

**IN THE SUPREME COURT OF NEVADA**

YACOV JACK HEFETZ,

Appellant,

vs.

CHRISTOPHER BEAVOR,

Respondent.

Electronically Filed  
Sep 06 2016 03:33 p.m.  
Tracie K. Lindeman  
Clerk of Supreme Court  
Supreme Court No. 70327  
District Court Case No. A-11-64533-C

**RESPONDENT'S SUPPLEMENTAL APPENDIX TO**

**ANSWERING BRIEF – VOL. I**

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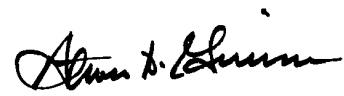
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CLERK OF THE COURT

TRAN

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

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

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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

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1 ill and she's elderly. What we did is we have a -- an Israeli  
2 affidavit, which apparently we're there, they do it by, you  
3 know, attorneys. But anyway, where she essentially gave it to  
4 him just to make -- signed to him just in case her interests,  
5 so to speak, since he manages her affairs anyway. We don't  
6 need it to proceed in the claim as we have it now. But we  
7 brought it with us just in case it became an issue. And  
8 opposing counsel can confirm we agreed that it's not an issue  
9 in terms of the right to proceed to the extent that, of  
10 course, the Court and the jury finds that my client had a  
11 right to proceed on the guaranty. But the issue of Alice  
12 Cohen not being here, pursuant to our June stipulation of  
13 2012, would not be an issue for the defense.

14 THE COURT: Okay. Is that correct?

15 MR. SAGGESE: That's correct.

16 THE COURT: All right. Anything else?

17 MR. IGLODY: No, Your Honor.

18 THE COURT: Okay. Okay. We'll have you -- I'll ask  
19 you and you can -- if you're going to rest, you can put it in  
20 front of the jury and then you'll go.

21 What witnesses are we expecting today, your clients?

22 MR. SAGGESE: My client, perhaps his wife, ex-wife,  
23 and Rob Rink.

24 THE COURT: I'm sorry?

25 MR. SAGGESE: Rob Rink.

1 MR. IGLODY: Robert Rink, yeah.

2 THE COURT: You think we'll get those done today?  
3 You're hopeful?

4 MR. SAGGESE: I would love to.

5 THE COURT: All right. Have you had a chance to talk  
6 about the verdict forms and the jury instructions?

7 MR. SAGGESE: Instructions, yes. The verdict form  
8 I've seen, plaintiffs and --

9 Did we submit a --

10 THE COURT: All right. Then you guys will certainly  
11 have tonight to discuss that. You're going to be done with  
12 witnesses certainly tomorrow, right?

13 MR. IGLODY: Once again, it's hard to predict how  
14 long everything's going to take.

15 THE COURT: I understand.

16 MR. IGLODY: As of now the only rebuttal witness we  
17 have left since we called Wayne out of order is a gentlemen  
18 named Gary Frey, which of course will be Herbert Frey's son.  
19 And we had anticipated having him come on Thursday. If for  
20 some reason things go remarkably quick today, I can go out in  
21 the hallway and try to see if I can get him down here today.  
22 But barring that, we would expect Gary Frey as the last one as  
23 our rebuttal, and that would be definitely by tomorrow  
24 morning. I don't have much for him. I just want to, you  
25 know, get some points in. And then after that we'd be ready

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

4 THE COURT: Okay. We'll go over this evening, go  
5 over agreed-to jury instructions and a verdict form or verdict  
6 forms so we can go over that. Apparently the juror that's an  
7 attorney has a motion at, like, 8:00, so -- and I have  
8 calender, anyway. So we won't be starting -- I won't have  
9 them here until 11:00. But if you guys want to get here at  
10 like 10:30, maybe we can go over a few things and maybe  
11 resolve it. If not, you know, we'll deal with it.

12 MR. IGLODY: And along those lines, because we have  
13 been exchanging e-mails, and obviously we disagree on some  
14 things. But in my proposed jury -- jury instructions, I have  
15 just jury instruction blank, blank, blank, blank, and then I  
16 have for my verdict form just a caption with a verdict, you  
17 know, plaintiff, defendant, special verdict, and whatnot. Is  
18 that how the Court wants it, on numbered ones, so you can  
19 switch in and out or how do you want it done?

20 THE COURT: Are you talking about cites or...

21 MR. IGLODY: Well, no. I have citations for every  
22 jury instruction. But what I'm saying is in the past the way  
23 judges have done it is they just pick them up and mix them up  
24 and then we number them afterwards so that there's no  
25 confusion.



1           THE COURT: Well, we'll -- obviously, there might be  
2 a disagreement as to the order, so as far as initially,  
3 certainly no numbers. But at -- when you -- when we get it  
4 all resolved, I don't care, I can fill in the numbers or you  
5 can do it on the computer. But, you know, once we get it  
6 resolved initially, I guess it certainly doesn't matter,  
7 because there's going to be disagreement on the order. Or  
8 there might be. So that's one thing you guys can talk about  
9 this afternoon or this evening.

10           MR. IGLODY: And should we come prepared with extra  
11 clean sets or do you just want the marked ones with the  
12 citations for now?

13           THE COURT: Well, I guess it depends how far along we  
14 get. You're mostly proposing, at least I would certainly hope  
15 the pattern instructions.

16           MR. IGLODY: Mine are almost exclusively pattern  
17 instruction.

18           THE COURT: If there's any outside those, you know,  
19 we'll have to certainly discuss. But, obviously, my  
20 preference is to use the pattern instructions. But, you know,  
21 I wouldn't worry about it. We can get them, you know, get a  
22 clean set, once we get it all resolved.

23           Okay.

24           MR. IGLODY: Thank you.

25           THE COURT: Okay.

1 (Pause in proceedings.)

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

3 (Jury reconvenes at 10:36 a.m.)

4 THE COURT: Please be seated.

5 (Jury roll call.)

6 THE COURT: Good morning, ladies and gentlemen. For  
7 those of you who were here early, it was sort of, I guess,  
8 some excitement. Seems like fire alarms and things go off a  
9 lot here. But that's a whole other story.

10 We're going to be starting tomorrow at 11:00 to  
11 accommodate some scheduling stuff, plus I have morning  
12 calender, anyway. And I'll remind you again at the end of the  
13 day, so starting at 11:00.

14 Okay. Plaintiff.

15 MR. IGLODY: We rest, Your Honor.

16 THE COURT: Thank you. Defense.

17 MR. SAGGESE: The defense would like to call  
18 Christopher Beavor.

19 CHRISTOPHER BEAVOR, DEFENDANT'S WITNESS, SWORN

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

22 THE WITNESS: Christopher Lee Beavor,  
23 C-H-R-I-S-T-O-P-H-E-R L-E-E B-E-A-V-O-R.

24 DIRECT EXAMINATION

25 BY MR. SAGGESE:

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1 Q Good morning, Mr. Beavor.

2 A Good morning.

3 Q Please start by describing to the jury your  
4 relationship to the parties, starting with Samantha Beavor.

5 A Samantha Beavor is currently my ex-wife, at the  
6 time, my wife.

7 Q At the time specifically, at the time of --

8 A The development, the guaranties, and the  
9 documents in question.

10 Q Okay. And Mr. Hefetz, plaintiff.

11 A Mr. Hefetz was a associate, a friend, and a  
12 lender in -- in the business dealings.

13 Q How long have you known Mr. Hefetz?

14 A From today.

15 Q In your entire life?

16 A Since approximately the end of 2005. So eight  
17 -- eight years.

18 Q Okay. And as you were about to say, how long  
19 had you known him up until the Toluca Lake project, till you  
20 two came together on that?

21 A Approximately two years.

22 Q And you understand clearly why we're here,  
23 correct?

24 A Yes.

25 Q And you understand that Mr. Hefetz is suing you

1 on a particular note?

2 A That's correct. I do.

3 Q And you understand you have counterclaims  
4 against Mr. Hefetz?

5 A I do.

6 Q Okay. Tell us about how you two came together,  
7 specifically how you and plaintiff came together on the Toluca  
8 Lake project?

9 A Well, I had been doing business with Mr. Frey as  
10 a lender and a partner, and in terms of a partnership, I  
11 was --

12 Q And Mr. Frey is -- what's his first name?

13 A Herbert Frey.

14 Q Now, have we heard from that particular Frey  
15 yet?

16 A Yes. He spoke two days ago.

17 Q Okay. Herbert Frey.

18 A Senior.

19 Q Herbert Frey --

20 A There's Gary --

21 Q -- Senior?

22 A Right.

23 Q And you had done previous business with Frey  
24 Senior?

25 A Yes.

1 Q Okay. So go ahead, in a narrative form, you...

2 A Well, at the time when we were doing business, I  
3 was approximately 31, 32 years of age. I'd done -- they'd all  
4 mentioned prior. I had little to no experience, like Wayne  
5 had mentioned yesterday, in construction or development at all  
6 with -- with multi-family units. I had some great ideas with  
7 some rooftop pool, I was familiar with real estate sales. And  
8 Mr. Gilmore, who is a representative agent of the Freys,  
9 Yacov, Star Development, was also a long-term developer here  
10 that had passed away since this event.

11 Q And that's the Mr. Gilmore that we've heard that  
12 was involved with the project but is now deceased, correct?

13 A Correct. Correct.

14 Q Okay.

15 A He's a long-standing member of our community  
16 here, did a lot of development projects for 30-some-odd years  
17 with Yacov, Mr. Frey, and I believe with possibly Wayne  
18 Krygier. And they came in and said, We want to be your  
19 partners, we like your ideas. We like where you're going. We  
20 want to be able to lend money to you for the next 20 to 30  
21 years. We want to get behind you and be -- be your partner  
22 and we'll support you in all of your ideas or development  
23 deals that you bring to the table that we support.

24 And in general I was told that, you know, we do  
25 business on handshakes, and if we like you and trust you, we

1 wouldn't be doing -- we wouldn't be doing any business with  
2 you if we didn't like you and trust you, period. And that any  
3 and all documents, or in the event of somebody were to pass  
4 away, or somebody were -- was to completely steal something or  
5 completely do some fraudulent acts and, you know, run across  
6 these. But other than that... And I think that's why I  
7 believe personally in the testimony you heard that a lot of  
8 them didn't know what was even in these documents giving out  
9 millions of dollars.

10 Q So, we -- we --

11 MR. IGLODY: Can I just interpose an objection and a  
12 motion to strike. We're talking about hearsay testimony and  
13 about a decedent.

14 THE COURT: As to the part regarding the person who's  
15 no longer with us, I'm striking his testimony. And this is  
16 direct, so a narrative isn't appropriate.

17 MR. SAGGESE: Okay. Could we approach for a second?

18 THE COURT: Sure.

19 (Off-record bench conference.)

20 BY MR. SAGGESE:

21 Q All right. Mr. Beavor, you had -- so you had  
22 met and formed a relationship with Mr. Frey, Herbert Frey?

23 A Through Steve Gilmore.

24 Q Through Steve Gilmore. And through that  
25 relationship you had -- well, you tell me, were you introduced

1 to Mr. Hefetz through Herbert Frey or did you meet him a  
2 different way?

3 A I first met Yacov for a hard money loan in a  
4 small cafe in Green Valley.

5 Q Okay. And how did you come to know who he was?

6 A Through my general contractor, Allen Floyd.

7 Q So you were introduced to Mr. Hefetz through  
8 Allen Floyd. Do you remember the approximate year when you  
9 first met with him in Green Valley?

10 A 2006, 2007.

11 Q Okay.

12 A Right at the time.

13 Q Now, let's get to --

14 A The beginning of 2006.

15 Q -- Toluca Lake, because there are many parties  
16 involved in Toluca Lake, but specifically this case is about  
17 you and Mr. Hefetz. So I want to tailor our  
18 question-and-answer session to your relationship with Mr.  
19 Hefetz and undertakings with Mr. Hefetz.

20 How did you first interact with Mr. Hefetz solely on  
21 the basis of Toluca Lake? How did you come to interact with  
22 him?

23 A Well, Steve Gilmore was -- was the  
24 representative that facilitated and represented Mr. Frey as  
25 the lender and oversaw. Like I said, they were mentoring me

1 and they had a full say-so on almost every e-mail and  
2 everything that I did. I never touched the money, they  
3 approved every loan, every document.

4 Q The question is how did you come to meet Mr.  
5 Hefetz?

6 A Eventually I'd come to find out at the time  
7 prior to them filing bankruptcy that -- that he, in fact, had  
8 some involvement via through Mr. Frey. And --

9 Q So it's --

10 A -- that they were going to come together and had  
11 a plan and they wanted me to follow their plan.

12 Q So, your -- your first interaction with Mr.  
13 Hefetz was through Star Development in regard to Toluca Lake?

14 A For this particular project, yes.

15 Q And what did you come to know about Star  
16 Development? I mean, did you -- did you know who it was? Did  
17 you know it was Hefetz or did you --

18 A At the -- at the day that it came about to me I  
19 was told that it was Mr. Frey's company, that they were  
20 setting up an entity to beat up the banks, that they were  
21 creating a separate entity to play it good cop/bad cop.

22 Q By whom were you told this?

23 A By Steve Gilmore, Gary Frey, and Mr. Frey.

24 Q Okay. And you've seen documents and the jury  
25 has seen some documents in relation to a substitution of



1 manager on Toluca Lake; are you familiar with those documents?

2 A Yes.

3 Q Okay. Now, for a little foundation, were you  
4 individually or did you have a company that was the manager of  
5 Toluca Lake?

6 A Yes. C&S Holdings was the manager of Toluca  
7 Lake, which was -- I was a member and my wife at the time,  
8 Samantha, was a member.

9 Q So you two had a company called C&S Holdings?

10 A That's correct.

11 Q The C is...

12 A Chris and the S is Samantha.

13 Q Okay. And that company was the manager of  
14 Toluca Lake?

15 A That is correct.

16 Q And what percentage ownership of the Toluca Lake  
17 project did you have, you know, in writing, in paper -- on  
18 paper?

19 A It was approximately 67 and a half percent.

20 Q Okay. And that was 67 percent of the project  
21 was owned by C&S Holdings?

22 A That's correct.

23 Q Which is you and Samantha Beavor?

24 A That's correct.

25 Q Okay. Now, back to the introduction of Star

1 Development into the project.

2           A     Now, on the ownership, I just wanted to comment,  
3 because you said 67 percent ownership. But the way all the  
4 agreements were written, that -- that -- it specifically said  
5 on the agreements that anything and -- basically that I did  
6 was controlled and I had to get approval by the Freys. And  
7 that's why Gilmore was put in place in the loan agreement  
8 while he was paid \$5,000 a month, because, again, it was all  
9 of their money and I didn't know where their money was coming  
10 from. But they were making all of those decisions and telling  
11 me, basically, what to do. And if you thoroughly read all of  
12 those documents, anything and anything that I was to do, I  
13 needed to get approval for them.

14           Q     Well, let me ask you this. In relation to that  
15 document I referenced where you were removed or you resigned  
16 as the manager of C&S Holdings, or as the manager of Toluca  
17 Lake, and -- and was replaced the same day by Star  
18 Development, if you know, why were you prohibited from  
19 yourself and putting the project into bankruptcy? Why did you  
20 have to be removed so that Star Development can put it into  
21 Chapter 11 bankruptcy?

22           A     Well, it was a -- it was a unique situation in  
23 2007. It was right prior to the economic collapse. And when  
24 you develop you purchase land first, and then once you own the  
25 land you create a development project. You create plans,

1 ingress, egress, parking, he designed the plan for the lot in  
2 Los Angeles. And so we had to purchase the land, do the  
3 designs, and then you take the plans and you bring it to a  
4 bank for a construction loan, which is the \$22 million  
5 construction loan that we're talking about with China Trust  
6 Bank.

7           So at the time, Mr. Frey had given us -- give Toluca  
8 Lake Vintage a 6 million -- a 4.4 million approximate loan  
9 amount to acquire the land. That money was paid into escrow  
10 to close on the land. And then a part of that money was --  
11 was given to engineering and architectural firms to complete  
12 the design so we could take and collateralize that land. So,  
13 in the beginning, Mr. Frey had a first trust deed prior to  
14 China Trust. He was in first position on the land, owned the  
15 land. And then --

16           Q     Even though he was first position on the land,  
17 owned the land, you were still manager of the project, in  
18 those --

19           A     I was still the manager of the project under a  
20 very strict loan agreements, guidance. Meaning that anything  
21 that I did I had to get approval in writing.

22           Q     So let me ask you -- I'll re-ask you the  
23 question. You gave me a tailored answer and that is, I know  
24 you have a lot to say. But a tailored answer.

25           Were you able to put the project into Chapter 11

1 bankruptcy --

2 A Could I have done this? Yes.

3 Q -- if you wanted? Okay. So why -- why did Star  
4 Development force you to resign and do it themselves?

5 A Well, in -- in the specific meeting with Mr.  
6 Frey, Gary Frey, Steve Gilmore --

7 Q And without saying what specific people said  
8 specifically, you can tell us what was the outcome of that  
9 meeting or what was determined at that meeting. But to avoid  
10 hearsay, I -- I don't want you to say, Steve Gilmore said,  
11 this person said.

12 A Well, I was just saying at the meeting and in  
13 the meeting where everyone's conversing and a lot of people  
14 are talking on multiple points and reasoning.

15 Q So this meeting takes place, and as a result of  
16 the meeting you understand what?

17 A Well, what had happened was I had left the  
18 country on a vacation to Mexico, is how this receivership,  
19 China Trust Bank, had happened. But -- and -- and I -- to go  
20 into this meeting of why it happened, if I could explain of  
21 how we got to that point with China Trust Bank, is -- if  
22 that's okay to help me with that answer.

23 Q Well, I want you to just stay on course, because  
24 it could take a very long time. So what we want to do is --

25 THE COURT: This works best if he asks the

1 question --

2 THE WITNESS: I understand.

3 THE COURT: -- and you answer the question. So  
4 answer his questions and don't --

5 Thank you.

6 THE WITNESS: Well, I remember everything and  
7 [indiscernible].

8 BY MR. SAGGESE:

9 Q Right. And again, we understand that you have a  
10 lot to -- to say. But what we would prefer is just -- doesn't  
11 have to be a short answer, but answer the question  
12 specifically. And -- and that is, as a result of that meeting  
13 you referenced, what -- what did you come to know? What was  
14 determined by that meeting?

15 A That that -- that they were all experienced,  
16 that they were there to mentor me, that we were all  
17 partnership, that it was all their money and they knew I  
18 didn't have any millions of dollars. And that for them to  
19 make a decision and for them -- that they'd been doing this  
20 for over 40 years, developing a big percentage of Las Vegas  
21 and multiple projects like you heard from Wayne, from Canada  
22 to L.A. to Vegas, for decades. That they've been through  
23 economic collapses before and that they knew how to beat up  
24 the bank, and that we were all going to stick together. And  
25 that the bank was doing wrong. And that they know exactly

1 what to do and how to do it, and that they were going to  
2 appoint legal counsel for me and they were going to appoint  
3 legal counsel for the company and they were going to pay for  
4 legal counsel for themselves. And --

5 Q Now, we -- so we're all on the same page, when  
6 you say they, as a basis of understanding, they would  
7 include --

8 A Mr. Frey, Gary Frey, his son, probably a trustee  
9 of his trust, Frey Family Trust.

10 Q And Gary Frey, was he an owner or managing  
11 member of Star Development, Gary Frey?

12 A Gary Frey -- and when this was happening and  
13 they formed it --

14 Q Yes or no.

15 A -- specifically just for this action or this  
16 beating up the bank strategy to get their money and make  
17 money, that I didn't go on to -- to secretary of state, I was  
18 going off their word. So at that meeting, for me to say who  
19 -- did I know who the owners or members or managers were?  
20 They were just saying, Look, we're Star Development. So, that  
21 meaning Gary Frey and Herbert Frey, I believed at that time.

22 Q Okay. Have you come to know who is, in fact,  
23 owners and managing members of Star Development?

24 A Yeah. I follow it now. Depending on where our  
25 case goes, at some points it's Yacov, and if the case, I

1 notice that he comes off and puts his son, and so I -- yeah,  
2 I've been following it over the last few years as they add and  
3 take off.

4 Q So at a meeting, do you have an approximate date  
5 of that meeting wherein a strategy was discussed in relation  
6 to --

7 A It would have been approximately April-ish of  
8 2008.

9 Q And do you remember the approximate date of the  
10 promissory note --

11 A 2000.

12 Q -- that you had signed?

13 A I believe it was in 2007.

14 Q Yeah. If I -- if I represented to you it was  
15 March of 2007, does that ring a bell?

16 A Yes.

17 Q So about one year later, discussions are being  
18 had by essentially the individuals who put up the money. Is  
19 that accurate? Discussions are being had in relation to the  
20 future of --

21 A Well, I had --

22 Q -- hold on.

23 A -- counsel --

24 Q Hold on. For the future of Toluca Lake,  
25 discussions are being had in relation to the future of Toluca

1 Lake by the individuals who put up the money for the project?

2 A That is correct.

3 Q And as a result of those meetings, was a  
4 decision made to remove you as manager?

5 A Yes. I -- I had counsel at the time, Ballard  
6 Spahr, who represented the company, and not me as an  
7 individual, but Toluca Lake. And there was a receivership  
8 motion put into place, because Mr. Frey -- when we -- when all  
9 the original agreements were put into place, the loan with  
10 China Trust Bank was not a part of that loan agreement. And  
11 all of the agreements that we -- that were put into place,  
12 including the guaranty, the loan agreement, the deed and the  
13 note, none of it took into account that China Trust Bank was  
14 -- or Mr. Frey was also going to be the borrower on the main  
15 loan. And in that main loan, and with the loan with Mr. Frey,  
16 it said if we defaulted or did anything on the first loan,  
17 that it automatically triggered my guaranty, my unlimited  
18 guaranty, now that I've come to know it later.

19 Q So let's get more specific on that. Because we  
20 can't speak in generalities so the jury can understand. When  
21 you say the main loan, you're referring to a \$22 million China  
22 Trust loan?

