

IN THE SUPREME COURT OF THE STATE OF NEVADA

Case No.: 72371

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Elizabeth A. Brown
Clerk of Supreme Court

PARDEE HOMES OF NEVADA

Appellant,

v.

JAMES WOLFRAM and WALT WILKES, et al.

Respondents.

Appeal Regarding Judgment and Post-Judgment Orders
Eighth Judicial District Court
District Court Case No.: A-10-632338-C

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10/23/2013	Trial Exhibit G	23	JA003638
10/23/2013	Trial Exhibit H	23	JA003639- JA003640
10/23/2013	Trial Exhibit I	23	JA003641- JA003643
10/23/2013	Trial Exhibit J – filed under seal	24	JA003644- JA003669
10/23/2013	Trial Exhibit K	24	JA003670- JA003674
10/23/2013	Trial Exhibit L	24	JA003675- JA003678
10/23/2013	Trial Exhibit M	24	JA003679- JA003680
10/23/2013	Trial Exhibit N	24	JA003681- JA003683
10/23/2013	Trial Exhibit O – filed under seal	25-26	JA003684- JA004083
10/23/2013	Trial Exhibit P	27	JA004084
10/23/2013	Trial Exhibit Q	27	JA004085
10/23/2013	Trial Exhibit R	27	JA004086- JA004089
10/23/2013	Trial Exhibit S	27	JA004090

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10/23/2013	Trial Exhibit T	27	JA004091- JA004092
10/23/2013	Trial Exhibit U	27	JA004093
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10/23/2013	Trial Exhibit W	27	JA004095- JA004096
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10/23/2013	Trial Exhibit Z	27	JA004099- JA004100
10/23/2013	Trial Exhibit 1	27	JA004289- JA004292
10/23/2013	Trial Exhibit 10 – filed under seal	27	JA004320- JA004329
10/23/2013	Trial Exhibit 11 – filed under seal	28	JA004330- JA004340
10/23/2013	Trial Exhibit 12 – filed under seal	28	JA004341- JA004360
10/23/2013	Trial Exhibit 13 – filed under seal	28	JA004361- JA004453
10/28/2013	Trial Exhibit 15	34	JA005228- JA005232
10/28/2013	Trial Exhibit 18	34	JA005233- JA005235

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10/28/2013	Trial Exhibit 19	34	JA005236- JA005237
10/28/2013	Trial Exhibit 20	34	JA005238- JA005254
10/23/2013	Trial Exhibit 21	28	JA004454
10/28/2013	Trial Exhibit 23	34	JA005255- JA005260
10/30/2013	Trial Exhibit 23a	39	JA005816- JA005817
10/28/2013	Trial Exhibit 24	34	JA005261- JA005263
10/23/2013	Trial Exhibit 25	28	JA004455- JA004462
10/24/2013	Trial Exhibit 26	31	JA004792- JA004804
10/30/2013	Trial Exhibit 27	39	JA005818- JA005820
10/29/2013	Trial Exhibit 28	36	JA005494- JA005497
10/29/2013	Trial Exhibit 29	36	JA005498- JA005511
10/24/2013	Trial Exhibit 30	31	JA004805- JA004811
12/13/2013	Trial Exhibit 31a	48	JA007385- JA007410
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12/12/2013	Trial Exhibit 40	46	JA006949- JA006950
12/12/2013	Trial Exhibit 41	46	JA006951- JA006952
10/23/2013	Trial Exhibit 6 – filed under seal	27	JA004293- JA004307
10/23/2013	Trial Exhibit 7 – filed under seal	27	JA004308- JA004310
10/23/2013	Trial Exhibit 8 – filed under seal	27	JA004311- JA004312
10/23/2013	Trial Exhibit 9 – filed under seal	27	JA004313- JA004319
10/23/2013	Trial Exhibit AA	27	JA004101- JA004102
10/23/2013	Trial Exhibit BB	27	JA004103
10/23/2013	Trial Exhibit CC	27	JA004104
10/23/2013	Trial Exhibit DD	27	JA004105
10/23/2013	Trial Exhibit EE	27	JA004106- JA004113
10/23/2013	Trial Exhibit FF	27	JA004114- JA004118
10/23/2013	Trial Exhibit GG	27	JA004119- JA004122
10/23/2013	Trial Exhibit HH	27	JA004123

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10/23/2013	Trial Exhibit II	27	JA004124
10/23/2013	Trial Exhibit JJ	27	JA004125
10/23/2013	Trial Exhibit KK	27	JA004126- JA004167
10/23/2013	Trial Exhibit LL	27	JA004168
10/23/2013	Trial Exhibit MM	27	JA004169
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10/23/2013	Trial Exhibit QQ	27	JA004241- JA004243
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10/23/2013	Trial Exhibit TT	27	JA004256- JA004262
10/23/2013	Trial Exhibit UU	27	JA004263- JA004288
10/24/2013	Trial Exhibit VV	31	JA004791

Date	Document Description	Volume	Labeled
12/10/2013	Trial Exhibit WW	43	JA006531- JA006532
12/12/2013	Trial Exhibit XX	46	JA006879- JA006935

Dated this 28th day of February, 2018.

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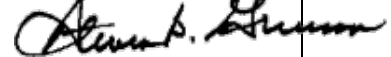
CERTIFICATE OF SERVICE

I hereby certify that I am an employee of McDonald Carano LLP, and on the 28th day of February, 2018, a true and correct copy of the foregoing document was e-filed and e-served on all registered parties to the Supreme Court's electronic filing system:

/s/ Beau Nelson

An Employee of McDonald Carano LLP

Steven D. Grierson
CLERK OF THE COURT



DISTRICT COURT
CLARK COUNTY, NEVADA

JAMES WOLFRAM,)	
)	ORIGINAL
Plaintiff,)	
)	
vs.)	CASE NO.
)	A-10-632338-C
PARDEE HOMES OF NEVADA,)	
)	
Defendants.)	

REPORTER'S TRANSCRIPT
OF

TRIAL PROCEEDINGS
BEFORE THE HONORABLE KERRY L. EARLEY
DISTRICT COURT JUDGE
HELD ON TUESDAY, DECEMBER 10, 2013
AT 8:30 A.M.

APPEARANCES:

For the Plaintiff:	JAMES J. JIMMERSON, ESQ.
	JAMES M. JIMMERSON, ESQ.
For the Defendant:	PATRICIA K. LUNDVALL, ESQ,
	AARON D. SHIPLEY, ESQ.
Reported by:	Angela Campagna, CCR #495

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I N D E X

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1 DISTRICT COURT IV

2 PROCEEDINGS

3 * * * * *

4 THE COURT: Good morning.

5
6 CROSS-EXAMINATION

7 BY MS. LUNDVALL:

8 Q. Thank you, your Honor.

9 Mr. Wolfram, what I want to do is pick up
10 where we left off yesterday. Okay?

11 A. All right.

12 Q. What I'm trying to do is to put in
13 chronological order the events that led to the filing of
14 this lawsuit, all right?

15 And so we started with Mr. Lash's letter
16 which was found at Exhibit W that identified that Pardee
17 had taken down or had purchased other lands other than
18 single family residential lands from CSI?

19 Do you recall talking about that?

20 A. Yes.

21 Q. And then you sent a letter back -- you along
22 with Mr. Wilkes sent a letter back saying we're entitled to
23 commissions on those other lands correct?

24 A. Yes.

25 Q. And you begin asking for the documents

1 concerning those transactions, correct?

2 A. Yes.

3 Q. And we looked at Exhibit 24. We looked at
4 Exhibit 19, and we were on Exhibit 18 that your counsel
5 sent.

6 So what I want to you do is pick up Exhibit
7 18 for me, please?

8 A. All right.

9 Q. Now, at Exhibit 18, is the letter that bears
10 the date of August 26 of 2009. Your attorney sent this on
11 your behalf, did they not, Mr. Wolfram?

12 A. Yes.

13 Q. And I'm not going to review this entire
14 thing, because much of this is a recap of what was
15 contained in the earlier letters.

16 But, once again, your attorneys are asking
17 for all of the documents underlying all the transactions
18 between SCS and Pardee, correct?

19 A. Yes. That's the only way to find out, you
20 know, what has happened.

21 Q. And they are contending that you're entitled
22 to more commissions, correct?

23 A. Well, I would be if there is land in there,
24 but this always goes back to money. I'm going to state it
25 again. It isn't the money. I'm trying to find out in

1 this lawsuit --

2 Q. Well, Mr. Wolfram, commissions are paid in
3 money, are they not?

4 A. Yes.

5 Q. All right. So if you're asking for more
6 commissions, you're asking for money, are you not?

7 A. Yes.

8 Q. All right. What I want to do then is to try
9 to take a look at the response that you got back from Mr.
10 Lash. That's the letter that is found at Exhibit 15.

11 A. Yes.

12 Q. All right. We've talked about this letter.
13 Fairly lengthy. Already in this trial. But this letter in
14 sum identifies all the land, the single family residential
15 land that Pardee purchased from CSI; does it not?

16 A. I don't think so.

17 Q. You don't think so? But Mr. Lash in his
18 representations to you is telling you this is all the
19 single family residential land that Pardee has purchased
20 from CSI?

21 MR. J.J. JIMMERSON: Objection, your Honor.

22 The letter will speak for itself concerning
23 whether or not all the residential property --

24 THE COURT: Are you just asking for his
25 understanding of the letter?

1 MS. LUNDVALL: Yes. I'm trying to
2 synthesize.

3 THE COURT: What's your understanding?

4 THE WITNESS: My understanding of the letter
5 is that it shows the take down in the letter, and it shows
6 that all balances out to \$84,000 at the bottom. I see
7 that.

8 THE COURT: We know it's 84 million, Counsel.

9 THE WITNESS: I'm sorry. 84 million.

10 THE COURT: That's okay.

11 THE WITNESS: But I see that on the map.

12 BY MS. LUNDVALL:

13 Q. Okay. And from this perspective that didn't
14 satisfy you either, did it?

15 A. No. No.

16 Q. So what you did is you went back to the title
17 company again; is that correct?

18 A. Yes.

19 Q. All right. Now I want you to turn to Exhibit
20 II, please.

21 THE COURT: It's in the defendant's.

22 BY MS. LUNDVALL:

23 Q. So by the time that you're going back now to
24 the titling company asking for more information, you have
25 been told that Pardee has paid you all of its commissions

1 on the \$84 million purchase property price, correct?

2 A. Yes.

3 Q. And it's already told you that, in fact, they
4 have not exercised any option property, correct?

5 A. Yes.

6 Q. And you have been given the commission
7 orders, the orders to pay commission that identified the
8 amount and the due dates then of your commissions, correct?

9 A. Yes.

10 Q. And Mr. Lash has given you a map that
11 identifies the specific location of those lands, correct?

12 A. I'm going to have to beg off on that one
13 though.

14 Q. He gave you a map?

15 A. He gave me a map but --

16 Q. And you understood his map that he was
17 projecting to you is the -- is that those were all of the
18 lands that Pardee had purchased with the \$84 million
19 purchase property price?

20 A. With the \$84 million, but there were other
21 lands that I found out, five different parcels outside of
22 there that I think I should have known about.

23 That could have been -- that could have been
24 single family residents also. I don't know. There is
25 five different parcels. His map didn't show any of those.

1 Q. Turning your attention -- because his map
2 didn't show any of those as you well know that he told you
3 that you were not entitled to commissions on those,
4 correct?

5 A. I'm not.

6 Q. Correct?

7 A. I'm not entitled to anything other than --
8 how do I know those maps if no one will tell me one word
9 about them? No one will say they are not single family.
10 You know, how do I know that's not going to be single
11 family? You're asking me to go out and find your
12 information.

13 Q. All right.

14 A. All they would have to do is explain to me
15 what those five parcels were and let me take it from
16 there, but I knew there was other lands. So I went back
17 to the title company, and I was trying to find out what
18 the other land was. Was it single family? Was it
19 commercial? That's all I was doing.

20 Q. Mr. Wolfram, where is the letter from you
21 that says, Mr. Lash, I am only entitled to commissions on
22 the single family residential land and therefore, that's
23 why I want this information? You don't have that letter,
24 do you?

25 A. I didn't write a letter. I talked to on

1 numerous occasions.

2 Q. You did not write that letter, did you?

3 A. No.

4 Q. I want you to stick with Exhibit II, please.

5 A. He admitted on the stand, your Honor, that I
6 talked to him on --

7 THE COURT: You know what, I have all the
8 testimony, so just answer the questions.

9 BY MS. LUNDVALL:

10 Q. All right. So, in other words, the
11 information you had as we have established that you have
12 received wasn't good enough, so you were still looking for
13 additional information, correct?

14 A. Correct.

15 Q. All right. At Exhibit II is the instruction
16 then that Mr. Lash gave to the folks at the title company,
17 correct?

18 A. Let me read and see what -- yeah. And the
19 reason I did that is because --

20 Q. Hold on. This instruction from Mr. Lash to
21 the title company, I want to ask you a few questions about
22 it, if I could, please. All right?

23 A. All right.

24 Q. In this instruction then, he's authorizing
25 the title company to give you all the transaction documents

1 then dealing with the single family lands, correct?

2 MR. J.M. JIMMERSON: Objection, your Honor.

3 The document will speak for itself. It's very clear as to
4 what it says. He's allowed to be exposed to and what he
5 says he's not allowed to be exposed to.

6 BY MS. LUNDVALL:

7 Q. Do you understand my question, Mr. Wolfram?

8 A. Let me read it again because I think this is
9 --

10 THE COURT: You're asking him to read and
11 what his understanding was, correct?

12 MS. LUNDVALL: That's correct, your Honor.

13 THE COURT: Because he didn't write it, the
14 document says. But what his understanding because he's
15 referenced in it? So that's what you're looking for,
16 correct, why he was referencing what he was doing,
17 correct?

18 THE WITNESS: Well, I was trying to -- reason
19 why when I went to get there, that's the reason I want the
20 takedowns is because I knew there were other properties.

21 BY MS. LUNDVALL:

22 Q. And my question to you is, Mr. Lash
23 authorized the release of the information dealing with the
24 single family residential take downs, correct?

25 A. No. I don't think.

1 Q. I'm going as far to direct your attention
2 then to the e-mail that says, Hi, Frances. And I want you
3 to answer this question.

4 A. Where is the e-mail?

5 Q. On page II?

6 THE COURT: On the same document. Just the
7 top part.

8 THE WITNESS: Oh, at the top.

9 BY MS. LUNDVALL:

10 Q. You are authorized to give Jim copies of only
11 the single family takedowns.

12 Did I read that accurately?

13 A. Okay. Copies of only the single family
14 takedowns.

15 Q. Did I read that accurately?

16 A. Yes. You read that correctly.

17 Q. Please do not give him copies of multifamily
18 or the commercial transactions.

19 Did I read that correctly?

20 A. You read it correctly, but why wouldn't he
21 want me to have that when I have to track this land or
22 follow this land the same way he does?

23 Q. What I want to do then is turn your attention
24 then to where we're at on Exhibit KK. We've already
25 identified that you received the deeds then that are found

1 at Exhibit KK; is that correct?

2 A. May I go back, your Honor?

3 Q. You received --

4 A. Maybe you can clarify something for me.

5 Q. Okay. Mr. Wolfram.

6 THE COURT: Is there a pending question or an
7 answer you just gave?

8 THE WITNESS: Was an answer I just --

9 THE COURT: Back to JJ to that e-mail, is
10 that where you want to go?

11 THE WITNESS: No. I'm on --

12 MS. LUNDVALL: Yeah. I was on II.

13 THE COURT: Oh, ii. I already moved it.

14 THE WITNESS: It says you're authorized to
15 give Jim copies of only the single family residence
16 takedowns. Are you referring in that letter that the
17 information from the takedowns is Jon's November letter,
18 that is the information they gave me?

19 BY MS. LUNDVALL:

20 Q. Mr. Wolfram, one of the things --

21 THE COURT: No. She'll give you the
22 questions, okay. If you don't -- if you think she's
23 referring to something, please ask for clarification of
24 the question. She was just asking you what the e-mail
25 said.

1 THE WITNESS: Would you give me an
2 interpretation of where I got the single family takedowns?

3 BY MS. LUNDVALL:

4 Q. What I want to do then is to direct your
5 attention to Exhibit KK, Mr. Wolfram.

6 A. Okay.

7 THE COURT: These are the deeds.

8 THE WITNESS: Okay.

9 BY MS. LUNDVALL:

10 Q. You received those deeds that are found at
11 Exhibit KK from the title company, did you not?

12 A. I did.

13 Q. Turn your attention to Exhibit LL. You
14 apparently asked for additional deeds, did you not?

15 A. Yeah. Because I didn't think I had them all.
16 You're right.

17 Q. And then turning your attention to MM, there
18 is a fax transmission sheet that indicates that eight pages
19 were sent to you.

20 Do you see that?

21 A. Yes.

22 Q. All right. You received copies of the deeds
23 that were all reflected then in that fax transmission, did
24 you not?

25 A. Yes.

1 Q. And so the title company gave you copies of
2 the deeds that you had asked for, correct?

3 A. Yes. Now am I allowed to ask for
4 interpretation here?

5 THE COURT: No. I know it's frustrating.
6 This is how cross-examine works.

7 MS. LUNDVALL: All right.

8 THE COURT: Are you feeling you're not
9 answering the questions? Because you need to give full
10 answers.

11 THE WITNESS: I don't think --

12 THE COURT: She gets to do the questions.

13 THE WITNESS: I don't think I've been able to
14 fully answer the question.

15 THE COURT: Well, but I think your
16 frustration is you don't think you're getting all the
17 information out. Remember we did that yesterday and
18 believe me, your counsel --

19 THE WITNESS: No. No. It's not that. I
20 wasn't getting fully -- I don't think I had all the
21 information, but there is something that goes along with
22 that information. And that's the fact that they want me
23 to be a private detective.

24 THE COURT: You know what, I understand your
25 feelings. I understand that. I understand you're

1 frustrated. You've been able to say that several times.
2 So please don't think that I'm not aware, okay.

3 But she has to ask her questions so she can
4 do a -- she has a fairness to answer the question asked.
5 If you don't understand it, she'll rephrase it. Okay.

6 THE WITNESS: I'll try, your Honor.

7 THE COURT: Okay. Try.

8 BY MS. LUNDVALL:

9 Q. All right. Mr. Wolfram, at the point that
10 you had received all of the deeds then from the title
11 company, that still wasn't enough for you; is that correct?

12 A. Right.

13 Q. At this point in time now that, in addition
14 to all the other information that we've talked about, the
15 fact that Pardee has not exercised any option property, the
16 fact that you've been paid and given the information on the
17 amount and due dates then on the purchase property price,
18 you've been given now a map that contains all the
19 single-family residential takedowns.

20 You've been identified -- given a letter
21 describing when those takedowns occurred, and now you've
22 been given the deeds then underlying those takedowns, and
23 that wasn't enough for you, correct?

24 MR. J.M. JIMMERSON: Objection, your Honor.

25 THE COURT: What is the objection?

1 MR. J.M. JIMMERSON: He's testified that
2 those facts are not -- that the underlying facts of the
3 question are not true. It's followed by a fall premise.

4 MS. LUNDVALL: Well, she's doing it basically
5 as a hypothetical.

6 MR. J.M. JIMMERSON: As long as it was a
7 hypothetical.

8 THE COURT: I understand what's disputed, but
9 if that is true, all those facts you went through, then go
10 ahead. So do it that way.

11 BY MS. LUNDVALL:

12 Q. All of that information --

13 THE WITNESS: Restate it again.

14 MS. LUNDVALL: Mr. Wolfram, all of the
15 information that I just identified, that still wasn't
16 enough for you; is that right?

17 A. State it again because I got sidetracked.

18 Q. What I want to do -- because what I don't
19 want to have happen is for an objection to be made and then
20 for you to think that your attorney is trying to put words
21 in your mouth.

22 A. Just restate it and I'll answer the question.

23 Q. So you have the letter from Mr. Lash that
24 said we're taking down other properties, and you said we're
25 entitled to commissions on those other properties, correct?

1 A. Wrong. Only if it was single family
2 residences which I didn't know.

3 Q. All right. Hold on. I want to take you now
4 all the way back to your letter that is found at Exhibit Z.

5 A. All right.

6 Q. In this letter you sent to Mr. Lash, you
7 state that you were the procuring cause of all of those
8 other transactions and that you were entitled to
9 commissions on those, correct?

10 A. On the single family, right.

11 Q. Where does it say? Hold on. I want to ask
12 this question. You and I are going to continue to struggle
13 all day.

14 A. Okay.

15 Q. But what I'm trying my damndest to do is to
16 ensure we get you on and off this witness stand as quickly
17 as possible. We are not going to do that if we're arguing.
18 And so what I want to do is to try to ask you, if you wait
19 for my question to finish and then for you to give your
20 answer to the question that I pose to you.

21 A. Counsel, I'm not trying to argue. I see
22 something come up and I start to answer the question
23 before --

24 THE COURT: The question is finished.

25 THE WITNESS: That's what's happened. I'm

1 not trying to argue.

2 THE COURT: Let her get her question out.

3 BY MS. LUNDVALL:

4 Q. In this letter you refer back to Mr. Lash's
5 letter that bears a date of August 23rd of 2007, where you
6 talked about the outside agreement to purchase additional
7 properties. And you even quote from his letter that says,
8 "as land is purchased under these agreements you will not
9 be entitled to any commissions on these other agreements."

10 That's what you wrote, did you not?

11 A. Yes.

12 Q. And you say, "however, we are not clear on
13 how you came to that understanding."

14 Is that what you wrote?

15 A. I did.

16 Q. And then you went on to talk about how you
17 were the procuring cause on those other transactions,
18 correct?

19 A. Yes.

20 Q. And that you believe you were entitled to
21 commissions on those other transactions?

22 A. Yes.

23 Q. And there is no letter from you to Mr. Lash
24 before this litigation began that says Mr. Lash, I was
25 wrong, I am not entitled to commissions on those other

1 transactions?