23 A Yes.

24 Q That's the main loan?

25 A That's correct. Mr. Frey became a -- as a



1 borrower and a guarantor on that loan, and then he -- part of  
2 the strategy was we weren't behind in schedule. We were doing  
3 a complex roof on a fault line in Los Angeles with a rooftop  
4 pool. And we had pre-agreed agreements with China Trust Bank  
5 for extensions. But in that extension you had to sign off on  
6 the extension requesting it. It's already there, we're not  
7 begging, we don't need it. It was already agreed into a  
8 300-plus page loan agreement.

9           Then what had happened was, is when the market  
10 started collapsing and the banking was starting to collapse  
11 all over, from Lehman Brothers, banks were going under, you  
12 know, it was in the news in L.A., IndyMac was going under,  
13 China Trust Bank, which is really Bank of Taiwan for political  
14 reasons for them, but they were starting to freeze up, they  
15 had no capital. And so the Freys that are very complex and  
16 been through the '87 -- been through multiple collapses in  
17 historical real estate calender, they said this is our --

18           MR. IGLODY: I think we're going to a little bit in a  
19 narrative, plus a little bit of an expert testimony.

20           MR. SAGGESE: If you have an objection, you can lodge  
21 an objection.

22           MR. IGLODY: Objection.

23           MR. SAGGESE: But a speaking objection, please.

24           MR. IGLODY: Objection.

25           THE WITNESS: So --

1 MR. SAGGESE: There's an objection.

2 THE WITNESS: Yeah, I'm sorry.

3 MR. SAGGESE: Stop.

4 THE COURT: Hang on. I'm -- joking. I'm going to  
5 sustain the objection as to narrative. Again, just -- it'll  
6 go really a lot faster, let him ask the question, answer the  
7 question --

8 THE WITNESS: I'm sorry.

9 THE COURT: -- I'm sure he'll get to a follow-up.  
10 It'll go much quicker.

11 BY MR. SAGGESE:

12 Q Yeah. So stay with me. I understand.

13 A I know, I'm just trying to explain in a nutshell  
14 in 30 minutes --

15 Q Too big of a picture for this.

16 A Okay.

17 Q It's -- it's just -- let's -- stay with me. And  
18 certainly I'm not being rude if I interrupt you and I'm not  
19 being disagreeable if I stop you. But stick with me.

20 Based on meetings and the decisions of the  
21 individuals, the Freys and Star Development that provided some  
22 funding for the project, a determination was made to file  
23 bankruptcy, correct?

24 A A determination from -- from them. They removed  
25 me and they said that -- that we're going to work in your best

1 interests as a fiduciary agent for the whole project and that  
2 we're not only going to recover our money that is owed to us,  
3 we're -- that we're going to profit and you're going to get  
4 paid, Chris, the money that is owed to you and profit.

5 Q Okay. So you were put in a position where, and  
6 correct me if I'm wrong, but you were put in a position where  
7 you believed, as they had stated to you, Star -- Star  
8 Development, that if the bankruptcy Chapter 11 went forward,  
9 everyone would be forgiven of their personal guaranties; was  
10 that your understanding?

11 A Absolutely. And they appointed their own legal  
12 counsel. They -- they asked me to relinquish all of my legal  
13 counsel and representation.

14 Q Okay. So let -- let me -- let me walk you  
15 through that. So you referenced Ballard Spahr before. You  
16 had your own lawyer, or the project had its own lawyer,  
17 correct?

18 A Yeah. Yes. I feel bad --

19 Q Okay. So you had -- you had your own lawyer or  
20 the project had its own lawyer. Did you fire or let go or  
21 stop having --

22 A Against their advice, they thought I was crazy.  
23 They did tell me --

24 Q Not what they told you. I'm just asking you a  
25 specific --

1 A Yes.

2 Q -- tailored question. Did you let your attorney  
3 go?

4 A Yes.

5 Q And did you let your attorney go upon advice of  
6 -- of Star Development, Gary Frey, and the individuals  
7 behind --

8 A Yes. Based on our agreement.

9 Q -- the money matter, which would be --

10 A Our agreement.

11 Q -- Herbert Frey, Gary Frey.

12 A Yes.

13 Q And you say based on your agreement. Give me a  
14 summary of that agreement.

15 A A summary of that agreement was Chris, we know  
16 what we're doing, we're asking you to relinquish counsel.

17 Q Without putting it in terms of someone  
18 speaking --

19 A Okay.

20 Q -- what was your --

21 A The agreement was that -- that --

22 Q Just let me ask the questions. Please.

23 A Okay. Go ahead.

24 Q What was your understanding of the agreement  
25 between the individuals who had the money and the loan with

1 China Trust Bank and you about bankruptcy and moving forward,  
2 from bankruptcy forward? What was your understanding of the  
3 agreement? Not -- not what did they tell you.

4 A The understanding of the agreement was -- was  
5 they were going to provide legal counsel for me, that they  
6 were going to --

7 Q Did they?

8 A Yes.

9 Q Okay.

10 A That --

11 Q Do you remember the lawyer's name?

12 A Haberbush [phonetic].

13 Q Do you remember his first name?

14 A I -- I never met him other than in court when I  
15 fired him in front of the judge for fraud, or lying.

16 Q Okay. So Haberbush was supposedly an attorney  
17 handling your best interests; at least that's what you  
18 believed?

19 A Paid by them, retained by them, I never paid him  
20 one penny. So a lot of lawyers don't work for free. But  
21 that's correct.

22 Q So you were under the impression that if you  
23 followed Star Development's lead in filing for bankruptcy and  
24 putting the project into bankruptcy, that you would have an  
25 attorney that represented you and was paid for?

1           A     Yes.

2           Q     And that this attorney would be looking out for  
3 your best interests?

4           A     Including Star Development working, looking out  
5 for my best interests.

6           Q     Okay. And -- and you believe that because what,  
7 because Star Development was managing Toluca Lake--

8           A     Well, they were the manager of Toluca Lake and  
9 they kept me on as a member for -- for actually, I believe,  
10 for tax purposes, because if the debt went bad, they would put  
11 -- if they took over the membership of Toluca Lake and they  
12 wrote off their bad debt and it would flow back to them, they  
13 wouldn't get the tax write off. So they kept me in as a  
14 member, since I didn't have any money or losses, so they could  
15 write off the debt that would flow into me. So what they --

16          Q     Well, let me ask -- let me ask you this, more  
17 specifically. You believed that you were essentially part of  
18 the plan of Star Development and Herbert Frey, who funded the  
19 -- the project. Is that -- is that accurate?

20          A     That's correct.

21          Q     Their plan. In other words, and you understood  
22 their plan to be that they would file a Chapter 11 bankruptcy.  
23 And as we've heard in open court, everyone would be forgiven  
24 of their personal guaranties?

25          A     Absolutely.

1           Q     I -- I believe we heard it from two witnesses, I  
2 believe Hefetz -- Mr. Hefetz said everyone would be forgiven  
3 of their personal guaranties, and I believe Wayne Krygier, if  
4 you recall, stated the goal was file bankruptcy and everybody  
5 would be relieved from their personal guaranties. You  
6 believed that to be true?

7           A     Absolutely.

8           Q     And you thought you were part of everyone?

9           A     Well, they -- well, they had a fiduciary  
10 responsibility, I believe, in business ethics. They were  
11 managing Toluca Lake, and as a manager of a company they're  
12 supposed to work in the best interests of the owners. So if I  
13 was still 67 percent --

14           MR. IGLODY: Objection, Your Honor. State -- and  
15 motion to strike. He's stating some kind of legal conclusion  
16 here. Thank you.

17           THE COURT: I'm going to sustain the objection.  
18 Again, he's going to ask the questions. Direct your answers  
19 to the questions.

20           THE WITNESS: Okay.

21           THE COURT: You don't need to give a narrative.

22           THE WITNESS: Okay.

23           THE COURT: Please.

24 BY MR. SAGGESE:

25           Q     Maybe tomorrow no coffee.

1           A     All right.  Okay.  Sorry.

2           Q     I understand you're a little excited.  But for  
3 purposes of flow, like the judge said, I'll ask you a  
4 question, you answer it, we'll move along.

5                 Ultimately, did you come to realize that the plan you  
6 thought you were part of, that, all right, we'll let this  
7 project go into bankruptcy, you're 67 percent owner, we'll let  
8 it go into bankruptcy, everyone's forgiven of their personal  
9 guaranties.  Were you -- did you come to find out that you  
10 weren't part of that plan?

11           A     Yes.  By chance.  By luck.

12           Q     Okay.  Tell us about that.  How did -- and, you  
13 know, let's keep it --

14           A     Keep it narrative and answer the questions.

15           Q     How did you discover that you were not going to  
16 be forgiven of your personal guaranty, representations being  
17 everyone is going to be forgiven of their personal guaranties?  
18 Briefly, how did you find out?

19           A     How did I find out?  We were right towards the  
20 end of settling with China Trust Bank, settling the  
21 bankruptcy, everyone was going to walk away from the table,  
22 the bank, the Freys, everyone was supposed to walk away happy,  
23 including the community that we were developing the project.

24           Q     Okay.

25           A     And I start reading the final pleadings myself



1 and motions. And I read a motion that was filed on a February  
2 date and I was reading a court date where they were going to  
3 approve this motion. And we were drafting up paperwork, legal  
4 paperwork, to relinquish all the -- the guaranties, the notes  
5 against my house that I lived in. And I noticed on a piece of  
6 paperwork I believe dated February 13th from Victor Saan  
7 [phonetic] on a legal declaration to federal court, it  
8 stated --

9 Q Now, for -- for everyone's understanding, who's  
10 Victor Saan?

11 A He is the bankruptcy attorney hired by Mr. Frey  
12 to represent Toluca Lake, which I was -- was an owner of  
13 Toluca Lake, to represent Toluca Lake.

14 Q Now, he's -- he's different than, obviously,  
15 David Haberbush or attorney Haberbush that you referenced  
16 earlier, right?

17 A That's correct. He represents Toluca Lake,  
18 which I was an owner of --

19 Q When you say he, who he?

20 A Victor Saan.

21 Q Represent Toluca Lake?

22 A Toluca Lake in the bankruptcy proceedings.

23 Q And Haberbush represents?

24 A Haberbush was supposed to represent Christopher  
25 Beavor, Samantha as individuals with our guaranties against

1 the bank and throughout the project.

2 Q Do you know if Haberbush worked in conjunction  
3 with Victor Saan?

4 A Victor Saan, Haberbush, and Mark Fields that  
5 represented personally Mr. Frey all worked together for 25  
6 years at a large firm in L.A.

7 Q Okay.

8 A I believe it's on the statement.

9 Q So you discover --

10 THE COURT: Counsel, we need to take a short break.  
11 Sometimes my staff needs to take a break.

12 So we're going to take a 10-minute recess. During  
13 this recess you're admonished not to talk or converse amongst  
14 yourselves or with anyone else on any subject connected with  
15 this trial or read, watch, or listen to any report of or  
16 commentary on the trial or any person connected with this  
17 trial by any medium of information including without  
18 limitation newspapers, television, radio, or Internet, or form  
19 or express any opinion on any subject connected with the trial  
20 until the case is finally submitted to you.

21 We'll take a short recess.

22 (Jury recesses at 11:10 a.m.)

23 THE COURT: Cathy has to go and we won't have a  
24 substitute. And so we're coming back -- we'll come back at  
25 1:15. And Chris will -- because Chris will let the jury go

1 and we'll come at 1:15.

2 (Court recesses at 11:25 a.m., until 2:56 p.m.)

3 (Outside the presence of the jury.)

4 MR. IGLODY: A partial settlement, I guess.

5 MR. SAGGESE: One -- one party settled. Samantha  
6 Beavor has settled out.

7 THE COURT: Okay.

8 MR. SAGGESE: Doesn't mean much for you or I as far  
9 as the trial moving forward.

10 THE COURT: Did you work on the other, or?

11 MR. IGLODY: Yes. We gave it a shot.

12 THE COURT: Okay. That's all I can ask. Okay. So  
13 other than that, basically we continue. Right?

14 MR. IGLODY: Well, here's what we had envisioned,  
15 depending on what the Court would like to do. We'd envisioned  
16 putting our settlement on the record.

17 THE COURT: Okay.

18 MR. IGLODY: And then at that point excusing Samantha  
19 Beavor. And then depending on if the Court will indulge it,  
20 maybe getting some sort of clarification to the jury along the  
21 lines of there's a party not here pursuant to confidential  
22 [indiscernible], don't read into -- read any -- don't give it  
23 any weight, don't read anything into it, and let's proceed  
24 with Mr. Beavor. And then he takes the stand. In other  
25 words, don't have them looking at the empty chair going, Well,

1 what happened? Because that might tie them up.

2 Other than that, we -- that's it.

3 THE COURT: I don't think they -- well, okay. All  
4 right. Let's put the settlement on the record and we'll --  
5 I'll think about what we need to do. I don't think they're  
6 going to care that much. The trial's going to keep going and  
7 the fact that there's one less party, they may or may not even  
8 notice.

9 But, okay, what are the terms of the settlement?

10 MR. IGLODY: The terms of the settlement --

11 THE COURT: Or are you not disclosing them? As long  
12 as you've agreed to dismiss her, what do you want to put on  
13 the record?

14 MR. IGLODY: Yeah. We're just putting on the record,  
15 just to put on the record, obviously not for the jury, the  
16 terms of the settlement are that Yacov Hefetz is settling with  
17 defendant Samantha Beavor for complete and full release  
18 between Samantha Beavor and Yacov Hefetz. Obviously, we have  
19 claims and [indiscernible] pending, so it would be a mutual  
20 release --

21 THE COURT: Mutual releases.

22 MR. IGLODY: The client agrees to release by April  
23 15, assuming all her paperwork's executed by then, the deed of  
24 trust against the condominium that she resides in at Domnus  
25 Lane, D-O-M-N-U-S, with a 15-day extension just in case with

1 title, you never know.

2           The condition of the settlement, the condition of the  
3 release, and the condition of them going separate ways is that  
4 Samantha agree that she will not aid, abet, or participate in  
5 any attempt to take, move, transfer, hide, shelter, any assets  
6 of her ex-husband Christopher Beavor in any way, shape, or  
7 form, and we agreed to generally go by the uniform fraudulent  
8 transfer act, definitions as it pertains to assets. And the  
9 agreement has the only exception of, obviously, there's no  
10 child support at the moment. They do have one child together.  
11 Obviously, if a court of competent jurisdiction orders child  
12 support, that would not fall under the purview of what we're  
13 contemplating in this agreement. That is a condition.

14           If the condition is violated, in other words, if  
15 settlement agreement is breached, we agreed upon mutually to  
16 have a liquidated damages clause provision. The liquidated  
17 damages clause would be \$1 million, which obviously is a  
18 reduction of the \$6 million judgment that's currently being  
19 pursued by the plaintiff against the defendant. And what we  
20 were hoping for was first to have everybody consent to it on  
21 the record so that we're clear that everybody's consented,  
22 including Mr. Beavor, Christopher Beavor, since he's currently  
23 a codefendant with her and represented by same counsel.

24           And then we were hoping maybe the Court would indulge  
25 a status check just to make sure we're getting all the

1 paperwork done.

2 THE COURT: Is that your understanding of the  
3 agreement?

4 MR. SAGGESE: That is, Your Honor. Other than having  
5 a -- the other codefendant have to agree, I don't think that's  
6 necessary. But, yeah, that sounds essentially correct.

7 And just to expand slightly, a liquidated damages  
8 clause is in effect if -- and this is pursuant to our  
9 discussion -- you know, it becomes known that Mr. and Mrs.  
10 Beavor are moving assets of any significant value and to avoid  
11 Mr. Hefetz. I think we're all -- we're all in agreement with  
12 that and understand that their marriage is over, their  
13 relationship is over, they don't have assets in common. And  
14 the likelihood of that is slim. But we agreed to that  
15 liquidated damages clause, because should by some fortune Mr.  
16 Beavor come upon a lot of money, and instead of having to give  
17 it to Mr. Hefetz if he should lose this case, he signs it over  
18 to his wife, that would be a violation of the agreement.

19 THE COURT: Okay. Mr. Hefetz, are you agreeable to  
20 that?

21 THE PLAINTIFF: Yes, sir. I'm sorry.

22 THE COURT: Thank you.

23 THE PLAINTIFF: I would like to make her life easy  
24 and get out of their responsibility.

25 THE COURT: Okay. And Samantha Beavor, am I

1 pronouncing it right, are you agreeable to that?

2 MS. BEAVOR: Absolutely.

3 THE COURT: And since there's certainly no time to do  
4 a good faith settlement, and they are separate, Mr.  
5 Christopher Beavor, are you agreeable to that?

6 MR. BEAVOR: I'm agreeable from what I heard, yes.

7 THE COURT: Okay. Then we have a settlement for  
8 Samantha Beavor and -- or Beavor. And you're free to go.

9 MR. IGLODY: Could we set -- set a status check just  
10 to confirm we have a stip in order, settlement paperwork,  
11 release of deed of trust, things like that?

12 THE COURT: That's fine. How long do you think?

13 MR. IGLODY: Mark, 30 days, just to make sure?

14 MR. SAGGESE: 30 days will be enough.

15 THE COURT: Make it 45 days.

16 MR. IGLODY: 45, okay.

17 THE COURT: I've got a -- let's see now, today's the  
18 27th.

19 THE CLERK: April 16th, 9:00 a.m.

20 MR. IGLODY: April 16th, 9:00 a.m.?

21 THE CLERK: Yes.

22 MR. IGLODY: Okay.

23 THE COURT: Okay. Thanks. Okay. So, as far --  
24 that's fine. As far as telling the jury -- I don't see any

25 Reason to say she's been excused. But if you want --

1 I --

2 MR. IGLODY: The only concern, obviously, is, you  
3 know, they read anything into it saying, Oh, you see, they  
4 never had anything to begin with or anything goofy like that.  
5 That's --

6 THE COURT: That's why I'm saying that just she's  
7 excused and she's not here.

8 MR. IGLODY: Maybe an advisement that they don't read  
9 anything into it or give it any weight or something like that.  
10 That's the only reason I'm concerned.

11 THE COURT: I don't have any problem with that.

12 MR. SAGGESE: He can say exactly that. Don't read  
13 anything into it.

14 THE COURT: Okay. I have to sign a warrant, so have  
15 a seat and -- and maybe you can talk some more.

16 MR. SAGGESE: You never know.

17 THE COURT: It won't hurt.

18 (Court recesses at 3:04 p.m., until 3:35 p.m.)

19 (Outside the presence of the jury.)

20 THE COURT: So, be seated. Is that a no-go?  
21 Anything we need to deal with outside the presence?

22 MR. SAGGESE: Nothing from the defendant, Your Honor.

23 MR. IGLODY: No, Your Honor. Thank you.

24 THE COURT: Okay. Go get them.

25 MR. SAGGESE: So, 3:30 to 4:45 today?



1 THE COURT: Pretty much. Who's the next witness?

2 MR. SAGGESE: We were already in --

3 MR. IGLODY: We're continuing.

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

5 (Jury reconvenes at 3:36 p.m.)

6 THE COURT: Please be seated. Parties acknowledge  
7 the presence of the jury.

8 MR. IGLODY: Yes, Your Honor.

9 THE COURT: Defense, acknowledge the presence of the  
10 jury?

11 MR. SAGGESE: Yes, Your Honor.

12 THE COURT: Sorry, ladies and gentlemen. We have  
13 been working. So we will continue.

14 Ms. Samantha Beavor is not going to be -- be in court  
15 and you are not to draw any inference regarding that at all.

16 Okay.

17 MR. SAGGESE: All right. Your Honor, we'd like to  
18 recall to the stand Mr. Beavor.

19 Still under oath.

20 THE COURT: Go ahead and swear him again. It's...

21 CHRISTOPHER BEAVOR, DEFENDANT'S WITNESS, SWORN

22 THE CLERK: Thank you. Please be seated. State and  
23 spell your name for the record.

24 THE WITNESS: Christopher Lee Beavor,

25 C-H-R-I-S-T-O-P-H-E-R L-E-E B-E-A-V-O-R.

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1 DIRECT EXAMINATION (Continued)

2 BY MR. SAGGESE:

3 Q Mr. Beavor, just to get us back on track, what  
4 -- Toluca Lake originally as a project was operated  
5 exclusively by you as manager of C&S Holdings. For how long  
6 were you the only entity involved?

7 A As the manager?

8 Q Yes.

9 A As the manager, I was the sole manager for  
10 approximately 18 months.

11 Q And you recall a entry of Star Development in  
12 relation to the Toluca Lake project?

13 A Yes.

14 Q When did they come on the scene?

15 A In approximately April of 2009. According to  
16 the documents, around that period.

17 Q April 2009, and --

18 A May -- or was it May of '09. I mean, they --  
19 they came and approached me in April, but the actual  
20 documents, I believe --

21 Q April of 2009?

22 A '09.

23 Q And the project was started what month and year?

24 A The loan started in 2007.

25 Q So the loan was put into place and as you had

1 testified earlier that the loan was utilized initially for the  
2 purposes of purchasing the land that would be Toluca Lake; is  
3 that right?

4 A That's correct. Or Mr. Frey was the first  
5 trustee holder.

6 Q So the land was purchased in relation to the  
7 loan which was given in 2007, and two years later after the  
8 project was underway Star Development came in and took over  
9 management, correct?

10 A That's correct. Like I said, they've been under  
11 -- I've been under their guidance for the entire construction.

12 Q Star Management?

13 A Some of the members and advisors.

14 Q Star Development, it's called. Yeah.

15 A Yeah, prior to Star Development actually being  
16 legally formed.

17 Q Okay. So the individuals who ultimately legally  
18 formed Star Development, you're saying they were involved to  
19 one -- you know, to some extent?

20 A To some extent, yes. Some extent.

21 Q So there -- there came a point where you were  
22 asked to resign as manager of the project, correct?

23 A That is correct.

24 Q Okay. And you were 67 percent owner of the  
25 project?

1           A     Yes. And still -- still have ownership -- had  
2 ownership at the time that they took it over.

3           Q     Okay. And were there other percentage owners  
4 involved?

5           A     There was Rob Rink via Essential Investments.

6           Q     What was his percentage, if you know?

7           A     Approximately 7 percent. And there was clear --  
8 Allen Floyd.

9           Q     Do you know what his percentage ownership was?

10          A     Around 27 percent via his construction company.  
11 I don't know his legal entity.

12          Q     So, once you were approach -- well, tell us, who  
13 approached you in relation to putting the company into  
14 bankruptcy, or the project into bankruptcy?