2 A. I answered that question yesterday. And the
3 way I answered it, any real estate agent will think that
4 if you were the procuring cause, you know, you would get
5 paid for it no matter --

6 THE COURT: Her question is did you write a
7 letter like that?

8 THE WITNESS: No, I did not.

9 THE COURT: Okay. Thank you.

10 BY MS. LUNDVALL:

11 Q. All right. So we're trying to get back into
12 the chronology then that we were laying, Mr. Wolfram.

13 A. Okay.

14 Q. You've identified the fact that you received
15 all of the orders to pay commission that identified the
16 amounts and due dates of your commissions on the 84 million
17 purchase property price, correct?

18 A. Yes. But I didn't sign off on all of them,
19 because I didn't get them after it went into the bank.
20 But I knew they were paying me. I always thought they
21 were paying me.

22 Q. And you knew you were paid in full on the
23 commissions that you were entitled to for the 84 million
24 purchase property price, correct?

25 A. No. Not correct. I didn't receive anything

1 to show what any maps or any information to show the check
2 back to see I had been paid. I really felt as though that
3 Pardee was being fair with me. That they were paying me.
4 But I had nothing to check it out to see if I was paid
5 correctly.

6 Q. Have you taken a look -- now you're
7 contradicting your earlier testimony, but I want to see if
8 we can go from there.

9 A. All right.

10 Q. Because you earlier testified that you were
11 paid in full on the commissions owed on the 84 million
12 purchase property price, and that's my question to you.

13 MR. J.M. JIMMERSON: Objection, your Honor.

14 MS. LUNDVALL: That was my question to you.
15 My simple question is, is that a yes or is that a no?

16 MR. J.M. JIMMERSON: The question has changed
17 now. The question was you knew you were being paid in
18 full versus you were paid in full there are two different.

19 THE COURT: You knew you were being paid in
20 full.

21 MR. J.M. JIMMERSON: Versus you were paid in
22 full. The idea is being his subjective understanding of
23 what was going on versus being paid in full on the \$84
24 million.

25 THE COURT: I understand, because that's -- I

1 know that's one of the reasons we're here, but just
2 rephrase it.

3 THE WITNESS: She said I knew. I didn't
4 know.

5 THE COURT: Stop. Stop. Sorry. Sorry.

6 THE WITNESS: That's okay.

7 THE COURT: Let's get this straightened out.
8 Rephrase your question. Be real clear on your question,
9 Ms. Lundvall.

10 BY MS. LUNDVALL:

11 Q. You were paid in full on the 84 million
12 purchase property price commissions, correct?

13 A. I don't know. I was paid in full, but I felt
14 I was paid in full, but I had no information to confirm
15 the fact that I was paid in full. No one sent me any
16 information to where I could contract.

17 I mean, I know they paid me, and I felt I was
18 being paid right, but I had no information.

19 Q. All right. You received each one of the
20 orders to pay commission, did you not?

21 A. I got the transcripts from the bank, and all
22 the real estate agency got was a letter in the beginning
23 stating that all the money was going to be paid from the
24 bank. They didn't get a commission order every time when
25 my commissions were paid.

1 Q. All right. But you received each and every
2 one of the orders to pay commission that you had requested
3 from the title company? We established that yesterday; am
4 I correct?

5 A. You know, it's a little bit fuzzy for me. I
6 don't know that's correct. All I got from the bank was a
7 check and a statement. That's what I got from the bank.
8 Are you saying -- let me ask counsel. Are you saying each
9 month when they came in I got that?

10 Q. No. I'm saying at any point in time before
11 this litigation began, you received each and every one of
12 those orders to pay commission? Did you not?

13 A. The only commissions was the award I had to
14 sign off on. I signed off on a couple of them at D & W
15 Realty.

16 THE COURT: I think it's Exhibit A. We went
17 through, right?

18 BY MS. LUNDVALL:

19 Q. That's right. There is one other exhibit I
20 think that makes it even more clear. If The Court will
21 give me just a second, I will find that?

22 A. Counsel, if I signed off on --

23 Q. Hold on, please. I'm going to ask you a
24 question. Okay?

25 A. Okay.

1 Q. What I want to you do is turn to Exhibit Y,
2 please. You looked at Exhibit Y yesterday. Did you not,
3 Mr. Wolfram?

4 A. Just let me read it. Okay.

5 Q. All right. The very last line is that Mr.
6 Wolfram also asked that I forward to him copies of the
7 previous commission orders which I did. Yesterday I had
8 asked you the question, you received those? Your response
9 was yes, I did. Do you remember that?

10 A. I may have said that, yes.

11 Q. Okay. I want to continue to go on from
12 there.

13 A. Okay.

14 Q. Now, at Exhibit A in this litigation, all of
15 the orders to pay commission are in there. Have you taken
16 a look at Exhibit A?

17 A. But what -- let me ask --

18 Q. Have you taken a look at Exhibit A?

19 A. Yeah. I have seen it.

20 Q. Have you totaled up all of the orders to pay
21 commission and the corresponding checks that are found at
22 Exhibit A?

23 A. I felt that I was paid on the property, but I
24 wasn't sure that I was paid on the property because nobody
25 gave me anything going through other than what you're

1 saying, an order to pay commission. How do you just check
2 back and find out what you've been paid for if you just
3 have an order to pay commission? You know, I wonder if
4 there was more land or less land or when the adjustment
5 came from 1958 acres? I knew when the parcel numbers went
6 down, it wouldn't come out to exactly 1958 acres. It went
7 up to 21 something. You know, how do I know those things
8 are right unless I see some maps or unless I see some
9 information pertaining to that? All right.

10 Q. All right. So, now we've gotten to the point
11 at least that you acknowledge that you believe you were
12 paid on in full on the commissions on the purchase property
13 price, correct?

14 A. You're right, I believe.

15 Q. All right. Mr. Lash identified -- had
16 already told you that Pardee had not exercised any option
17 property pursuant to paragraph two of the option agreement,
18 correct?

19 A. His word, right.

20 Q. And at this point in time you've also
21 received the map from Mr. Lash with all of the single
22 family takedowns?

23 A. I see one map from Mr. Lash.

24 Q. And you received then the deeds from the
25 title company, correct?

1 A. Yes. Well, I don't think all the deeds are
2 there, Counsel. But I did get some deeds from the title
3 company.

4 Q. And on those deeds are reflected parcel
5 numbers, correct?

6 A. Yes.

7 Q. And there is also the seller that is
8 reflected on that those deeds, correct?

9 A. Yes.

10 Q. The buyer is reflected?

11 A. Yes.

12 Q. You could calculate from the legal
13 description the amount of acre that was at issue under
14 those deeds, correct?

15 A. I could except do you know how long it would
16 take me to go out and get maps for each deed? That isn't
17 the way real estate was done. That's not the way Jon
18 would do it with me. He wouldn't send me a bunch of deeds
19 and say check it out. He would send me a parcel map with
20 some acres and say go find out what is going on here, Jim.

21 Q. I want you to turn to Exhibit K, please. I
22 want to pull up one example.

23 MR. J.M. JIMMERSON: You mean KK, Counsel?

24 MS. LUNDVALL: KK. Thank you. What I want
25 you to do is turn to KK-2. I want to use one example

1 under these deeds.

2 A. All right.

3 Q. You see the stamp that is in the upper
4 right-hand corner?

5 A. You mean the number?

6 Q. I'm looking at the very upper right-hand
7 corner on KK-2.

8 A. Oh, the whole thing, yeah, okay.

9 Q. All right. There is a bunch of information
10 that is up there; is there not?

11 A. Yes.

12 Q. At the very minimum the escrow company's name
13 is up there, correct?

14 A. Yes.

15 Q. And you see the RPTT?

16 A. Yes.

17 Q. That is also the real property transfer tax,
18 correct?

19 A. Yes.

20 Q. And from that real property tax you can also
21 calculate the purchase property or what the price was
22 underlying of that transaction, correct?

23 A. Correct.

24 Q. And you also received as part of Exhibit KK
25 the declarations of value on these transactions; were you

1 not?

2 A. Repeat that one.

3 Q. You also received the declarations of value
4 that had been filed by Pardee and CSI when these deeds were
5 recorded, correct?

6 A. I'm not sure where I am here, your Honor.

7 Q. Let's turn to -- let me give you one example
8 then. If you turn to KK-5.

9 A. Oh, yeah, okay.

10 Q. So let the record show also received the
11 declarations of value that went along with those deeds,
12 correct?

13 A. From the stamp on the deed.

14 Q. All right. Now, as it relates then to the
15 single family residential lands, all of the pieces of
16 information that had been asked for by your counsel have
17 been given to you, was it not?

18 A. It's been given to me in a stamp, but that's
19 it. That's not the way my contract says that they are to
20 provide me with reasonable information. That is not the
21 way you do reasonable information making me go find
22 everything that's out there is not reasonable information.
23 That's just not right. They're supposed to supply me.
24 Not make me go out and look for it. I'm sorry. I said it
25 again, but that's what it is.

1 Q. Now, Mr. Wolfram, notwithstanding the receipt
2 of all that information concerning the residential land,
3 that still wasn't good for you, correct?

4 A. No. Because I didn't feel as though I was
5 getting the information I needed and the way the
6 information usually goes down in real estate transaction.

7 Q. What I want you to do is turn to Exhibit 20.
8 All right. This is the letter then that you authorized
9 your attorney to send to Mr. Lash, correct?

10 A. Yes.

11 Q. Now, what I want to do is ask you a few
12 questions concerning the contents of this letter. In the
13 very first paragraph Mr. Jimmerson contends that pursuant
14 to the Pardee's written equipment agreement, Pardee was
15 obligated to provide to Mr. Wilkes of now of Rubicon Realty
16 and Jim Wolfram of D & W Realty, LLC the following, and
17 then he put something in quotes.

18 Do you see that?

19 A. Yes.

20 Q. All right. And he says that that portion
21 that is being quoted was pursuant to the written agreement
22 then that was between Pardee and you and Mr. Wilkes,
23 correct?

24 A. Okay.

25 Q. All right. You see that portion that is

1 quoted?

2 A. Yes, I do.

3 Q. That quote does not -- is not found within
4 the commission agreement, is it?

5 A. It's not what?

6 Q. It's not found in your commission agreement,
7 is it?

8 A. It's reasonable information. I would think
9 that he is requesting reasonable information that I
10 shouldn't have to go look for.

11 Q. But back to my question, sir, though this
12 portion that is found in the letter is not found in your
13 commission agreement, is it?

14 A. No.

15 Q. All right.

16 A. As set forth except for the option agreement.

17 Q. And he's also requesting for exercise of all
18 option information. So let's break it down a little bit.
19 Pardee has told you if it hasn't exercised any options
20 pursuant to paragraph two of the option agreement, correct?

21 A. I'm supposed to take that as being gospel,
22 right?

23 Q. No. What I want to do then is continue as
24 far as taking a look at this letter, please. Now, in this
25 letter there is a reference to being ignored. But we do

1 know there is information that had been given to you prior
2 to this letter that is dated May 17 of 2010, correct?

3 A. Your letter is dated May 17, 2010.

4 Q. And you also know that before that period of
5 time Pardee through Mr. Lash then had already sent you the
6 letter that is found at Exhibit 15 along with the map he
7 had created, correct?

8 A. A letter I got through my attorney, you're
9 right.

10 Q. And all the information then that you got
11 from the title company then came before this letter as
12 well, correct?

13 A. Information came before, but it was only
14 after I went through long efforts to get that information.
15 It wasn't provided to me. All that information was not
16 provided to me.

17 Q. And in this letter it also contends that
18 you're entitled to more commissions as well; is that
19 correct?

20 A. Where are you reading, right here? I would
21 only be -- I am without even reading that, I would only be
22 entitled to more commissions. If, in fact, I was a
23 procuring cause of something and it were already property
24 or where I had stated originally other properties because
25 I thought I would have a second agreement on a different

1 amount of property than my first agreement. I thought
2 there would be two separate contracts. If there weren't
3 two separate contracts, I just, you know, and we worked it
4 out again. And what I thought, this is just what I
5 thought if we worked it out again we probably have to work
6 it out on the single family residence or I should be paid
7 on all of them. That's what I was thinking.

8 Q. Let me see if I understand then your
9 testimony, Mr. Wolfram. You're indicating though that if
10 you were entitled to additional monies on these other
11 transactions, there would have to be a second commission
12 agreement, correct?

13 A. That's what I mean right now. It's been
14 explained to me it would probably just go on as single
15 family residence. And if I was wrong, I was wrong. I'm
16 not trying to get out of anything. I just feel as though
17 any real estate agent fees, we go through this I don't
18 know how many times a year on a procuring costs. If any
19 other land was picked up, I would have been the procuring
20 cause of it, because I brought the whole thing to them
21 originally. They didn't take all of it. They just want
22 the single family residence. I understand that, but when
23 they went back and bought other properties, you know, then
24 I feel as though I was a procuring cause. Something
25 should have been worked out there.

1 Q. Now, there was no second agreement that was
2 entered into for additional commissions between Pardee and
3 yourself; is that correct?

4 A. Right.

5 Q. There was no written agreement between
6 yourself and -- is that correct?

7 A. No. This is what I was thinking that I was a
8 procuring cause of. There was no written agreement. I
9 was asking Jon if I'm the procuring cause, let's talk
10 about this and see what we have here on the properties. I
11 mean, I'm not an unreasonable man. If he doesn't want me
12 to be paid on something, we could come to some kind of an
13 agreement if that's the way it was. And when it got down
14 to the golf courses, the golf course lots, I think maybe
15 you could see that that looks like a single family
16 resident lot, because there's a single family on the lot.
17 It looks like it. The way it's worked out, I'm probably,
18 you know, not entitled to that. And that's the way it is.
19 I mean, that was only secondary in my lawsuit anyway here.
20 I'm just after information. That's all.

21 Q. All right.

22 A. For my family.

23 Q. So from this perspective, Mr. Wolfram, my
24 question to you though is fairly simple. You understood
25 that there needed be to be a second agreement between

1 yourself and Pardee concerning these additional lands
2 before you were entitled to the commission; is that
3 correct?

4 A. Only --

5 Q. Yes or no?

6 A. No.

7 Q. All right. You did not have a second
8 agreement; is that correct?

9 A. Counsel, we hadn't seen -- talked about it
10 yet. I hadn't said -- Jon hadn't said a word to me other
11 than in the letter, and this on the telephone. We hadn't
12 even sat down to discuss this. He says, no, Jim, you're
13 not entitled. I say, well, Jon, I'm the procuring cause
14 on this. Let's talk about this. I am the procuring
15 cause. Nobody would talk to me about it. If he would
16 just sit down and say let's take -- you take this or
17 you're not entitled to at all, fine. At least we have a
18 decent conversation.

19 Q. So from this perspective, Mr. Wolfram, at no
20 point prior to this litigation beginning did you send a
21 letter to Mr. Lash then acknowledging that you did not have
22 a second commission agreement, and, therefore, you were not
23 entitled then to monies on the multifamily, the golf course
24 lands, all the other things?

25 MR. J.M. JIMMERSON: I'm going to object.

1 This is a misstatement of Nevada law Procuring Cause
2 Doctrine in Nevada does not require commission agreement
3 in order to commission.

4 THE COURT: She's just asking a fact, did you
5 or did you not get a second. I know.

6 MR. J.M. JIMMERSON: No. No. But the last
7 clause of the question was and, therefore, you were not
8 entitled to commissions on these things.

9 THE COURT: Pursuant to a written agreement
10 if she would have that, I understand. I do understand the
11 evidence so...

12 MS. LUNDVALL: And, also, from a legal
13 perspective, we wholeheartedly disagree.

14 THE COURT: I understand that too.

15 MS. LUNDVALL: Thank you, your Honor.

16 THE COURT: But I understand you did. There
17 is no second.

18 MS. LUNDVALL: There is no --

19 THE COURT: There is no commission agreement.
20 It's the letter we have that basis of this litigation.

21 BY MS. LUNDVALL:

22 Q. In fact, then, as we've established as well,
23 Mr. Wolfram, you didn't send a letter before this
24 litigation to Mr. Lash saying I know that I'm owed --
25 entitled to commissions pursuant to the commission

1 agreement then that you brought a lawsuit for?

2 A. I did not send that letter. I didn't think
3 it was ever going to come to a lawsuit in this. Jon and I
4 have had always had a good relationship with Jon Lash. I
5 mean, a really good relationship. I wanted to talk to him
6 to see what was happening. It kind of went a little bit
7 south when I couldn't get any information.

8 Q. Now, what I want to do, Mr. Wolfram, is to
9 address then a question that was posed to you by your
10 counsel. And when you talked with your counsel on Exhibit
11 20, the suggestion was made that did you not get a response
12 from Pardee to that letter, do you recall that?

13 A. This is Mr. Jimmerson's letter?

14 Q. Yes, sir.

15 A. Mr. Jimmerson didn't get a response. I mean,
16 a response for information that he was asking for.

17 Q. All right. What I would like to do is be
18 able to mark as Defendants next in line, I think it is
19 Exhibit WW; is that correct?

20 THE CLERK: WW.

21 MS. LUNDVALL: May I approach, your Honor?

22 THE COURT: Yes.

23 MS. LUNDVALL: Mr. Wolfram, I'll hand you
24 what will be marked as WW.

25 MR. J.M. JIMMERSON: I don't know what WW is.

1 THE COURT: Make sure you...

2 BY MS. LUNDVALL:

3 Q. I will. Let me ask you a few questions.

4 A. Let me read the letter, please. I mean, I
5 have read it before, but I just want to refresh my memory
6 to make sure.

7 THE COURT: That's fine.

8 THE WITNESS: Okay.

9 BY MS. LUNDVALL:

10 Q. All right. Mr. Wolfram, let me ask you this,
11 a couple of foundational questions, if I could, please.

12 Do you see in the lower right-hand corner
13 there is what you probably learned by now is a bates label?

14 A. Yes.

15 Q. That bates label indicates in PLTM, the
16 plaintiffs?

17 A. Yes.

18 Q. You understand this was a copy of a letter
19 then that the plaintiffs your side produced to us then
20 during the course of discovery in this case, correct?

21 A. Yes.

22 Q. And there is a letter that bears a date of
23 June 14 of 2010?

24 A. That's this letter.

25 Q. And makes reference then to it's responding

1 then to Mr. Jimmerson's letter of April 21st of 2010 and
2 May 17th of 2010, correct?

3 A. Yes.

4 MS. LUNDVALL: Your Honor, we would offer for
5 admission Exhibit WW.

6 THE COURT: Any objection, Counsel?

7 MR. J.M. JIMMERSON: None, your Honor.

8 THE COURT: So admitted. Did you get a copy?

9 THE CLERK: I did not get a copy.

10 THE COURT: Do you have an extra one because
11 I marked on this one.

12 MS. LUNDVALL: I do.

13 THE WITNESS: Is there a question on this
14 letter?

15 THE COURT: Not yet. We just admitted it
16 into evidence. You're fine.

17 BY MS. LUNDVALL:

18 Q. All right. This is a letter?

19 THE COURT: Now there is going to be a
20 question on the letter.

21 THE WITNESS: Okay.

22 BY MS. LUNDVALL:

23 Q. This is a letter, Mr. Wolfram that Mr. Curtis
24 sent back to Mr. Jimmerson, is it not?

25 A. It is.

1 Q. And he makes reference to the fact he's
2 responding to the then communications from Mr. Jimmerson,
3 correct?

4 A. He makes that response.

5 Q. So it is accurate then, that Pardee did
6 respond to the request that Mr. Jimmerson is making,
7 correct?

8 A. He made a response, but he didn't give what
9 Mr. Jimmerson was looking for.

10 Q. It set forth per Pardee's position as to why
11 he was -- it was not giving that information, did it not?

12 A. It says that but --

13 Q. All right. Let's go through --

14 A. You need information.

15 Q. Let's go through the content then of the
16 letter, please. All right?

17 A. All right.

18 Q. In the very -- in the second paragraph, Mr.
19 Curtis writes, "The issue is not what lands Pardee owns,
20 but what land is within the express scope of the September
21 1st, 2004 commission letter which your client and Pardee
22 signed."

23 Did I read that correctly?

24 A. You did.

25 Q. And when you brought a lawsuit in this case,

1 then your lawsuit is alleging breach of that commission
2 agreement, correct?

3 A. Breach of that commission and you expect me
4 to go on word.

5 Q. Turning your attention then as far as to on
6 the next paragraph. It identifies that the map that you
7 had sent, it was enclosed with the earlier letter of April
8 21st?

9 A. Wait a minute. I'm not following you there.

10 Q. You see the third paragraph?

11 A. Was this not prepared for Mr. Wolfram?

12 THE COURT: Yes. That's what she's referring
13 to.

14 THE WITNESS: Okay. Go ahead.

15 BY MS. LUNDVALL:

16 Q. It identifies that that includes real
17 property that was not within the scope of the commission
18 letter, correct?

19 A. Yes.

20 Q. And we've established then in through your
21 testimony that you're not entitled to commissions on the
22 multifamily?

23 A. Yes.

24 Q. On the golf course land?

25 A. Yes.

1 Q. And on all the commercial land?

2 A. That's what you established.

3 Q. It goes onto state that, "please note by its
4 terms, the commission letter was concerned only with the
5 sale of certain properties pursuant to paragraphs one and
6 two of the option agreement as defined therein. And the
7 commission letter provided relevant, in relevant part that
8 it represents our entire understanding concerning the
9 subject matter hereof."

10 Did I read that correctly?

11 A. You read that correctly, but I --

12 Q. Hold on. I want to ask you a question. When
13 we go to your commission agreement, this is a blowup.
14 These three paragraphs --

15 A. Yes.

16 Q. -- only deal with paragraphs one and
17 paragraphs two of the option agreement; is that correct?

18 A. Yes.

19 Q. And there is nothing else within the letter
20 that says that you're entitled to commissions on any other
21 lands, correct?

22 A. That's right. But I am having --

23 Q. Mr. Wolfram, I'm going to pose a question to
24 you. Okay? In the second page then, Mr. Curtis goes on to
25 write that Pardee denies any allegation that it materially

1 breached any representation to provide documents. Pardee
2 further denies that it has any contractual obligations to
3 provide any documents to your client except for such
4 documents as expressly contemplated in the commission
5 letter. All of which were timely furnished to your client
6 long ago.

7 Did I read that accurately?

8 A. You read it accurately.

9 Q. All right. Now, Pardee --

10 A. Am I allowed to respond to that?

11 THE COURT: No. She'll ask you the next
12 question.

13 BY MS. LUNDVALL:

14 Q. Now, Mr. Wolfram, notwithstanding the
15 information you had and notwithstanding the position that
16 Pardee had articulated to you, that still wasn't enough for
17 you; is that correct?

18 A. That's correct, because I.

19 Q. Is that correct? Yes or no.

20 A. I don't have any information. I'm going on
21 word. You tell me that I have to write a letter. I can't
22 use the phone calls and everything right here. It's the
23 same difference. I'm going on somebody's word. Nobody is
24 proving to me that any of that other land is not single
25 family residents. And I also thought that we were into

1 the option property. According -- when you went east and
2 went outside the office property, I was always told
3 purchased property is purchase property. When they went
4 way back into this -- I heard all that yesterday. I
5 didn't know anything about that. All I knew is what
6 purchase property was. And when I saw it, it went outside
7 the purchase property boundary. I figured that was
8 probably option property.

9 Q. Now, what we know is that from your position
10 then as you've testified is it notwithstanding the
11 information that Pardee had given to you and not
12 withstanding the position that Pardee had sack articulated,
13 that still wasn't good enough for you; is that right?

14 A. Only because I did not get any information I
15 was requesting.

16 Q. And you brought a lawsuit; is that right?

17 A. To get information but the lawsuit.

18 Q. You brought a lawsuit? Yes or no.

19 A. Yes.

20 Q. In that lawsuit you asked for money damages,
21 correct?

22 A. But okay.

23 Q. Yes or no?

24 A. I asked for money damages, but my lawsuit
25 isn't about the money.

1 Q. Now, in and also during the course of
2 discovery in this case, were you aware that your attorneys
3 identified that your money damages were in the multi
4 millions of dollars?

5 A. They wouldn't be if I went completely through
6 the whole property.

7 Q. Now, during discovery in this case you know
8 that your attorneys have served subpoenas upon Coyote
9 Springs, correct?

10 A. Yes.

11 Q. And through those subpoenas, you didn't find
12 any notice of an option to exercise, did you?

13 MR. J.M. JIMMERSON: Objection, your Honor.
14 Lack of foundation. Hasn't been established that he
15 actually read all the documents from Coyote Springs.

16 THE COURT: That were produced.

17 MR. J.M. JIMMERSON: Yes. There were
18 thousands of documents produced.

19 THE COURT: Well, just ask him from the
20 information you've been provided. Just base it that way.
21 We have to assume that his counsel would provide him.

22 MR. J.J. JIMMERSON: Of course.

23 BY MS. LUNDVALL:

24 Q. All right. Mr. Wolfram, let me go back to
25 and revise my question then. You know that during the

1 course, during the course of this litigation then that your
2 attorney served subpoenas upon Coyote Springs, correct?

3 A. Yes.

4 Q. And within those documents, you had the
5 opportunity to take a look at those, didn't you?

6 A. Yes.

7 Q. And you know that your attorney has had the
8 opportunity to take a look at those?

9 A. They did.

10 Q. And you had an opportunity to take a look at
11 all the exhibit books in this courtroom?

12 A. Yes, I did.

13 Q. And in none of those exhibit books do we find
14 a written option exercise notice, correct?

15 A. No.

16 Q. Now, my next question to you got to be this.
17 That document does not exist if all those exhibits that are
18 in this courtroom, correct?

19 A. No. You called it purchased property.

20 That's true.

21 Q. In addition, you had the opportunity then to
22 subpoena documents then from both Stewart Title Company as
23 well as Chicago Title Company, did you not?

24 A. We did.

25 Q. Now, once you had -- you, again, you had an

1 opportunity to take a look at those documents?

2 A. I did.

3 Q. And you had an opportunity to take a look at
4 all the exhibits as far as in this courtroom, correct?

5 A. I did.

6 Q. You don't see any escrow documents dealing
7 with a purchase of option property pursuant to paragraph
8 two of the option agreement, do you?

9 A. What I did hear --

10 Q. My question is a yes or no, Mr. Wolfram.

11 A. Yes.

12 Q. In other words, none of those documents
13 exist, correct?

14 A. I'm not going to say they don't exist. I
15 really am not -- I am really not an usher here. Not sure
16 I heard all that going way back and say there was so much
17 argument on option property and purchased property here.
18 It's like you're saying that there was never any mention
19 of option property and purchase property. I heard that
20 almost this whole court case being argued on a lot of that
21 stuff and that wasn't what my lawsuit was.

22 Q. Let me make sure that you understand my
23 question, Mr. Wolfram. In all of the exhibits then, you
24 didn't find any documents from the escrow companies dealing
25 with a transaction brought pursuant to paragraph two of the

1 option agreement?

2 A. No.

3 Q. Is that correct? Is that correct?

4 A. I think.

5 Q. All right. You also then had the opportunity
6 to search the public records, correct?

7 A. Yes.

8 Q. And you had the opportunity then to bring any
9 of those public records that you found dealing with deeds
10 to this courtroom, correct?

11 A. If I found something, right.

12 Q. And you did not find an option property deed?

13 A. I did not, but I was calling and asking why
14 wasn't it option property. It looks like reasonable
15 information. Someone would say here is the reason Jim
16 instead of just blowing me off and blowing my attorney
17 off. That's all. We wouldn't be here.

18 Q. Now, Mr. Wolfram, let me see if I can't get
19 you to turn to Exhibit L which is the commission agreement.

20 A. All right.

21 Q. We've gone through this laboriously, but I
22 just want to cover a couple additional points, if I could,
23 please, when we take a look particularly at i and ii.

24 A. Yes.

25 Q. And if we take a look then at the paragraph

1 that is found on page two of the commission agreement?

2 A. Okay.

3 Q. When those commissions under i and ii were to
4 be made?

5 A. A little louder. Just a little louder.

6 Q. My apologies. When the payments then made
7 under i and ii were to be made to you was when the payments
8 were being made by Pardee to CSI, correct?

9 A. Yes.

10 Q. All right. And that's found in the
11 paragraph, and it's at the top of page two, correct?

12 A. Pardon?

13 Q. That's found within the paragraph that's at
14 the top of page two, correct?

15 A. Yes.

16 Q. All right. There is nothing as far as in
17 that paragraph when it comes to the payments under i and ii
18 that were dependant upon learning the location for the
19 number of acres that were being sold, correct?

20 A. Not according to that, but I don't know how
21 I'm going to follow anything if I don't get some of that
22 information. I'm just, I'm in limbo if I don't have it.

23 Q. Mr. Wolfram, you've indicated earlier that
24 this commission agreement was different than any other that
25 you had dealt with; is that right?

1 A. Absolutely.

2 Q. All right. And when you were asking them for
3 locations and takedowns and dates of closing what you were
4 relying upon was your prior experience; is that correct?

5 A. Not completely. I was relying on some of
6 that, but I was relying that I needed information to
7 really check back. I didn't think they were cheating me,
8 but I needed to know. I had to have some kind of a
9 statement or some kind of a map to show me where we were
10 going.

11 Q. All right. Now, let me focus your attention
12 then on as far as i and ii, if I could, please.

13 A. All right.

14 Q. You knew Pardee was purchasing lands with the
15 \$84 million, correct?

16 A. I did but I wasn't sure on that. I called
17 over and asked please explain it to me because I was not a
18 part of that when it was put together. I get a letter on
19 the 31st of August. I mean, I get a memo on the 31st of
20 August stating that that's what we're doing. And up to
21 that time I didn't have a clue. That's the reason I
22 needed maps and information. I didn't understand it. Mr.
23 Jimmerson tried to help me find out what that was all
24 about.

25 Q. All right. Now, let me as far as see if we

1 can't clarify then. You indicated you didn't know if
2 Pardee was purchasing lands with the \$84 million; is that
3 right?

4 A. No. If they were purchasing land with the
5 \$84 million, the question is where was the land and was I
6 being treated fairly with the land.

7 Q. And Mr. Lash then identified the location of
8 those lands. And you also received a deed from the title
9 company concerning those locations, correct?

10 A. I received the letter from Jon Lash only
11 because my attorney just kept assisting with the letters,
12 and I kept calling. That's the only reason I got that.

13 Q. And that was all then before this litigation
14 began, correct?

15 A. Yes.

16 Q. So you knew as a result of the information
17 that had been provided to you, that Pardee was purchasing
18 lands with the \$84 million and purchased property price,
19 correct?

20 A. You say you knew. I didn't know what the
21 land was or I needed something to see in black and white,
22 what I was being paid for to be certain. That it was up,
23 you know, up to snuff. That's a bad expression, but I
24 needed information to see that I was being paid for the
25 right thing. That's all.

1 Q. All right.

2 A. I thought it was option property. That's
3 when I -- and I think -- still think it was option
4 property.

5 Q. I'm not going to quarrel with you over issues
6 we've already gone over, okay. But my next question to you
7 is this, the land that Pardee purchased for \$84 million in
8 purchase property price, do you now acknowledge that you
9 have been paid the commissions on those lands?

10 A. I do. I always thought I was getting paid
11 the right commission on there. I thought that's the word.

12 Q. All right. So let's turn then to iii,
13 please.

14 A. Okay.

15 Q. Iii talks about additional commissions that
16 you were entitled to receive, correct?

17 A. Right.

18 Q. And those additional commissions would be
19 over and above then what you were getting under i and ii,
20 correct?

21 A. Option property.

22 Q. All right. But it would be over and above
23 what you were getting under i and ii?

24 A. Yeah. After the purchase property was
25 purchased, we go to the option property. That's right.

1 Q. Okay. And so once you get to the option
2 property then, but, in fact, Pardee was purchasing lands
3 pursuant to paragraph two of the option agreement, you knew
4 you were entitled to commissions for those additional
5 lands, correct?

6 A. Yes.

7 Q. And if there were no additional lands then
8 that were purchased, you're not yet entitled to a
9 commission, correct?

10 A. But I didn't know whether there was. No.
11 It's not correct. I didn't know on those additional lands
12 that were purchased what I was entitled to. All I wanted
13 was someone to basically tell me -- show me what it is.
14 But I needed it anyway to be able for my family, not so
15 much me. They are not real estate agents. They need to
16 be able to take all of those properties and put them up on
17 a map and have certain information that they can go back
18 and forth to. That's the whole basis of this thing.

19 Q. All right. So what I want to do now is to go
20 back to the safeguards that you had built in for your
21 family into the commission agreement when you negotiated
22 that.

23 A. Okay.

24 Q. You did build in some of those protections
25 for your family, did you not?

1 A. What are you referring to?

2 Q. Well, you negotiated this commission
3 agreement then with Pardee, correct?

4 A. Yes. With options and with reasonable
5 information being provided by Pardee, not by me.

6 Q. Let's take a look then at one of the drafts
7 then for which you had requested inserts to be made. Let
8 me get you to turn to exhibit -- can I get you to turn to
9 Exhibit K, sir?

10 A. Okay. All right.

11 Q. All right. At Exhibit K is a draft of your
12 commission agreement.

13 Do you see that?

14 A. Yes.

15 Q. And these are -- is a draft that has some
16 handwriting on here.

17 Do you see that?

18 A. Yes. Yeah. I see the handwriting.

19 Q. Do you see the fax transmission at the top of
20 this?

21 A. Yes.

22 Q. All right. You received a copy of this; is
23 that right?

24 A. Yes.

25 Q. All right. And these are additional what

1 attorneys call black lines that you wanted into this
2 commission agreement.

3 Do you understand what I mean by black lines?

4 A. They were dickering back and forth, and these
5 are things maybe we want changes to. I believe that's red
6 lines and black lines. I'm not really good on the
7 attorney.

8 Q. I know. I want to make sure that you and I
9 are talking about the same thing. Okay.

10 So let me see if I can't direct your
11 attention then to page two with the black lines then.

12 A. The black line meaning that?

13 Q. All right. Do you see as far as --

14 THE COURT: She wants you to make sure you
15 understand.

16 THE WITNESS: The black line meaning that's
17 what I wanted to change to?

18 BY MS. LUNDVALL:

19 Q. Yes, sir. And you see as far as on page two
20 in the far right-hand corner, far right-hand column there
21 is two markings?

22 A. Yes.

23 Q. All right. Those two markings indicate there
24 is going to be an insert. And do you see the two inserts
25 then that were being requested?

1 A. Wait a minute. They are what?

2 Q. They are inserts. They are changes that are
3 being made then to the document that had been provided to
4 you?

5 A. That's not a black line is what you're
6 saying?

7 Q. It is what attorneys refer to as black line.

8 A. Okay. So those inserts are going to make a
9 change. Okay.

10 Q. Do you see where it says the commission shall
11 be paid into escrow?

12 A. Yes.

13 Q. Concurrently with Pardee's deposit of the
14 option property price into escrow?

15 A. Yes.

16 Q. And the commission shall be paid directly
17 from the proceeds of said escrow?

18 A. Yes.

19 Q. Do you see where I'm at?

20 A. Yes.

21 Q. Now, you knew that your commission agreement
22 was going to be -- a copy of it would be given to the
23 escrow agent, correct?

24 A. Certainly.

25 Q. And the escrow agent would have obligations

1 to follow the contractual document then he or she had in
2 front of him, correct?

3 A. Yes.

4 Q. And that escrow officer would be obligated
5 then to pay you any commissions that you would be entitled
6 to from the option property closings, correct?

7 A. Any commissions.

8 Q. And in particularly you wanted the proceeds
9 from the option closing to be paid from the escrow company,
10 correct?

11 A. Yes.

12 Q. That was a protection for you, correct?

13 A. Yeah. That was a protection for me.

14 Q. That all --

15 A. I want reasonable information for the
16 purchase property also.

17 Q. And that protection then survives your death,
18 does it not?

19 A. Yes.

20 Q. That protection will also protect your family
21 as well; is that correct?

22 A. That particular one will, yes.

23 Q. Now, Mr. Wolfram, what I'm trying to do is go
24 through to make sure that I don't -- I'm not covering old
25 ground. So my apologies for any delay.

1 A. I understand.

2 Q. You have still got Exhibit L in front of you;
3 is that correct?

4 A. L?

5 Q. L. Which is your commission agreement, sir.

6 A. Yes.

7 Q. All right. At Exhibit L what I want to you
8 do is to turn to page two, if I could, please.

9 Now, the very last paragraph on your
10 commission agreement, I want to focus a little bit my
11 questions then concerning that last paragraph. Let me read
12 aloud the first sentence, and then I'll ask you a few
13 questions, if I could, please?

14 A. Okay.

15 Q. States this agreement represents our entire
16 understanding concerning the subject matter hereof and all
17 oral statements representations and negotiations are hereby
18 merged into this agreement and are superseded hereby.

19 Did I read that accurately?

20 A. You did.

21 Q. All right. And so you knew that anything you
22 had negotiated or any of the previous drafts, all of those
23 were abandoned, but this was the document that was going to
24 control?

25 A. This was the document.

1 Q. And in this lawsuit then the breach of
2 contract that you have alleged is breaching of this
3 commission agreement, correct?

4 A. Breach of contract, yeah. Breach of the
5 commission. I needed information.

6 Q. In other words, the contract that you alleged
7 is breached is this commission agreement, correct?

8 A. Yes.

9 Q. All right. The agreement goes on to state
10 that this agreement may not be modified except by a written
11 instrument signed by all of us. There is no other -- there
12 is no modification to this commission agreement, correct?

13 A. No.

14 Q. And as we've -- that's no?

15 THE COURT: Is that correct?

16 THE WITNESS: No modification.

17 BY MS. LUNDVALL:

18 Q. No modifications and there is no second
19 agreement for any of the additional properties, the
20 commercial properties multifamily, etcetera, correct?

21 A. That's right.

22 Q. It also goes on to state that, "nothing
23 herein shall create a partnership, a joint venture, or
24 employment relationship between the parties, between the
25 parties hereto unless expressly set forth to the contrary."

1 Do you see where I'm reading?

2 A. I do.

3 Q. Now, you knew there wasn't some type of a
4 joint venture between yourself and Pardee, correct?

5 A. Yes.

6 Q. And you knew there wasn't a partnership that
7 you were creating with Pardee, correct?

8 A. Yes.

9 Q. And you knew that you weren't an employee of
10 Pardee by reason of this particular language?

11 A. Right.

12 Q. And now you've been in partnerships before,
13 correct?

14 A. Yes.

15 Q. You understand that partnerships are special
16 relationships, do you not?

17 A. Yes.

18 Q. And that partners owe special duties to each
19 other, correct?

20 A. Yes.

21 Q. But this agreement, your commission agreement
22 expressly states that you're not in a partnership with
23 Pardee, correct?

24 A. Correct.

25 Q. Now, also you understand that a joint venture

1 is a form of a partnership?

2 A. Yes.

3 Q. All right. And people who are parties to a
4 joint venture, they too owe special relationships or
5 special duties to each other, correct?

6 A. All right.

7 Q. And you knew that you weren't entering into a
8 joint venture with Pardee, correct?

9 A. Well.

10 Q. Well --

11 A. Sort of.

12 Q. I want to focus on the language here. The
13 language says nothing herein shall create a partnership.

14 A. Okay.

15 Q. A joint venture or employment relationship.

16 A. All right.

17 Q. You would agree with me that you're not into
18 a joint venture with Pardee; is that right?

19 A. Yeah. I will agree with it in the fact that
20 I can see right now that no matter what commission
21 agreement I ever wrote in my life, if it got into court,
22 it could be twisted. It could be pushed around. I can't
23 believe what we're getting into here, but go ahead. I'm
24 sorry. I agree with you.

25 Q. Okay. And you also knew that you weren't

1 going to be an employee then of Pardee as well?

2 A. Right.

3 Q. In negotiating then this commission
4 agreement, you relied upon Mr. Jimmerson, did you not?

5 A. I did.

6 Q. And you knew that the agreement then went
7 through several drafts or several reiterations; is that
8 right?

9 A. That's right. That's the reason I went to
10 Mr. Jimmerson, because I wasn't capable attorney wise or
11 legal wise to draw up something of this nature as big as
12 this was. I knew I wouldn't be capable of writing up my
13 -- mine would not have, not been anywhere near what they
14 put together here, your Honor.

15 Q. And you so trusted Mr. Jimmerson to act in
16 your best interest?

17 A. I certainly do.

18 Q. And at that point in time you weren't looking
19 to Pardee to protect your interest, you were looking for
20 Mr. Jimmerson to protect your interest?

21 A. I like both of them to protect my interest.
22 And I like to protect Jon's interest. This is kind of --
23 you say it's not. It's kind of a mutual agreement on what
24 we're doing here. Jon needs protection. I need
25 protection. We just tried to work something out. That's

1 the way I see it. I guess everybody doesn't see it that
2 way.

3 Q. But in negotiating then this agreement
4 though, it was Mr. Jimmerson who you were relying upon to
5 get the best deal possible for you, correct?

6 A. I was relying on Mr. Jimmerson, but I thought
7 Jon would be fair about what I did and I'm not saying he
8 didn't.

9 Q. And ultimately then you guys reached a final
10 agreement, correct?

11 A. We did.

12 Q. Now, in the edits that you had asked for that
13 we had taken a look at and that are found on Exhibit K, do
14 you recall those edits about the escrow, the black lines?

15 A. Wait a minute. Yes.

16 Q. All right. Those edits then found its way
17 into the final draft that you signed, correct?

18 A. They did.

19 Q. All right.

20 A. Counsel, I don't think there is anything
21 wrong with my commission agreement. I agreed to it. I
22 agreed to it, and I thought it was fair. I don't know
23 where we're going with this, but I thought it was a fair
24 commission agreement. I don't -- I didn't have any
25 problem with what they worked out.

1 Q. All right. The edits that you had asked for
2 were contained then in the final version of the commission
3 agreement, correct?

4 A. They were.

5 Q. So your input then they -- the question then
6 for being paid from escrow information from escrow that got
7 -- that was found in the final version of the escrow of the
8 commission agreement, correct?

9 A. Correct.

10 Q. And you considered then this to be an arms
11 length transaction between yourself and Pardee?

12 A. A what?

13 Q. An arms length transaction?

14 A. Explain arms length so I make certain I know
15 what we're talking about.

16 Q. That you brought an attorney with fire power
17 to the negotiating table with Pardee?

18 A. Yes, I did.

19 Q. And he negotiated a deal that was in your
20 best interest?

21 A. In my interest and Jon's interest. Not just
22 my interest, Counsel. Jon needs protection too.

23 Q. All right. Mr. Lash on behalf of Pardee, he
24 asked for some things too?

25 A. Yes.

1 Q. Is that right? And you asked for some
2 things; is that right?

3 A. We were trying to come to some mutual
4 agreement on what commission should have been.

5 Q. And as a result then of coming to a mutual
6 agreement then, you had the opportunity to review this and
7 then before you signed it, correct?

8 A. Yes.

9 Q. And you found it to be acceptable to you,
10 correct?

11 A. I did. I think that I accepted the whole
12 commission letter as being fair. I wouldn't have signed
13 it.

14 Q. Now, I want to turn your attention to a
15 different topic, if I could, please. All right.

16 Now, you indicated that never during your
17 professional career had you worked on an hourly basis; is
18 that correct?

19 A. I can't remember working on an hourly basis.
20 I'm going to say I won't say never, but I really don't
21 recall working on an hourly basis.

22 Q. And you're not familiar with any other
23 brokers within your industry that do work on an hourly
24 basis, correct?

25 A. Well, there may have been some, but I really

1 don't think I remember any.

2 Q. All right. And so when you were coming up
3 with the hourly rate, then for your time, you were
4 basically pulling a number out of the air, were you not?

5 A. You have it right. I tried to make it fair.
6 I did. I took it way less hours, probably three times
7 less hours than what I put into this thing. Driving up
8 there. Going everywhere. Pulling up. All the
9 information trying to put the map together, it took
10 several months.

11 Q. And what you're doing then is not only you
12 were guessing then as to what rate would be applicable,
13 then to for your time; is that correct?

14 A. I was -- I was just trying to make it fair.

15 Q. And you were also pretty much getting then as
16 to how much time you had into it as well; is that right?

17 A. No. No. I know -- I don't know. I didn't
18 keep track how did we get into this. I didn't keep track
19 hour by hour by hour by hour. You know, this went over
20 months. This went from I don't know how many trips to the
21 county building. I don't know how many trips to Coyote
22 Springs. I don't know how many trips anywhere. I didn't
23 think it was coming to this. I have well more hours than
24 what I put down here. Someone told me to put down what I
25 think I should be paid, and I just tried to make a fair

1 figure. Nobody could quibble with it.