15          A     Well, the -- Steve Gilmore, Gary Frey and Wayne  
16 Krygier, and Herbert Frey, Sr.

17          Q     Okay. And were representations -- and -- and  
18 these individuals, I heard a couple of names, are any of them  
19 associated with Star Development?

20          A     Yes.

21          Q     And Star Development is a company owned in part  
22 by plaintiff?

23          A     That's correct. Yacov Hefetz.

24          Q     And these individuals recommended what action  
25 for the project?

1           A     They recommended -- I -- they -- I had a legal  
2     counsel representing Toluca Lake and we had a strategy and  
3     financing to complete the project and had the ability to pay  
4     everybody back, China Trust in its entirety, all the  
5     contractors in their entirety, and including the 6 -- the 4.3  
6     plus the profit for them, where I wasn't going to get  
7     anything, but everyone was supposed to be paid off.

8           And they said no, we can make better money, we can --  
9     and just release us. We'll file bankruptcy. I said I didn't  
10    want to do that. And without -- without -- they said, Well,  
11    we'll release you of any and all obligations. We've been  
12    doing this for 40 years, we know how to do this. Just -- we  
13    will give you counsel, we will pay for everything, and we'll  
14    be done with it.

15          And I felt, because I'm like, this is their money,  
16    that -- that although I'm making the decisions and I had no  
17    ability to pay them back the 6 million, as Mr. Frey testified,  
18    when they gave me the original loan, that I -- I said, Okay.  
19    Here, you -- they forcefully took over as manager to represent  
20    myself, Robert Rink, and Allen Floyd through their entities as  
21    owners.

22          Q     Let me -- let me stop you there.

23          A     I'm sorry.

24          Q     So Robert Rink, Allen Floyd, and yourself  
25    comprised what percentage ownership of Toluca --

1           A     100 percent of Toluca Lake.

2           Q     The three of you percentage ownership would  
3 total 100?

4           A     Yes.

5           Q     And you three, if this is what I just heard, you  
6 three had a plan of -- of finding supplemental, what is it,  
7 backing, loan, what -- supplemental --

8           A     We not only had a plan, that information was  
9 actually submitted to the bankruptcy court in our opposition  
10 of the lender and an affidavit saying that they had the  
11 financing and had the money and the ability to complete the  
12 project.

13          Q     Okay. So if the project -- if -- if your plan  
14 went forward, you were anticipating completing the project?

15          A     Yes. Keep in mind this was in a good area of  
16 Los Angeles. It wasn't as hard hit as the Las Vegas  
17 community. So, yes.

18          Q     So, you would have -- you anticipated, it was at  
19 least your hope you, Robert Rink, and Allen Floyd complete the  
20 project with the funding that you referenced, you submitted to  
21 the bankruptcy court to tell the court it existed. You wanted  
22 to complete the project. And you believed everyone would be  
23 paid back?

24          A     Yes.

25          Q     An --

1 A And under that plan --

2 Q Hold on.

3 A -- that would have.

4 Q An alternative from the individuals, Star  
5 Development and Herbert Frey, an alternative -- and they are  
6 the individuals who put a majority, if not all of the money  
7 initially, was presented to you, correct?

8 A That's correct.

9 Q And that was in the form of a Chapter 11  
10 bankruptcy?

11 A That's correct.

12 Q And that was against the China Trust \$22 million  
13 full project note?

14 A That's correct. Their action caused the  
15 guaranty and all the documents within there to go bad with  
16 their own actions. So they -- they loaned me the money and  
17 they -- they made the entity default on itself. And then  
18 later, the years later now are coming after me for something  
19 that they did and then had control.

20 Q Now, making entity default on itself, was Mr.  
21 Frey in a position, Herbert Frey in a position to extend the  
22 deadline for the debt repayment?

23 MR. IGLODY: Objection.

24 THE WITNESS: Yes.

25 MR. IGLODY: Calls for speculation.

1 THE COURT: Sustained.

2 BY MR. SAGGESE:

3 Q Do you have personal knowledge --

4 THE COURT: Your answer will be stricken.

5 BY MR. SAGGESE:

6 Q Do you have personal knowledge as to what was  
7 required to extend the deadline for paying back China Trust  
8 Bank? Do you know what was necessary?

9 A Yes.

10 Q Okay. And how did you come to know this  
11 information about what was required by China Trust Bank?

12 A Well, I was a guarantor borrower and the manager  
13 of Toluca Lake. We had -- because it was a -- a very unique  
14 development project with a rooftop pool in Los Angeles, and  
15 putting a rooftop pool in an earthquake zone area requires a  
16 lot of engineering. And so we had already pre degree [sic] in  
17 the 300-plus page loan agreement that we already had automatic  
18 extensions granted and that it only required the signatures of  
19 the guarantors to request that automatic extensions.

20 Q And who were -- who were the guarantors you're  
21 referring to?

22 A Mr. Frey, Robert Rink, Allen Floyd, myself, and  
23 Samantha.

24 Q So if all the parties agreed and signed the  
25 extension, China Trust Bank would -- was an automatic



1 extension, as you referred to it?

2 A That's correct. And then when we requested the  
3 group, Toluca Lake and myself requested that automatic  
4 extension, we were not negotiating it, it was already agreed  
5 to, Mr. Frey at that point denied signing that document.

6 Q And did you come to understand why that decision  
7 not to sign as one of the guarantors to extend the note to  
8 China Trust, why that occurred, why that action was taken?

9 A Well, at that time China Trust Bank had owed us  
10 -- we had a floating prime rate, and China Trust had committed  
11 -- we had a proceeding. China Trust had owed or requested  
12 some additional funds that were not agreed to in the agreement  
13 and asked us to waive some rights in the automatic extension.  
14 And at the end of the day we wanted to just complete the  
15 project and pay everybody back. And Mr. Frey along with Star  
16 Development Group, they separated and they came up with a plan  
17 and approached me and said, Look, it's time for you to walk  
18 away. We're the experienced people in this group. We're --  
19 you're just going to need to follow what we say.

20 Q So, in the -- and that was the Chapter 11  
21 bankruptcy, and there came -- it came to a point where you had  
22 objected to the Chapter 11 bankruptcy proceedings in  
23 California; do you remember that?

24 A Yes.

25 Q Okay. And what triggered this objection that

1 you made the Court aware of?

2           A     I was reading court documents from counsel that  
3 they were paying for that they put into place to represent me  
4 in terms of paperwork, although I never met this attorney.  
5 And I was reading an e-mail document. And on the first page  
6 there was a statement stating that all the parties have come  
7 up with an agreement, meaning the Star Development Group, Mr.  
8 Frey, myself, all the guarantors, and it was an approval for a  
9 -- what they called a global settlement agreement, meaning  
10 where the bank got cleared, I was cleared of all the  
11 guaranties, other testimony, other witnesses were testifying  
12 for the last few days about this global release of guaranties.

13           And in this agreement, there was a statement in the  
14 declaration to the Federal Bankruptcy Court that all parties  
15 had mutually agreed to this agreement, that everybody had good  
16 will and everybody had negotiated in good faith. And this  
17 declaration was filed with the bankruptcy.

18           And myself, Rob Rink, Samantha, and the guarantors  
19 that were then the owners of Toluca Lake had never seen this  
20 agreement once. And so this declaration obviously was falsely  
21 filed to the Federal Bankruptcy.

22           Q     Do you know who -- we know counsel would file a  
23 -- a pleading. But do you know who specifically, if you know,  
24 was responsible for filing an affidavit that stated -- let's  
25 keep it to just you, because Samantha's not here, any other

1 parties were not parties, just you -- do you know who caused  
2 to be filed the document that alleged you were in agreement  
3 with the settlement in the bankruptcy which you saw --

4 A I would imagine the group that was paying the  
5 attorneys to file those documents.

6 Q Not -- not who you imagine. If you know. Do  
7 you know who filed that particular affidavit? In other words  
8 --

9 A Who filed it is -- was Victor Saan, the attorney  
10 hired by Star Development.

11 Q Okay.

12 A And paid for by Star Development.

13 Q Okay. So --

14 A And was taking direct orders for Star  
15 Development.

16 Q So Star Development hired Victor Saan. Victor  
17 Saan you believed as an attorney was representing your best  
18 interests, but you discovered that an affidavit was filed in  
19 the Chapter 11 bankruptcy ultimately saying that you agreed  
20 when, in fact, you did not?

21 A That's --

22 Q Or -- or you could clarify -- I mean, that's --

23 A That's correct. And then I -- I fired my  
24 attorney. The first time I met him was in court, but I fired  
25 him for this -- well, he -- I -- I called him up and he

1 prepared some declaration, which I believe is evidence  
2 somewhere, that he retracted that we didn't see it. And they  
3 filed an ex parte motion on a Friday, which means it's an  
4 emergency motion all of a sudden, before I could get into  
5 court, because I had no money, and I had no way of paying for  
6 legal representation, especially in Los Angeles. So they  
7 filed an ex parte on a Friday so court was on Monday. So, to  
8 go into L.A. against some of the largest lawyers in -- in  
9 California. And so I went there and I terminated my legal  
10 counsel in front of the judge --

11 Q What was that individual's name?

12 A Haberbush. Davie Haberbush.

13 Q And Haberbush was in the same law firm as Victor  
14 Saan?

15 A They had all worked together. There's three  
16 attorneys. They had worked together for 10-plus years at the  
17 same law firm. But at this point they'd all separated into  
18 their own practices.

19 Q But what -- what -- in your binder there, it  
20 should be in there, is marked D14. Can you turn to that? And  
21 this is a pre-agreed-upon Exhibit D14. I know that's hard to  
22 turn those pages.

23 Do you -- tell the -- tell the ladies and gentlemen  
24 of the jury what D14 is, title of the document.

25 A United States Bankruptcy Court, Central District

1 California, it says, "Order granting emergency ex parte motion  
2 for approving a modification of the order approving the  
3 settlement agreement between debtor, China Trust Bank, and all  
4 others."

5 Q Okay. Let me stop you there. So this was the  
6 document you were referring to when we were just talking,  
7 correct?

8 A Yes, one of them. And it was -- there was lots  
9 of exhibits.

10 Q I understand there is a series of bankruptcy  
11 documents and they will be going back with the jury that they  
12 could see them all. But for purposes of what you and I were  
13 discussing on direct examination, Exhibit D14, is that  
14 document -- what -- what is that document, without the title,  
15 but, you know, an explanation as to what it is.

16 A Well, this is the actual order that was finally  
17 approved from that proceeding for my -- and I had a limited  
18 understanding of how it worked. But when a lawyer submits a  
19 document, a judge typically will rule that it's valid and will  
20 sign off on it or an order or publish it out to the people  
21 that are involved.

22 Q Well, let me -- let me -- I'll ask you a  
23 question. You can give me a direct answer to it.

24 In looking at this -- and if you need time to look  
25 through it and make sure we're on the same page, is this the

1 order related to your emergency motion that you put on in  
2 relation to what we were discussing -- discussing?

3 A A majority of it. But when I actually --  
4 actually after I terminated counsel and the judge heard of  
5 what they were trying to do, which was to turn all the funds  
6 from Toluca Lake, which is the debtor in possession, were the  
7 funds from the bankruptcy, because there was a -- a  
8 partnership agreement with the person that was finishing the  
9 project as of today, where profits were supposed to be 25  
10 percent given back to Toluca Lake to pay back the debtors,  
11 they somehow on their own order that they created said that  
12 all the funds from the development were going to go to Star  
13 Development.

14 And so when I fired my attorney and made a big  
15 commotion, the judge actually read it, because she was just  
16 going to sign off on it. And she said, Whoa, this is wrong.  
17 So she corrected their order and said, No, the funds aren't  
18 going to go to Star, they're going to go to Toluca Lake and  
19 we're going to maintain this. And then she also said, I'm  
20 going to add the section in here where -- normally when you --  
21 they -- she gives a final order in a bankruptcy, it's final.  
22 You can't come back and say, He said, she said, or make  
23 claims. It's done. And she said, Okay, I don't -- there's  
24 something -- I'm not here to rule on that --

25 Q Just stick to what is in the order versus what

1 she said.

2 A Okay. Well, it's here in the order, I can read  
3 it.

4 Q Okay. Well, then, let's stick to what's in the  
5 order, if you want to refer to a particular page.

6 A On page 4 she -- the judge ordered,  
7 "Notwithstanding to the contrary of the order, all rights,  
8 remedies, defenses, and claims of the debtor and its members,"  
9 me being a member, "including but not limited to Essential  
10 Investments, C&S Holdings, Rocket Construction," which was the  
11 general contractor, Allen Floyd, "collectively as Christopher  
12 Beavor, Samantha Beavor, C&S Holdings, Bryan Head, LLC  
13 Company, and on the other hand Herbert Frey Revocable Trust  
14 dated and all other parties on hand that they have against  
15 each other are preserved.

16 "And further, notwithstanding on the contrary, all  
17 compensation to Star Development for any entity controlled by  
18 Frey, except for Section B, Advisory Services Revenue Share  
19 Agreement" --

20 Q And let me --

21 A -- "shall be paid to the debtor."

22 Q And the debtor --

23 A Which was --

24 Q -- the debtor being who?

25 A Toluca Lake, which I'm a member of Toluca Lake.

1 Q Okay.

2 A Which I have not received any compensation, it's  
3 still in the control of Mr. Hefetz and Star Development.

4 MR. IGLODY: I'll object to that. That's not in  
5 evidence and it contradicts the order itself. Motion to  
6 strike.

7 THE COURT: That's appropriate for cross-examination.  
8 The document you stipulated, the document's in evidence, the  
9 jury can review the document.

10 BY MR. SAGGESE:

11 Q So Mr. Beavor, you at some point made a  
12 realization that, in fact, the attorneys that were expected to  
13 represent your best interests, you made the personal  
14 determination that they weren't acting in your best interest?

15 A Well, we'd never seen that document and he's  
16 representing that he presented it to and everybody had -- and  
17 we'd never seen the document. So, obviously, it was --

18 Q So you know in the end that everyone, and this  
19 is to use the language of previous witnesses, that everyone's  
20 guaranties were forgiven?

21 A That's what -- correct.

22 Q Except whose?

23 A Samantha and mine, those only two people.

24 Q Okay. And you objected to that and it's your  
25 opinion that the judge, based on this order that the jury



1 could look at, carved out an exception for rights and remedies  
2 that you may have?

3 A Well, that's correct. That's what it's here  
4 for.

5 Q Okay. Let's move on. When you originally  
6 signed the loan and promissory note and the guaranty, which is  
7 the basis of plaintiff's claim with Mr. Frey, was Mr. Hefetz  
8 involved in that transaction at all?

9 A At the time that I signed the agreements at  
10 title company here, I was not aware that Yacov Hefetz was  
11 involved.

12 Q And at the time you signed a -- the guaranty and  
13 the promissory note and the loan agreement referencing monies  
14 to be used to purchase land that would comprise Toluca Lake,  
15 was Star Development, Yacov Hefetz's company, involved?

16 A I'm sorry. Could you repeat the question?

17 Q And I will submit to you it's March of 2007 when  
18 you signed the promissory note, the loan agreement, and the  
19 guaranty with Mr. Frey, Herbert Frey. Was Star Development  
20 involved in that transaction at all?

21 A Not that I'm aware of. Not that I'm aware of at  
22 that time.

23 Q And was it -- what was your understanding in  
24 relation to the monies you were borrowing, what would it be  
25 secured by, if anything?

1           A     The project -- the only way that we could -- the  
2 -- the money was never given to me, it was -- it was always in  
3 duly brought into the land, do a title company, and also I  
4 believe they had title insurance, and I don't know if they put  
5 a title insurance claim in for the money, too. But they --  
6 the money would go right into title, would be cleared out in  
7 expenses, there'd be lien releases, and I'm sorry, I'm getting  
8 off track.

9           Q     And it was utilized -- it was utilized  
10 originally to purchase the land, Toluca Lake, correct?

11          A     Purchase the land and pay for bills to develop  
12 the project.

13          Q     So, in other words --

14          A     And the only way -- the only way that I was ever  
15 to pay that money back and in the agreement was to finish --  
16 build a project, finish it, sell them, and the money was never  
17 even going to go to me. It was all paid off. Just like if  
18 you buy a house and get a loan from Chase and you sell it to  
19 your friend or a neighbor, it goes to title and they pay off  
20 the loan. They don't give you the money to pay off Chase.

21          Q     So the -- the loan was provided to Toluca --  
22 Toluca Lake, and it was to secure land?

23          A     That's correct.

24          Q     And it was secured by the project?

25          A     And a first trust deed position at the time.

1           Q     Okay. Was there ever an understanding that you  
2 would -- or had the resources to pay back the \$6 million  
3 yourself, individually, Chris Beavor, versus manager of Toluca  
4 Lake or manager of C&S?

5           MR. IGLODY: Objection. Relevance.

6           THE COURT: Sustained.

7 BY MR. SAGGESE:

8           Q     Let me ask you this. The note is for \$6  
9 million, and that's what the lawsuit is. But we've come to  
10 know that 4.4 was originally distributed for the land,  
11 correct?

12          A     That's correct.

13          Q     And we've also come to know that 2.2 or 2.4  
14 million of it allegedly comes from Mr. Hefetz, and the other  
15 half was Mr. Frey, at least that's what Mr. Hefetz testified  
16 to; does that sound right?

17          A     Yeah. From the -- from my testimony, it was all  
18 Mr. Frey's money, and later Mr. Frey, I guess, needed some  
19 money and went to Yacov and Yacov gave him some cash.

20          Q     Right. And that is evidenced by the exhibits  
21 the jury could see, the assignment. Do you know the year of  
22 the assignment in which Mr. Frey assigned the note or the  
23 right to pursue the note against you; do you remember that?

24          A     I believe it is 2011, shortly after he took the  
25 contract out of my hand of the settlement.

1           Q     And -- and let me ask you this. 4.4 million --  
2 \$6 million note, how much of that money did you take or put in  
3 your pocket or put under your bed or in a mattress or in a  
4 bank account?

5           A     Zero. Matter of fact, I -- part of that money  
6 that Wayne Krygier spoke about yesterday in testimony, about  
7 cramming down and negotiating, I believe around a half a  
8 million of it was owed to C&S Holdings, which also was zero  
9 was collected on that, also.

10          Q     Okay.

11          A     For staff and employees that I employed to  
12 manage the project.

13          Q     Now, in relation to that document that was filed  
14 in the Chapter 11 bankruptcy, it was an affidavit signed by  
15 whom; do you remember who signed and submitted the affidavit,  
16 specifically the one that said you, because you're the only  
17 one at this point in this case that matters, what you agreed  
18 to this global settlement with China Trust and you're on  
19 board. Who -- who signed that affidavit that went into the  
20 bankruptcy court? If you know, because you may not know.  
21 There's a lot of documents.

22          A     I don't -- I don't -- who signed that specific  
23 -- the declaration was from Victor Saan, the attorney  
24 representing Star Development.

25          Q     Okay. And Victor Saan signed the affidavit that

1 said above it -- above the signature --

2 A That he spoke with Star Development and all  
3 parties.

4 Q -- and Star Development is Yacov Hefetz. And  
5 the affidavit said Star Development has relayed, that you  
6 agree, essentially, and you found that to be objectionable,  
7 accurate?

8 A Yes. That's accurate.

9 Q When you made -- when you made this realization  
10 that you were not included in the discussions related to the  
11 settlement, did you notify anybody? Did you make a --

12 A The first phone call I made was to my attorney  
13 that I'd never met that was supposed to be representing me.

14 Q Okay.

15 A And --

16 Q Did you call -- let me ask you, did you call  
17 anybody else?

18 A I called the -- Rob Rink, the owners of Toluca  
19 Lake, who also have lost hundreds of thousands of their money,  
20 and let them know that there was a settlement that we had not  
21 seen that is being put forth to the courts.

22 Q So the way you addressed your dissatisfaction  
23 was getting another lawyer and filing an objection to the  
24 bankruptcy proceeding; is that accurate?

25 A Yes. I went down and I hired the state bar

1 attorney. Well, I -- I represented myself and there wasn't  
2 enough time because they filed an ex parte motion. And I -- I  
3 called Gary Frey, I called Wayne, everybody went silent on the  
4 phone, nobody would call me back, and there was some emergency  
5 motion quickly that I discovered something, and they were  
6 going to try to just cram it down and get it signed off on  
7 Monday.

8 And then I showed up, all the bank attorneys were  
9 mad, because it was time and I was a nobody in the case.

10 Q All right. Let's move ahead to mutual release.  
11 Did there come a time when, in light of your dissatisfaction  
12 with the -- the bankruptcy, that you discussed with Herbert  
13 Frey, the original lender, and agreement or an opportunity for  
14 you to be finally removed from your personal guaranty?

15 A Well, from the beginning when they came there  
16 they absolutely said, We're going to release you of all  
17 obligations right from the beginning. And --

18 Q But that ended up not being true.

19 A That's correct. Rob was there, everybody was  
20 there. We were all under the -- the same agreement. And as  
21 they spoke before, I believe testified, and I was under the  
22 understanding that every -- we all make deals...

23 Q But did you -- let me keep you on track. Did  
24 you -- you know, at that point did you feel tricked?

25 A Absolutely.

1           Q     And -- and did there come a point in time when  
2 you reached out to Herbert Frey, the older gentleman who  
3 testified first in this case, the individual who originally  
4 put forth the actual money for Toluca Lake to purchase the  
5 property, 4.4; did you have an opportunity to discuss with him  
6 an opportunity or an agreement or a contract for you to be  
7 released from your personal guaranty like everyone else was?

8           A     Yes.

9           Q     Okay. And did you ever get your hands on a  
10 written mutual release?

11          A     December 30th, 2010, Wayne Krygier sent me an  
12 e-mail prepared by, I believe, some of the testimony. I don't  
13 know if it's in the records of that attorney that was friends  
14 with Yacov Hefetz, that they prepare. And they had sent me  
15 the document, said it was a done deal, to sign, to bring these  
16 checks and cashier's checks for \$24,000 for the legal fees,  
17 because they were too busy and didn't have time to actually  
18 prepare the document. So I printed it out, signed the  
19 documents, got the checks, went down to their offices.