2 Q. But as you indicated, you did not keep any
3 kind of a log?

4 A. No. I did not write down hour for hour. I
5 just went up and did my job.

6 Q. And so the total then the amount you're
7 guessing at that in what that total amount was?

8 A. I am. Well, it's an educated guess, because
9 I spent way more time than what it was and the amount that
10 I would have down there per hour being a professional, you
11 know, a plumber would get paid more than that. I
12 mentioned that before, they would. But I put down
13 something that I didn't think anyone would quibble with.

14 Q. You're not a plumber, correct?

15 A. No. I'm not a plumber.

16 Q. All right. Now, I'm going to turn to a new
17 topic then as well. All right?

18 A. All right.

19 Q. Now, being within the industry, are familiar
20 with the process of recording acquisitions of real
21 property, are you not?

22 A. Yes.

23 Q. You know that deeds are found as a matter of
24 public record, correct?

25 A. They are.

1 Q. And you also know the declarations of value
2 are found as a matter of record?

3 A. Declarations of what?

4 Q. Declarations of value?

5 A. Yes.

6 Q. And you know on a deed you're going to find
7 who the seller is, correct?

8 A. Yes.

9 Q. You're going to find out who the buyer is?

10 A. Yes.

11 Q. And you're going to be able to discern by
12 looking at the legal description what the location of that
13 land is, correct?

14 A. Yes. But I'm not going to have any maps.

15 Q. And you're going to be able to determine what
16 the parcel numbers are from a legal description as well?

17 A. Yes. They are not acres on all of them.

18 There are acres on some.

19 Q. You can calculate what the acreage is from
20 the legal description, can you not?

21 A. If I was to go out and try to get maps and
22 put together a whole series of maps and everything, and
23 that was the way I would do it. There is a much easier
24 way of doing it than trying to send someone out to do
25 that. Actually, I don't know why I should have had to. I

1 think that you should have provided the maps.

2 Q. All right. Also, from the deed and from the
3 declaration of value, you can discern the amount of money
4 that had been paid for the land acquisition, correct?

5 A. Yes.

6 Q. And you can also make determination as to the
7 date by which the land then changed hands, correct?

8 A. I can.

9 Q. Also, as we have seen then on those stamps
10 that were in the upper right-hand corner that usually
11 identifies what the -- who the escrow company is?

12 A. Yes.

13 Q. And various numbers then associated with that
14 escrow, correct?

15 A. Yes.

16 Q. And also there is a document number that is
17 --

18 A. Yes.

19 Q. -- ascribed to that deed as well, correct?

20 A. Yes. And why wasn't I provided those deeds
21 without asking for them? In fact, I didn't.

22 Q. Now, another topic for you before this
23 litigation began, you've indicated that you had spoke to
24 Frances Butler at Chicago Title, correct?

25 A. Yes.

1 Q. And you also knew that Linda Jones was at
2 Stewart Title?

3 A. Did I?

4 Q. She was one the of the escrow officers that
5 was previously handling the escrow?

6 A. That was Pardee's escrow at Stewart.

7 Q. In other words, CSI and Pardee started at
8 Stewart and moved the transaction then to Chicago Title,
9 correct?

10 A. Yes.

11 Q. And you knew that Frances Butler then was the
12 escrow officer assigned to the task of, as the escrow
13 officer for their transactions, correct?

14 A. I did.

15 Q. All right. And you spoke to her before this
16 litigation was filed?

17 A. Several, several times.

18 Q. And you confirmed with her that your
19 commission letter was part of the escrow instructions in
20 her escrow file, correct?

21 A. Yes. It was recorded with the escrow, so I
22 was part of the escrow. And all I was asking was what any
23 other commission I have, if I went, if I bought 40 acres
24 from anybody in here and I would call the title company
25 and ask about my commission, they would certainly let me

1 know all the information that I needed to know about my
2 commission. But in this case, I couldn't find anything.

3 Q. But you did confirm though with Frances
4 Butler that your commission agreement was part of her
5 escrow file at Chicago Title?

6 A. Yes.

7 Q. And that the title company then had your
8 commission agreement on file with them?

9 A. Yes.

10 Q. And you knew that they had duties then that
11 arose by reason of knowing what your commission agreement
12 required?

13 A. They have duties and they should talk to me
14 about my commission.

15 Q. All right. I want to turn your attention
16 then to a different topic, if I could, please.

17 In this litigation we have seen copies of
18 amendments 1 through 8 of the amended and restated option
19 agreement?

20 A. Yes.

21 Q. Do you recall that?

22 A. I do. I have seen them in my book here, in
23 the book I had previous to coming to court.

24 Q. All right. And we now know that the purchase
25 property price was \$84 million, correct?

1 A. Yes.

2 Q. And any of those amendments, did you see an
3 increase in purchase property price?

4 A. Yeah. They have a schedule where the price
5 of land goes up every year. I think that was in the
6 original agreement with Mr. Whittemore and Jon Lash.

7 Q. Let me see if I can't reframe my question
8 because I don't think you understand my question. Okay?

9 A. Relevant. Okay.

10 Q. I want to focus your attention and maybe if I
11 take you to the exhibit. Pick up the Plaintiff's exhibits.
12 I believe beginning at Exhibit 6 is the first amendment to
13 the options agreement.

14 A. My book tells me which one to go to.

15 MS. LUNDVALL: May I approach, your Honor?

16 THE COURT: Yes. It in their second book.

17 THE WITNESS: Right. It's 11.

18 MS. LUNDVALL: Actually, if you go to tab six
19 for me, please, I want to start there.

20 THE COURT: Start with amendment one. Now,
21 at Exhibit 6, that is the first amendment to the amended
22 and restate option agreement.

23 A. Yes.

24 Q. All right. And you had the opportunity to
25 take a look then at Exhibit 6?

1 A. Yeah. Let me refresh my memory here a little
2 bit.

3 Q. All right.

4 A. Okay. I didn't read it all, but I refreshed
5 my memory a little bit.

6 Q. All right. Very simple question, and that is
7 this. Were there any increases in purchase property price
8 found within this document?

9 A. I don't remember if there was an increase in
10 the price right off hand. I don't remember, Counsel.

11 Q. You would agree with me that this document to
12 use attorney terms speaks for itself; is that right?

13 A. Yeah. If you read it, I'm sure it speaks for
14 itself.

15 Q. In other words, that is what is on the
16 written page is what the parties' agreement was, correct?

17 A. Yes.

18 Q. And if, in fact, there was an increase in
19 purchase property price, you would have expected your
20 attorneys then to point that out to The Court, would you
21 not?

22 A. I think there was an increase. The increase
23 went up to 43. I think it was 43 plus an acre or 44 an
24 acre. I know I've seen it, but I don't remember exactly
25 where I saw it.

1 Q. All right. I want to make sure that you
2 understand my question to you, Mr. Wolfram.

3 We've identified the purchase property price.
4 Now I'm going to use those terms in capital letters.

5 A. Eighteen million dollars?

6 Q. Nope. \$84 million.

7 A. I mean, well, from the 67, okay. \$84
8 million, I was just taking that from the 66 million, from
9 the extra purchase \$18 million going up.

10 Q. All right. Is this a copy on my poster board
11 then of your commission agreement?

12 A. Yes.

13 Q. All right. Purchase property price is the
14 term that is used in your commission agreement?

15 A. Right.

16 Q. And we know from taking a look at the second
17 amendment to the option agreement as well as the amended
18 and restated option agreement, that that number was \$84
19 million, correct?

20 A. Yes.

21 Q. All right. In Exhibit 6 which is the first
22 amendment, did the parties say we're going to pay more than
23 \$84 million?

24 A. No. However --

25 Q. Stop. Okay. There is no question that is

1 pending to you right now, and I want to try to make sure we
2 get through this as quickly as possible.

3 A. Okay, Counsel.

4 THE COURT: It just makes it easier. Okay.

5 THE WITNESS: It makes it harder on me.

6 THE COURT: You're doing very well. You're
7 listening to the questions and answering them.

8 THE WITNESS: Okay.

9 THE COURT: And it's going very smoothly.

10 BY MS. LUNDVALL:

11 Q. All right. Mr. Wolfram, also and, Brian, if
12 you can take that down for me. Given the confidentiality
13 component, I don't want this part displayed. If we could
14 -- not that there is anybody -- everyone in this courtroom
15 is bound by that. So strike that. My apologies.

16 THE COURT: No. That's okay.

17 BY MS. LUNDVALL:

18 Q. Also, Mr. Wolfram, we know you were entitled,
19 if one existed to a written option exercise notice for any
20 of the properties that were being purchased pursuant to
21 paragraph two of the option agreement?

22 A. Yes.

23 Q. So at Exhibit 6, is there any written option
24 exercise notice found in that first amendment?

25 A. I didn't get one.

1 Q. All right. Well, nor is it found in that
2 first amendment, correct?

3 A. No. It's not in there.

4 Q. Okay. All right. I'm going to ask you these
5 same questions concerning each one of these amendments.

6 A. The problem is my answer is kind of
7 redundant, Counsel. I mean, you know, I don't want to be
8 redundant, because I know the Judge here doesn't want me
9 to keep being redundant. But it's the same thing. I was
10 not a party to whatever you were saying was happening
11 there, and I wouldn't have to get an attorney to help me
12 out here, because no one would answer my questions.

13 Q. All right.

14 A. And I realize, your Honor, you told me don't
15 keep saying it's important to me. I didn't understand
16 what was going on.

17 THE COURT: I'm not trying to cut off your
18 time. I'm just trying to make sure you answer the
19 question that she had, and I understand the evidence
20 there. And your counsel has asked a question, so you can
21 say that, but it is in evidence.

22 THE WITNESS: It keeps coming back to that,
23 and it keeps coming back to the answer.

24 THE COURT: And I understand that. She's
25 just trying to get the evidence out she needs. Can you

1 ask the -- like amendments 1 through 8.

2 MS. LUNDVALL: That's what I'm going to do.
3 Try to do that in an effort to expedite things a little
4 bit. You've got all the amendments that were found from
5 tab six to tab thirteen.

6 A. And I didn't have any of them after the
7 restated option agreement. Nobody sent me any of them.

8 Q. You have those in front of you, do you not?

9 A. I do now.

10 Q. Hold on.

11 A. That's one of the reasons.

12 Q. Okay.

13 A. Okay.

14 Q. All right. You have Exhibit 6 through 13 in
15 front of you?

16 A. Uh-huh.

17 Q. We've looked at 6.

18 A. Yes.

19 Q. We now know that in 6 that there is no
20 increase in purchase property price found within Exhibit 6?

21 A. 84 million.

22 Q. Still 84 million, and it's the same thing in
23 tab 7, correct?

24 A. Yes.

25 MR. J.M. JIMMERSON: Your Honor, we'll

1 stipulate. Can we save -- we did this earlier with regard
2 to some of the deeds. Can we just stipulate that the \$84
3 million in purchase property price never changed?

4 THE COURT: Did not increase even through any
5 of the amendments and that's your understanding too?

6 THE WITNESS: That's my understanding.

7 THE COURT: Okay. Then you have the second
8 part, okay.

9 BY MS. LUNDVALL:

10 Q. So we have a stipulation that from amendments
11 1 through 8 which are found at tabs 6 through 13, that
12 there is no increase in purchase property price?

13 A. Correct.

14 MR. J.M. JIMMERSON: Yes.

15 MS. LUNDVALL: Just need it on the record, a
16 verbal. Thank you.

17 THE WITNESS: Thank you.

18 BY MS. LUNDVALL:

19 Q. All right. My next question is going to be
20 is if there is a written option exercise notice that's been
21 given pursuant to paragraph two of the option agreement,
22 found in amendments 1 through 8 that are found at 6 through
23 13?

24 A. There's no written option agreement in there,
25 but I needed to know whether it was option property or

1 purchase property. I was under the impression that the
2 purchase property from the very beginning was in the
3 parcel one. And when land got outside of that property,
4 it's only reasonable that I should question that land to
5 see why it is an option property.

6 Q. Mr. Wolfram, what I want to try to do then is
7 to confine you to the question again, because you're
8 starting to go off on the tangent again.

9 A. I get a little excited.

10 Q. I know. So do I. I think we all do.

11 A. All right.

12 Q. All right. So I want to focus my question.
13 And it looks like we're going to have to take each one of
14 these at a time.

15 THE COURT: And he also didn't say notice
16 too, so just try it again. Just try collectively again.

17 THE WITNESS: I'm sorry.

18 THE COURT: No. You're fine. You don't need
19 to apologize to anybody.

20 BY MS. LUNDVALL:

21 Q. This written option exercise notice pursuant
22 to paragraph two of the option agreement, there is no such
23 notice that is found at Exhibit 6, correct?

24 A. There is not.

25 Q. Not one at Exhibit 7?

1 A. No.

2 Q. At 8?

3 A. That's correct, yes.

4 Q. At Exhibit 8?

5 A. Correct.

6 Q. At Exhibit 9?

7 A. Correct.

8 Q. At Exhibit 10, correct?

9 A. What was Exhibit 10?

10 Q. Exhibit 10 is --

11 A. Just refresh my memory.

12 THE COURT: Amendment number five.

13 BY MS. LUNDVALL:

14 Q. Amendment number 5 and restated option
15 agreement.

16 A. Oh, okay. All right. All right. Correct.

17 Q. And at tab 11 is amendment number six, I'm
18 correct there too; is that right?

19 A. Yes.

20 Q. And at tab 12 is amendment number 7.

21 I'm correct there as well?

22 A. That's what's in there, right.

23 Q. And at tab 13 is found at amendment number 8.
24 I'm correct there as well?

25 A. Yes.

1 Q. Now, have you ever taken a look then at the
2 transactions that are reflected as the property that is
3 being taken down by Pardee to determine if it is reflected
4 on Mr. Lash's map that he sent you as Exhibit 15. Have you
5 done that comparison?

6 A. I have looked at Mr. Lash's map, and I saw
7 the takedowns on Mr. Lash's map. And they didn't agree
8 with what I thought was purchase property and option
9 property.

10 Q. Okay. My question is different than that,
11 Mr. Wolfram. Have you taken a look at tab 6 through 13?

12 A. Yes, I have.

13 Q. And compared those in the takedowns being
14 identified therein?

15 A. Yes.

16 Q. To Mr. Lash's map?

17 A. His takedowns up to 84 million were correct.

18 Q. All right. Now, I've had another -- I have
19 another series of questions. Hold on. I have another
20 series of questions for you. I have no question on the
21 table at this point in time.

22 A. Okay.

23 THE COURT: Are we at a stopping point now?
24 My bailiff reminded me I needed to do something. Let's go
25 ahead and take a quick 15 minute break. So come back at

1 10:30.

2 (Short break.)

3 MS. LUNDVALL: Your Honor, I intend to pass
4 the witness.

5 THE COURT: Oh, okay. Great.

6 THE WITNESS: Wow.

7 THE COURT: All right. Okay. Now it's your
8 counsel's chance to do what is called a redirect, okay?

9 THE WITNESS: Okay.

10 THE COURT: All right. You're going to get
11 there, I promise.

12

13 REDIRECT-EXAMINATION

14 BY MR. J.M. JIMMERSON:

15 Q. How are you doing, Mr. Wolfram?

16 A. I'm here.

17 Q. Can you flip open to Exhibit Number 1,
18 please. It's a commission letter agreement.

19 A. Mine starts with 6. Is there another book?

20 THE COURT: There is a one to five book.
21 What is the other exhibit?

22 MR. J.M. JIMMERSON: L.

23 THE COURT: Yeah. I'll just look at that.

24 THE WITNESS: Is that the one you want?

25 MR. J.M. JIMMERSON: Yeah. That's the one we

1 want you be to on. Permission to approach.

2 THE COURT: Yeah. Absolutely, to help him.

3 MR. J.M. JIMMERSON: Here is 1 through 5.

4 THE COURT: We'll all be consistent.

5 THE WITNESS: Okay. Here we go.

6 BY MR. J.M. JIMMERSON:

7 Q. Mr. Wolfram, this is your commission letter
8 agreement that you signed at the beginning of September
9 2004?

10 A. It is.

11 Q. Okay. And it's representing your agreement
12 with Pardee; is that right?

13 A. Yes.

14 Q. Okay. You were asked some questions about
15 how the payments were made to you.

16 Do you see how the payments were structured
17 and Roman numeral I, II, and III?

18 A. I do.

19 Q. I remember you testified concerning the
20 purchase property price payments.

21 Do you remember what you said?

22 A. Maybe not.

23 Q. Okay.

24 A. I mean it came up so many times, I'm not sure
25 which time you're talking about.

1 Q. I understand.

2 A. I know what the purchase property price is,
3 if that's what you're saying. The payments on 84 million,
4 they went into escrow. This came up a lot.

5 Q. I'll begin I guess my questioning with do you
6 see that the term purchase property price is a capitalized
7 term?

8 A. It is. It goes back to the option.

9 Q. Okay. And do you -- can you tell us what
10 that definition is from the option agreement?

11 A. Yeah. It means it's the same thing as what's
12 in the option agreement number two on our book here, the
13 option.

14 Q. But do you remember what the definition is,
15 what the words are that define the term purchase property
16 price?

17 A. I have it right here.

18 Q. If you would like to flip to Exhibit 2, we
19 can, just to look. It's on page three.

20 A. Yeah.

21 Q. It's in the middle of paragraph B.

22 A. Yeah. The purchase price property price,
23 okay, yeah. 66 million. Oh, yeah. 66 million. I'm with
24 you now.

25 Q. What is the definition though? It says it

1 shall be 66 million. What is the definition?

2 A. The definition is of the first there is four
3 percent of the --

4 Q. Can you read the definition of purchase
5 property price for us?

6 A. The purchase price -- the purchase price of
7 the purchase property -- purchase property price shall be
8 \$66 million and shall be payable as follows.

9 Q. Okay. So what is being bought for at this
10 point in time \$66 million?

11 MS. LUNDVALL: What's his understanding of
12 what is being bought?

13 THE COURT: Yes.

14 THE WITNESS: My understanding is that they
15 are taking the purchase property price in parcel, parcel
16 one, which is the purchase property parcel, and they are
17 buying that 1958 acres. That's in that parcel.

18 BY MR. J.M. JIMMERSON:

19 Q. Later they buy 1958 acres. At this point
20 it's only 1500; is that right?

21 A. Yeah. It was changed to 1950, but it was
22 1500 in this, right?

23 Q. When it was changed, the purchase property
24 price was increased from 66 million to 84 million?

25 A. Right.

1 Q. Okay. And, again, when it was increased,
2 what was the land that was being purchased for the \$84
3 million? What was your understanding?

4 A. I didn't have an understanding. I didn't ask
5 what the land was. Nobody would tell me what the land
6 was. I was looking then again north and it moved east. I
7 asked.

8 Q. Why did you think it would go north?

9 A. That's the purchase property. That's the
10 parcel. Parcel one is purchased property.

11 Q. Okay.

12 A. There is 3,000 plus acres in that.

13 Q. Okay. Now, we can flip back to Exhibit 1?

14 A. Oh, okay.

15 Q. Mr. Wolfram, there was some discussion about
16 some of the protections and safeguards that were
17 implemented as part of this contract.

18 Do you remember that discussion?

19 A. Yes.

20 Q. Okay. I would like to point you to paragraph
21 number two on page two. Was this part of those protections
22 as you understood them?

23 A. Let me read it. I mean, I have read this
24 before, but I want to be sure.

25 THE COURT: It's okay. Take your time.

1 THE WITNESS: Yes. I have read it.

2 BY MR. J.M. JIMMERSON:

3 Q. Okay. Was this part of the protections or
4 safeguards as we discussed earlier as you understood the
5 contract?

6 A. That's what Mr. Jimmerson was trying to work
7 out for me so I could follow what was going on.

8 Q. Okay. And when you say -- so you could
9 follow what was going on, which portion of this paragraph
10 entitles you to information that allows you to follow what
11 is going on?

12 A. On the option portion they, you know, they
13 tell me ahead of time what have you. When you get into
14 the purchase price, everybody says, you know, you can't
15 talk acreage. You have to spend price. But it also says
16 to keep me reasonably informed. And reasonably informed,
17 I would assume, would be that acreage that they're being
18 -- that they are taking down for the 84 million so I can
19 see if I'm being properly compensated on it.

20 Q. Have you ever engaged in a transaction where
21 you didn't know what you were being paid for?

22 A. No. I haven't.

23 Q. In your industry is it regular or is it
24 ordinary that brokers would be paid for something they did
25 not know about?

1 A. No.

2 Q. Okay. Did Mr. Wilkes ever face a situation
3 with you and he as partners where he was being paid or you
4 were being paid for something that you didn't know what you
5 were being paid for?

6 A. No. That wouldn't... You know what you're
7 being paid for.

8 Q. Okay. So let's talk about these
9 communications between you and Pardee that were referenced
10 earlier today. Can you please switch binders now, Mr.
11 Wolfram?

12 A. All right. Which binder?

13 Q. I'm sorry. The second there was binders. I
14 apologize.

15 THE COURT: That's okay. We have it. The
16 second one that says six through 33. We got it.

17 MS. LUNDVALL: Which binder are we on?

18 MR. J.M. JIMMERSON: It's binder two, Exhibit
19 22. Are you at Exhibit 22, Mr. Wolfram?

20 A. I am.

21 Q. And you testified on cross-examination that
22 in this letter you were requesting or you were requesting
23 additional commissions or that you were stating that you
24 hadn't been paid for the commission. You hadn't been paid
25 commissions on these additional purchases.

1 Do you remember that discussion?

2 A. Yeah, I do.

3 Q. Can you point to me in this letter where
4 you're demanding payment?

5 A. I'm not demanding payment. That's what I
6 said. I want to know what it was about. If, in fact, I
7 was and they said, you know, it was single family
8 residence, I take the pay. But if it isn't, it would have
9 been gone. But I still would have liked to have the maps
10 so I could follow -- so my family down the road can follow
11 what's going on. It's just the same as what Pardee would
12 have.

13 Q. Now, looking at paragraph three, it says
14 further as we have never received any surveyed plat maps of
15 the development we're unable to track which options have
16 been exercised and/or what un optioned property is now
17 being purchased?

18 A. Right. I see that.

19 Q. Do you later request these maps in this
20 letter?

21 A. Yeah. I do.

22 Q. Okay. Did you ever request the maps outside
23 of correspondence with Mr. Lash or other representatives of
24 Pardee?

25 A. The five parcels are you speaking about that

1 I found that they didn't?

2 Q. No. I'm asking generally did you make a
3 phone call? Did you have a face to face conversation as
4 opposed to just formal correspondence?

5 A. Yeah. I talked several times to Jon.

6 Q. Okay.

7 A. Well, not just to -- Jon finally said even
8 though I talked to him. He finally said I'm not really up
9 to date as much as other people are on this project. And
10 when I knew that was wrong Jon Lash knows everything that
11 is going on over there he said.

12 MS. LUNDVALL: Your Honor, I'm going to as
13 far as to ask to strike that.

14 THE COURT: I will.

15 MS. LUNDVALL: Thank you.

16 THE COURT: But he's smart.

17 THE WITNESS: Yeah. He understands.

18 MR. J.M. JIMMERSON: I'll ask the question
19 again.

20 THE COURT: We're going to redo the question.

21 THE WITNESS: Let's do it.

22 THE COURT: It's okay.

23 BY MR. J.M. JIMMERSON:

24 Q. So other than formal correspondence, other
25 than letters or e-mails, were there any other

1 communications that you had with Mr. Lash or other
2 representatives of Pardee concerning your request for
3 information or maps?

4 A. Yes. I called. I talked to Jon and Jon
5 finally said that he didn't really have the information.
6 Maybe that I needed -- he wasn't completely sure as much
7 as other people said he was going to send me to an
8 attorney.

9 He sent me to Mr. Stringer and Mr. Stringer's
10 attorney. I didn't know he had something to do with it at
11 that time with the land, but he sent me to Mr. Stringer.
12 So I talked to Mr. Stringer, and I talked to Mr. Curtis.

13 Q. Did you have conversations with those two
14 individuals?

15 A. I certainly did.

16 Q. Okay. Why didn't you send letters?

17 A. I probably -- if I knew I was going to have a
18 lawsuit, you could bet I would have sent letters, but I
19 didn't send letters. I expected him to keep me reasonably
20 informed. I asked him what was going on, but nobody would
21 give me anything, nothing.

22 Q. Okay. You eventually received a map from Mr.
23 Lash; is that right?

24 A. Yes.

25 Q. Okay. Can you please flip to Exhibit 15?

1 A. Yes. I have it.

2 Q. You got it in front of you. Was this map or
3 was this letter with the enclosed map and the legend
4 addressed to anyone else besides you at D & W Real Estate?

5 A. No.

6 Q. Okay. Do you know if Mr. Lash sent this to
7 Mr. Wilkes?

8 A. No. It didn't go to Mr. Wilkes, but I always
9 -- Walt and I always kept each other informed. I sent a
10 letter to Mr. Wilkes.

11 Q. But you passed it onto Walt?

12 A. Yes.

13 Q. Please review this letter. And can you point
14 to me the sentence where Mr. Lash tells you the attached
15 map reflects all of the production residential property
16 that Pardee has purchased?

17 A. You want me to read the whole letter to find
18 that?

19 Q. Tell me if that statement exists.

20 A. Well, I don't remember it being in there.

21 Q. That's what I'm saying. Tell me if it's
22 there, please point me to it.

23 A. I read the letter. I don't remember that
24 being in there.

25 Q. Okay. Please flip to the map, so page three

1 of this exhibit. Okay?

2 A. Okay.

3 Q. You have seen this map before, right?

4 A. Yes. I have seen this map before.

5 Q. Okay.

6 A. And if you will note -- let me note on my
7 map. I found this property. It was on my map. The map
8 he gave me, it was not on there.

9 Q. Okay. Well --

10 A. And there were other properties that weren't
11 on there either.

12 Q. We'll get there. You discussed that on
13 cross-examination. But look at this map. Can you tell me
14 what the designation of the different colors of land are?

15 A. No.

16 Q. Does it tell you the designation of the white
17 land?

18 A. We have -- they have it all in yellow on
19 here, but it doesn't tell me designations at all.

20 Q. Okay. Why are the designations important?

21 A. Because I get paid on a single family
22 production residential property, and I don't get paid on
23 commercial. I don't get paid on multifamily.

24 Q. Okay. You were asked about some of the
25 publically recorded documents that you had looked at.

1 Do you see any designation on those
2 publically recorded documents?

3 A. No. There is not.

4 Q. Okay. On the deeds?

5 A. No. There is not on there either.

6 Q. What about the declaration of value?

7 A. Well, there is value on there. I think on
8 the deed if I'm trying to remember that thing in the upper
9 right-hand corner. I don't remember whether it says
10 declaration of value on that or not.

11 Q. Well, but --

12 A. But, no.

13 Q. How do you know how the land is designated?

14 A. I don't.

15 Q. Okay. Now, you had later sent a letter
16 responding to Mr. Lash with an enclosure of your map; is
17 that right?

18 A. Yes.

19 Q. Okay. Was that a complete -- did that map
20 match the map of Mr. Lash?

21 A. It's amazing what I put -- how I put my map
22 together. And it came out. It looks like Jon's map which
23 he must have already, must have had himself, but it did
24 not match Jon's map.

25 Q. What was the difference between the map you

1 sent Mr. Lash and the map that is enclosed here?

2 A. The difference was it has five different
3 parcels that were -- that would have been bought. And
4 they didn't have it on their map. And all I wanted to
5 know what those five parcels were. I mean, I don't think
6 that is being unreasonable.

7 Q. And how did you come up with your map?

8 A. I started out with like I mentioned in
9 passing. That's all new land up there. I started out
10 with planning and zoning. At one time Walt, we went down
11 there together. That is before Walt was real sick of
12 planning and zoning. They didn't really have accurate
13 figures. So they sent me to a master planner. The master
14 planner told me forget it. We can't do it. We don't have
15 it.

16 They sent me to the development office down
17 the corner. When we went into the development office, the
18 development office said no, we had already been to the
19 assessors office. But we didn't really work real hard
20 with them. We thought the development office would have
21 it. We went in there. They said no. All we do is take
22 what Pardee brings in here to us, and we try to put it
23 together.

24 So we went back up to the assessor and
25 records office. And, oh, God. I made 20 trips, 15-20

1 trips down to the assessors office. And the way they did
2 it then it's a lot better now. They took a little thing
3 and they punched on the screen to tell who owned what
4 different pieces of property. But they didn't have the
5 whole property. So I couldn't put my map together.

6 And God love this girl. She said, you know
7 what, there is a guy that draws the maps in the back. He
8 probably knows more about this than anybody, but I don't
9 know that he'll speak to you. And she brought him out.

10 And he took me in the back room, and when he
11 started going in, then my map came together. And you can
12 see on my map, even then I had a mistake in the red area
13 at the top. You know, they took out in four pieces they
14 took out. I had mine in purple, because there was still
15 some question on that when I did my map.

16 Q. Well, let's look to your map.

17 A. Pardon?

18 Q. Let's flip to your map so we know. Flip to
19 23A since that is the better copy of it.

20 THE COURT: I was going to say, mine isn't.

21 MR. J.M. JIMMERSON: 23A is the best copy
22 that we made.

23 THE COURT: Here it is.

24 BY MR. J.M. JIMMERSON:

25 Q. Okay. Mr. Wolfram, I'm looking at this map

1 of 23A. Is this the map that you created that you were
2 describing how you put together?

3 A. Yeah. This is the map that I put together,
4 right.

5 Q. Okay. And you've got here these names. It
6 says Coyote and Pardee in different portions of the map.
7 Do you see that?

8 A. Yes.

9 Q. Now, what are you communicating or what's
10 being reflected?

11 A. Well, I was communicating there when I went
12 down there to find, you know, the land, a lot of it was
13 Coyote Springs land. So what I did when I was there, I
14 went back down and went clear out to the edge of what the
15 property was and put down -- this is what I'm trying to
16 get out of Pardee, how to follow the land. And I put down
17 all these other parcels. So if any one of those parcels
18 were sold, was sold, I could color that in and show that
19 that went to Pardee.

20 Q. Okay. So when you say Coyote or Pardee,
21 that's who owns the land?

22 A. Yeah. Coyote is CSI. Coyote Springs
23 Development and the colored portion is Pardee.

24 Q. Okay.

25 A. That's the easiest way to track it, James. I

1 mean, if someone gives you each parcel when they sell it,
2 and you can color it in, and I know they -- well, I --
3 she'll say I don't know. But I assume that they have a
4 map on their wall just like this. And as things are taken
5 down, everything they color it in, and they can follow it.
6 And that's what I think that I need and my assigns needs.

7 Q. Well, you knew at least as of the date of the
8 creation of this map who owned certain portions of land in
9 Coyote Springs, right?

10 A. Yes, I did.

11 Q. Did you get that information from public
12 records?

13 A. I went down to the assessors office, and
14 that's where I finally got it.

15 Q. But it was public records, you weren't
16 calling a private company?

17 A. No. No.

18 Q. Okay. What is the numbers? So you've got
19 the name Pardee or Coyote, and then you have a series of
20 numbers. What are those numbers?

21 A. Those are parcel numbers.

22 Q. And what's a parcel number?

23 A. A parcel number is the way of keeping track
24 of land down at the county building. The ownership and
25 track of land. Who owns it and how much the acreage is

1 and what have you.

2 Q. So is it like a social security number for
3 land?

4 A. Yes. Sort of. I never heard it that way
5 before, but that's probably right.

6 Q. Okay. Now, you've got another set of numbers
7 below the parcel number. What is this number?

8 A. That's the acreage.

9 Q. How did you learn about the acreage?

10 A. Well, it's -- like I say, you go down there
11 and when I went to the assessors office, and say, for
12 instance, the one there that says 91 acres Pardee, I'm
13 just using that as an example. When I finally saw Pardee
14 owned that, I have the parcel number, I can get the
15 acreage, and it tells me what they bought.

16 Q. Okay. And you got that from public records;
17 is that right?

18 A. Yes.

19 Q. Now, you were asked a question on
20 cross-examination, if you could calculate how many acres
21 were inside parcel one versus outside of parcel one that
22 was owned by Pardee.

23 Do you remember that?

24 A. Yes.

25 Q. Okay. Are you able to calculate?

1 MS. LUNDVALL: Now you're asking him to
2 contradict his testimony that he gave earlier?

3 THE COURT: He's just going over it. He said
4 it. You're asking the same question again.

5 MR. J.M. JIMMERSON: Yeah. Is he able to
6 calculate?

7 MS. LUNDVALL: And he previously testified
8 that he was able to.

9 THE COURT: Clarify that or if he's
10 consistent. It's his witness.

11 BY MR. J.M. JIMMERSON:

12 Q. Are you able to calculate it?

13 A. If you take the overall picture, no.

14 Q. Why not? First of all, why would you say on
15 cross-examination that you could calculate it and now
16 you're saying you can't?

17 MS. LUNDVALL: Well, your Honor, I think we
18 need to clarify what was originally asked of him. Because
19 what I asked of him was if he could calculate the acreage
20 that was outside of parcel one.

21 MR. J.M. JIMMERSON: That's what I want to
22 know. How he can do it if he said yes and now he said no.
23 I want to know how.

24 THE COURT: That's a legitimate.

25 THE WITNESS: Okay. I didn't on -- when

1 you're looking that the map, I didn't -- no one showed me
2 the green area. But I did know I had five parcels in here
3 and that they were outside of what Mr. Lash's map were and
4 we got the --

5 MR. J.M. JIMMERSON: Mr. Wolfram, sorry.

6 THE COURT: That's okay.

7 MR. J.M. JIMMERSON: I'm going to get later.

8 THE COURT: I'm just listening to the
9 testimony. Let your counsel help you.

10 BY MR. J.M. JIMMERSON:

11 Q. I just need to know why you testified on
12 direct exam -- first of all, I'll ask you again.

13 If you were to put the boundaries of parcel
14 one, the purchased property, the map that we discussed
15 throughout this litigation --

16 A. Yes.

17 Q. Okay. In this map...

18 A. Yes.

19 Q. Okay. The map that you drew...

20 A. Yes.

21 Q. Okay. Would you be able to tell us, would
22 you be able to calculate the number of acres that are
23 outside of parcel one that are owned by Pardee as reflected
24 in this map?

25 A. We did that on the first day. We measured to

1 see that the green area was outside of parcel.

2 Q. And what I want to know is are you able to
3 calculate the exact number of acres that's outside of
4 parcel one that is owned by Pardee?

5 A. No.

6 Q. Why did you say otherwise?

7 A. Well, I don't remember what her question was
8 when you say why did I say otherwise.

9 Q. Okay. Well, my question is this. If you
10 could calculate it, how would you go about calculating the
11 number of acres that are outside of parcel one?

12 A. How I do like any.

13 THE COURT: That's based on this map?

14 BY MR. J.M. JIMMERSON:

15 Q. Uh-huh.

16 A. I would do like any real estate agent. I go
17 see where parcel number one is. But on this map here, it
18 doesn't show me or his map, it doesn't show me the parcel
19 one line. But I would go and I would get the parcel
20 numbers. I would get the acreage. I would do all that to
21 see if it was in parcel one or out of parcel one.

22 Q. Okay. My question would be this. How could
23 you take the number of acres if it wasn't -- the property
24 wasn't in a straight line, the property was curved?

25 A. Well, you see, I don't completely understand

1 your question, James. If the property was curved, I know
2 that looking at this, some of that on that line that was
3 drawn, some of that may be in and some may be out. I
4 don't think that's where you're going.

5 Q. I just want to know if you were able to
6 calculate it how you would calculate it. Because it's one
7 thing to be able to calculate height times width and
8 getting an area. I want to know how do you calculate the
9 number of acres when the land is curved?

10 A. Well, that will be tough. I don't think --
11 that would be tough.

12 Q. Okay. What's the most advanced math that you
13 graduated from either high school or college, Mr. Wolfram?

14 A. I think I had algebra. I had a little
15 geometry.

16 Q. Did you graduate from -- did you finish your
17 calculus class?

18 A. No. My major didn't have that.

19 Q. Okay. So for your best testimony now, could
20 you tell us whether or not you could calculate the number
21 of acres Pardee owned outside of parcel one?

22 A. No. Not exactly.

23 Q. Okay.

24 A. I can't.

25 Q. Mr. Wolfram, continuing on with this map, I'm

1 seeing here a number of different colors. Does that
2 correspond to the I guess I would call it legend on the
3 page behind it where it says sales?

4 A. Yes. That's what I did.

5 Q. And you've got here in sales, you've got
6 these prices. These numbers with a dollar sign before
7 them. What do those refer to?

8 A. Let me turn over. That's how much that --
9 let me see. Oh, that's how much -- I was trying to figure
10 out what they had -- what they had paid for the property
11 that they were getting. I put down everything that I
12 could think of. When I went to get those maps, I put down
13 the acreage. I put down the parcel, anything that showed
14 on those maps, I tried to make a record of it so I
15 wouldn't have to come back and back and back again.

16 Q. Well, I'm asking you when you said you
17 referred to prices, did they have actually prices on the
18 maps, or did you get that information from a different
19 location?

20 A. I don't know if I got that. I probably may
21 have put that down when I got it from Jon's letter. I
22 don't know if that's when I put that down or not.

23 Q. Okay. But you said that you put down all the
24 information?

25 A. You know what, that was -- I'm trying to

1 remember when I put that down, whether I got it from the
2 public records and put it down. And I don't even know
3 right now. It's been so long, if that even matches up
4 with what they have on theirs. I really don't know.

5 Q. Okay. We had gone over earlier about what
6 was available on the deeds. Is the declaration form public
7 record?

8 A. Yes.

9 Q. Would it contain some of this information
10 concerning the price of land?

11 A. It would. And that's what I was trying to
12 tell you. I would think when I was doing this map, I
13 would have probably got it off of some of the deeds or
14 maps or something.

15 Q. Okay.

16 A. But I would not have taken all of this map
17 that I did off the deeds. I would have to work forever to
18 put a map together off the deeds like I put together.

19 Q. Well, you said you worked off maps; is that
20 right?

21 A. I worked off what?

22 Q. Maps?

23 A. Yes.

24 Q. Okay. Where on here do you indicate the land
25 designation?

1 A. There is no -- there is no land designation.

2 Q. Why didn't you put down the land designation?

3 A. Because there wasn't any -- there isn't any.

4 Wish we would have.

5 MR. J.M. JIMMERSON: Okay. Mr. Wolfram. Can
6 we now switch binders, your Honor?

7 THE COURT: Yes. You got it. Where do you
8 want to go?

9 MR. J.M. JIMMERSON: To ii.

10 THE COURT: I'm going to put this back.

11 THE WITNESS: James, can I answer that part
12 again? I have had a little time to think about it.

13 THE COURT: You're talking about the question
14 where you got your money values on the map?

15 THE WITNESS: No. It's okay. Just forget
16 it.

17 BY MR. J.M. JIMMERSON:

18 Q. I want to know if you've got an incomplete
19 answer, I want to hear the complete answer.

20 A. On that green area on my map there, I knew
21 that that's possibly what they were buying, but I wasn't
22 sure. The acreage on there, I wasn't exactly certain
23 whether it was all within the -- from we didn't have a map
24 and an actual map to show the line on the property where
25 the parcel number one was. I assumed. And some of it may

1 not be exactly where we thought -- where I thought it was.
2 But I was trying to put it together. But I did not -- was
3 not able to actually take all the acreage outside of
4 parcel one, because I found there is other acreages down
5 below there. They were out of parcel one too.

6 MR. J.M. JIMMERSON: Mr. Wolfram, that is a
7 very, very good point. I'm glad you actually completed
8 your answer. Your Honor, before we get to ii, I would
9 like to refer The Court to begin with Exhibit 25 which is
10 the map of the parcel one. Okay. And I would like to
11 refer to -- I believe it's Exhibits 26 and 29.

12 THE COURT: I'll just do off these instead of
13 trying to unroll the big ones. It's too difficult.

14 BY MR. J.M. JIMMERSON:

15 Q. Okay. Well, your Honor, I'm just going to
16 put it here, if possible.

17 A. That's better for me.

18 Q. Okay. Mr. Wolfram, this is parcel one here,
19 right?

20 A. Yes.

21 Q. Okay. Can you see the boundaries parcel one
22 on this map?

23 THE COURT: You're referring to
24 plaintiffs...?

25 MR. J.M. JIMMERSON: I think I've got it

1 upside down, actually.

2 THE COURT: You do.

3 THE WITNESS: You did.

4 MR. J.M. JIMMERSON: Here. I'll just double
5 check exactly which exhibits this is. Your Honor, Exhibit
6 26.

7 THE COURT: Okay.

8 THE WITNESS: Let me take a look here.

9 THE COURT: It's in sections under Exhibit
10 26. It's not put together as a whole.

11 MR. J.M. JIMMERSON: And this is Exhibit 30,
12 your Honor.

13 THE COURT: All right.

14 MS. LUNDVALL: So you're comparing and
15 contrasting Exhibit 25 against which?

16 BY MR. J.M. JIMMERSON:

17 Q. Against 26 and 30.

18 A. I see parcel one over there, but I don't see
19 the line on this map I have in front of me.

20 Q. You see parcel one here?

21 A. Yes.

22 Q. Referring to Exhibit 25?

23 A. Yes. That's the parcel one.

24 Q. Okay. Do you see the boundaries of parcel
25 one on Exhibits 26 or 30 here or here?

1 A. No.

2 Q. Okay. The maps represented here compared to
3 the map represented here do not contain all the same
4 information; is that right?

5 A. Right.

6 Q. Okay. So referring to the maps that you used
7 to construct your map, did it contain -- do the maps
8 showing the parcels that have been purchased, do those maps
9 contain the boundaries of parcel one?

10 A. No. Absolutely not.

11 Q. Okay. Now we can move onto ii, your Honor,
12 unless Mr. Wolfram's got anything else on that answer.

13 A. No.

14 Q. Okay.

15 A. Should use bifocals, but when I'm hunting
16 they get in my way.

17 THE COURT: Try blended bifocals. They might
18 work.

19 THE WITNESS: Probably should.

20 THE COURT: Now we're back to ii?

21 BY MR. J.M. JIMMERSON:

22 Q. Yes, your Honor. Mr. Wolfram, do you see at
23 the top line of the top e-mail, "Hi, Frances, you're
24 authorized to give Jim copies of only the single family
25 takedowns"?

1 A. Yes.

2 Q. Okay. Did you receive copies of all of the
3 single family home takedowns from Pardee or from the title
4 company?

5 A. No.

6 Q. Okay. Let's look to JJ, an e-mail sent one
7 week later after ii. Are you there, Mr. Wolfram?

8 A. I am.

9 Q. Looking at this, it says, "I spoke to Jon and
10 he said to not give him any amendment since they referenced
11 the multifamily and custom lot transactions."

12 Do you see that?

13 A. I do.

14 Q. Were you given any amendments which reference
15 the multifamily and custom lot transaction.

16 A. No. I wasn't. But you got to remember what
17 my map was. That was one of the reasons that I'm here.
18 My map showed they bought some property over there to --
19 on the bottom on the left. And it didn't have it on his
20 map and, you know, I wanted those things clarified.

21 Q. Well, what about the amendments that didn't
22 contain custom lots or family, were you given any of those?

23 A. No.

24 Q. Interesting.

25 MS. LUNDVALL: You know, your Honor,

1 somewhere counsel needs to learn. That's why I'm placing
2 my objection. I have great as far as respect for Mr.
3 Jimmerson and think it's a good idea to try to learn good
4 habits.

5 THE COURT: Yeah. I know you feel that, but
6 we can't always say it out loud in the courtroom is what
7 she's saying. I have the point perfectly but...

8 BY MR. J.M. JIMMERSON:

9 Q. Mr. Wolfram, this next sentence, it says, "he
10 said to just let Jim know that you provided everything to
11 him."

12 Do you see that?

13 A. Yeah. I see that but I didn't get everything
14 provided to me.

15 Q. Uh-huh. Did you tell -- were you informed
16 that you were provided everything?

17 A. Well, they -- yeah. They say that I was
18 provided everything, but I wasn't provided everything.

19 Q. Okay.

20 A. And that was the reason for our
21 correspondence, and it would be so easy for somebody just
22 to say, you know, you're not entitled to this or
23 something, but nobody told me -- would tell me anything on
24 that land. I wouldn't have an attorney if it --

25 THE COURT: So you're speaking of the land

1 that you found that was outside?