20          Q     Let me back you up a little bit. Wayne Krygier  
21 testified that the attorney that you're referencing in that  
22 e-mail string was Ofir Ventura; does that name ring a bell?

23          A     I've never heard of him and --

24          Q     So he's not your lawyer?

25          A     Absolutely not.

1           Q     So, you didn't have your lawyer draft the mutual  
2 release and agreement to -- to be released from your guaranty,  
3 did you? Or you didn't cause an attorney to -- to write it,  
4 either?

5           A     No.

6           Q     So, to the best of your knowledge, Ofir Ventura  
7 represented -- as an attorney, represented who?

8           A     Star Development and -- and Mr. Frey.

9           Q     And I will show you -- I'll have you look at  
10 Exhibits D1 and D2, and these will be back with the jury to  
11 look at. Let's start with D2.

12           Get to D2 yet? Let me know when you're there.

13          A     I'm there.

14          Q     All right. Now, on D2 you're looking at?

15          A     Yes.

16          Q     What's the title of D2?

17          A     "The Mutual Release and Payment Agreement."

18          Q     Okay. Now, do you remember this particular  
19 document, seeing this document?

20          A     Absolutely, yes. I do.

21          Q     Okay. And you received this document from whom?

22          A     Wayne Krygier via Mr. Frey.

23          Q     Okay. And this document, I don't know if you  
24 need to look through it or you have it committed to memory,  
25 probably, the -- the contents of this document, if you can



1 summarize, are what?

2 A Well, I was to release Mr. Frey for any and all  
3 damages that I might have had from possibly the  
4 misrepresentations made in Federal Bankruptcy Court, so I was  
5 releasing him of -- of some of what we perceived as wrongful  
6 acts. And I was -- I was -- he was -- we were supposed to  
7 mutually release each other from any and all claims.

8 Q Okay. And one of the claims -- and for you the  
9 claim was the guaranty?

10 A Yeah, it's all. We were supposed to wash each  
11 other's hands and --

12 Q And -- and be specific.

13 A -- everything be finished.

14 Q Which guaranty --

15 A Guaranties, notes, deeds.

16 Q Which guaranty were you primarily --

17 A The \$6 million guaranty --

18 Q Okay.

19 A -- that we're here in court today to discuss.

20 Q And in exchange for everybody to go their  
21 separate ways, the bottom under "Payment amount" on the first  
22 page, D2, "Payment amount," do you see that?

23 A Yes.

24 Q You were to pay \$23,500 at \$1,000 down, and then  
25 18 checks of \$1,250?

1           A     Yes. That was all the money [indiscernible] I  
2 could afford.

3           Q     Say that again?

4           A     Yes, that's the payments and -- and all the  
5 money that I had or could afford to pay at the time.

6           Q     So --

7           MR. SAGGESE: Court's indulgence. Better get this  
8 guy some water. You ought to give him a -- you all right over  
9 there? Want some water?

10 BY MR. SAGGESE:

11           Q     Now, Mr. Beavor, what's been marked as Exhibit  
12 D1, flip that over, and you're on D2, because we'll jump back  
13 to that. Okay.

14                 Do you recognize that?

15           A     Yes, I do.

16           Q     And what's the check number on that?

17           A     1993.

18           Q     And the amount?

19           A     \$1,250.

20           Q     And the next check?

21           A     The check number?

22           Q     Yeah.

23           A     Was 1994 for \$1,250.

24           Q     Okay. Is the month changed on that?

25           A     Yes. It's -- it goes from February 1st to March

1 1st.

2 Q Okay. Last one was March 1st. And the date on  
3 this check?

4 A March 1st, 2011.

5 Q Take a look again.

6 A I mean April, I'm sorry.

7 Q 4/1 for \$1,250?

8 A May 1st, 2011.

9 Q For \$1,250?

10 A June 1st, 2011.

11 Q All payable to who?

12 A Herbert Frey Revocable Family Trust. July 1st,  
13 2011, Herbert Frey.

14 Q 1250?

15 A August 1st, 2011, Herbert Frey Revocable Family  
16 Trust.

17 Q 1250. And I will submit to you and you can look  
18 at the ones in front of you, there are a total of 15 checks  
19 here, the last check number 2010; is that accurate?

20 A Yes.

21 Q Made out to the Herbert Frey Revocable Trust,  
22 correct?

23 A That is correct.

24 Q Dated July 1st, 2012?

25 A That's correct.

1 Q And that would have been the final payment on  
2 your mutual release agreement?

3 A That's correct.

4 Q And then pursuant to D1 -- excuse me, D2, page 2  
5 of -- of D2, as the jury has seen, I'll show it again. It  
6 says, "Immediately upon the mutual execution of this  
7 agreement, Beavor shall pay the sum of \$1,000." That was an  
8 initial payment of \$1,000, correct?

9 A Yes. Yacov took that. He has a cashier's  
10 check.

11 Q And is this the cashier's check that represented  
12 the \$1,000 that was the down payment on your mutual release  
13 with Herbert Frey?

14 A Yes.

15 Q And that release was of your guaranty on the \$6  
16 million loan in 2007 from the Toluca Lake project?

17 A Yes.

18 Q Now, D2, the actual release, can you flip ahead  
19 a few pages, three, four, five pages, they're not paginated,  
20 it's the signature page. You see that signature page?

21 A Yes, I do.

22 Q Whose -- whose signature is first?

23 A The first signature is my signature versus C&S  
24 Holdings and Bryan Head Loss [phonetic].

25 Q Okay. And that signature is dated what,

1 January --

2 A January 3rd, 2011.

3 Q Okay.

4 A And like I said, I have that e-mail, December  
5 30th, 2010. So this is 11 days --

6 Q And this \$1,000 down payment is dated when?

7 A January 4th, 2011.

8 Q And you signed this document January 3rd?

9 A That's correct. So I signed the document, and  
10 then I got the -- as soon as they gave it to me on the 30th, I  
11 printed -- had Samantha sign it and then I went to the bank.

12 Q Okay. And the signature below your signature is  
13 whose?

14 A My -- or Samantha Beavor's signature and my  
15 signature.

16 Q And that's your ex-wife at the time  
17 [indiscernible]?

18 A That's correct.

19 Q Now, the next page, the next signature page is  
20 blank. That accurate?

21 A Yes.

22 Q It says Herbert Frey Trustee, and Herbert Frey  
23 individually, and there are no signatures, right?

24 A That's correct.

25 Q And I want you to tell in a question-and-answer

1 format the ladies and gentlemen of the jury how it came to be  
2 that this document did not get signed by Herbert Frey?

3 A I went down to Mr. Frey's office in the  
4 Flamingo.

5 Q On what -- at what -- on what day, if you  
6 remember?

7 A Within a day or two of that day I got the  
8 cashier's check, maybe on --

9 Q That's January 3rd.

10 A -- within a day or two. Within a day.

11 Q So you go down to Mr. Frey's office, where is  
12 it?

13 A Located in the Flamingo Casino.

14 Q Okay. And does he share an office with anybody  
15 at that time?

16 A At that time Mr. Frey's desk and Yacov's desks  
17 are right next to each other in an office in the back rooms of  
18 the Flamingo.

19 Q Literally their desks are touching?

20 A Yes.

21 Q Okay. I mean, is there a cubicle between --

22 A No, they're just touching. You could reach out  
23 and look at each other.

24 Q Okay. So you entered that office. And you're  
25 looking to finalize this with Mr. Frey, Herbert Frey?

1 A Yes.

2 Q And it doesn't quite --

3 A This is Mr. Frey's document to me and the  
4 settlement, so yes, I --

5 Q So you go to his office --

6 A -- find his document --

7 Q -- you have the cashier's checks, you're ready  
8 to finally be released from your guaranty.

9 A As he's always promised.

10 Q And you go and you were met by whom?

11 A Yacov Hefetz.

12 Q And that's the plaintiff?

13 A That's correct.

14 Q And tell me about the interaction.

15 A I said, Is Mr. Frey here? I'm here to drop off  
16 our settlement. I said, I look forward to moving past this  
17 and doing business together on other deals. All excited, I'm  
18 excited. And he goes, What are you talking about? And he  
19 grabs the contract out of my hand and he thumbs through it and  
20 he turned red and got all upset and said, Absolutely I'm not  
21 having Mr. Frey sign this document, over my dead body, this  
22 won't happen, and I will do anything and everything for this  
23 not to happen.

24 Q Did you -- did you -- did you protest, did you  
25 argue, what did you do in response --

1 A I walked --

2 Q -- so I know.

3 A -- I mean, I just walked out. He seemed very...

4 Q Did you take your checks back with you?

5 A No. He had the cashier's checks, the checks,  
6 and the document.

7 Q Did you -- and he kept the document?

8 A Yes.

9 Q So, to this day you were never --

10 A I still don't have any -- I have not received  
11 back the cashier's checks, checks.

12 Q Now, have you come to find out why, as you sit  
13 here today, why Mr. Frey agreeing to release you of your \$6  
14 million guaranty might upset him?

15 A Well, now I know. At the time Mr. Frey said he  
16 had some health concerns and that this whole transaction was  
17 very upsetting for him. And --

18 Q I mean, as far as Mr. Hefetz's position in  
19 having an interest in the Toluca Lake project or monies that  
20 he believes are subject to your mutual release; do you  
21 understand what I'm saying?

22 A Yeah. At that time I didn't know I was -- had  
23 -- that I was dealing at all with -- it was just with Mr. Frey  
24 and I, and that was the agreement, and that --

25 Q But have you come to find out why Mr. Hefetz has



1 interjected himself and --

2 A Well, it appears that those two had an agreement  
3 that had nothing to do with me and that he gave Mr. Frey some  
4 cash --

5 Q So you know today --

6 A -- as of today, but not --

7 Q -- that Mr. Hefetz had an agreement or a deal  
8 with Mr. Frey that he would provide some money, half of the  
9 money, after the fact, couple years later, from what I  
10 understand, to provide, to offset the cost of the purchase of  
11 the Toluca Lake land?

12 A That's correct. That's correct.

13 Q Okay.

14 MR. SAGGESE: Court's indulgence.

15 Q Let me ask you a couple of questions backing up  
16 a little bit. When you were managing this project as C&S  
17 Holdings, Christopher and Samantha, you were the manager. Up  
18 until the point that Star Development showed up on the scene,  
19 which is Hefetz and Gary Frey and Mr. Hefetz's son, Shan  
20 Hefetz, you were -- let me put it this way.

21 Did they come on the scene, Star Development, and  
22 assure you that they would be working with you, that you were  
23 both on the same -- that you both intended on moving the  
24 project forward, or what was their representation? Were you a  
25 team? Were you -- or were you separate? In other words, did

1 they try and alienate you or did they -- what was the  
2 relationship between let's say C&S Holdings and Star  
3 Development when they first came on the scene?

4 A That they brought their 40 years experience,  
5 that they were partners, and Star Development as a manager of  
6 Toluca Lake, which I'm a member, is supposed to, even in the  
7 operating agreement, is supposed to work in a fiduciary  
8 responsibility to do what's in the best interests of Toluca  
9 Lake and its members, which would be myself, Samantha, and  
10 Robert Rink, and Allen Floyd, all the ones that didn't get a  
11 dime out of it, all of the people that didn't get the guaranty  
12 releases on it.

13 Q But you -- the names you just mentioned were the  
14 sum total of 100 percent ownership?

15 A That's correct.

16 Q Star Development comes on as Star Development  
17 essentially communicates to you that as a team, seen as a  
18 unified front you're going to move the project forward, or if  
19 strategically put it into bankruptcy, it's a unified front.  
20 In other words, they were not antagonistic and like, you're --  
21 you know, it was more like, are we going to do this as a team;  
22 is that accurate?

23 A Absolutely accurate.

24 Q And it didn't work out that way, did it?

25 A Not until I read the documents did he even find

1 out that all along they'd been fraudulently stating facts that  
2 were -- had no truth --

3 Q And -- but the facts specifically that you  
4 agreed to the settlement --

5 A All of these agreements that we've all been  
6 working in good faith and we've actually been being told lies  
7 every month through e-mails through Gary Frey's Star  
8 Development.

9 Q All right.

10 A And Wayne Krygier.

11 MR. SAGGESE: Now, Your Honor, I'm going to pass the  
12 witness. And reserve for redirect.

13 THE COURT: Thank you. Direct -- or cross.

14 CROSS-EXAMINATION

15 BY MR. IGLODY:

16 Q Chris, you said that when Star Development  
17 through Herbert Frey and Steve Gilmore and Gary Frey came to  
18 you, they said that they were you, as you said, partners and  
19 you were going to work together. Now, at that time, they  
20 weren't your partners, were they?

21 A Well, define partner.

22 Q Well, you define partner for me and how you  
23 think, you used the word during your direct, I'd like you to  
24 tell me --

25 A People that exchange money --

1 Q -- what you think partner is.

2 A -- work together, share in profit, have the same  
3 ideals, same goals, same understanding, that are forth and  
4 honest with each other I would consider partners.

5 Q We'll get back to honesty in a little bit. Now,  
6 let's talk about a couple of names to clarify your concept of  
7 partnership. Let's talk about, for example, Allen Floyd.

8 Allen Floyd was on the project with you, wasn't he?

9 A He was the general contractor.

10 Q But he was also a member of Toluca Lake Vintage,  
11 wasn't he?

12 A Yes, he was.

13 Q With you as another member of Toluca Lake  
14 Vintage?

15 A C&S Holdings, yes, was in --

16 Q Through C&S Holdings, did you consider him a  
17 partner?

18 A Allen Floyd?

19 Q Yes.

20 A Yes.

21 Q Robert Rink. Robert Rink was with you on the  
22 project, was he?

23 A When you say on the project...

24 Q Was he a member of Toluca Lake Vintage?

25 A Yes. Essential Investments through his --

1 Q Through Essential Investments.

2 A Yes.

3 Q And that is important to point out. Everybody  
4 had their ownership interest through a different entity, C&S  
5 Holdings for you and Samantha, Rocket Construction for Allen,  
6 and Essential Investments for our friend Robert Rink, right?  
7 Is that correct?

8 A That is correct.

9 Q Okay. And the three of you comprised  
10 essentially all of the members of Toluca Lake Vintage; is that  
11 right?

12 A Besides the revenue share agreements. But we  
13 were the members, but not the sole owners and controllers of  
14 the -- of the entity.

15 Q Well, but let's be clear about our terms here,  
16 because I want to make sure that we're using our language  
17 correctly. Toluca Lake Vintage, an entity, a limited  
18 liability company; is that right?

19 A That is correct.

20 Q And as a limited liability company it had three  
21 members; is that right?

22 A That's correct.

23 Q And between the entities that we discussed it  
24 was you, basically, Allen, and Robert; is that right?

25 A That's correct.

1 Q And you were the majority owner of Toluca Lake  
2 Vintage; is that right?

3 A That's correct.

4 Q Toluca Lake Vintage was the borrower from both  
5 China Trust and Herbert Frey; is that right?

6 A That's correct.

7 Q So Toluca Lake Vintage, the three of you, did  
8 you consider them to be your partners?

9 A Yes, I considered China Trust Bank, all the  
10 lenders, and --

11 Q Let me be clear.

12 A -- everybody partners in a transaction.

13 Q Apparently I wasn't clear. Allen and Robert,  
14 your co-members at Toluca Lake Vintage, did you consider them  
15 to be your partners?

16 A Yes.

17 Q Now, let me drill down on that a little bit  
18 since we were using that term a lot and I want to be clear  
19 what we mean by that.

20 When they participated with you in the construction  
21 of Toluca Lake Vintage, if Toluca Lake Vintage had been  
22 phenomenally successful, movie stars moving in, okay, Esquire  
23 Magazine, whatever, okay, they would have shared with you in  
24 the profits, wouldn't they have, Allen and Robert?

25 A And Mr. Frey, yes.

1 Q I'll get to Mr. Frey in just a second.

2 A Oh, I thought you were asking who would share.

3 Q No, no, no.

4 A I'm sorry.

5 Q Would Robert and Allen, your co-members in  
6 Toluca Lake Vintage share with you the phenomenal profits if  
7 the project had been successful?

8 A I don't know about phenomenal, but they would  
9 share in the profits.

10 Q And one of the reasons they would share in the  
11 profits is because they were members with you in Toluca Lake  
12 Vintage; is that right?

13 A That's correct.

14 Q Now, Herbert Frey was never a member of Toluca  
15 Lake Vintage, was he?

16 A Not that I'm aware of.

17 Q Well, I'm sorry, but I can't let you go on that  
18 one. I need you to tell me to the best of your ability  
19 whether or not Herbert Frey was a member of Toluca Lake  
20 Vintage of which you were a 65 or 67.1, whatever it was,  
21 percentage member?

22 A Well, at this time we're still waiting for the  
23 Kls from Gary Frey, and it was still unknown at this moment if  
24 -- if Herbert Frey took the membership. So when I get those  
25 Kls -- for the best of my ability, up until approximately 12

1 months ago he was not listed as a member.

2 Q All right. Well, let's --

3 A But I don't know at this point if he's not a  
4 member or not.

5 Q We can do this instead. Just -- that's fine.  
6 Let's go back to 2007. All right. In 2007, did Toluca Lake  
7 Vintage have Herbert Frey as a member?

8 A He had a prearranged assignment of membership in  
9 his possession that he could record at any time, so he had an  
10 interest in the membership ownership.

11 Q You know --

12 A So I don't know what kind of -- when you say  
13 ownership, if -- when you have some type of a document that  
14 says you have the assignment and membership of owners --  
15 assignments of ownership, I -- you're an attorney. I'm not.

16 Q Fair enough.

17 A Would that be considered some type of ownership?

18 Q Fair enough. And it is important for us to use  
19 our language carefully. So let's go ahead and drill down a  
20 little bit more.

21 When you were a member of Toluca Lake Vintage, did  
22 you ever have member meetings?

23 A Yes.

24 Q Who was responsible for sending out the notices  
25 for the member meetings of Toluca Lake Vintage?



1           A     My secretary.

2           Q     To your knowledge, did you ever address an  
3 envelope to Herbert Frey as a member of Toluca Lake Vintage to  
4 appear at your annual meeting?

5           A     If you look at the loan agreement somewhere in  
6 this evidence folder, Mr. Gilmore was listed as the agent  
7 representative of Mr. Frey, and he was to be notified and  
8 informed of every decision that the company made.

9           Q     So, let's go back. To your knowledge, did you  
10 ever have a member meeting where Mr. Frey was listed as a  
11 member of entity, Toluca Lake Vintage?

12          A     Mr. Gilmore was notified of our decisions,  
13 members, and because of that, because Mr. Frey held in his  
14 possession a pre-signed agreement of assignment of membership.

15          Q     I'll try one more time. We already established  
16 Robert, Allen, and you, through entities, members of Toluca  
17 Lake Vintage. That much we have down, all right. What I'm  
18 trying to establish is whether or not at any time Herbert Frey  
19 had an actual membership in Toluca Lake Vintage. That's all  
20 I'm trying to get to. If you know the answer, great. If you  
21 don't, just say no and we'll move onto the next one.

22          A     No. Let's move on.

23          Q     Okay. Now, you were talking about what you  
24 called I think it was -- was it an assignment of economic  
25 interest?

1 A An assignment of membership interest.

2 Q An assignment of membership interest?

3 A Yes.

4 Q And you said it was somewhere in my documents,  
5 right? You said it was somewhere in our documents?

6 A I said in the documents there was a loan  
7 agreement and a note where Mr. Gilmore received compensation  
8 and received approval and made decisions.

9 Q Okay. You want to point that to me -- you want  
10 me out to that, where Gilmore had this?

11 MR. IGLODY: Are we going to 4:45, Your Honor?

12 THE COURT: It's only 10 minutes, yeah.

13 MR. SAGGESE: Your Honor, on that note, can we  
14 approach?

15 THE COURT: All right.

16 (Off-record bench conference.)

17 THE WITNESS: Do you have a sticky tab? I'm like,  
18 there's a few documents in here.

19 BY MR. SAGGESE:

20 Q I'm sorry?

21 A If you have a sticky tab, I'll tab --

22 Q Just tell me the page number, or exhibit number.

23 A There's page 118 called the Operating Agreement  
24 for Toluca Lake.

25 Q P, D, D, P, which tab number?

1           A     I'm sorry. P9, Exhibit 7, page 118. Third --  
2           Q     Read -- read --  
3           A     -- third paragraph --  
4           Q     -- read the top of it.  
5           A     "Amendment to the Operating Agreement for Toluca  
6 Lake Vintage."  
7           Q     Which amendment, first amendment?  
8           A     The first amendment.  
9           Q     Okay.  
10          A     And dated March 27, 2007.  
11          Q     Okay.  
12          A     Do you want me to keep reading?  
13          Q     Yeah. I'd like you to read the first paragraphs  
14 and then the first numbered paragraph.  
15          A     The first paragraphs, "Operating Agreement of  
16 Toluca Lake, a California Limited Liability Company, effective  
17 March 27, 2007, capitalized" --  
18          Q     Go ahead.  
19          A     -- "capitalized terms used herein and not  
20 authorized -- otherwise defined herein are used with the  
21 meanings given them in the agreement. For good and valuable  
22 consideration the receipt of sufficiency of which are hereby  
23 acknowledged, the undersigned being all members of the  
24 company," so the undersigned being all members of the company,  
25 "do hereby agree to amend the agreements. And the members on

1 behalf of themselves and behalf of the company do agree that  
2 until such time as of all the company's indebtness [sic] to  
3 Herbert Frey, Trustee of Herbert Frey Revocable Trust, and all  
4 obligations related therein by rising from the loan in the  
5 principle of 6 million as described in the loan agreement,"  
6 which that loan agreement will have Mr. Gilmore, "the  
7 promissory notes related to and all agreements entered into  
8 with or for the benefit of lender related or such loan  
9 documents are satisfied in full. If lenders or lenders'  
10 designee," which I would assume Mr. Gilmore is a designee,  
11 "and any or other persons or entity acquires all or any  
12 portion of the membership interest, which is security interest  
13 was granted in the assignment hereby defined and succeeds to  
14 all or any portion of the rights and interest including voting  
15 and managerial rights of any member in the company the  
16 following provisions shall be included in this operating  
17 agreement and shall control over the provisions of this  
18 agreement to the contrary."