2 THE WITNESS: Right. Not just that land.
3 The other land, but, no, the -- but the other land too.

4 THE COURT: No. I understand.

5 THE WITNESS: The other land. Also, if
6 you're getting paid for something, think about it. If
7 you're getting paid for something, wouldn't you want to
8 know what you're getting paid for? Wouldn't you want to
9 know if it was accurate instead of just taking somebody's
10 word for it? That's my position on that, and that's the
11 reason I'm here.

12 BY MR. J.M. JIMMERSON:

13 Q. Mr. Wolfram, you were asked on direct
14 examination. You referred back to our plaintiff's binder
15 2. We're going to begin with Exhibit 12.

16 You were asked on cross-examination whether
17 you had compared the maps between what Mr. Lash had
18 represented to you and what was included as maps in the
19 Exhibits 6 through 12, amendments -- or 6 through 13,
20 amendments 1 through 8 to the amended restated option
21 agreement?

22 Do you remember that?

23 A. Yeah. I remember. I guess I didn't
24 understand it at first. Maybe she had to repeat it again,
25 but I do remember that.

1 Q. Okay. I just wanted to make sure that you
2 remember what was going on. Let's begin with B1, Exhibit
3 B1 within Exhibit 12. It's going to be bates 1156.

4 A. Where? Where do you want me to get --

5 Q. I just want to you refer to B1, bates 1156.

6 A. In which book are we talking about here?

7 Q. Exhibit 12. So Plaintiff's book number 2.

8 A. Oh, Exhibit 12, okay. Okay.

9 MS. LUNDVALL: You're at 12, and you're
10 asking him to turn to which exhibit?

11 BY MR. J.M. JIMMERSON:

12 Q. B1. 1156 is the bates stamp. Are you there,
13 Mr. Wolfram?

14 A. Yeah, I am.

15 Q. I'll wait for Ms. Lundvall to get there. Are
16 we all there? Okay.

17 THE COURT: I think so.

18 BY MR. J.M. JIMMERSON:

19 Q. Mr. Wolfram, did Mr. Lash's exhibit contain
20 designations for example res 1, res 2, res 3?

21 A. No. And, you know, that's where I probably
22 misspoke too. Because I brought my map trying to find out
23 what that land was, and when she said compared, I didn't
24 -- James, I didn't compare this res 1, res 2, res 3, res
25 4. But that was one of the reasons I was here, to find

1 out what was going on over there.

2 Q. Okay.

3 A. On res 1 and res 2 and res 3, res 4.

4 Q. Did it contain information containing the
5 information of washes, the wash campus?

6 A. You mean on these maps in the back here?

7 Q. No. In Mr. Lash's map?

8 A. No.

9 Q. Okay. If you want to flip the page, we'll go
10 to 1157. Did Mr. Lash's map contain information concerning
11 the AD1, AD2, AD3, AD4?

12 A. No there were no designations. And that's
13 what I'm talking about. That's what I'm talking about,
14 your Honor. I know they have those maps over there, and
15 they could given those maps to me because they were
16 developing.

17 Q. Okay. Mr. Wolfram, please flip now to B6,
18 1161.

19 A. All right.

20 Q. Did Mr. Lash's map contain reference to the
21 land res 1, res 2, res 3, res 4, res 5?

22 A. No. It didn't refer to any of that at the
23 top of site acreage, no.

24 Q. Did it contain information concerning how the
25 land was going to be built in which order?

1 A. No.

2 Q. Okay. Did Mr. Lash's map even reference any
3 of this land on B6 with the exception of the wash, the
4 school, and the park?

5 A. No.

6 Q. Did your map?

7 A. My map didn't -- my map just showed where it
8 was. I didn't have designations to know it was in there.

9 Q. Did your map show that Pardee owned?

10 A. Yeah.

11 Q. The land reference in res 1, res 2, res 3,
12 res 4?

13 A. No. That was the reason I had it on my map.
14 I was sure they owned the property. I just had no
15 designation, or I didn't know what it was all about. That
16 was my inquiry.

17 Q. Okay. Mr. Wolfram, now you were asked about
18 the bottom of the commission letter agreement concerning
19 whether or not there was an employment relationship or a
20 joint venture or a partnership.

21 Do you remember that discussion?

22 A. Yes, I do.

23 Q. Were you under the impression that you were
24 going to be partners with Pardee?

25 A. No.

1 Q. Have you ever been partners with clients that
2 you brokered a deal for?

3 A. Well, yeah. I've been partnered up with
4 Walt. We brokered a lot of deals.

5 Q. I'm sorry. Have you ever been partners with
6 a client in that, that you gave them the land or you
7 brought them the land?

8 A. No.

9 Q. Okay.

10 A. Nor has Walt.

11 Q. Have you ever been in a joint venture with a
12 client?

13 A. Not to my recollection.

14 Q. Okay. Have you ever, I guess, been employed
15 beyond the standard broker commission or broker/client
16 relationship?

17 A. No.

18 Q. Okay. Are many of those relationships one
19 time deals?

20 A. In real estate a lot of relationships are one
21 time deals.

22 Q. Okay. In many of those relationships do you
23 have any expectation that the relationship would continue
24 on after the land transaction?

25 MS. LUNDVALL: What relationships are we now

1 talking about?

2 THE COURT: I think client/broker
3 relationship.

4 BY MR. J.M. JIMMERSON:

5 Q. Broker/client.

6 A. No.

7 Q. Do you have an expectation between that the
8 relationship between you and Pardee would go on?

9 A. Just through my commission to the end of the
10 commission. We had an agreement and that we went 35 more
11 years, I guess.

12 Q. Okay. So you expected it to go on for
13 another 35 years?

14 A. Well, you never know. They may sell their
15 interest or they may re-parcel and sell a portion of it.
16 There is going to be so many different things happen in
17 the next 35 years, that you can't even predict all the
18 things that can happen.

19 Q. But at the time of the signing of the
20 commission letter agreement, did you have any idea or have
21 any expectation that it would be just a one time deal?

22 A. The overall picture, just the one time deal?

23 Q. No. I'm referring to the initial purchase,
24 the initial receipt of commissions.

25 A. The initial what?

1 Q. Receipt of commissions. You didn't receive
2 one commission, you received multiple commissions?

3 A. Oh, okay. No. Right. It would go over a
4 period of time.

5 Q. Did you have an understanding of or an
6 expectation or a contemplation that Pardee's relationship
7 with Coyote Springs would become more involved?

8 A. On down the road?

9 Q. Uh-huh.

10 A. Yes.

11 Q. And to the extent there was more land
12 purchased for which you would be entitled a commission, you
13 would have a continued ongoing interest in that
14 relationship, right?

15 A. Right. I would have to, right.

16 MS. LUNDVALL: Your Honor, I'm going to
17 object to that. It would be subject to the commission
18 agreement based on his --

19 THE COURT: I think that was the basis for
20 the question anyway. He's made it very clear that the
21 ongoing relationship with Pardee was because of his
22 commission agreement, and then you said who knows what
23 will happen with the land. But it just tied to the
24 commission agreement. That's my understanding, correct?

25 THE WITNESS: Yes.

1 THE COURT: All right.

2 MS. LUNDVALL: Thank you.

3 THE COURT: You're welcome.

4 BY MR. J.M. JIMMERSON:

5 Q. As part of that commission agreement, you
6 contract to receive certain information in addition to
7 commissions; is that right?

8 A. Yes. Right.

9 Q. Is that one of the reasons -- or, I'm sorry.
10 Strike that, your Honor.

11 When you contracted to receive information
12 specifically to be reasonably informed as to all matters
13 related to the amount and due dates of your commissions,
14 did you expect that you would be required to go to the
15 public recorders office, the assessors office to get that
16 information?

17 A. This was the whole point that I was trying to
18 make when the counsel was up there, and you said I would
19 be cross-examined. This is the whole point I was trying
20 to make. This whole thing is I'm the private eye. I have
21 to go out and complain to the title. Complain here.
22 Complain to get my information. It shouldn't be that way.
23 You know how simple it is.

24 MS. LUNDVALL: I'm going to as far as object
25 to what he thinks is simple for Pardee. He has no idea of

1 Pardee's office. I have heard this repeatedly. I think
2 it's inappropriate for him to continue to do so.

3 MR. J.M. JIMMERSON: He should be able to.

4 THE COURT: Here's how I'm taking it. He's
5 taking it based on his prior experience. I also have the
6 testimony that he's never been involved. And I understand
7 all that in this type of an agreement.

8 So I understand, Mr. Wolfram, is your
9 testimony all you have is your prior experience, so I
10 understand that is the foundation for his testimony. I
11 will make that clear. I understand that, okay.

12 THE WITNESS: May I answer the question?

13 THE COURT: You may answer the question, and
14 will you answer mine? You're doing this based on your
15 prior experience, you had never been involved in this
16 type?

17 THE WITNESS: Yeah. Well, yeah. My prior
18 experience and different commission letters and that is my
19 prior experience, but you know how easy it would be for
20 me. It says reasonable information or I know when it gets
21 into the option property according to the option property
22 it comes down to reasonable information. You talk to
23 somebody and they say, hey, Jim, we're going to send you
24 an e-mail. We're taking down 150 acres, we're going to
25 give you parcel number, what have you. And a few of the

1 information goes into the title company, so you have it
2 all. You can pick it up down there at the title company.
3 It would take them just a few minutes to punch that into
4 the computer and come out with something that I can
5 understand.

6 MS. LUNDVALL: Your Honor, once again --

7 THE COURT: I understand. You don't really
8 have a foundation to know how Pardee set it up. Based on
9 your experience, I'll take the answer based on his --

10 MS. LUNDVALL: Thank you, your Honor.

11 THE WITNESS: That's reasonable information.

12 THE COURT: I get the reasonably informed. I
13 get the key words.

14 THE WITNESS: I'm driving you crazy probably,
15 but the truth of the matter is I have to go on what I
16 know.

17 BY MR. J.M. JIMMERSON:

18 Q. Let's talk about what you know, Mr. Wolfram.

19 Do you know if Pardee has maps of the land
20 they purchased from Coyote Springs?

21 A. They do.

22 Q. Do you know if --

23 MS. LUNDVALL: How do you know? Hold on.
24 From the standpoint now I need a foundation. How does he
25 know that?

1 THE COURT: That was my next question.

2 THE WITNESS: Because I saw designations in
3 the 7, 6, and 5. There is designations in there.

4 THE COURT: In the amendments.

5 MR. J.M. JIMMERSON: May I?

6 THE COURT: You want your witness back?

7 MR. J.M. JIMMERSON: I would love to conduct
8 an examination.

9 THE COURT: Why don't you get your witness
10 back. And I know you don't want to hear this, but you
11 have to answer the questions your counsel asks. So I know
12 you want to get things done.

13 THE WITNESS: I was talking to her.

14 THE COURT: I know and that doesn't work very
15 well. As I said before, your counsel will ask questions.

16 THE WITNESS: Do you want your witness back?

17 THE COURT: Yes. He deserves to get his
18 witness back. The Court would like that. So listen to
19 his questions.

20 BY MR. J.M. JIMMERSON:

21 Q. Mr. Wolfram?

22 A. Yes.

23 Q. Have you seen the maps?

24 A. I have.

25 Q. That Pardee has?

1 A. I have.

2 Q. Where have you seen those maps?

3 A. I have seen it in the amendments that I
4 didn't get after the restated option agreement. I have
5 seen in amendment 7, I think in amendment 6 and amendment
6 five after the restated option agreement. I have seen the
7 designations there.

8 Q. Okay. So you -- do you know if Pardee has
9 information concerning the designations of the land that
10 they have purchased?

11 A. Well, they certainly had to have it or they
12 wouldn't have put it in the amount.

13 Q. Do you know if they put them in maps, in map
14 form?

15 A. Well, I haven't seen their overall picture,
16 but I -- any developer that is developing a project --

17 MS. LUNDVALL: Your Honor --

18 THE COURT: The answer is you don't have the
19 foundation so...

20 BY MR. J.M. JIMMERSON:

21 Q. I'll ask a new question. Have you seen maps
22 concerning designation information?

23 A. I have.

24 Q. From Pardee?

25 A. I have.

1 Q. Are those the same maps you're referring to
2 earlier from the amendments?

3 A. Yes.

4 Q. Okay. Mr. Wolfram, were you furnished at any
5 point prior to this litigation a copy of those maps?

6 A. No.

7 Q. Were you furnished a copy of any map from
8 Pardee containing designation information?

9 A. Not containing designation information.

10 Q. Okay.

11 A. And that's important to me, James.

12 Q. Why is it important to you, Mr. Wolfram?

13 A. It's important to me because I know how -- I
14 know this purchased property I don't get paid on the
15 designations. But it's still important for me to track.
16 And you get outside of the like amendment 7, you get
17 outside of the area, and then I only get paid on single
18 family residents property.

19 Q. I want to understand this, Mr. Wolfram. Are
20 you entitled to payment for any commercial property sold?

21 A. No.

22 Q. Are you entitled to payment for any --

23 MS. LUNDVALL: This has now been asked and
24 answered how many times.

25 MR. J.M. JIMMERSON: Your Honor, I have not

1 asked that question on redirect.

2 MS. LUNDVALL: It's been established in this
3 trial, so it's been asked and answered.

4 THE COURT: You're doing it as a foundation,
5 correct?

6 MR. J.M. JIMMERSON: Yes. Exactly, your
7 Honor. It's going to be two more sentences.

8 THE COURT: I'll go ahead and allow it and
9 overrule it. Get to it.

10 BY MR. J.M. JIMMERSON:

11 Q. Are you allowed to get commission for the
12 sale of multifamily property?

13 A. No.

14 Q. Okay. So to the extent the land is
15 designated for those uses, you could expect no commission?

16 A. Absolutely.

17 Q. Okay. On the flip side, for land not
18 designated commercial, not designated multifamily, and
19 designated production residential, you would be entitled to
20 a commission; is that right?

21 A. I would.

22 Q. Okay. And were you given, once again, any
23 maps reflecting the location of that production residential
24 designated property?

25 A. No.

1 Q. In Coyote Springs?

2 A. No. That's what I -- okay. That's what I
3 needed.

4 THE COURT: Okay. You answered.

5 MR. J.M. JIMMERSON: Your Honor, can I take a
6 brief moment?

7 THE COURT: Absolutely.

8 MR. J.M. JIMMERSON: I pass the witness.

9 MS. LUNDVALL: Very briefly, your Honor.

10 THE COURT: Yes. We're limiting it to what
11 we just did, right?

12

13 RECROSS-EXAMINATION

14 BY MS. LUNDVALL:

15 Q. Absolutely. All right.

16 Mr. Wolfram, what I want to do is to take
17 you back to your commission agreement. We opened up to
18 have tab -- Exhibit 11 or Exhibit L for me.

19 A. Exhibit what?

20 Q. L.

21 THE COURT: L as in Larry. The commission
22 agreement.

23 THE WITNESS: Oh, okay. There we go. All
24 right.

25 BY MS. LUNDVALL:

1 Q. All right. What I want you to do is turn to
2 page two of that exhibit. Okay? I want to focus
3 specifically upon the language that was contracted for
4 between yourself and Pardee?

5 A. All right.

6 Q. This very last sentence says that you're
7 going to be -- shall be kept reasonably informed as to all
8 matters relating to the amount and due date of your
9 commissions.

10 Did I read that accurately?

11 A. Yes.

12 Q. And you have acknowledged that you're not
13 entitled to commission on multifamily?

14 A. I am not.

15 Q. You're not entitled to a commission on the
16 commercial land?

17 A. I am not.

18 Q. Or the golf course land?

19 A. I am not.

20 Q. Or the custom lot land?

21 A. You mean the custom lot that we discussed
22 here, yes. I am not.

23 Q. All right.

24 A. Or I don't think I am. The Judge is going to
25 make a decision on that, but I really don't think I am.

1 Q. Okay. So of those lands, there is no amount
2 or due date of a commission that is due to you, correct?

3 A. Not on those lands.

4 Q. All right.

5 A. But --

6 Q. Hold on. I have another question for you,
7 please. What I want you to do is turn to Exhibit 15.

8 A. Okay.

9 Q. This is the letter that Mr. Lash had sent to
10 you, correct?

11 A. It is.

12 Q. And this is the letter that contained the map
13 that was being discussed between you and Mr. Jimmerson?

14 A. Yes.

15 Q. I want you to go to the third paragraph on
16 page one.

17 A. Okay.

18 Q. All right. The very first sentence in that
19 third paragraph says the transaction was amended on March
20 28 of 2005 to reflect an adjusted acquisition price of \$84
21 million.

22 Did I read that correctly?

23 A. You read that correctly.

24 Q. And Mr. Lash then went on through the balance
25 of the letter and described to you how it is that they

1 spent that \$84 million?

2 A. He did.

3 Q. And you knew that that \$84 million was
4 supposed to be for purchase property, correct?

5 A. Yes.

6 Q. And you knew --

7 A. Well --

8 Q. You knew?

9 A. Now wait. Now wait. Now wait. I didn't
10 know. That wasn't to my understanding. That's how I got,
11 halfway got here in the first place. Some of that land
12 was outside of what the purchase property was that I was
13 originally talking about. And I wanted to know what it
14 was. Simple question. What is it? Just tell me why
15 we're outside of the purchase property area.

16 Q. All right. What I want to do, though, is to
17 limit you to the question that I asked. You knew that the
18 \$84 million was being spent by Pardee to acquire purchase
19 property, correct?

20 A. In their view of purchase property and I knew
21 that.

22 Q. All right. And Mr. Lash in this letter
23 identified to you how it is that the \$84 million was being
24 spent, correct?

25 A. It does.

1 Q. All right. The purchase property from your
2 review of the option agreement was supposed to be the
3 production residential property, correct?

4 A. Yes.

5 Q. And you knew that was for the single family
6 production detached residential property, that big long
7 name that we've been using?

8 A. Right.

9 Q. And that we've been shortening it to single
10 family residential, correct?

11 A. Right.

12 Q. All right. So you knew when you got this
13 letter that what Mr. Lash was describing to you that they
14 had spent the 84 million upon, correct?

15 A. If you look it shows on the map at the
16 bottom, the last takedown, takedown five. It comes out
17 and right at the bottom of that it says 83 million, almost
18 84 million. That's what it says.

19 But when you take that what it says in red
20 down in the last takedown and you take it over to my map,
21 you see that there is other land over and above that 84
22 million that was taken down in amendment 7. And what I'm
23 doing is trying to find out what that other land was I
24 wasn't paid for. And then I find out that it's been
25 subdivided. When I go to the county and res 5 is

1 definitely single family residence, they have the rest of
2 it drawn out in separate lots. Also, it may not have been
3 recorded that way, but res 5 was definitely recorded that
4 way.

5 Q. All right.

6 A. I don't know how they got --

7 Q. Mr. Wolfram, you're going far beyond the
8 question that I asked of you. But you knew that Mr. Lash's
9 letter was describing to you how they spent the \$84
10 million, correct?

11 A. Yes.

12 Q. And you knew that was for purchase property,
13 correct?

14 A. His view of purchase property.

15 Q. And you knew the purchase property was single
16 family residential land, correct?

17 A. Yes.

18 Q. All right. What I want you to do now, we're
19 going to go to a totally different topic based on what Mr.
20 Jimmerson asked of you.

21 I want you to turn to tab 12 and follow-up on
22 the questions that were posed to you by Mr. Jimmerson?

23 A. Okay. Hold on. I have tab 12.

24 Q. All right. He asked you to turn to Exhibit
25 B1.

1 A. On -- oh, B1 in the back, okay. Hold on.

2 All right.

3 Q. At Exhibit B1.

4 A. Did he ask me B1?

5 Q. He asked you questions on B1.

6 A. I thought it was B2.

7 Q. He asked you questions on B1. All right. So
8 my question to you is I want you to pick up the map that
9 Jon Lash prepared which is found at Exhibit 15.

10 A. All right.

11 Q. Okay. The easiest way for you to be able to
12 do this is you see that finger, that funny looking finger
13 that is on B1?

14 A. At the top?

15 Q. Yeah.

16 A. Yeah.

17 Q. That funny looking finger is colored in on
18 Jon Lash's map, is it not?

19 A. It is.

20 Q. All right. This transaction is reflected on
21 Mr. Lash's map, is it not?

22 A. Yes.

23 Q. All right. Now I want you to turn back then
24 to while you're at it tab 12.

25 A. I see it. Comes off the bottom of the

1 finger.

2 Q. All right. Tab 12. We go to B6.

3 A. Wait a minute. Tab 12 I thought we were on
4 Jon's map on 15.

5 THE COURT: She was having you compare.

6 THE WITNESS: Fifteen or twelve?

7 THE COURT: You need to redo it.

8 BY MS. LUNDVALL:

9 Q. All right. So what I want you to do then is
10 to -- why don't you take the map --

11 A. You can just tell me again.

12 Q. All right. Take a look up here. Turn his
13 head around. This is Jon Lash's map. See that funny
14 looking finger, that funny looking finger that appears as
15 far as on Exhibit B1, that is found at tab 12, correct?

16 A. Correct.

17 Q. All right. So that land transaction is
18 reflected then on the map that Mr. Lash prepared for you,
19 is it not?

20 A. Yes.

21 Q. All right. Now I want you to turn to Exhibit
22 B6 that is found at tab 12.

23 A. All right. Okay. I got it.

24 Q. All right. At B6 -- you were here during the
25 testimony of Mr. Whittemore, correct?

1 A. Yes, I was.

2 Q. And he described B6 as property that Pardee
3 had acquired pursuant to the multifamily agreement,
4 correct?

5 A. Yeah. It wasn't part of the -- oh, okay.
6 Harvey --

7 Q. Hold on. Do you recall his testimony in that
8 regard?

9 A. I recall his testimony saying it was an adult
10 -- I mean multifamily for the whole thing is what I
11 remember him saying.

12 Q. It was multifamily land, correct?

13 A. The whole thing.

14 Q. And Pardee had acquired that land pursuant to
15 the multifamily agreement, correct?

16 A. Yes.

17 Q. And you acknowledged that you are not
18 entitled to commissions on multifamily land transactions,
19 correct?

20 A. Correct. But if the designation changes, I
21 should be entitled to it.

22 Q. Now, what I want to you do -- okay. That's
23 your testimony; is that right?

24 A. If anything is single family residence is my
25 testimony.

1 Q. Hold on. What I want you to do -- you said
2 if it changes, then I'm entitled to a commission?

3 A. If it changes to single family residence like
4 res 5, I should be entitled to that single family
5 residence.

6 Q. You show me where in your commission
7 agreement it says that?

8 A. It says in my commission agreement single
9 family residence.

10 Q. All right. You tell me where in your
11 commission agreement that it says that you are entitled to
12 any changes that Pardee make at any point in the future?

13 A. Are you telling me that over 35 years there
14 will be so many changes in this thing in 35 years. It
15 says right there that I am single family residents. And
16 the option it says single family residents, and I
17 understand that. This is single family residents. I
18 don't even know how we got out of this. This is it.
19 Ready to go. And they even have -- I believe they even
20 have pads on it.

21 Q. Mr. Wolfram, is there anything as far as
22 within paragraph one, paragraph two, or paragraph three
23 that says Pardee acquires multifamily land and pays a
24 premium for that land --

25 A. No.

1 Q. -- but later changes it, that somehow that
2 you're entitled to a commission? There's nothing in here?

3 A. Nothing. There is nothing on there that says
4 that.

5 Q. All right. That's my question. Stop.
6 That's my question.

7 A. Okay. Okay. Okay.

8 Q. Now, I believe this is my last question to
9 you, Mr. Wolfram, based upon the redirect examination. I
10 guess I have two more. I wrote down a quote. And your
11 quote was, "it would be so easy if someone told me what I
12 was not entitled to."

13 A. Okay.

14 MR. J.M. JIMMERSON: I'm going to object.

15 BY MS. LUNDVALL:

16 Q. Is that an accurate quote that you testified
17 to?

18 A. I know what I'm not entitled to. I
19 referenced it here. I don't know how many times she
20 always says I'm being redundant. How many times did I
21 reference that I don't get paid for commercial. I don't
22 get paid for multifamily. I understand that I don't.

23 Q. And we looked at Exhibit WW this morning
24 which was the letter from Mr. Curtis. And at the very
25 minimum, Mr. Curtis told you what you weren't entitled to,

1 correct?

2 A. In the letter he stated what I wasn't
3 entitled to.

4 Q. All right. Now, let's go as far as to the
5 issue concerning calculations of acreage, please.

6 A. I'm sorry. Speak up again a little bit.

7 Q. Calculations of acreage.

8 A. Okay.

9 Q. All right. All the way back in October when
10 I had the opportunity to ask you some questions --

11 A. Oh, okay.

12 Q. All right. And I want to see if I can
13 refresh your recollection a little bit. And I'll ask you a
14 couple more. You identified that your theory of the case
15 was that parcel one was purchased property, correct?

16 A. Yes.

17 Q. And that you believed that Pardee had
18 purchased option property because certain of the deeds that
19 had been supplied by the title company, and when you map
20 those you could see that existed outside the boundary of
21 parcel one, correct?

22 A. That was part of it. Actually, I went to the
23 deeds, but I don't always work off deeds. It was better
24 to go to the assessors office and find out what was
25 outside of parcel one.

1 I mean, I don't know anybody that would go to
2 the deeds and try to pull up all this information here
3 when you can go and get the parcel number and get the
4 number acreage and see exactly where the land is laying.
5 That's the way we do it.

6 Q. And you identified back in October that you
7 had created an overlay of the lands that Pardee had
8 acquired to compare against parcel number one.

9 Do you recall that?

10 A. Yeah. I don't recall it, but I probably did
11 that. Are you talking about the depo?

12 Q. No. I'm talking about your testimony back in
13 October.

14 A. Oh, okay. Okay.

15 Q. All right. Remember the transparency overlay
16 that had been created?

17 A. No, I don't.

18 Q. It was used during Mr. Whittemore's
19 testimony.

20 Do you recall any of that?

21 MR. J.M. JIMMERSON: Objection. Lack of
22 foundation.

23 THE COURT: She's just asking if he recalls.
24 If he doesn't recall, we have no foundation.

25 THE WITNESS: Which don't recall. See, you

1 guys --

2 BY MS. LUNDVALL:

3 Q. Let me ask you this...

4 THE COURT: She's going to ask. If you don't
5 recall, she has to ask another question.

6 BY MS. LUNDVALL:

7 Q. Do you know what the boundaries of number one
8 is, correct?

9 A. Yes.

10 Q. And you know the boundaries of what Pardee
11 acquired with the 84 million?

12 A. Right.

13 Q. And you could create -- you could create that
14 type of overlay, right?

15 A. Yes.

16 Q. And you could see how much land then exists
17 outside the bound of parcel one?

18 A. Very close, yes.

19 Q. All right. You indicated that you personally
20 don't have the skill set to calculate that acreage; is that
21 right?

22 A. It isn't a skill set. When I'm sitting here
23 thinking without sitting down, I can see the part of that
24 property might be a little dubious as to where that line
25 was. There wasn't a line on anything that I had. There

1 wasn't any line. So I had to try to figure out if it was
2 in or out. Some of it might be in a little bit. Some of
3 them might be out a little bit on either the previous red
4 or in the green area.

5 Q. But you said in response to Mr. Jimmerson's
6 questions that you don't have the math ability to calculate
7 boundaries if they were rounded.

8 Do you recall that?

9 A. I recall what he said, but you're blowing
10 this way out of proportion here.

11 Q. But you know there are individuals that do
12 have that skill set, correct?

13 A. And I can calculate the acreage on those maps
14 myself.

15 Q. All right. Thank you, Mr. Wolfram. Okay.
16 One last question and it concerns Exhibit Z. Would you pull
17 up Exhibit Z for me, please?

18 A. Exhibit what?

19 Q. Z as in zebra.

20 A. Okay. All right.

21 Q. All right. This is the letter that you
22 wrote, correct?

23 A. It is.

24 Q. I asked you some questions concerning this
25 letter.

1 Do you recall that?

2 A. Yes.

3 Q. And I asked you whether or not if it was, you
4 believed it was reasonable for Mr. Lash to interpret your
5 letter as asking for more commissions.

6 Do you recall that?

7 A. I recall what you said.

8 Q. And you believed it was reasonable for Mr.
9 Lash to believe you were asking for more commissions,
10 correct?

11 A. About the land for more commissions, I was
12 wanting to know where the land was, if I was entitled to
13 it. It wouldn't take very much to figure out whether I
14 was or whether I wasn't.

15 Q. Let's talk about the land that you were
16 making reference to, and I want to direct your attention to
17 the letter you drafted.

18 A. Okay.

19 Q. That letter is in response to Mr. Lash's
20 letter dated August 23rd of 2007, correct?

21 A. Which one are you?

22 Q. It's exhibit --

23 A. I know the map. I mean, I know the letter.

24 Q. All I need to know is whether or not that if
25 you were responding then to Mr. Lash's letter that is found

1 at Exhibit W?

2 A. Yes.

3 Q. And in Exhibit W is the letter that where Mr.
4 Lash says we're buying some other properties. You're not
5 entitled to commissions on those other properties, correct?

6 A. No, not correct. I'm taking his word for it.
7 And his word isn't necessarily right.

8 Q. Well, let's put it in a time context. Okay.
9 You have got the benefit of hindsight right now, but you
10 didn't communicate the benefit of hindsight. And I want to
11 as far as be able to take a look at the words that you
12 communicated at this time.

13 A. Go ahead.

14 Q. All right. At Exhibit W is Mr. Lash's
15 letter, page two of Mr. Lash's is letter.

16 A. Okay.

17 Q. Right up underneath a portion where he
18 identifies then how the overpayment is going to be taken
19 into account.

20 A. Yes.

21 Q. He talks about how recently Pardee entered
22 into separate agreements under different values per acre in
23 terms in the original deal to purchase this additional
24 acreage?

25 A. Yes.

1 Q. He also talks about the commercial and the
2 golf related acreage, correct?

3 A. Yes.

4 Q. And he said Pardee may ultimately purchase
5 the right to this acreage in the future as well?

6 A. Yes.

7 Q. And then he goes onto say as land is
8 purchased under these other agreements, you will not be
9 entitled to any commissions related to those agreements,
10 correct?

11 A. That's what he states.

12 Q. Right. And we know now that's a true
13 statement?

14 A. That's a true statement.

15 Q. All right. Let's turn to your letter of
16 Exhibit Z. Okay. Your letter of Exhibit Z is responding to
17 Mr. Lash's letter, is it not?

18 A. It is.

19 Q. You make express reference to the date of his
20 letter, correct?

21 A. Yes.

22 Q. You state in the very first paragraph. You
23 even repeat language about how Mr. Lash informed you that
24 as land is purchased under these agreements you will not be
25 entitled to any commissions related to these other

1 agreements.

2 Do you see where I'm at?

3 A. I am, but how I do know --

4 Q. And, however, we're not clear how you came to
5 this understanding.

6 Did I read that accurately?

7 A. You read it accurately because I wasn't --

8 Q. You're next paragraph, let's follow along.
9 You set forth your argument for why you thought that you
10 were entitled to commissions on those other land?

11 A. Yes.

12 Q. Did you not?

13 A. Yes.

14 Q. All right. And so you were telling Mr. Lash
15 that you were entitled to additional commissions on these
16 other transactions?

17 A. I was entitled to them, but I figured we
18 would discuss it to see what it was. I mean, how else can
19 you do that?

20 Q. Well --

21 A. You have to have a discussion on what it is.

22 Q. Well, when you were going to discuss it with
23 Mr. Lash, were you going to try to shake him down for
24 additional commissions?

25 A. Oh, shake him down, ma'am?

1 MR. J.M. JIMMERSON: Objection, your Honor.
2 It's argumentative.

3 THE COURT: Let's please stop. It's okay.
4 Stop. I'm going to strike the question. Could you just
5 rephrase it? What was the purpose?

6 THE WITNESS: I don't have a blemish on my
7 whole real estate career.

8 THE COURT: Stop.

9 BY MS. LUNDVALL:

10 Q. What I want to do, Mr. Wolfram, is clarify
11 one point. Your letter to Mr. Lash, you believe it was
12 reasonable for Mr. Lash to interpret that as you asking for
13 more commissions?

14 A. It was for discussion.

15 MR. J.M. JIMMERSON: Asked and answered.

16 THE WITNESS: If he didn't think I was
17 entitled --

18 THE COURT: He's answering the same way he
19 did before so...

20 BY MS. LUNDVALL:

21 Q. Well, he sent you a letter --

22 THE COURT: We need to move on.

23 BY MS. LUNDVALL:

24 Q. He sent you a letter in response and said you
25 were not, correct?

1 A. He sent me a letter that says I was not. But
2 how do I know what those lands are? How? If you're
3 expecting me to sit there in the dark and not understand.
4 This isn't hard to clarify if people get together.

5 MS. LUNDVALL: Your Honor, I'm going to pass
6 the witness. Thank you.

7 THE COURT: All right. I think we're good.

8 MR. J.M. JIMMERSON: Is it time for lunch?

9 THE COURT: Yes, it is.

10 MS. LUNDVALL: Well, what I would like to do
11 is confirm that they have no further questions of Mr.
12 Wolfram.

13 MR. J.M. JIMMERSON: I don't believe we're
14 entitled to.

15 THE COURT: They weren't going to get another
16 shot. They were done. They weren't going to.

17 MS. LUNDVALL: Thank you, your Honor.

18 THE COURT: Okay. I don't mean that nasty,
19 but I know you were complete.

20 THE WITNESS: Sorry for the outbreak.

21 THE COURT: Please. I take no offense, Mr.
22 Wolfram, I take no offense. Both parties I know I have a
23 position, and I understand that. Okay?

24 THE WITNESS: Okay.

25 THE COURT: You don't need to apologize. I

1 appreciate you trying the best you can to cooperate on the
2 cross. Let's take a lunch break. Mr. Lash is here,
3 right?

4 MS. LUNDVALL: Uh-huh. Back at 1:00?

5 THE COURT: Welcome back. So we'll be ready
6 to go with you. How long do we need for lunch?

7 MS. LUNDVALL: Ten to 1:00, hour and five
8 minutes?

9 THE COURT: That would be fine. Is that okay
10 with Mr. Lash's schedule?

11 MS. LUNDVALL: Thank you, your Honor.

12 THE COURT: 1:00 o'clock would be fine. I'm
13 trying to get --

14 MS. LUNDVALL: Can we make it 1:00 o'clock?

15 THE COURT: 1:00 o'clock would help The Court
16 out. I have some other things I'm trying to do at the
17 lunch hour. See you back here at 1:00 o'clock.

18 (Lunch break.)

19 THE COURT: Good afternoon, Counsel. I found
20 my notes from Mr. Lash. You're still on direct exam; is
21 that correct?

22 MS. LUNDVALL: From a technical standpoint.
23 Yeah. The direct exam had been -- he had been called in
24 the case in chief by Mr. Jimmerson. And so technically
25 I'm on cross-examine, but I recognize my duty.

1 THE COURT: That's why my notes look like
2 direct. Okay. I went through my notes. All right. So
3 then you will continue. Perfect. Okay. Mr. Lash.

4 THE CLERK: Do you want me to swear him in?

5 THE COURT: Yes. Because it's been a while.

6 THE CLERK: Please stand and raise your right
7 hand.

8 Whereupon--

9 JON LASH,
10 was called as a witness, and having been first duly sworn,
11 was examined and testified as follows:

12 THE CLERK: For the record, please state and
13 spell your first and last name.

14 THE WITNESS: Jon Lash, J-o-n, L-a-s-h.

15 THE COURT: Thank you. Welcome back.

16 THE WITNESS: Thank you.

17

18 CROSS-EXAMINATION

19 BY MS. LUNDVALL:

20 Q. Mr. Lash, I'm going to try very hard not to
21 re-plow old ground with you. And I'm going to try as far
22 as to ask you questions in new topic areas for which we
23 have not had an opportunity to chat.

24 So the first thing what I want to do is, I
25 want to establish a chronology of really what led to this

1 dispute, what led to this litigation, if I could, please?

2 A. Right.

3 Q. All right. And in March of 2005, Pardee and
4 CSI had signed the amended and restated option agreement,
5 correct?

6 A. Correct.

7 Q. And then after that point in time there was
8 an initial closing and, therefore, the very first
9 commission payment would have been made to Mr. Wilkes and
10 Mr. Wolfram, correct?

11 A. Yes. Correct.

12 Q. And then thereafter there were a series then
13 of commission payments that were being made to Mr. Wolfram
14 and Mr. Wilkes; is that right?

15 A. Correct.

16 Q. Now, there is a letter that we have seen in
17 this trial that bears a date of August of 2007 when it
18 identifies that Mr. Wolfram and Mr. Wilkes had been
19 overpaid that you drafted.

20 Do you recall that letter?

21 A. Yes.

22 Q. What I want to do is to ask you during the
23 timeframe between 2005 when they first began receiving
24 commission payments and your letter then of August of 2007,
25 did you receive any complaints from either Mr. Wolfram or

1 Mr. Wilkes about any of their commission structure?

2 A. No.

3 Q. Did you receive any complaints from them
4 saying they were not given enough information about their
5 commissions?

6 A. No.

7 Q. Did you receive any requests from them saying
8 we need some information from you, Mr. Lash, please give it
9 to us?

10 A. I don't believe so.

11 Q. All right. What I want to do then is to take
12 you to the timeframe then in August of 2007 when you sent
13 the letter. That's Exhibit W. Can I ask you to turn to
14 there so we can be on the same page?

15 A. Tell me where in the -- we're in the
16 defendant's trial?

17 Q. In the defendant's trial exhibits. And what
18 I would like for you to do is to turn to Exhibit W, please.

19 A. All right.

20 Q. Now, at Exhibit W is your letter, correct?

21 A. Correct.

22 Q. That letter as we have seen frequently in
23 this trial has two parts to it. Number one, you're
24 informing them how the overpayment was going to be dealt
25 with, correct?

1 A. Correct.

2 Q. And then also on the second page, you also
3 inform them that there are other transactions that Pardee
4 is entering into with CSI.

5 Do you see where I'm at?

6 A. Hold on.

7 Q. I'm now on page two on the last --

8 A. Yes. It says recently Pardee entered into
9 separate agreements under different value per acre.

10 Q. There we go. And you also go on to let them
11 know they are not entitled to commission on those other
12 transactions, correct?

13 A. Correct.

14 Q. All right. And if I move through these
15 exhibits too quickly, let me know. Since we've dealt with
16 them so much, we have somewhat of an idea what is contained
17 in there. But if I need to stop and slow down, please let
18 me know. All right?

19 A. I will.

20 Q. Now, after you sent this letter to Mr.
21 Wolfram and Mr. Wilkes, you got a letter back from them,
22 did you not?

23 A. Yes.

24 Q. And let's turn to Exhibit Z. That is found
25 within the exhibit binders there. This is the letter that

1 you got back from Mr. Wolfram and Mr. Wilkes, correct?

2 A. Correct.

3 Q. They directly respond to your letter that was
4 sent in August of 2007.

5 Do you see that in the first line?

6 A. Yes.

7 Q. And they quarrel with your understanding
8 regarding the fact they are not entitled to commissions on
9 the other agreements that you had made them aware of, do
10 they not?

11 A. Yes.

12 Q. In the second paragraph they set forth their
13 request to you or their argument to you as to why they
14 should be entitled to additional monies.

15 Do you see where I'm at?

16 A. Yes. I'm reading it.

17 Q. Feel free to spend as much time as you want
18 with it.

19 A. All right.

20 Q. And in that second paragraph there they are
21 setting forth their argument as to why they should be
22 entitled to additional monies, are they not?

23 A. Yes.

24 Q. Is that how you interpret their letter?

25 A. Yes.

1 Q. And is that the understanding that you took
2 away from their letter?

3 A. Yes.

4 Q. Now, we've established then through this
5 trial that they then began to make certain demands and
6 certain requests for information upon the title company.
7 What I want to do is go immediately to the letters that
8 were being sent to Pardee and to ask you a few questions
9 concerning those letters.

10 Can I begin by getting you to pick up the
11 plaintiff's books and turning to Exhibit 24, please?

12 A. All right.

13 Q. All right. That Exhibit 24 which I have
14 misplaced on mine, but let me walk a little closer. This
15 is the first letter you had received or the Jim Stringer
16 had received then from Mr. Jimmerson in April of 2009. Is
17 that -- do you recall that?

18 A. I recall the letter. I'm not sure it was the
19 first letter. I did receive this letter.

20 Q. So you don't know if it's the first letter or
21 not, but you do recall receiving this letter?

22 A. Yes.

23 Q. And Mr. Stringer, did he bring it to your
24 attention?

25 A. Yes.

1 Q. And when Mr. Stringer brought it to your
2 attention and the request for information were made in
3 there, what is it that you understood then Mr. Jimmerson to
4 be asking for?

5 A. I thought every time we got these letters
6 there was -- it was all about not getting paid properly
7 and basically wanting more money.

8 Q. And did you understand then that these
9 letters were asking for information and more money then
10 from Pardee?

11 A. Yes.

12 Q. That was the context in which that you were
13 reading these communications; is that right?

14 A. Correct.

15 Q. All right. Turning your attention then to
16 Exhibit 19. It's another letter that was sent.

17 A. It's dated May 19?

18 Q. It's dated May 19 of 2009.

19 A. Also to Mr. Stringer.

20 Q. Also to Mr. Stringer. Did Mr. Stringer then
21 bring this to your attention as well?

22 A. Yes.

23 Q. And did you have conversation with Mr.
24 Stringer and have the opportunity to read this letter and
25 to discuss that with Mr. Stringer?

1 A. Yes.

2 Q. And, once again, what was it that you
3 understood then the plaintiffs to be asking for from Pardee
4 at this time?

5 A. Additional information is primarily what the
6 letter was asking for.

7 Q. And did you understand that additional
8 information then to be related to the other transactions,
9 the other additional monies that they had been asking for?

10 A. Yes.

11 Q. All right. Turning your attention then to
12 Exhibit 18. Now, Exhibit 18 is another letter that this
13 time it is directed to Mr. Curtis at Pardee. Did Mr.
14 Curtis share this with you, Mr. Lash?

15 A. Yes.

16 Q. Once again, can you summarize what it is you
17 understood being requested of Pardee from the plaintiffs?

18 A. There again, that they still didn't have the
19 information they needed to understand the -- if they had
20 been paid fairly under the single family transaction.

21 Q. And did you understand them to be asking for
22 all documents under all transactions that Pardee had
23 entered into?

24 A. Yes.

25 Q. And all transactions would have included the

1 multifamily, the custom lots, the commercial properties,
2 and the golf courses, correct?

3 A. Correct.

4 Q. And did you believe they were entitled to
5 those documents?

6 A. No. As I've already testified, they are not
7 a party to those agreements, and we had confidentiality
8 agreements with Mr. Wolfram where we could not give them
9 the documents.

10 Q. And in addition, did you believe they were
11 entitled to commissions on these other agreements?

12 A. No.

13 Q. So when they were making a request for
14 commissions under these other agreements, did you believe
15 they were entitled to information related to those other
16 agreements?

17 A. No. They are not.

18 Q. Now, you sent a response, though, back to
19 these communications containing a map in an explanation
20 then that is found at Exhibit 15. Can I get you to turn to
21 Exhibit 15, please?

22 A. All right. It's dated November 24.

23 Q. November, yeah. It's November 24 of 2009.

24 Now, can you explain to The Court then how it
25 was that you and your staff then went about putting this

1 letter together to be able to send back to Mr. Wolfram?

2 A. We had our area engineers here in Las Vegas
3 work with our person in Las Vegas. His name is Jim Rizzi
4 who handles our land development. And they basically
5 prepared a map that would show which property we purchased
6 for the 84 million. And then we tried in the narrative to
7 summarize takedown by takedown how much was paid. I think
8 that's on page two of the exhibit. It shows the closing
9 date. There was a total of five takedowns and the
10 purchase price.