19 Q Thank you. Just going to go ahead and place  
20 that there. Now, this was an agreement that Toluca Lake  
21 Vintage was following up with -- and I'm just putting the  
22 signature page there just to clarify -- so now we're in 2007,  
23 right. In March 29, 2007, Christopher Beavor, Allen Floyd,  
24 and Robert Rink, through their respective entities as members  
25 of Toluca Lake Vintage signed off on this first amendment to

1 the operating agreement; is that right? I'm looking at it  
2 right now. Are you looking at it?

3 A Yes.

4 Q Okay. So those are the signatures, you  
5 recognize them?

6 A Yes.

7 Q And thank you for reading that lengthy  
8 lawyer-ese paragraph. But in there, they're saying in  
9 consideration of the \$6 million to Herbert Frey, that they're  
10 saying -- and allow -- allow me to go ahead and try to  
11 interpret and if we don't like that, we'll just go ahead and  
12 continue reading, that as security for his loan to Toluca Lake  
13 Vintage, he can go ahead and take over Toluca Lake Vintage to  
14 protect his \$6 million loan if it becomes necessary. Is that  
15 roughly summarize what we're talking about?

16 A Basically. And that he's in control and these  
17 are to approve everything.

18 Q Well, if we have to read the whole thing, we  
19 will. But I want to clarify that this agreement was if it  
20 should become necessary and arise that he can step in and take  
21 over control of Toluca Lake Vintage. Please, go ahead.

22 A Do you want me to continue reading or answer yes  
23 or no?

24 Q Yeah. Do you disagree with me that he had that  
25 right?

1           A     He did have that right.

2           Q     He exercised that right two years later in May  
3 of 2009 when he put Gary and Wayne in charge through Star  
4 Development of Toluca Lake Vintage; is that right?

5           A     I was under the understanding that Steve  
6 Gilmore, and that I needed full approval to make any  
7 decisions. And that I was 31 years old and they were here to  
8 mentor --

9           Q     I thought you were 32 at the time.

10          A     31 to 32, depending upon which month we're  
11 talking about in the transaction.

12          Q     So going back to my question, though, in May of  
13 2009, pursuant to this agreement you pointed out for us,  
14 Herbert Frey put his son and Wayne Krygier through Star  
15 Development in charge of Toluca Lake Vintage; is that right?

16          A     That's correct. So he was giving them  
17 directive; that is correct.

18          Q     Now --

19          A     He did.

20          Q     Now, in your -- in your direct, we looked at the  
21 exhibits with the signed resolution by all the members  
22 agreeing to Star Development with Wayne Krygier and Gary Frey  
23 coming in to take over Toluca Lake Vintage; is that right?  
24 Let's go ahead and pull up those --

25          A     That's -- yeah, could you show me that document?

1           Q     Sure. All right. Let's look at D8. Look at  
2 D8, and then turn -- let's just be accurate here, one, two,  
3 three, four, five -- five pages.

4           A     D8, five pages deep.

5           Q     Defendant's exhibit, yes. 8.

6           A     Am I in the right --

7           Q     Take your time, it's on the tabs. And then go  
8 five pages deep --

9           A     So [indiscernible].

10          Q     -- go past the schedule of creditors.

11          A     One, two, three --

12          Q     That's right.

13          A     -- four, five.

14          Q     And now we're looking at the Resolution of the  
15 Board of Directors of Toluca Lake Vintage, right?

16          A     Yeah. I -- I was unaware that we had a board of  
17 directors.

18          Q     Yeah. You know, the term of art -- it's very  
19 interesting you point that out, since we had so much trouble  
20 with partner, but it is correct. It should be a member's  
21 resolution. Let's go back -- let's go further a few pages,  
22 because we might as well do this chronologically correct?

23          A     Okay.

24          Q     Go down three more pages, and you might remember  
25 this one. If not, it doesn't matter. This is the signature

1 block for the notification of replacement of manager. And we  
2 talked about this yesterday when Herbert was here. And  
3 Herbert Frey signed it, Christopher Beavor signed it, and Gary  
4 Frey signed it. You see that? You can look at the page ahead  
5 of it so you know what I'm talking about.

6 A I do see it.

7 Q Okay. And do you remember signing off on that?

8 A I do.

9 Q All right. And -- and for Star Development, we  
10 see Gary Frey listed there, right?

11 A I do.

12 Q And then for C&S Holdings, we see the  
13 Christopher Beavor, yeah?

14 A I do.

15 Q And then we see, of course, Herbert Frey, which  
16 we've already established, right?

17 A I do.

18 Q So, here we have -- oh, and I forgot the date.  
19 The date was May 13, 2009, yeah? Does that sound right to  
20 you, based on what -- you can look at the original, it's  
21 probably a better quality than the video screen.

22 A I -- I do.

23 Q So here we are, May 13, 2009. Herbert puts Gary  
24 in there. And Gary is taking over the company. Because on  
25 the page 2 of this thing that we signed it says, sure enough



1 -- come on, let's see if I can do this right. It says --  
2 oops. Here we go.

3 "Notification of Replacement of Manager." Which was  
4 you. "Please take notice that pursuant to the voting rights  
5 established in the first amendment to the operating agreement"  
6 -- that's what we were looking at earlier, right? Yes?

7 A Yes.

8 Q "Of Toluca Lake Vintage, LLC, Herbert Frey,  
9 trustee of the Herbert Frey Revocable Family trust, et cetera,  
10 et cetera, hereby votes and elects to replace the manager of  
11 Toluca Lake, C&S Holdings," you, "with Star Development,"  
12 right? Am I basically summarizing that?

13 A Well, my question to you would be is how can he  
14 vote to replace if he's not a member?

15 Q That's actually a very good question. And I'm  
16 just going to go ahead and ask that back to you.

17 A Well, you asked me if he was a member earlier.

18 Q We talked earlier about when you think Herbert  
19 Frey became a member of Toluca Lake Vintage. And I tried to  
20 go back to 2007 to find out if he was a member of 2007. And  
21 what we found instead was that we had, in effect, a security  
22 agreement, the first amendment to the operating agreement, say  
23 that none of you guys --

24 MR. SAGGESE: Objection. Counsel's testifying.

25 MR. IGLODY: No, no. I'm just trying to --

1 MR. SAGGESE: Making a statement.

2 THE COURT: Ask a question.

3 MR. IGLODY: Sure.

4 BY MR. IGLODY:

5 Q We saw on the first amendment to operating  
6 agreement that you guys were not allowed to amend away the  
7 first amendment to the operating agreement; you remember that?  
8 That was a condition.

9 A Who was not allowed?

10 Q Toluca Lake Vintage. Its members.

11 A Was not allowed to do what?

12 Q Change --

13 A Could you show me where this says in the  
14 document?

15 Q Yeah. Let's go back to it. No problem. Let's  
16 go back to what you were looking at, which was P9.

17 A I probably go off what's the IRS filed  
18 documents.

19 Q I'm sorry, what did you say?

20 A For the membership.

21 Q We're not here to talk about the IRS. We're  
22 here to talk about the operation of an entity. And it goes a  
23 lot smoother if you just answer the questions.

24 A Okay. So P9?

25 Q So P9 was the First Amendment to Operating

1 Agreement we talked about, the one that you pointed out to me  
2 when I asked you about the membership interest. If you would  
3 turn to that, please.

4 A I have P9.

5 Q All right. Why don't you take a minute to look  
6 at it, because I don't want to read any more.

7 A Do you want me to look at it or do you want me  
8 to read it?

9 Q No, look at it. Because we have a disagreement  
10 here and I want to make clear -- I want to make sure that we  
11 understand. Because it's very important to me and to this  
12 case. As of the date of this agreement, P9, the First  
13 Amendment to the Operating Agreement for Toluca Lake Vintage,  
14 okay, which was signed off on by the three members of Toluca  
15 Lake Vintage, it says here, and tell me if you disagree, we'll  
16 read the whole thing, that there is a \$6 million loan at  
17 Toluca Lake Vintage from Herbert Frey's Trust. Does that  
18 sound right to you?

19 A Yes.

20 Q And that in consideration of that, the members  
21 of Toluca Lake Vintage grant to Herbert Frey the right to step  
22 in and take over complete management of Toluca Lake Vintage to  
23 protect his security interest.

24 A To take over management or to take over  
25 membership?

1           Q     Well, the document's in front of you. And if we  
2 have a dispute about that, you go ahead and tell me. I know  
3 what I think, but you're the one answering the questions.

4           A     But you -- no, are we reading it or what you  
5 think?

6           Q     No, I'm asking you to answer the question.

7           A     So the question is?

8           Q     As of March 29, 2007, was Herbert Frey 100  
9 percent of Toluca Lake Vintage?

10          A     Was Herbert Frey of March 7th?

11          Q     March 29, 2007.

12          A     March 29th?

13          Q     We're looking at the first amendment to the  
14 operating agreement.

15          A     Oh, because it said March 27th, so I was  
16 confused.

17          Q     March 27th, I apologize.

18          A     Okay.

19          Q     March 27th, 2007. Right? Because we're trying  
20 to figure out when Herbert Frey becomes a member?

21          A     I see the document, March 27th. I was confused  
22 with the 29.

23          Q     Was he a member at that time?

24          A     I was unaware that he was a member on this  
25 particular date.

1           Q     Doesn't quite answer the question. Was he a  
2 member on March 27 of 2007?

3           A     No.

4           Q     In fact, if we turn to the next page, Bates  
5 stamp 119, we see the members of Toluca Lake Vintage signing  
6 off on this security agreement for Herbert Frey and his trust,  
7 right? Christopher Beavor, Allen Floyd, and Robert Rink; did  
8 I read that correctly?

9           A     Yes, you did read that correctly.

10          Q     So, because we were trying to get to membership  
11 to get back to partnership as of at least March 29th -- March  
12 27, 2007, we can all agree that Herbert Frey was not a member  
13 of Toluca Lake Vintage; is that right?

14          A     I'll agree to that statement.

15          Q     And since you pointed it out to us, he did, in  
16 fact, have -- and you're right about this -- the power  
17 pursuant to this agreement to make himself the exclusive  
18 manager of Toluca Lake Vintage, because each one of you signed  
19 off all of your ability to make managerial decisions to him if  
20 he elected to use them.

21          A     An exclusive manager or a member?

22          Q     Manager.

23          A     Okay. I'll have to read that. Did you read  
24 that?

25          Q     I'll tell you what --

1 MR. IGLODY: Is this a good time for a break, Your  
2 Honor? He can read it overnight?

3 THE COURT: It is, yes.

4 MR. IGLODY: Okay. Thank you.

5 THE COURT: All right. Ladies and gentlemen, we'll  
6 take our evening break.

7 MR. IGLODY: At least we know where we start  
8 tomorrow.

9 THE COURT: All right. Ladies and gentlemen, we're  
10 going to start at 10:30 tomorrow. During this recess you're  
11 admonished not to talk or converse amongst yourselves or with  
12 anyone else on any subject connected with this trial or read,  
13 watch, or listen to any report of or commentary on the trial  
14 or any person connected with this trial by any medium of  
15 information including without limitation newspapers,  
16 television, radio, or Internet, or form or express any opinion  
17 on any subject connected with the trial until the case is  
18 finally submitted to you.

19 I have, as I said before, just so you understand, I  
20 have morning calender. And some of those matters went away.  
21 They resolved. So we can start -- I think I'd said 11:00. We  
22 can start a little earlier to make sure we get this thing done  
23 quickly. So 10:30. We'll see you tomorrow at 10:30.

24 Are you going to be done by 11:00, Juror No. --

25 UNIDENTIFIED JUROR: I don't know, Your Honor. I

1 would try to go the earliest that I could to my court hearing  
2 and I will try to get through here as soon as I can.

3 THE COURT: All right. To make it safe so you don't  
4 have to wait, make it 11:00. 11:00. Sorry, I forgot about  
5 that, that it was...

6 UNIDENTIFIED JUROR: Thank you, Your Honor.

7 THE COURT: No problem.

8 (Jury recesses at 4:52 p.m.)

9 THE COURT: Counsel, we're outside the presence, but  
10 we're still on the record. I just want the record to reflect,  
11 in case this goes up, well, first of all, hopefully you guys  
12 will talk tonight if you're going to talk about settlement,  
13 and as I said, if this gets appealed, I was still not clear  
14 why settlement negotiations were stipulated to be admitted  
15 into evidence. It's against all the rules I know about. But  
16 in any event I'm not trying the case. And the stipulation is  
17 the stipulation. And so we wasted more than a half hour on  
18 that.

19 Aside from that, please talk. You also have to get  
20 jury instructions and verdict form together. Because we've  
21 got to have all that done by tomorrow, assuming -- well,  
22 certainly we have to do closings on Friday. And we've got  
23 some witnesses to get through tomorrow. Okay.

24 Anything else we needed to discuss outside?

25 MR. SAGGESE: No, Your Honor.

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THE COURT: All right. Thank you.

MR. SAGGESE: Thank you.

(Court recessed for the evening at 4:54 p.m.)




**CERTIFICATION**

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

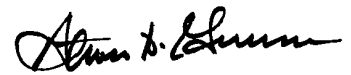
**AFFIRMATION**

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

**KARR REPORTING, INC.  
Aurora, Colorado**

  
KIMBERLY LAWSON

KARR Reporting, Inc.



CLERK OF THE COURT

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**EIGHTH JUDICIAL DISTRICT COURT**  
**CLARK COUNTY, NEVADA**

YACOV JACK HEFETZ,  
Plaintiff,

vs.

CHRISTOPHER BEAVOR, an  
individual

Defendant,

Case Number: A645353

Dept No: XXVIII

**DEFENDANT CHRISTOPHER BEAVOR'S MOTION FOR  
RECONSIDERATION**

DATE OF HEARING:

TIME OF HEARING:

COMES NOW, Defendant CHRISTOPHER BEAVOR, through his attorney of record, JOSHUA TOMSHECK of the Law Firm of Hofland & Tomsheck, and hereby submits the MOTION TO RECONSIDER.

This MOTION is made and based upon all the papers and pleadings on file herein, the attached points and authorities in support hereof, and oral argument at the time of hearing, if deemed necessary by this Honorable Court.

1  
2  
3 NOTICE OF MOTION

4 YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that DEFENDANT  
5 CHRISTOPHER BEAVOR, will bring the foregoing MOTION TO RECONSIDER on for  
6 hearing on the 9 <sup>Oct.</sup> day of    , 2013, at     a.m./p.m., before Department XXVIII or as soon  
7 thereafter as counsel may be heard.

8  
9 DATED THIS 27<sup>TH</sup> DAY OF AUGUST, 2013

10  
11 **HOFLAND & TOMSHECK**

12  
13  
14 By: 

15 Joshua Tomsheck, Esq.  
16 Nevada Bar No. 9210  
17 228 South Fourth Street, 1<sup>st</sup> Floor  
18 Las Vegas, Nevada 89101  
19 (702) 895-6760  
20 Attorney for Christopher Beavor  
21  
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1           On June 19, 2013, Defendant Christopher Beavor retained the undersigned to  
2 defend against Plaintiff's Motion for New Trial or in the Alternative Motion for  
3 Judgment Notwithstanding Verdict (JNOV).  
4

5           On June 20, 2013, the undersigned counsel contacted Plaintiff's counsel, Brian  
6 Morris, Esq., whose name was attached to the aforementioned Motion for New Trial  
7 or in the Alternative Motion for Judgment Notwithstanding Verdict (JNOV).  
8 During that contact, the undersigned counsel inquired of Mr. Morris as to how  
9 Plaintiff's Motion for New Trial or in the Alternative Motion for Judgment  
10 Notwithstanding Verdict (JNOV) was not untimely filed and thus, time barred.  
11 During that same conversation, Mr. Morris conceded that Plaintiff's Motion  
12 appeared to be time barred and indicated Plaintiff's counsel may be forced to  
13 withdraw the Motion given its untimeliness. At the conclusion of that telephone  
14 conversation, Plaintiff's counsel, Mr. Morris, indicated he did not see how Plaintiff's  
15 Motion was not filed late, but if he found otherwise, he would contact Defense  
16 Counsel.  
17

18           Thereafter, on June 20, 2013, the undersigned counsel filed, on behalf of  
19 Defendant Beavor, Defendant's Opposition to Plaintiff's Motion for New Trial or in  
20 the Alternative Motion for Judgment Notwithstanding Verdict (JNOV). In the  
21 Opposition, the Defense stated "[a]s Plaintiff's Motion is untimely filed, and thus  
22 procedurally time barred, Defendant need not address Plaintiff's motion on the  
23 merits" but that "should this honorable Court desire additional briefing on the  
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1 merits, Defense counsel can provide same." (See Opposition at page 3).

2 After the undersigned had contacted Plaintiff's counsel and received the  
3 above referenced information, and after filing their opposition, Plaintiff's counsel,  
4 Mr. Morris, contacted Defense counsel and stated that after reviewing the calendar,  
5 he now believed that his Motion had been timely filed. The undersigned counsel  
6 informed Plaintiff's counsel that he had already filed his opposition based on their  
7 earlier conversation, but that he had included reference to the Court that should the  
8 Court requires or require additional briefing, it would be provided. Plaintiff's  
9 counsel indicated he would have no objection to same. Thereafter, Plaintiff's  
10 counsel, Mr. Johnson, filed their Reply, leaving out all of the pertinent procedural  
11 facts relayed above.<sup>1</sup>

12 This matter, having to do with a substantive issue which sought to invalidate  
13 the Jury's determination of the facts, law and evidence, was never heard for  
14 argument, but was heard on a "chambers calendar." The Matter was continued  
15 until a second chambers calendar on August 7, 2013, at which time this Court ruled.

16 It is important for this Court to note that the Minute Order from the  
17 Chambers decision was *never served* on the undersigned, even though he is listed as  
18 "Lead Attorney" for Defendant Christopher Beavor on the Courts Odyssey system.

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<sup>1</sup> It should be noted that the signing attorney on the document was Mr. Johnson and not Mr. Morris, whom had conferred with Defense counsel regarding the matter. It should also be noted that this filing is not intended to convey to the Court any attempt at intended unethical conduct on behalf of Mr. Morris, who is known to the undersigned as being an extremely ethical and forthright litigator, simply that the Court made its decision without the necessary requisite facts to be fully informed on the issues.

1 (See Exhibit "C"). Instead, as the minutes from the August 7, 2013 hearing clearly  
2 state, "CLERK'S NOTE: A copy of this minute order was placed in the attorney  
3 folder(s) of: H. Stan Johnson, Esq. (Cohen- Johnson) and Marc Saggese, Esq.  
4 (Saggese & Associates)" even though Mr. Saggese withdrew as counsel of record on  
5 March 25, 2013. The undersigned only discovered the Court's decision by  
6 happenstance when checking the online Court minutes after realizing he had never  
7 received a decision. This Motion for Reconsideration now follows.  
8

### 9 10 LEGAL ARGUMENT

11 Pursuant to E.D.C.R 2.24:

12 (a) No motions once heard and disposed of may be renewed in the  
13 same cause, nor may the same matters therein embraced be reheard,  
14 unless by leave of the court granted upon motion therefor, after  
15 notice of such motion to the adverse parties.  
16

17 1. (b) A party seeking reconsideration of a ruling of the court,  
18 other than any order which may be addressed by motion pursuant  
19 to N.R.C.P. 50(b), 52(b), 59 or 60, must file a motion for such relief  
20 within 10 days after service of written notice of the order or  
21 judgment unless the time is shortened or enlarged by order. A  
22 motion for rehearing or reconsideration must be served, noticed,  
23 filed and heard as is any other motion. A motion for reconsideration  
does not toll the 30-day period for filing a notice of appeal from a  
final order or judgment.

24 (c) If a motion for rehearing is granted, the court may make a final  
25 disposition of the cause without reargument or may reset it for  
26 reargument or resubmission or may make such other orders as are  
deemed appropriate under the circumstances of the particular case.

27 To date, the only Order related to the reconsideration sought by Defense  
28

1 Counsel is the Minute Order referred to above, which, of the date of this filing was  
2 has never been served on the undersigned. It is only by happenstance that the  
3 undersigned learned of the entry of the minute order from this Court. There is no  
4 written order, nor has any Notice of Entry of Order been received. As such, this  
5 Motion for Reconsideration is ripe and timely filed.  
6

7  
8 ***1) Plaintiff's Motion Must Be Heard on its Merits:***

9 Modern rules of procedure are intended to allow the court to reach the merits,  
10 as opposed to disposition on technical niceties. Costello v. Casler, 127, Nev. Adv. Op.  
11 36, 254 P. 3d 631 (2011), *See also* Schmidt v. Sadri, 95 Nev. 702, 705, 601 P.2d 713, 715  
12 (1979) ("The Legislature envisioned that [the Nevada Rules of Civil Procedure] would  
13 serve to simplify existing judicial procedures and promote the speedy determination  
14 of litigation upon its merits.").

15  
16  
17 Plaintiff claims in their reply that Defendant's failure to oppose the Motion on  
18 its Merits constitutes a waiver pursuant to EDCR 2.20. The record at this juncture  
19 states otherwise however. As outlined above, the undersigned defense counsel  
20 contacted Plaintiff's counsel and inquired about the Motion for New Trial, and had in  
21 depth discussions about the timeliness of same. After that first conversation, defense  
22 counsel was left with the notion that Plaintiff's counsel had, in fact, conceded the  
23 lateness of their motion. Plaintiff then filed their opposition on that basis. However,  
24 in that Motion, defense counsel expressly reserved the right to file additional points  
25 and authorities should the Court so desire, by stating "should this honorable Court  
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1 desire additional briefing on the merits, Defense counsel can provide same.” (See  
2 Opposition at page 3). Following the filing of that Opposition, Plaintiff’s counsel *then*  
3 contacted defense counsel and indicated that he no longer though the Motion for  
4 New Trial was time barred. In that conversation, Plaintiff’s counsel conceded that he  
5 would have no objection to defense counsel filing points and authorities on the merits  
6 should the Court agree with Plaintiff’s counsel as to the timeliness of the Motion for  
7 New Trial.  
8

9  
10       Moreover, as this Court is aware, there is nothing within EDCR 2.20, or any  
11 other rule of law, which *requires* the Court to find in Plaintiff’s favor under these  
12 circumstances. EDCR 2.20 simply states that “[f]ailure of the opposing party to serve  
13 and file written opposition *may* be construed as an admission that the motion and/or  
14 joinder is meritorious and a consent to granting the same.” *Emphasis added.* This  
15 “may” language, as opposed to a directive such as “shall,” indicates that this Court  
16 has discretion and can make a decision based on the totality of the circumstances.  
17 Here, it is crystal clear that the Defendant *did not* admit that the Plaintiff’s motion  
18 had merit or consent to its granting. Conversely, defense counsel provided in its  
19 opposition that despite its position that “Plaintiff’s Motion is untimely filed, and thus  
20 procedurally time barred, Defendant need not address Plaintiff’s motion on the  
21 merits” – something that had been conceded by the Plaintiff at the time Defendant  
22 filed his opposition – but affirmatively stated that “should this honorable Court  
23 desire additional briefing on the merits, Defense counsel can provide same.” The  
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1 "may" provision within EDCR 2.20 is designed to address a situation where a non-  
2 moving party simply "fails to serve and file written opposition." That didn't happen  
3 here. The non-moving party (the Defendant) *did* serve and file written opposition,  
4 addressing the issue of timeliness and offering to provide additional briefing, an  
5 allowance discussed, and agreed to, by Plaintiff's counsel.  
6

7  
8 Given this procedural history and the consistent mandate of the Nevada  
9 Supreme Court, this matter must be decided on its merits.

10  
11 ***2) Plaintiff's Motion was Not Timely Filed:***

12 Despite Plaintiff's clever attempt to draw out the time period to file the  
13 Motion for New Trial pursuant to NRCP 59, their application of NRCP 6 to include  
14 the date in which they filed their Motion is in error. In their analysis, they neglect  
15 the clear application of the rules and incorrectly conclude that the three (3) day  
16 addition for mailing is exclusive of weekends and non-judicial days. This is not the  
17 case.  
18  
19

20  
21 As this Court is aware, Motions for New Trial after the 2004 Amendment to  
22 NRCP 6, must be filed within ten days from the date when notice of the final  
23 judgment's entry is served. NRCP 59(b). Under NRCP 6(a), this ten-day period does  
24 not include weekends and nonjudicial days, including holidays. Further, under  
25 NRCP 6(e), three days are added to the ten-day period when the notice of entry is  
26 served by mail or electronic means, as done in this case by former counsel, Mr.  
27  
28

1 Saggese. (See Exhibit "B"). To calculate the due date, the ten-day period is  
2 determined and then the three (3) days are added to that date. However, unlike the  
3 ten-day filing period, the three-day mailing period *includes* weekends and  
4 nonjudicial days. Winston Products Co. v. DeBoer, 122 Nev. 517, 134 P.3d 726  
5 (2006); *see also* Nalty v. Nalty Tree Farm, 654 F. Supp. 1315, 1318 (S.D. Ala. 1987)  
6 (recognizing that the final day of the three-day mailing period could land on a  
7 weekend or nonjudicial day). *See also* Comments on 2005 Amendments to FRCP  
8 6(e), as adopted in NRCP 6(e), noting that "[i]ntermediate Saturdays, Sundays, and  
9 legal holidays are included in counting these added three days." This distinction is  
10 one that Plaintiff fails to recognize in their Reply.  
11

12  
13  
14 Here, the ten-day period commenced the day after notice of the final  
15 judgment's entry was served, May 22, 2013 and ended on Wednesday, June 5, 2013.  
16 Thereafter, the three (3) days are added onto that date for mailing. Unfortunately  
17 for the Plaintiff, they, in their reply, clearly apply the standard that is true in NRCP  
18 6(a), namely that the ten (10) day period for filing under that subsection does not  
19 include weekends and non-judicial days, including holidays, and Plaintiff further  
20 applies that rule to the three (3) day mailing provision under Rule 6 (e). However,  
21 the Nevada Supreme Court has clearly held that the three (3) day mailing period  
22 under NRCP 6(e) *does* include both weekends and holidays. As such, their Motion  
23 was due *before* they filed it on June 10, 2013. As the Nevada Supreme Court has  
24 repeatedly held, "[u]ntimely motions for new trial . . . must be denied." Ross v.  
25  
26  
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1 Giacomo, 97 Nev. 550, 553, 635 P.2d 298, 300 (1981) overruled on other grounds by  
2 Winston Products Co. v. DeBoer, 122 Nev. 517, 134 P.3d 726.

3 As Plaintiff's Motion for a New Trial was untimely filed, a fact that was  
4 acquiesced to at the time Defendant filed their opposition in this matter, this Court  
5 should reconsider its previous ruling and deny Plaintiff's Motion. In the event this  
6 Court agrees with Plaintiff that their NRCP 59 Motion was timely filed, this Court  
7 should deny Plaintiff's Motion for the reasons set forth below.  
8

9  
10 3) *NRCP 59 does not warrant a new trial or a judgment notwithstanding the*  
11 *verdict*

12 As this court is well aware, NRCP 59 controls the relief Plaintiff is seeking in  
13 their Motion, by stating:  
14

15 RULE 59. NEW TRIALS; AMENDMENT OF JUDGMENTS

16 (a) Grounds. A new trial may be granted to all or any of the  
17 parties and on all or part of the issues for any of the following causes  
18 or grounds materially affecting the substantial rights of an aggrieved  
19 party: (1) Irregularity in the proceedings of the court, jury, master, or  
20 adverse party, or any order of the court, or master, or abuse of  
21 discretion by which either party was prevented from having a fair  
22 trial; (2) Misconduct of the jury or prevailing party; (3) Accident or  
23 surprise which ordinary prudence could not have guarded against;  
24 (4) Newly discovered evidence material for the party making the  
25 motion which the party could not, with reasonable diligence, have  
26 discovered and produced at the trial; (5) Manifest disregard by the  
27 jury of the instructions of the court; (6) Excessive damages  
28 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.

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

4 As outlined below, none of the provisions of NRCP 59 warrant a granting of  
5 Plaintiff's Motion under the facts of this case.  
6

7 I. *There was no irregularity in the proceedings of the court, jury, master,*  
8 *or adverse party, or any order of the court, or master, or abuse of*  
9 *discretion by which the Plaintiff was prevented from having a fair*  
10 *trial, and any argument to the contrary is belied by the record;*

11 Plaintiff argues that defense counsel "intentionally violated" Nevada law in  
12 making the closing arguments submitted to the jury. Specifically, Plaintiff's counsel  
13 refers to arguments made at page 63 of the day 5 trial transcript. A thorough reading  
14 of the record however, reveals the opposite to be true. In reviewing the record from  
15 Trial, it is clear that defense counsel 1) made no objectionable argument that wasn't  
16 supported by the evidence; and 2) that the arguments raised by Plaintiff's counsel in  
17 their Motion for New Trial *were not objected to at Trial*. It is unfathomable how  
18 Plaintiff's counsel can raise, in the venue of their instant Motion for a New Trial, that  
19 these arguments were so inappropriate that a Motion for New Trial was warranted,  
20 yet Trial counsel for the Plaintiff, who was present at each phase of the Trial before  
21 the jury, didn't even see fit to lodge an objection. Despite Plaintiff's contention that  
22 now, at this juncture, the "prejudice was so egregious that no objection was  
23 necessary to preserve the issue for reconsideration either in a motion for new trial or  
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1 on appeal," the clear holdings of the Nevada Supreme court say otherwise. It is a  
2 well settled rule of law that "[t]he failure to object to allegedly prejudicial remarks at  
3 the time an argument is made, and for a considerable time afterwards, strongly  
4 indicates that the party moving for a new trial did not consider the arguments  
5 objectionable at the time they were delivered, but made that claim as an  
6 afterthought." Beccard v. Nevada Nat'l Bank, 99 Nev. 63, 657 P.2d 1154 (1983), *citing*  
7 Curtis Publishing Company v. Butts, 351 F.2d 702, 714 (5th Cir.1965), *aff'd*, 388 U.S.  
8 130, 87 S.Ct. 1975, 18 L.Ed.2d 1094 (1967). In the case of Beccard, *supra*, the District  
9 Court granted a Motion for a New Trial for Respondent Nevada National Bank  
10 based on the claim that counsel for Appellant had made no less than eight (8) "highly  
11 prejudicial and inflammatory statements" allegedly made during closing argument.  
12 However, there, as here, no objection was made at the time of Trial. The Nevada  
13 Supreme Court reversed the District Court's granting of a new Trial as they were not  
14 objected to at the time of Trial. In so finding, the Court stated that "[s]pecific  
15 objections must be made to allegedly improper closing arguments in order to  
16 preserve the contention for appellate review. Southern Pac. Transp. Co. v.  
17 Fitzgerald, 94 Nev. 241, 244, 577 P.2d 1234, 1235-36 (1978). The Court concluded that  
18 the District Court committed error in granting a new trial under NRCP 59 based on  
19 the allegations of improper arguments because the moving party failed to object to  
20 the allegedly improper closing arguments at trial and raised the allegation for the  
21 first time in a Motion for a New Trial. Beccard, *supra* at 1156, *citing* Curtis Publishing,

1 *supra*. The same holds true in this matter. There was no objection raised at the time  
2 of Trial. The fact that there are dynamic changes of a case during Trial, something  
3 that happens in *every* case, does not lessen the burden on the parties to raise  
4 contemporaneous objections. Here, there was none and raising the issue now, on a  
5 Motion for New Trial, is not sufficient. As such Plaintiff's Motion must be denied.  
6

7  
8 **II. *There was no misconduct of the jury or prevailing party warranting a***  
9 ***new trial***

10 As this Court is also aware, when a party is given the opportunity for a  
11 mistrial during litigation, or a curative instruction related to the admission of Trial  
12 evidence, and therein waives the opportunity to ask for same at Trial, they are  
13 thereafter barred from raising the same circumstances as a basis for a Motion for  
14 New Trial following an adverse verdict. This is precisely the circumstances that  
15 present themselves to the Court in this matter.  
16

17  
18 The Plaintiff has argued that defense Trial counsel "engaged in repeated acts  
19 of misconduct which while objected to and to which objections were sustained no  
20 admonishment was given to the jury." (Motion at page 6). A reading of the Trial  
21 transcripts however reveals a different story. While it is true that defense Trial  
22 counsel was admonished by this Court to refrain from making further reference to  
23 the Plaintiff as an "Israeli Businessman," and that the Court went as far as to caution  
24 defense counsel that any further such comment could result in a Mistrial, the record  
25 reveals that the first broach of the subject was elicited by *Plaintiff's Counsel* during  
26  
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28

1 the direct examination of Plaintiff by Mr. Iglody.

2 Q: I see you hesitating. What's - what's is your mother tongue?

3 A: Hebrew

4  
5 Trial Transcript, Day 2, Page 4 line 23-25.

6 This discussion continued onto the next page:

7 Q: How long have you been in the United States?

8  
9 A: I've been in and off. I came here as a young man and I left the country  
10 and then I came back. Since I came back was 15 years.

11  
12 Trial Transcript, Day 2, Page 4 line 23-25.

13 During cross examination, the Plaintiff volunteered that "English is my  
14 second language. And I never went - I never went to school in America."

15  
16 Trial Transcript, Day 2, Page 24 lines 11-12.

17 It was during further cross examination of Plaintiff that defense counsel  
18 asked the following question:

19  
20 Q: You knew as a businessman, a successful, very wealthy Israeli  
21 businessman, that the fact that this project - -

22  
23 Trial Transcript, Day 2, Page 31 line 9-11.

24 The Court then immediately asked counsel to approach and sent the jury to  
25 lunch. Thereafter, there was a lengthy conversation between the Court and counsel  
26 regarding the use of the word "Israeli" by defense counsel. The Court admonished  
27 defense Trial counsel not to do it again and indicated that if it happened again, the  
28



1 Court would declare a mistrial.

2 Trial Transcript, Day 2, Page 34

3 Thereafter defense Trial counsel apologized, indicated his intent was not to  
4 offend or inflame the jury, and promised the Court it wouldn't happen again.  
5

6 Following the lunch break, the Court again admonished defense Trial  
7 counsel. Trial Transcript, Day 2, Page 37.  
8

9 From that point on, the record indicates that it was *plaintiff's counsel*  
10 *themselves* that asked that no curative instruction be given and never moved the  
11 Court to grant a mistrial. Specifically, the following exchange took place:  
12

13 Q: (by the Court): So, my question to the plaintiff's counsel is do you want a  
14 curative instruction?  
15

16 A: The problem with a -

17 Q: (by the Court): Or do you just want to move on?  
18

19 A: The problem with a curative instruction, and this is difficult for us, is, of  
20 course, when you give a curative instruction, you just draw attention to it.

21 Q: (by the Court): Highlights it, yes.  
22

23 A: And that - that creates the problem. If it would please the Court I think  
24 perhaps you can reserve on that issue for now, depending on how the rest of the  
25 examination goes. And if necessary, that can be addressed perhaps before we issue  
26 the jury instructions, depending on whether it's necessary. At some point I have to  
27 rely on the jury's good discretion to see past these inflammatory statements.  
28

1 Q: (by the Court): Okay. Then we'll continue.

2 Trial Transcript, Day 2, Page 37.

3 Thereafter, there was no mention of the word "Israeli" by either party and the  
4 issue did not present itself again. Moreover, and more importantly, the Plaintiff  
5 *never* again made an objection, Motion (for mistrial or otherwise) or request for  
6 curative instruction related to the issue. The record reveals a thorough discussion  
7 about all areas of the jury instructions and forms of verdict, in which the issue is  
8 neither raised or mentioned by *any* party or the Court. Trial Transcript, Day 5, Pages  
9 23-38.  
10

11  
12 The Nevada Supreme Court has consistently held that one of this court's  
13 "primary objectives" is to promote the "efficient administration of justice." Eberhard  
14 Mfg. Co. v. Baldwin, 97 Nev. 271, 273, 628 P.2d 681, 682 (1981). The efficient  
15 administration of justice requires that any doubts concerning a verdict's consistency  
16 with Nevada law be addressed before the court dismisses the jury. Carlson v.  
17 Locatelli, 109 Nev. 257, 262-63, 849 P.2d 313, 316 (1993). The Court has also held that  
18 wherever possible, the verdict should be salvaged so that no new trial is required."  
19 Id. at 263, 849 P.2d at 316-17. In furtherance of that goal, the Court has repeatedly  
20 held true the policy that "failure to timely object to the filing of the verdict or to move  
21 that the case be resubmitted to the jury" constitutes a waiver of the issue of an  
22 inconsistent verdict. Eberhard, 97 Nev. at 273, 628 P.2d at 682. *See also* Brascia v.  
23 Johnson, 105 Nev. 592, 596, 781 P.2d 765, 768 (1989); Carlson, 109 Nev. at 262-63, 849  
24  
25  
26  
27  
28

1 P.2d at 316-17.

2 Accordingly, in the instant case, the Plaintiff's clear decision to pass on the  
3 Court's offered consideration of either a curative jury instruction or Motion for  
4 Mistrial, would have allowed the issue to be addressed while the jury was still in the  
5 box and in doing so, would have allowed for the Court to make a determination at  
6 that time in the efficient administration of justice. When given this option, the  
7 Plaintiff unequivocally decided against making a motion for same. The Plaintiff  
8 even asked the Court to reserve the issue, and even given the flexibility to make the  
9 same motion later, never did. The Plaintiff was given the opportunity to object,  
10 move the Court for a Mistrial or ask for a curative instruction. The Plaintiff chose  
11 not to do so. As such, the Plaintiff has waived his ability to argue for same at this  
12 juncture following an adverse verdict. This Court should not consider this argument  
13 now, after the jury has returned their verdict and should deny Plaintiff's Motion on  
14 this issue.  
15

16  
17  
18  
19  
20 *III. There was no "manifest disregard by the jury of the instructions of the*  
21 *court"*

22 In determining the propriety of the granting of a new trial under NRC  
23 59(a)(5), the question is not whether the jurors correctly applied the instructions of  
24 the court in their entirety, but whether one can "declare that, had the jurors properly  
25 applied the instructions of the court, it would have been impossible for them to reach  
26 the verdict which they reached." Weaver Bros. v. Misskelley, 98 Nev. 232 (1982),  
27  
28

1 citing Fox v. Cusick, 91 Nev. 218, 533 P.2d 466 (1975); see also Groomes v. Fox, 96 Nev.  
2 457, 611 P.2d 208 (1980); Eikelberger v. Tolotti, 94 Nev. 58, 574 P.2d 277 (1978); Price  
3 v. Sinnott, 85 Nev. 600, 460 P.2d 837 (1969).

4  
5 In the instant case, while the Plaintiff makes naked allegation that "the only  
6 possible explanation for this verdict must lie in the Defendant's improper conduct  
7 during the trial" - - Plaintiff cannot point to a single shred of evidence in the record  
8 that in any way intimates either the seeking of a nullified verdict or a verdict that is  
9 based on nullification. The only explanation that Plaintiff makes to this end is that  
10 the verdict was a dissatisfactory one and thus, must have been based on jury  
11 nullification. Clearly, this tenuous argument cannot be stretched to meet the  
12 Plaintiff's burden to show that "it would have been impossible for them to reach the  
13 verdict they reached." See Weaver Bros. v. Misskelley, *supra*.

14  
15 In this matter, the jury clearly, through polling, indicated their reasoned  
16 decision in this case. On page 78-80 of the day 5 Trial Transcript, this honorable  
17 Court polled the entire jury, member by member, and inquired of their responses  
18 and verdict. There was no objection to the polling and there was no objection to the  
19 ultimate verdict made contemporaneous with this process. As such, the Plaintiff  
20 must now be precluded from raising this issue on a Motion for New Trial pursuant  
21 to NRCP 59. Our Supreme Court has held that "[f]ailure to object to asserted errors  
22 at trial will bar review of an issue on appeal." McCullough v. State, 99 Nev. 72, 74,  
23 657 P.2d 1157, 1158 (1983); see also Allum v. Valley Bank of Nevada, 970 P. 2d 1062  
24  
25  
26  
27  
28

1 (1998), *citing* Commonwealth v. Jackson, 457 Pa. 237, 324 A.2d 350, 353 (Pa. 1974)  
2 (one cannot be heard to challenge unanimity of verdict where he fails to question the  
3 jurors' answers or requests that jurors be further interrogated); *See also* Scott v.  
4 Chapman, 71 Nev. 329, 331, 291 P.2d 422, 423 (1955).  
5

6  
7 **CONCLUSION**

8  
9 Based upon the foregoing, Defendant's Motion for Reconsideration should be  
10 GRANTED and Plaintiff's previously filed Motion for New Trial should be DENIED  
11 in its entirety.

12  
13 DATED this 27th day of August, 2013.

14  
15 **HOFLAND & TOMSHECK**

16  
17 By: 

18 Joshua Tomsheck, Esq.  
19 Nevada Bar No. 9210  
20 228 South Fourth Street, 1<sup>st</sup> Floor  
21 Las Vegas, Nevada 89101  
22 (702) 895-6760  
23 Attorney for Christopher Beavor  
24  
25  
26  
27  
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**CERTIFICATE OF SERVICE**

Pursuant to NRCP 5(b) I hereby certify that I am an employee of HOFLAND & TOMSHECK and that on the 28<sup>th</sup> day of August, 2013, service of a true and correct copy of the foregoing MOTION FOR RECONSIDERATION was made as indicated below:

☒ By First Class Mail, postage prepaid from Las Vegas, Nevada; or

☒ By Facsimile to the numbers indicated on this certificate of service; or

☐ By Personal Service as indicated.

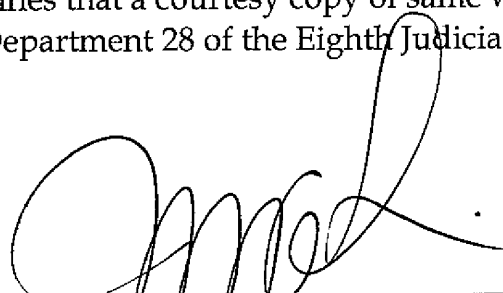
to : H. STAN JOHNSON, and  
BRIAN A. MORRIS  
c/o COHEN-JOHNSON, LLC  
6923 Dean Martin Drive, Suite G  
Las Vegas, Nevada, 89118

And that a copy of same was sent via facsimile transmission to:

(702) 823-3400

Additionally, the undersigned verifies that a courtesy copy of same was delivered via facsimile transmission to Department 28 of the Eighth Judicial District Court to:

(702) 366-1407

  
An Employee of Hofland & Tomscheck

\*\*\*\*\*  
\*\*\* FAX TX REPORT \*\*\*  
\*\*\*\*\*

## TRANSMISSION OK

JOB NO.	1332
DESTINATION ADDRESS	3661407
PSWD/SUBADDRESS	
DESTINATION ID	
ST. TIME	08/28 12:19
USAGE T	12' 07
PGS.	34
RESULT	OK

Hofland &  
Tomscheck

ATTORNEYS AND COUNSELORS AT LAW

BRADLEY J. HOFLAND\*  
JOSH TOMSHECK  
MATTHEW D. MANNING (1970 - 2005)

**FACSIMILE TRANSMITTAL COVER LETTER**

**DATE:** August 28, 2013  
**TO:** Department 28  
**FROM:** Joshua Tomscheck, Esq.  
**FAX NO.:** (702) 366-1407  
**Re:** *Hefetz vs. Beavor*

---

*If there are any problems with this transmission, please contact our office at 702-895-6760*

---

**MESSAGE:**

Please see the attached.

***FACSIMILE TRANSMITTAL COVER LETTER***

**DATE:** August 28, 2013  
**TO:** Department 28  
**FROM:** Joshua Tomsheck, Esq.  
**FAX NO.:** (702) 366-1407  
**Re:** *Hefetz vs. Beavor*

---

*If there are any problems with this transmission, please contact our office at 702-895-6760*

---

**MESSAGE:**

Please see the attached.



\*\*\*\*\*  
\*\*\* FAX TX REPORT \*\*\*  
\*\*\*\*\*

TRANSMISSION OK

JOB NO.	1329
DESTINATION ADDRESS	8233400
PSWD/SUBADDRESS	
DESTINATION ID	
ST. TIME	08/28 12:02
USAGE T	05' 01
PGS.	32
RESULT	OK

Hofland &  
Tomscheck

ATTORNEYS AND COUNSELORS AT LAW

BRADLEY J. HOFLAND  
JOSH TOMSHECK  
MATTHEW D. MANNING (1970-2005)

### FACSIMILE TRANSMITTAL COVER LETTER

DATE: August 28, 2013  
TO: H. Stan Johnson, Esq. and Brian Morris, Esq.  
FROM: Joshua Tomscheck, Esq.  
FAX NO.: (702) 823-3400  
Re: Hefetz vs. Beaver

---

*If there are any problems with this transmission, please contact our office at 702-895-6760*

---

MESSAGE:

Please see the attached.

***FACSIMILE TRANSMITTAL COVER LETTER***

**DATE:** August 28, 2013  
**TO:** H. Stan Johnson, Esq. and Brian Morris, Esq.  
**FROM:** Joshua Tomsheck, Esq.  
**FAX NO.:** (702) 823-3400  
**Re:** *Hefetz vs. Beavor*

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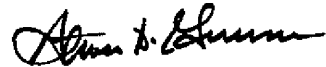
*If there are any problems with this transmission, please contact our office at 702-895-6760*

---

**MESSAGE:**

Please see the attached.

# EXHIBIT A



CLERK OF THE COURT

1 WOA  
2 MARC A. SAGGESE, ESQ.  
3 Nevada Bar No. 7166  
4 SAGGESE & ASSOCIATES, LTD.  
5 732 S. Sixth Street, Suite 201  
6 Las Vegas, Nevada 89101  
7 Telephone 702.778.8883  
8 Facsimile 702.778.8884  
9 Marc@MaxLawNV.com  
10 Attorney for Defendant Christopher Beavor

11 DISTRICT COURT  
12 CLARK COUNTY, NEVADA

13 YACOV JACK HEFETZ, an individual,

14 Plaintiff,

15 vs.

16 CHRISTOPHER BEAVOR, an individual;  
17 SAMANTHA BEAVOR, an individual; DOES I  
18 through X and ROE ENTITIES I through X,  
19 inclusive,

20 Defendants.

Case No.: A-11-645353-C  
Dept. No.: XXVIII

21 NOTICE OF WITHDRAWAL OF  
22 ATTORNEY

23 Pursuant to Supreme Court Rule 46, MARC A. SAGGESE, ESQ., hereby gives notice of  
24 his withdrawal as attorney of record for Defendant, CHRISTOPHER BEAVOR, a final  
25 determination having being entered in this matter.

26 DATED this 25<sup>th</sup> day of March, 2013.

27 /s/ MARC A. SAGGESE, ESQ.

28 MARC A. SAGGESE, ESQ.  
Nevada Bar No. 7166  
SAGGESE & ASSOCIATES, LTD.  
732 S. Sixth Street, Suite 201  
Las Vegas, Nevada 89101  
Telephone 702.778.8883  
Facsimile 702.778.8884  
Marc@MaxLawNV.com

1 **CERTIFICATE OF SERVICE**

2 THIS IS TO CERTIFY that on the 25<sup>th</sup> day of March, 2013, a copy of the foregoing  
3 **NOTICE OF WITHDRAWAL OF ATTORNEY** was sent via facsimile and in a sealed  
4 envelope via US Mail, with postage fully pre-paid thereon, to the following counsel of record,  
5

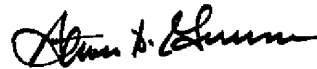
6 H. Stan Johnson, Esq.  
7 Brian A. Morris, Esq.  
8 Cohen-Johnson, LLC  
9 255 E. Warm Springs Road, Ste. 100  
Las Vegas, NV 89119  
702.823.3400

10 and that there is regular communication between the place(s) of mailing and the place(s) so  
11 addressed.  
12

13 /s/ Alexis Vardoulis

14 \_\_\_\_\_  
15 An Employee of Saggese & Associates, Ltd.  
16  
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# EXHIBIT B



CLERK OF THE COURT

1 JUDGE

2 MARC A. SAGGESE, ESQ.

3 Nevada Bar No. 7166

4 SAGGESE & ASSOCIATES, LTD.

5 732 S. Sixth Street, Suite 201

6 Las Vegas, Nevada 89101

7 Telephone 702.778.8883

8 Facsimile 702.778.8884

9 Marc@MaxLawNV.com

10 Attorney for Defendants/Counterclaimants

11 DISTRICT COURT

12 CLARK COUNTY, NEVADA

13 YACOV JACK HEFETZ, an individual,

14 Plaintiff,

15 vs.

16 CHRISTOPHER BEAVOR, an individual;  
17 SAMANTHA BEAVOR, an individual; DOES I  
18 through X and ROE ENTITIES I through X,  
19 inclusive,

20 Defendants.

21 CHRISTOPHER BEAVOR, an individual;  
22 SAMANTHA BEAVOR, an individual,

23 Counterclaimants,

24 vs.

25 YACOV JACK HEFETZ, an individual; DOES I  
26 through X; and ROE CORPORATIONS 1  
27 through 10, inclusive,

28 Counter-Defendant.

Case No.: A-11-645353-C  
Dept. No.: XXVIII

JUDGMENT

<input type="checkbox"/> Voluntary Dis	<input type="checkbox"/> Stip Dis	<input type="checkbox"/> Sum Jdgm	FINAL DISPOSITIONS <input type="checkbox"/> Time Limit Expired <input type="checkbox"/> Dismissed (with or without prejudice) <input type="checkbox"/> Judgment Satisfied/Paid in full
<input type="checkbox"/> Involuntary (stat) Dis	<input type="checkbox"/> Stip Jdgm	<input type="checkbox"/> Non-Jury Trial	
<input type="checkbox"/> Jdgm r Arb Award	<input type="checkbox"/> Default Jdgm	<input checked="" type="checkbox"/> Jury Trial	
<input type="checkbox"/> Win to Dis (by def)	<input type="checkbox"/> Transferred		

5/14/13 (68)

1 **I. JUDGMENT ON JURY VERDICT**

2 This action came on for trial before the Court, Honorable Ronald J. Israel, District Judge,  
3 presiding and a jury on February 25, 26, 27, 28, and March 1, 2013, the issues having been duly  
4 tried and the jury having duly rendered its verdict on March 1, 2013, the Court enters this  
5 Judgment pursuant to N.R.C.P. 54.  
6

7 IT IS ORDERED AND ADJUDGED that Judgment on the jury verdict is entered in  
8 favor of Defendant Christopher Beavor.  
9

10 **II. NOTICE OF ENTRY OF JUDGMENT**

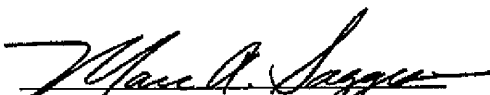
11 Within ten (10) days after entry of this Judgment, Defendant shall serve written notice of  
12 such entry, together with a copy of this Judgment, upon Plaintiff and shall file notice of entry  
13 with the clerk of the court.  
14

15 IT IS SO ORDERED.

16 DATED this 17 day of May, 2013.

17  
18   
19 DISTRICT COURT JUDGE 

20 Respectfully Submitted,  
21

22   
23 **MARC A. SAGGESE, ESQ.**  
24 Nevada Bar No. 7166  
25 **SAGGESE & ASSOCIATES, LTD.**  
26 732 S. Sixth Street, Suite 201  
27 Las Vegas, Nevada 89101  
28 Telephone 702.778.8883  
Facsimile 702.778.8884  
[Marc@MaxLawNV.com](mailto:Marc@MaxLawNV.com)  
*Attorney for Defendants/Counterclaimants*



# EXHIBIT 1

ORIGINAL

DISTRICT COURT  
CLARK COUNTY, NEVADA

FILED IN OPEN COURT  
STEVEN D. GRIERSON  
CLERK OF THE COURT

MAR 01 2013 4:23pm

BY Kathy Klein  
KATHY KLEIN, DEPUTY

YACOV JACK HEFETZ, an individual,  
Plaintiff,

vs.

CHRISTOPHER BEAVOR, an  
individual,  
Defendant.

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

VERDICT FORM

We, the jury in the above-entitled action find:

For Plaintiff \_\_\_\_\_

For Defendant 0

If you find in favor of Plaintiff: \$ \_\_\_\_\_

DATED this 1 day of March, 2013.

Holly Howard  
FOREPERSON

RECEIVED

MAR 04 2013

CLERK OF THE COURT

A-11-645353-C  
VER  
Verdict  
2270478



# EXHIBIT C

**CASE NO. A-11-645353-C**

2025

Conversion Case Number: **A645353**

## EVENTS & ORDERS OF THE COURT

07/21/2011	<b>Case Opened</b>
07/21/2011	<b><u>Document Filed</u></b> <i>Verified Complaint</i>
07/22/2011	<b><u>Initial Appearance Fee Disclosure</u></b> <i>Initial Appearance Fee Disclosure</i>
09/21/2011	<b><u>Affidavit of Service</u></b> <i>Affidavit of Service of Christopher Beavor</i>
09/27/2011	<b><u>Affidavit of Service</u></b> <i>Affidavit of Service of Samantha Beavor</i>
10/21/2011	<b><u>Answer and Counterclaim</u></b> <i>Defendants' Answer to Complaint and Counterclaim</i>
10/21/2011	<b><u>Initial Appearance Fee Disclosure</u></b> <i>Initial Appearance Fee Disclosure</i>
11/01/2011	<b><u>Reply to Counterclaim</u></b> <i>Reply to Counterclaim</i>
11/28/2011	<b>Demand for Jury Trial</b>

  
CLERK OF THE COURT

**ORDR**  
**COHEN-JOHNSON, LLC**  
H. STAN JOHNSON  
Nevada Bar No. 00265  
sjohnson@cohenjohnson.com  
BRIAN A. MORRIS, ESQ.  
Nevada Bar No. 11217  
bam@cohenjohnson.com  
255 W. Warm Springs Rd., Ste. 100  
Las Vegas, Nevada 89119  
Telephone: (702) 823-3500  
Facsimile: (702) 823-3400  
*Attorneys for Plaintiffs*

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

YACOV JACK HEFETZ, an individual,

Plaintiff,

vs.

Case No.: A645353

Dept. No.: XXVIII

CHRISTOPHER BEAVOR, an individual;  
SAMANTHA BEAVOR, an individual; DOES I  
through X and ROES ENTITIES I through X,  
inclusive,

Defendants.

Hearing Date: September 26, 2013

Hearing Time: 9:00 am

**FINDINGS OF FACT, CONCLUSION OF LAW AND ORDER**

THIS MATTER having come before this Court on September 26, 2013 on Defendant Christopher Beavor's Motion for Reconsideration, Plaintiff Yacov Hefetz, having been represented by H. Stan Johnson, Esq. of Cohen-Johnson, LLC; Defendant Christopher Beavor, having been represented by Joshua Tomsheck, Esq. of Hofland & Tomsheck; and Defendant Samantha Beavor having been represented by Marc A. Saggese, Esq. of Saggese and Associates, Ltd.; the Court having heard the representations and arguments set forth in open Court on the date of the hearing; the Court having carefully considered the pleadings and papers on file herein; being fully advised regarding the same; and good cause appearing:

**FINDINGS OF FACT**

The Court heard arguments by Counsel regarding Defendant's Motion for Reconsideration; the parties argued the timeliness of the Motion filed by Plaintiff for a New

11/5/13 

1 Trial.

2 THE COURT FINDS that Plaintiff's Motion for New Trial was timely filed;

3 THE COURT FURTHER FINDS: there were no grounds for reconsideration of the  
4 Court's prior order.

5 **CONCLUSION OF LAW**

6 THE COURT CONCLUDES that pursuant to NRCP 6(a) and (e), that the underlying  
7 Motion for New Trial or in the Alternative Motion for Judgment notwithstanding the Verdict  
8 (JNOV) was timely filed.

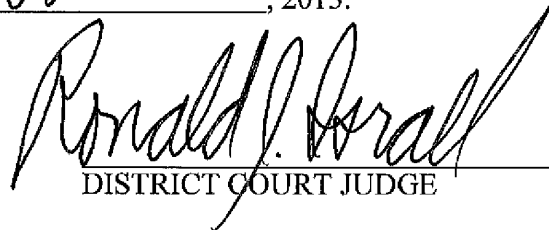
9 THE COURT FURTHER CONCLUDES that pursuant to EDCR 2.24 there are no  
10 grounds for reconsideration of the Court's order granting Plaintiff's Motion for New Trial.

11 **ORDER**

12 **IT IS HEREBY ORDERED** that the Motion for Reconsideration is DENIED.

13 **IT IS FURTHER ORDERED** that Mr. Tomshek's Oral Motion for a Stay is DENIED.

14 Dated this 12 day of Nov, 2013.

15   
DISTRICT COURT JUDGE

16 Submitted by:

17 COHEN-JOHNSON, LLC

18 

19 H. Stan Johnson, Esq.

20 Nevada Bar No.: 00265

21 Brian A. Morris, Esq.

22 Nevada Bar No.: 11217

23 255 E. Warm Springs Road, Ste. 100

24 Las Vegas, NV 89119

25 Attorneys for Plaintiffs

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**SUPREME COURT OF THE STATE OF NEVADA**

CHRISTOPHER BEAVOR, an individual;

Petitioner,

vs.

THE EIGHTH JUDICIAL DISTRICT  
COURT OF THE STATE OF NEVADA,  
CLARK COUNTY, and  
THE HONORABLE RONALD ISRAEL,  
DISTRICT JUDGE

Respondents,

and

YACOV JACK HEFETZ,

Real Party in Interest.

Electronically Filed  
May 13 2014 01:42 p.m.  
Tara K. Lindeman  
Clerk of Supreme Court

**PETITION FOR WRIT OF MANDAMUS**

To: The Supreme Court of the State of Nevada

COMES NOW, Petitioner CHRISTOPHER BEAVOR, through his attorney of record, JOSHUA TOMSHECK of the Law Firm of Hofland & Tomscheck, and hereby moves this Honorable Court for a Writ of Mandamus directing and mandating the Honorable Ronald Israel to vacate the Order entered September 3, 2013 in which Responded District Court vacated the finding of the jury in this matter and Ordered a new Trial.

This Petition is made and based upon the points and authorities attached hereto and the Appendix filed concurrently with this Petition.

1                                   **I. STATEMENT OF FACTS AND PROCEDURAL HISTORY**

2  
3           This Petition arises out of a civil lawsuit currently pending in the Eighth Judicial  
4 District Court, Clark County, Nevada. This case went to jury trial in February, 2013, with  
5 the Honorable Ronald Israel presiding. The Trial commenced February 25, 2013 and  
6 concluded with the jury's Verdict for the Defense on March 1, 2013. Petitioner's Appendix  
7 "PA" 00001. On May 17, 2013, this Court signed the Judgment in this case, entering the  
8 defense verdict. PA 00002-00003. On May 21, 2013, notice of entry of Judgment was  
9 served on the Plaintiff. PA 00004-00009. After this matter proceeded to Trial, Defendant's  
10 former counsel (and Trial Counsel in this matter), Marc Saggese, Esq., formally withdrew as  
11 attorney of record on March 25, 2013. PA 00010-00011.  
12

13  
14           On June 10, 2013, Plaintiff's counsel filed their Motion for New Trial or in the  
15 Alternative Motion for Judgment Notwithstanding Verdict (JNOV). PA 00012-00021.  
16

17           On June 19, 2013, Defendant Christopher Beavor retained the undersigned to defend  
18 against Plaintiff's Motion for New Trial or in the Alternative Motion for Judgment  
19 Notwithstanding Verdict (JNOV).  
20

21           On June 20, 2013, the undersigned counsel contacted counsel for the Real Party in  
22 Interest, Brian Morris, Esq., whose name was attached to the aforementioned Motion for  
23 New Trial or in the Alternative Motion for Judgment Notwithstanding Verdict (JNOV).  
24 During that contact, the undersigned counsel inquired of Mr. Morris as to how Plaintiff's  
25 Motion for New Trial or in the Alternative Motion for Judgment Notwithstanding Verdict  
26 (JNOV) was not untimely filed and thus, time barred. During that same conversation, Mr.  
27 Morris conceded that Plaintiff's Motion appeared to be time barred and indicated Plaintiff's  
28



1 counsel may be forced to withdraw the Motion given its untimeliness. At the conclusion of  
2 that telephone conversation, Plaintiff's counsel, Mr. Morris, indicated he did not see how  
3 Plaintiff's Motion was not filed late, but if he found otherwise, he would contact Defense  
4 Counsel.

5  
6 Thereafter, on June 20, 2013, the undersigned counsel filed, on behalf of  
7 Petitioner/Defendant Beavor, Defendant's Opposition to Plaintiff's Motion for New Trial or  
8 in the Alternative Motion for Judgment Notwithstanding Verdict (JNOV). PA 00022-00025.  
9 In the Opposition, the Defense stated "[a]s Plaintiff's Motion is untimely filed, and thus  
10 procedurally time barred, Defendant need not address Plaintiff's motion on the merits" but  
11 that "should this honorable Court desire additional briefing on the merits, Defense counsel  
12 can provide same." Id.

13  
14  
15 After the undersigned had contacted Plaintiff's counsel and received the above  
16 referenced information, and after filing their opposition, Plaintiff's counsel, Mr. Morris,  
17 contacted Defense counsel and stated that after reviewing the calendar, he now believed that  
18 his Motion had been timely filed. The undersigned counsel informed Plaintiff's counsel that  
19 he had already filed his opposition based on their earlier conversation, but that he had  
20 included reference to the Court that should the Court requires or require additional briefing,  
21 it would be provided. Plaintiff's counsel indicated he would have no objection to same.  
22 Thereafter, Plaintiff's counsel, Mr. Johnson, filed their Reply, leaving out all of the pertinent  
23 procedural facts relayed above. PA 00026-00032.<sup>1</sup>

24  
25  
26  
27 <sup>1</sup> It should be noted that the signing attorney on the document was Mr. Johnson and not Mr. Morris, whom had conferred  
28 with Defense counsel regarding the matter. It should also be noted that this filing is not intended to convey to the Court  
any attempt at intended unethical conduct on behalf of Mr. Morris, who is known to the undersigned as being an  
extremely ethical and forthright litigator, simply that the Court made its decision without the necessary requisite facts to

1 This matter, having to do with a substantive issue which sought to invalidate the  
2 Jury's determination of the facts, law and evidence, was never heard for argument, but was  
3 placed on a "chambers calendar." The Matter was continued until a second chambers  
4 calendar on August 7, 2013, at which time the District Court Court ruled, granting the  
5 Plaintiff's Motion by Minute Order. PA 00033. Therafter, the Minute Order from the  
6 Chambers decision was never served on counsel for the Petitioner. Instead, as the minutes  
7 from the August 7, 2013 hearing clearly state, "CLERK'S NOTE: A copy of this minute  
8 order was placed in the attorney folder(s) of: H. Stan Johnson, Esq. (Cohen- Johnson) and  
9 Marc Saggese, Esq. (Saggese & Associates)" even though Mr. Saggese withdrew as counsel  
10 of record on March 25, 2013. Id. The undersigned only discovered the Court's decision by  
11 happenstance when checking the online Court minutes after realizing he had never received  
12 a decision.  
13  
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15

16 Following the Court's decision on the Plaintiff's Motion for New Trial or in the  
17 Alternative Motion for Judgment Notwithstanding Verdict (JNOV), the Petitioner filed a  
18 Motion for Reconsideration with the District Court. PA 00034-00068. The Motion was  
19 opposed. PA 00069-00111. Unlike the Plaintiff's Motion for New Trial or in the  
20 Alternative Motion for Judgment Notwithstanding Verdict (JNOV), argument for the Motion  
21 for Reconsideration was heard before the Court. On September 26, 2013, the parties  
22 appeared and argued. PA 00112-00113. Following argument, the Court denied Defendant's  
23 Motion for Reconsideration. Id. Defendant verbally requested a stay of the proceedings,  
24 which was denied. Id. However, the Court thereafter contacted the undersigned and  
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---

be fully informed on the issues.

1 indicated that the Court would entertain written Motion for Stay. This was included in the  
2 Court minutes. Id. A findings of fact, conclusions of law and Order was filed on November  
3 14, 2013. PA 000114-00115. Notice of Entry of Order was entered November 15, 2014.  
4 PA 00116-00119. Therafter, Defendant/Petitioner filed a written Motion for Stay. PA  
5 00120-00126. The Motion for Stay was not opposed and was granted by the District Court.  
6 This Petition now follows.  
7

### 8 9 10 LEGAL AUTHORITY

11 NRAP 21, which governs extraordinary writs, including writs of mandamus,  
12 states as follows:

13 (a) Mandamus or Prohibition: Petition for Writ; Service and Filing.

14 (1) Filing and Service. A party petitioning for a writ of mandamus or  
15 prohibition must file a petition with the clerk of the Supreme Court with  
16 proof of service on the respondent judge, corporation, commission, board  
17 or officer and on each real party in interest. A petition directed to a court  
18 shall also be accompanied by a notice of the filing of the petition, which  
19 shall be served on all parties to the proceeding in that court.

20 (2) Caption. The petition shall include in the caption: the name of  
21 each petitioner; the name of the appropriate judicial officer, public tribunal,  
22 corporation, commission, board or person to whom the writ is directed as  
23 the respondent; and the name of each real party in interest, if any.

24 (3) Contents of Petition. The petition must state:

25 (A) the relief sought;

26 (B) the issues presented;

27 (C) the facts necessary to understand the issues presented by the  
28 petition; and

(D) the reasons why the writ should issue, including points and  
legal authorities.

(4) Appendix. The petitioner shall submit with the petition an  
appendix that complies with Rule 30. The appendix shall include a copy of  
any order or opinion, parts of the record before the respondent judge,  
corporation, commission, board or officer, or any other original document  
that may be essential to understand the matters set forth in the petition.

(5) Verification. A petition for an extraordinary writ shall be verified

1 by the affidavit of the petitioner or, if the petitioner is unable to verify the  
2 petition or the facts stated therein are within the knowledge of the  
3 petitioner's attorney, by the affidavit of the attorney. The affidavit shall be  
4 filed with the petition.

5 A writ of mandamus is available to compel the performance of an act which the law  
6 requires as a duty resulting from an office, trust, or station. Haley v. Eighth Judicial Dist.  
7 Court ex rel. County of Clark, 120 Nev. 222, 88 P.3d 840 (2004). Writ relief may be  
8 warranted when an important issue of law needs clarification. See State of Nevada v. Dist Ct.,  
9 118 Nev 609, 55 P.3d 420 (2002). A writ will not issue if there is a plain, speedy, and adequate  
10 remedy in the ordinary course of law. Id. (quoting Mineral County v. State, Dep't of Conserv.,  
11 117 Nev. 235, 243, 20 P.3d 800, 805 (2001)); NRS 34.170; NRS 34.330.

12  
13 Petitioners concede that a request for a writ of mandamus is an extraordinary remedy,  
14 however Plaintiffs have no other plain, speedy, or adequate remedy of law other than seeking  
15 the Writ of Mandamus as they have exhausted all requests and remedies in this regard at the  
16 District Court level.  
17

## 18 **II. STATEMENT OF ISSUES PRESENTED AND RELIEF SOUGHT**

19  
20 The issues in this case are as follows: (1) whether EDCR 2.20 requires a district  
21 court to grant a motion when a party files a limited opposition and indicates the  
22 willingness to provide further briefing; (2) whether a court should allow the parties to  
23 appear and argue on a Motion for New Trial rather than deciding the matter on a  
24 "chambers" calendar; and (3) whether the district court improperly computed the time  
25 allowed in which to file a motion for new trial.  
26  
27

28 The relief sought in this matter is to direct the District Court to vacate's Order

1 granting Plaintiff's Motion for a New Trial.

2 **III. STATEMENT OF REASONS WHY WRIT SHOULD ISSUE.**

3  
4 **i. The District Court erred in granting Plaintiff's Motion for New Trial**  
5 **pursuant to EDCR 2.20**

6 Pursuant to Nevada Rule of Appellate Procedure 8(a), and Fritz Hansen A/S  
7 v. Dist. Ct., 116 Nev 650, 6 P.3d 982 (2000), a party applying for a writ petition is required  
8 to first seek a stay in the district court when the order the petition seeks to challenge is one  
9 issued by a district court. As outlined in the above facts, the Defendant properly requested  
10 a stay of proceedings in the District Court in this case, which was granted by the District  
11 Court on January 7, 2014. PA 00120-00126. As such, by this Honorable Court's rules and  
12 requirements, the Plaintiffs' petition for relief is proper and ripe for determination.  
13  
14

15 A writ should issue in this matter because the District Court's decision ordering a new  
16 trial without addressing the motion for same on its merits leaves the Petitioner with no other  
17 this Court and dramatically changes the landscape of this case.  
18

19 Modern rules of procedure are intended to allow the court to reach the merits, as  
20 opposed to disposition on technical niceties. Costello v. Casler, 127, Nev. Adv. Op. 36, 254  
21 P. 3d 631 (2011), *See also* Schmidt v. Sadri, 95 Nev. 702, 705, 601 P.2d 713, 715 (1979)  
22 ("The Legislature envisioned that [the Nevada Rules of Civil Procedure] would serve to  
23 simplify existing judicial procedures and promote the speedy determination of litigation upon  
24 its merits.").

25  
26 Plaintiff claimed in their Motion for New Trial and subsequent Reply that Defendant's  
27  
28

1 failure to oppose the Motion on its Merits constitutes a waiver pursuant to EDCR 2.20.<sup>2</sup> PA  
2 PA 00012-00021, 00026-00032. The record states otherwise however. As outlined above, the  
3 undersigned defense counsel contacted Plaintiff's counsel and inquired about the Motion for  
4 New Trial, and had in depth discussions about the timeliness of same. After that first  
5 conversation, defense counsel was left with the notion that Plaintiff's counsel had, in fact,  
6 conceded the lateness of their motion. Defendant then filed their opposition on that basis.  
7 However, in that Motion, defense counsel expressly reserved the right to file additional points  
8 and authorities should the Court so desire, by stating "**should this honorable Court desire**  
9 **additional briefing on the merits, Defense counsel can provide same.**" PA PA 00022-  
10 00025 (emphasis added). Following the filing of that Opposition, Plaintiff's counsel *then*  
11 contacted defense counsel and indicated that he no longer thought the Motion for New Trial  
12 was time barred. In that conversation, Plaintiff's counsel conceded that he would have no  
13 objection to Defense counsel filing points and authorities on the merits should the Court agree  
14 with Plaintiff's counsel as to the timeliness of the Motion for New Trial.  
15

16 In ruling on Plaintiff's Motion, the District Court below indicated that the Court did  
17 not have discretion in its grant of a new trial based on EDCR 2.20. However, as this Court is  
18 aware, there is nothing within EDCR 2.20, or any other rule of law, which *requires* the Court  
19 to find in Plaintiff's favor under these circumstances. EDCR 2.20 simply states that "[f]ailure  
20 of the opposing party to serve and file written opposition *may* be construed as an admission  
21 that the motion and/or joinder is meritorious and a consent to granting the same." *Emphasis*  
22

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<sup>2</sup> (a) All motions must contain a notice of motion setting the same for hearing on a day when the judge to whom the case is assigned is hearing civil motions and not less than 21 days from the date the motion is served and filed. A party filing a motion must also serve and file with it a memorandum of points and authorities in support of each ground thereof. The absence of such memorandum may be construed as an admission that the motion is not meritorious, as cause for its denial or as a waiver of all grounds not so supported.

1 **added.** This “may” language, as opposed to a directive such as “shall,” indicates that the  
2 District Court has discretion and can make a decision based on the totality of the  
3 circumstances. Here, it is crystal clear that the Defendant **did not** admit that the Plaintiff’s  
4 motion had merit or consent to its granting. Conversely, defense counsel provided in its  
5 opposition that despite its position that “Plaintiff’s Motion is untimely filed, and thus  
6 procedurally time barred, Defendant need not address Plaintiff’s motion on the merits” –  
7 something that had been conceded by the Plaintiff at the time Defendant filed his opposition –  
8 but affirmatively stated that “should this honorable Court desire additional briefing on the  
9 merits, Defense counsel can provide same.” The “may” provision within EDCR 2.20(a) is  
10 designed to address a situation where a non-moving party simply “fails to serve and file  
11 written opposition.” That didn’t happen here. The non-moving party (the Defendant) **did**  
12 serve and file written opposition, addressing the issue of timeliness and offering to provide  
13 additional briefing, an allowance discussed, and agreed to, by Plaintiff’s counsel.  
14

15  
16  
17       Therafter, the matter was placed on a “chambers” calendar, which prevented the  
18 parties from appearing and arguing the merits of the matter or to place their agreement for  
19 further briefing on the record. As such, a Motion having to do with a substantive issue which  
20 sought to invalidate the Jury’s determination of the facts, law and evidence, was never heard  
21 for argument, but was decided on a “chambers calendar” without argument from the parties.  
22 Following the Court’s decision, the District Court Court did not even notify Defense counsel  
23 of its decision, instead placing the Minute Order from the Chambers decision in the folder of  
24 previous counsel who had since withdrawn. Had this matter been heard, as opposed to simply  
25 relying incorrectly on EDCR 2.20, Plaintiff’s counsel would have conceded that Defense  
26  
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28

1 counsel should be allowed to brief the issue on its merits, something the parties had discussed  
2 and agreed upon.

3         Given this procedural history and record below, a Writ should issue and this Court  
4 should, consistent with previous decisions of this Court, mandate the District Court to decide  
5 Plaintiff's Motion for a New Trial on its merits.  
6

7         **ii. Plaintiff's Motion for New Trial was Not Timely Filed:**  
8

9         Despite Plaintiff's clever attempt to draw out the time period to file the Motion for  
10 New Trial pursuant to NRCP 59, their application of NRCP 6 to include the date in which  
11 they filed their Motion is in error. In their analysis, they neglect the clear application of the  
12 rules and incorrectly conclude that the three (3) day addition for mailing is exclusive or  
13 weekends and non-judicial days. This is not the case.  
14

15         As this Court is aware, Motions for New Trial after the 2004 Amendment to NRCP 6,  
16 must be filed within ten days from the date when notice of the final judgment's entry is  
17 served. NRCP 59(b). Under NRCP 6(a), this ten-day period does not include weekends and  
18 nonjudicial days, including holidays. Further, under NRCP 6(e), three days are added to the  
19 ten-day period when the notice of entry is served by mail or electronic means. To calculate  
20 the due date, the ten-day period is determined and then the three (3) days are added to that  
21 date. However, unlike the ten-day filing period, the three-day mailing period *includes*  
22 weekends and nonjudicial days. Winston Products Co. v. DeBoer, 122 Nev. 517, 134 P.3d  
23 726 (2006); *see also* Nalty v. Nalty Tree Farm, 654 F. Supp. 1315, 1318 (S.D. Ala. 1987)  
24 (recognizing that the final day of the three-day mailing period could land on a weekend or  
25 nonjudicial day). *See also* Comments on 2005 Amendments to FRCP 6(e), as adopted in  
26  
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28



1 NRCP 6(e), noting that "[i]ntermediate Saturdays, Sundays, and legal holidays are included  
2 in counting these added three days." This distinction is one that Plaintiff fails to recognize in  
3 their Reply to Defendants Opposition to Plaintiff's Motion for New Trial.

4 Here, the ten-day period commenced the day after notice of the final judgment's entry  
5 was served, May 22, 2013 and ended on Wednesday, June 5, 2013. Thereafter, the three (3)  
6 days are added onto that date for mailing. Unfortunately for the Plaintiff, they, in their  
7 Reply, clearly apply the standard that is true in NRCP 6(a), namely that the ten (10) day  
8 period for filing under that subsection does not include weekends and non-judicial days,  
9 including holidays, and Plaintiff further applies that rule to the three (3) day mailing  
10 provision under Rule 6 (e). However, this Court has clearly held that the three (3) day  
11 mailing period under NRCP 6(e) *does* include both weekends and holidays. As such, their  
12 Motion was due *before* they filed it on June 10, 2013. As the Nevada Supreme Court has  
13 repeatedly held, "[u]ntimely motions for new trial . . . must be denied." Ross v. Giacomo, 97  
14 Nev. 550, 553, 635 P.2d 298, 300 (1981) overruled on other grounds by Winston Products  
15 Co. v. DeBoer, 122 Nev. 517, 134 P.3d 726.

16 As Plaintiff's Motion for a New Trial was untimely filed, a fact that was acquiesced  
17 to at the time Defendant filed their opposition in this matter, this Court should grant the  
18 instant Petition, and remand this matter to the District Court for proceedings consistent with  
19 same.

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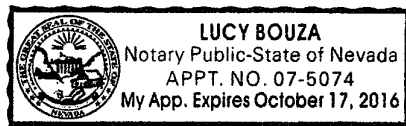
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Further Affiant sayeth naught.

  
Joshua Pomsheck, Esq.  
Nevada Bar No. 9210  
Attorney for Petitioner

*[Signature]*

DATED this 12<sup>th</sup> of May, 2014.



**CERTIFICATE OF COMPLIANCE**

I hereby certify that I have read this Petition for Writ of Mandamus, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e), which requires every assertion in the brief regarding matters in the record to be supported by appropriate references to the record on appeal. I hereby represent that this brief complies with the formatting requirements of Rule 32(a)(4)-(6) and either the page or type volume limitations as stated in Rule 32(a)(7). I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure

DATED this 12<sup>th</sup> day of May, 2014.

**HOFLAND & TOMSHECK**

By: 

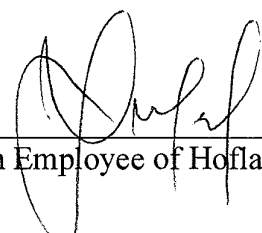
Joshua Tomsheck, Esq.  
Nevada Bar No. 9210  
228 South Fourth Street, 1<sup>st</sup> Floor  
Las Vegas, Nevada 89101  
(702) 895-6760  
Attorney for Christopher Beavor

**CERTIFICATE OF MAILING**

I HEREBY CERTIFY that in accordance to NRAP (25)(1)(d) I served a copy of the foregoing Petition for Writ of Mandamus on the 12<sup>th</sup> day of May, 2014, by depositing a copy of same in a sealed envelope in the United States Post Office Box, Las Vegas, Nevada, first class postage fully prepaid, and addressed to the the below recipients:

EIGHTH JUDICIAL DISTRICT COURT  
The Honorable Ronald Israel, Dept. 28  
District Court Judge  
200 Lewis Avenue  
Las Vegas, Nevada 89155

H. STAN JOHNSON, and  
BRIAN A. MORRIS  
c/o COHEN-JOHNSON, LLC  
225 E. Warm Springs Road, Suite 100  
Las Vegas, Nevada, 89119

  
An Employee of Hofland & Tomscheck

IN THE SUPREME COURT OF THE STATE OF NEVADA

CHRISTOPHER BEAVOR,  
Petitioner,

vs.

THE EIGHTH JUDICIAL DISTRICT  
COURT OF THE STATE OF NEVADA,  
IN AND FOR THE COUNTY OF  
CLARK; AND THE HONORABLE  
RONALD J. ISRAEL, DISTRICT  
JUDGE,

Respondents,  
and

YACOV JACK HEFETZ,  
Real Party in Interest.

No. 65656

**FILED**

SEP 16 2014

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY *S. Young*  
DEPUTY CLERK

*ORDER DENYING PETITION FOR WRIT OF MANDAMUS*

This original petition for a writ of mandamus challenges a district court order granting a new trial motion in a breach of contract action.

Writ relief is generally available only when there is no plain, speedy, and adequate remedy in the ordinary course of law. NRS 34.170; NRS 34.330; *Smith v. Eighth Judicial Dist. Court*, 107 Nev. 674, 677, 818 P.2d 849, 851 (1991). Moreover, this court has held that the right to appeal is typically an adequate legal remedy precluding writ relief and that "writ relief is not available to correct an untimely notice of appeal." *Pan v. Eighth Judicial Dist. Court*, 120 Nev. 222, 224-25, 88 P.3d 840, 841 (2004). Because a direct appeal is available from an order granting or

denying a new trial motion, NRAP 3A(b)(2), petitioner had an adequate legal remedy in the form of an appeal. *Pan*, 120 Nev. at 224, 88 P.3d at 841. Accordingly, we

ORDER the petition DENIED.

*J. Hardesty*, J.  
Hardesty

*Douglas*, J.  
Douglas

*Cherry*, J.  
Cherry

cc: Hon. Ronald J. Israel, District Judge  
Hofland & Tomsheck  
Cohen-Johnson LLC  
Eighth District Court Clerk

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Location : District Court Civil/Criminal [Help](#)**REGISTER OF ACTIONS****CASE No. A-11-645353-C****Yacov Hefetz, Plaintiff(s) vs. Christopher Beavor, Defendant(s)**§  
§  
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§**Case Type: Breach of Contract****Subtype: Guarantee****Date Filed: 07/21/2011****Location: Department 28****Cross-Reference Case Number: A645353****Supreme Court No.: 68438****68843****70327**

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**PARTY INFORMATION**

---

**Lead Attorneys****Defendant Beavor, Christopher****Joel Z. Schwarz***Retained*

702-550-4400(W)

**Plaintiff Hefetz, Yacov Jack****Harold Stanley Johnson***Retained*

702-823-3500(W)

---

**EVENTS & ORDERS OF THE COURT**

---

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

01/20/2015 9:30 AM

- Mr. Schwarz noted he was just retained Thursday and he spoke with Counsel regarding other trial stacks and will be submitting a joint motion to continue the trial. Court noted the age of the case and the prior trial on this case going to the Supreme Court. Court will allow a limited time given the fact Mr. Schwarz was just retained. Colloquy regarding scheduling issues. COURT ORDERED, Trial dates VACATED and RESET. The Judicial Executive Assistant (JEA) to issue the trial order. COURT FURTHER ORDERED, All Parties to a Settlement Conference. Counsel to notify the Law Clerk in chambers by next Tuesday of the date set for the settlement conference. CLERK'S NOTE: Chambers received a fax 01/26/15, from Joel Z. Schwarz, Esq. advising that the parties have a Settlement Conference scheduled with Judge Scotti on 02/26/15 @1:00 PM. kk 01/26/15.

[Parties Present](#)[Return to Register of Actions](#)**SUPP00150**



1 **OFFER**  
2 GORDON SILVER  
3 JOEL Z. SCHWARZ  
4 Nevada Bar No. 9181  
5 Email: [jschwarz@gordonsilver.com](mailto:jschwarz@gordonsilver.com)  
6 3960 Howard Hughes Pkwy., 9th Floor  
7 Las Vegas, Nevada 89169  
8 Tel: (702) 796-5555  
9 Fax: (702) 369-2666  
10 *Attorneys for Christopher Beavor*

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

9 YACOV JACK HEFETZ,

10 Plaintiff,

11 vs.

12 CHRISTOPHER BEAVOR,

13 Defendant.  
14

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

**OFFER OF JUDGMENT**

15 TO: Yacov Jack Hefetz, Plaintiff

16 TO: H. Stan Johnson, Esq., Cohen-Johnson, LLC, Plaintiff's attorneys.

17 PLEASE TAKE NOTICE that pursuant to the provisions of Rule 68 of the Nevada Rules  
18 of Civil Procedure and Nevada Revised Statutes 17.115, Defendant Christopher Beavor hereby  
19 offers to allow judgment to be taken against him in the total sum of **Ten Thousand and 0/100**  
20 **(\$10,000.00) Dollars**, which sum includes all costs, interest and attorneys' fees incurred to date.  
21 This sum represents a full and final resolution of the claims alleged in the above-captioned case,  
22 and is made for the purposes specified in NRCP 68 and NRS 17.115. It is not intended to be, nor  
23 should it be construed, as an admission of liability of any kind whatsoever. This offer will expire  
24 ten (10) days after the date of service upon Plaintiff. No partial acceptance may be made, and

25 ...

26 ...

27 ...

28 ...

1 any acceptance of only part of this offer will be construed as a rejection of the entire offer.

2 Dated this 3<sup>rd</sup> day of April, 2015.

3 GORDON SILVER

4 

5 JOEL Z. SCHWARZ  
6 Nevada Bar No. 9181  
7 3960 Howard Hughes Pkwy., 9th Floor  
8 Las Vegas, Nevada 89169  
9 Tel: (702) 796-5555  
10 Fax: (702) 369-2666  
11 *Attorneys for Christopher Beavor*

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**RECEIPT OF COPY**

The undersigned hereby acknowledges receipt of copy of **OFFER OF JUDGMENT** this  
3<sup>rd</sup> day of April, 2015.



H. Stan Johnson, Esq.  
Brian A. Morris, Esq.  
Michael V. Hughes, Esq.  
COHEN-JOHNSON, LLC  
255 East Warm Springs Road, Suite 100  
Las Vegas, NV 89119  
*Attorneys for Plaintiff*

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## REGISTER OF ACTIONS

CASE No. A-11-645353-C

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

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Case Type: **Breach of Contract**

Subtype: **Guarantee**

Date Filed: **07/21/2011**

Location: **Department 28**

Cross-Reference Case Number: **A645353**

Supreme Court No.: **68438**

**68843**

**70327**

### PARTY INFORMATION

#### Lead Attorneys

**Defendant** Beavor, Christopher

**Joel Z. Schwarz**  
*Retained*  
702-550-4400(W)

**Plaintiff** Hefetz, Yacov Jack

**Harold Stanley Johnson**  
*Retained*  
702-823-3500(W)

### EVENTS & ORDERS OF THE COURT

04/07/2015 **All Pending Motions** (9:00 AM) (Judicial Officer Israel, Ronald J.)  
*All Pending Motions (04/07/15)*

#### Minutes

04/07/2015 9:00 AM

- PLAINTIFF'S MOTION IN LIMINE CONCERNING THE EXCLUSION OF REFERENCES TO NATIONAL ORIGINS AND RELIGIOUS BELIEFS: Colloquy regarding avoiding references. Upon Court's inquiry of Counsel holding a meet and confer, Mr. Hughes stated he had failed to set it up. Mr. Schwarz advised the references regarding the national origins or religion may be seen from the evidence and facts presented in trial and should have no bearing on this case. Arguments by Counsel. COURT ORDERED, Motion GRANTED. Moving Counsel to prepare the order. PLAINTIFF'S MOTION IN LIMINE CONCERNING THE EXCLUSION OF THE CONTENTS OF SETTLEMENT NEGOTIATIONS: Arguments by Counsel. Court inquired if Plaintiff was seeking the amount of the settlement or that they had a settlement. Court further noted Defendants never sought to enforce the settlement. Colloquy. Court stated this was a new trial and the previous stipulations for evidence is not in the new trial. COURT stated its findings noting this is a question for the jury and ORDERED, Motion In Limine, DENIED. Plaintiff's Counsel to prepare the order. Colloquy regarding Defendant's Order Shortening Time that the Court just received. Mr. Schwarz advised the Motion is a one action rule and not able to waive; Further stating his Client was a Nevada resident and his property is located in Nevada, the deed of trust is on Defendant's house. Conference at the bench. Court noted Counsel is not ready for trial and ORDERED, Trial VACATED and RESET. The Judicial Executive Assistant (JEA) to issue the trial order. COURT FURTHER ORDERED, All Parties to a Settlement Conference. Counsel to notify chambers with three dates where all parties are available, by next Friday. Court noted they may schedule in Dept. XXX, set a private mediation, or find a Judge that is available. Mr. Schwarz noted the Order Shortening Time is no longer needed. 09/22/15 9:30 AM PRE-TRIAL CONFERENCE 10/06/15 9:30 AM CALENDAR CALL 10/12/15 1:30 PM JURY TRIAL

[Parties Present](#)

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