11 Q. Now, Mr. Lash, you bring up a good point.
12 Let me ask you this question. You work for Pardee Homes,
13 correct?

14 A. Yes.

15 Q. And your offices are located in California;
16 is that right?

17 A. Correct.

18 Q. At the time they were I think actually in LA;
19 is that right?

20 A. They were in West LA, yes.

21 Q. In West LA. They are now in El Segundo?

22 A. Yes.

23 Q. And your employment relationship then is
24 directly with Pardee Homes, correct?

25 A. Yes.

1 Q. Pardee Homes of Nevada is a separate legal
2 entity, is it not?

3 A. Correct.

4 Q. And the gentleman that you're making
5 reference to, Jim Rizzi, is he located here in Las Vegas?

6 A. He is. And he works for Pardee Homes of
7 Nevada.

8 Q. All right. And would you explain to The
9 Court then what Mr. Rizzi's role is for Pardee Homes of
10 Nevada?

11 A. He's basically the project manager for Coyote
12 Springs.

13 Q. Now, does Pardee Homes of Nevada also have a
14 president?

15 A. We do. It's Kliff Andrews.

16 Q. Now, between Mr. Rizzi and Mr. Andrews, were
17 they the individuals after the transaction was entered into
18 with CSI responsible then for implementing that agreement?

19 A. Yes. Primarily the day-to-day stuff is
20 handled by our Las Vegas office.

21 Q. And so --

22 A. Oversaw by Kliff who is the division
23 president. But relies heavily on Jim Rizzi for the
24 technical...

25 THE COURT: Information?

1 THE WITNESS: Information.

2 BY MS. LUNDVALL:

3 Q. So when you tried to create then the map that
4 identified all of the lands that had been purchased with
5 the \$84 million which was the purchase property price, you
6 went to Mr. Rizzi then by which to do so; is that right?

7 A. Correct.

8 Q. Since your testimony here in October, have
9 you confirmed with Mr. Rizzi that your map is accurate?

10 A. I have.

11 Q. And Mr. Rizzi has identified that, in fact,
12 this map --

13 MR. J.J. JIMMERSON: Objection. Hearsay.

14 BY MS. LUNDVALL:

15 Q. Good point, well taken. What have you
16 learned as a result of that confirmation?

17 MR. J.J. JIMMERSON: Objection. Hearsay.

18 THE WITNESS: I've asked Jim to reconfirm the
19 map we sent in the letter is correct.

20 THE COURT: Let me rule. You're asking what
21 was your understanding?

22 MS. LUNDVALL: Yes.

23 THE COURT: Rephrase it what you learn, not
24 specifically what is your understanding, okay. Then I'm
25 going to overrule. Then you can ask that. Just can't

1 give a word for word what he said. What was your
2 understanding?

3 THE WITNESS: Since I was here in October, I
4 asked Jim to reconfirm the map we had attached to this
5 letter --

6 THE COURT: Okay.

7 THE WITNESS: -- was correct. And he's done
8 that.

9 BY MS. LUNDVALL:

10 Q. And he's confirmed that in fact it is
11 accurate; is that correct?

12 A. That's correct.

13 Q. These are the acquisitions that Pardee paid
14 with the 84 million in purchase property price, correct?

15 A. Correct.

16 Q. Now, and you communicate that in the very
17 first page of your letter, do you not, particularly page
18 one? Let's look at the third full paragraph. You see that
19 first line?

20 MR. J.J. JIMMERSON: What line are you
21 referring to, Counsel?

22 THE COURT: Fifteen.

23 THE WITNESS: First line of the third
24 paragraph?

25 BY MS. LUNDVALL:

1 Q. Yes sir.

2 A. Yeah. It says the transaction was amended
3 March 28, 2005 to reflect an adjusted acquisition price to
4 84 million.

5 Q. And you went on to explain in this letter
6 then how that 84 million was spent, correct?

7 A. Correct.

8 Q. And the \$84 million --

9 MR. J.J. JIMMERSON: Objection at this point
10 by ten minutes of leading questions. Even though it's
11 cross-examination, that is her witness. She's not
12 permitted under the rule of evidence to lead. I've let it
13 go, but at this point I would like to ask her to have some
14 testimony from Mr. Lash and not Ms. Lundvall.

15 THE COURT: He's objecting. Some of it is
16 leading. I think we're kind of a mix here. But if you
17 could avoid as much as you can. I do understand he's your
18 critical witness. I mean, not critical but a key witness.

19 MS. LUNDVALL: I'm just trying to do
20 foundation and trying to speed things along.

21 MR. J.J. JIMMERSON: We're far beyond
22 foundation.

23 THE COURT: Well, bringing in this new
24 information. So let's -- sustained. And let's just keep
25 moving. I understand we're trying to balance to get it

1 moving. I understand.

2 BY MS. LUNDVALL:

3 Q. All right. Mr. Lash, can you do just a brief
4 summary of what it was you were communicating then to Mr.
5 Wolfram in this letter?

6 A. Well, this is probably the third or fourth
7 letter in a series. And so we tried to be as detailed as
8 we could to hopefully explain what property we had
9 purchased for the 84 million. And so what we thought is
10 we would do a narrative that showed the closing dates, the
11 closing, and the amount, and then try to have a
12 corresponding map.

13 THE COURT: Do you call that a parcel map,
14 that the map you've attached, or is that not the right
15 language?

16 THE WITNESS: I believe these are individual
17 parcels.

18 THE COURT: Okay. I just want to make sure.
19 All right. Thank you.

20 BY MS. LUNDVALL:

21 Q. Let's see if we can clarify then. This was a
22 special map that was created for Mr. Wolfram, was it not?

23 A. Yes.

24 Q. This isn't just some map that Pardee easily
25 spit out of its computer; is that correct?

1 A. No. We went to an outside engineer and then
2 asked him to delineate on a map each of these takedowns
3 all in an effort to try to be as clear as we could as to
4 what we were doing.

5 Q. And this map, though, would reflect parcels
6 that had been acquired by Pardee, correct?

7 A. Yes.

8 Q. And if, in fact, that you -- if you had a
9 deed and then in the deed in the legal description then it
10 makes reference to which specific parcel maps, these
11 transactions could be reflected upon; is that right?

12 A. Yes.

13 Q. All right. Now, while we're on this
14 particular point, we've heard suggestion made in this
15 courtroom that these are hanging all over Pardee's walls
16 and it's real easy for Pardee by which to pull these things
17 together, and it was nothing for Pardee by which to gather
18 this information to be able to give it to Mr. Wolfram.

19 Is that accurate?

20 A. That's not. We actually hired an outside
21 engineer to put the map together specifically for Mr.
22 Wolfram and Mr. Wilkes. It doesn't serve much use. We
23 look at the overall property when we go to developer. So
24 understanding where the different takedowns are doesn't
25 really help us in what we're doing.

1 Q. All right. Now, my -- did Mr. Wolfram or Mr.
2 Wilkes after receipt of this information come back and say
3 to you, Jon, the only thing I'm trying to figure out is if
4 this other land is single family land or not? I know I'm
5 not entitled to commissions on the multifamily or the
6 commercial lands or the golf course, but all I'm trying to
7 do is find out about single family? Did they ever
8 communicate that to you before this litigation was filed?

9 A. No. They just kept saying they haven't
10 gotten all the information and that, you know, we want --
11 we own more land than we're showing and we're not being
12 truthful.

13 Q. Now, we've established up through Mr. Wolfram
14 that he then began going to the title company to get
15 information.

16 Can I get to you turn to tab ii, please. It
17 would be in the defendant's book, Mr. Lash.

18 A. Still having trouble finding it.

19 MS. LUNDVALL: May I approach, your Honor?

20 THE COURT: Yes. It's in defendants now.

21 THE WITNESS: I've got it now.

22 THE COURT: It's under tab ii.

23 THE WITNESS: All right.

24 BY MS. LUNDVALL:

25 Q. All right. At tab ii is a communication then

1 from Lisa Lawson who was with Pardee Homes, correct?

2 A. She still is with Pardee Homes.

3 Q. And she's communicating then to Frances
4 Butler who now is being known as Frances Dunlap because she
5 got married; is that right?

6 A. Yes.

7 Q. And is she accurate then in communicating
8 that it was okay by you to give Mr. Wolfram all of the
9 single family takedowns?

10 A. Absolutely.

11 Q. But you did not want him to have the
12 multifamily or the commercial transactions, correct?

13 A. Correct.

14 Q. And nor did you want him to have the
15 amendments that made reference to any of those
16 transactions, correct?

17 A. Correct.

18 Q. All right. Did you authorize then the title
19 company to give all of the single family information to Mr.
20 Wolfram at his request?

21 A. Yes.

22 Q. All right. Now we've taken a look at Exhibit
23 K. That in addition contains some deeds. I'm going to go
24 ask you a couple questions just generically concerning one
25 of the sample deeds found in Exhibit KK. Pull up page two

1 of that exhibit.

2 Now this is a sample deed that had been given
3 by the title company to Mr. Wolfram. In classic deed does
4 it identify who is the seller?

5 A. Yes.

6 Q. Who is the buyer?

7 A. Yes.

8 Q. Legal description then is going to identify
9 them, what the parcel number, the location, and the
10 physical property that is at issue?

11 A. Yes.

12 Q. Also, it would -- if you look on the stamp in
13 the upper corner then, you can also see the real property
14 tax that it was paid, the transfer tax?

15 A. Right.

16 Q. And you can calculate then what the value of
17 that transaction was by knowing that information; is that
18 right?

19 A. Correct.

20 Q. Escrow company information is up there?

21 A. Yes.

22 Q. And the title documents then as to what
23 document number that that is, right?

24 A. Correct.

25 Q. Now, after you authorized the title company

1 to give Mr. Wolfram all of the information concerning the
2 single family transaction, he still wasn't happy, and he
3 still was asking for more information, was he not?

4 A. Correct.

5 Q. Turn to Exhibit 20, please.

6 A. All right.

7 Q. Now, at Exhibit 20 is a letter that was sent
8 on May 17th of 2010 to yourself by Mr. Jimmerson; is that
9 right?

10 A. Correct.

11 Q. All right. Let me see if I can direct your
12 attention then to the quotation that he has in this letter.
13 See where it says pursuant to the parties' written
14 agreement in that first paragraph?

15 A. Yes.

16 Q. In what written agreement did you understand
17 him to be making reference when you read this letter?

18 A. The original or the reinstated purchase and
19 sale agreement for single family, multi or single family
20 residential land.

21 Q. Let me see if I can direct your attention,
22 because he's talking about the parties' written agreement,
23 and he's making reference then to Mr. Wolfram and Mr.
24 Wilkes.

25 Did you understand him to be referring to the

1 commission agreement there?

2 A. Yes.

3 Q. All right. So and if you take a look, he
4 claims that that language is found in the commission
5 agreement according to this letter. Is that how you
6 interpret that?

7 A. Yeah. He said Pardee shall notify you, each
8 of you all the time of the exercise options and number of
9 acres being closed upon.

10 Is that what you're referring to.

11 Q. Yeah.

12 A. Okay.

13 Q. And do you see the way it's structured, does
14 it look like he's quoting then from the commission
15 agreement?

16 A. Yes.

17 Q. All right. But that language isn't found
18 within the commission agreement, is it?

19 A. Correct.

20 Q. All right. And part of that letter then goes
21 on to demand documents dealing with all of Pardee's
22 purchases from Coyote Springs, correct?

23 A. Correct.

24 Q. And when you read this letter, what did you
25 understand him to mean by all of the purchases?

1 A. That would include the multifamily, the
2 custom lot, and the golf course transaction.

3 Q. And, once again, at no point in time did you
4 receive any communication from Mr. Wolfram?

5 MR. J.J. JIMMERSON: Objection, Judge. All
6 this is leading, every single question right down the
7 line. I object respectfully.

8 THE COURT: That is leading.

9 MS. LUNDVALL: Good point well taken.

10 THE COURT: Sustained. All of you can kind
11 of do a little more general questions.

12 BY MS. LUNDVALL:

13 Q. Before this letter or after this letter
14 before the litigation was filed, did you receive any
15 communication from Mr. Wolfram saying, hey, I recognize I'm
16 not entitled to commissions on all those other
17 transactions? Did he send you anything that remotely
18 related to that?

19 MR. J.J. JIMMERSON: Objection. The question
20 has been asked and answered, same question about ten
21 minutes ago.

22 MS. LUNDVALL: I've asked him about the
23 communication prior to this letter. I'm now asking him
24 about it prior or after this letter.

25 THE COURT: It's the same question. It's a

1 different timeframe. You're asking after May 17, 2010
2 letter, correct?

3 BY MS. LUNDVALL:

4 Q. Correct, your Honor.

5 A. Right. I don't I believe we ever verbally
6 communicated. It was just the letters back and forth.

7 Q. All right. And at this point in time, what
8 was your understanding as to Mr. Wolfram's demand that
9 started this whole series of information about the other
10 property transactions between Pardee and CSI?

11 A. I believe his position in the letters was he
12 wanted to be paid for everything that we had bought.

13 Q. All right. Now, we've now had a response and
14 that was sent by Mr. Curtis. That has been marked as
15 Exhibit WW. Can I get you to direct your attention. It's
16 a loose document that is found in the very back of the
17 binder that you now have in front of you, Jon.

18 A. This is the June 14 letter from to Mr.
19 Jimmerson.

20 Q. Yep. After you received the letter from Mr.
21 Jimmerson, did you ask Mr. Curtis then to send a response?

22 A. Yes.

23 Q. And does this appear to be the response that
24 Mr. Curtis sent?

25 A. Yes.

1 Q. When the lawsuit was filed by Mr. Wolfram and
2 by Mr. Wilkes, did you understand them to be asking for
3 money damages?

4 A. Yes.

5 Q. Now, I want to change topics, because I'm
6 going to go as far as into a different area. I want to
7 talk a little bit about the commission agreement, if I
8 could, please.

9 If you turn to Exhibit L just to have that in
10 front of you. Now, under at Exhibit L, did you believe
11 that Mr. Wolfram and Mr. Wilkes were entitled to double dip
12 on their commissions under i and ii versus iii?

13 And do you follow my question?

14 A. No.

15 Q. All right. If Pardee had purchased \$84
16 million in purchased property and they had paid them
17 commissions on that?

18 A. Right.

19 Q. Were they entitled to be paid more
20 commissions on that same property?

21 A. Absolutely not.

22 Q. What I want to do is talk about the process
23 that Pardee set up to communicate to Mr. Wolfram and Mr.
24 Wilkes how much they were due the amount and the due date
25 then of their commissions under i and ii.

1 What was that process, Mr. Lash?

2 A. Well, we asked the title company who was
3 originally Stewart and then Chicago Title that every time
4 we would make a payment and the money was to be released
5 to the seller, that in turn Mr. Wilkes and Mr. Wolfram
6 would get their appropriate share as a commission. I
7 think I testified earlier that we had 49 of these
8 different payments.

9 Q. And it was your understanding then that the
10 escrow company complied with that directive?

11 MR. J.J. JIMMERSON: Please. The question is
12 this --

13 THE WITNESS: Yes. As I think we looked at
14 it last time, we have all 49 of the --

15 THE COURT: Right. We've gone through. I
16 think we actually went through them.

17 THE WITNESS: Yes, we did.

18 THE COURT: I went through my notes at lunch
19 hour.

20 BY MS. LUNDVALL:

21 Q. Mr. Lash, was there any complaint that was
22 made by either Mr. Wolfram or Mr. Wilkes that said somehow
23 that that procedure wasn't enough for them during the
24 timeframe they were receiving the payments?

25 A. No.

1 Q. Now, in exchange for the 84 million in
2 purchase property price, Pardee had deeds to the land from
3 CSI?

4 A. As we made the 49 payments, we didn't get a
5 deed every time. We would make the payments, and then I
6 think we only had five closings. So we made 49 payments
7 and ended up with five actual closings, but we got land.

8 Q. And at the conclusion of each one of those
9 closings, did Pardee get a deed from CSI?

10 A. At the closings, yes.

11 Q. And did you record them, those deeds?

12 A. Yes.

13 Q. Were there any deeds that you kept in your
14 pocket that you didn't record and make a matter of public
15 record?

16 A. No.

17 Q. Is that kind of a stupid question from a
18 business perspective in particular?

19 A. Well, being a public company, it would be
20 impossible for us to get the money released, have an
21 escrow with all the paper and then not record, properly
22 follow procedures.

23 Q. All right. Now, after you had acquired those
24 particular lands but for the single family residential
25 land, did Pardee have any business need to do any

1 acquisition for more land, more single family land?

2 A. Not that anymore than the 84 million that we
3 purchased.

4 Q. All right. Can you explain to The Court then
5 and identify then how much in inventory and how long that
6 inventory may be good for or how much inventory across what
7 period of time under what you reasonably expected to be
8 used out at Coyote Springs?

9 A. I think I testified earlier that we have a
10 little over 2,000 acres at an average of four houses per
11 acre. That's approximately 8,000 houses. So I think our
12 original plan was -- it takes a while to get these
13 communities going. But I think eventually we envisioned
14 maybe having as many as ten builders building the lots and
15 having guest builders and maybe absorbing at the maximum
16 1,000 a year. So we probably figured it was 15 plus years
17 of. We would have inventory. We would start out with a
18 couple hundred and grow that up to as much as a thousand.
19 It was probably around 15 years worth of inventory.

20 Q. So given that inventory, has Pardee had a
21 need to acquire additional single family land?

22 A. No.

23 Q. Do you reasonably expect in the near future
24 for Pardee to have a need to do so?

25 A. Based on inventory, no.

1 Q. All right. What I want to do then is to talk
2 a little bit about some earlier testimony that you had
3 given in response to questions by Mr. Jimmerson. There
4 were some questions that were posed to you about the
5 multifamily land that Pardee has acquired.

6 Do you recall those questions from Mr.
7 Jimmerson?

8 A. Yes.

9 Q. And those were acquired pursuant to a
10 separate agreement; is that right?

11 A. Correct. The multifamily and the custom lot
12 and the golf course happened several years or, you know,
13 quite a period after we did the original transaction.

14 Q. Now, did Mr. Wolfram or Mr. Wilkes have
15 anything to do with those transactions between Pardee and
16 CSI?

17 A. Well, I testified they don't. I don't think
18 they were the procuring cause of those transactions.

19 Q. All right. And so Pardee has actually
20 acquired some multifamily land, correct?

21 A. Correct. When we did the original deal
22 Harvey Whittemore and CSI was very adamant wanting to the
23 keep the multifamily and the golf courses and the
24 commercial.

25 THE COURT: For CSI?

1 THE WITNESS: For CSI. So the only
2 opportunity we had when we did the original deal was to
3 purchase the single family production lots or land.

4 BY MS. LUNDVALL:

5 Q. Mr. Jimmerson asked you a hypothetical. And
6 that hypothetical was if at some point in the future that
7 Pardee had taken its multifamily land and changed it then
8 to a designation of single family residential, if in fact
9 that the plaintiffs should be entitled to a commission on
10 that transaction.

11 Do you recall that question?

12 A. I do. And I think I answered it -- I
13 probably answered it wrong. I thought about it and I
14 think the through is --

15 MR. J.J. JIMMERSON: Objection. There is no
16 question pending. He answered the question as asked,
17 "yes, I remember the question Mr. Jimmerson asked me."

18 THE COURT: Go ahead and do your follow-up
19 question.

20 Do you want to explain your answer.

21 MS. LUNDVALL: Thank you.

22 THE COURT: I mean --

23 THE WITNESS: Yeah. I was going to say that
24 I think, you know, the more I think about it, the
25 multifamily was not contemplated when we did the original

1 deal. So whether we're buying multifamily or custom lots,
2 I think we should have the ability to do whatever we want
3 with that land from a practicality standpoint.

4 HE COURT: After you purchased it?

5 THE WITNESS: Yeah. Yeah. From a
6 practicality standpoint it doesn't make a lot of sense,
7 because the purchase price of the multifamily plan is a
8 lot higher than the single family land.

9 So if we truly wanted single family land, we
10 should just go buy single family land. It wouldn't make
11 sense to pay for multifamily land and convert it back to
12 single family residential.

13 BY MS. LUNDVALL:

14 Q. Mr. Lash, what I want to do is to stick with
15 the hypothetical that was posed to you by Mr. Jimmerson.
16 When you answered that hypothetical, had you had then --
17 were you looking at the commission agreement between Pardee
18 and the plaintiffs in this action?

19 A. Not when I answered the question.

20 Q. And you understand that this case is about
21 breach of the allegations of breach of that commission
22 agreement, correct?

23 A. Yes.

24 Q. And that's the only commission agreement that
25 you have with the plaintiffs; is that correct?

1 A. That's correct.

2 Q. Is there anything within that commission
3 agreement that says if you transmute multifamily land to
4 single family land at some point in the future they get a
5 commission on that type of a transaction?

6 A. No.

7 Q. And there is no other agreement between
8 Pardee and the plaintiffs for commissions of land acquired
9 by Pardee at Coyote Springs?

10 A. That's correct. This is the only agreement
11 we have.

12 Q. Now, what I would like to do then is a little
13 bit turn your attention to the negotiations that led to the
14 option agreement, if I could, please.

15 A. All right.

16 Q. You had indicated that you were involved in
17 those negotiations; is that right?

18 A. That's correct.

19 Q. And can you relate then to The Court kind of
20 the scope or the extent of those negotiations with
21 representatives of CSI?

22 A. Well, I think I testified earlier they were
23 lengthy discussions. Lots of phone calls. Lots of
24 meetings. Went on for several months.

25 Q. And once -- in fact, you believe, you

1 remember doing these negotiations. Were you actually the
2 person that was involved in drafting these documents, the
3 documents that are at issue, in other words, the option
4 agreement, the amendments to the option agreement?
5 Anything of that nature?

6 A. We have outside counsel. Steven Neebe
7 (phonetic) is our attorney that drafted this information.

8 Q. And then can you relate to The Court then how
9 it is that the negotiations that you had conducted were
10 translated then into a written document? Did you have
11 anything to do with that, in other words, sitting down
12 actually at a computer screen or with a piece of paper in
13 doing that and doing that drafting?

14 A. No.

15 Q. What I would like to do is to ask you a few
16 questions, a little bit of background questions then
17 concerning Pardee Homes of Nevada. Pardee Homes is the
18 parent corporation for Pardee Homes of Nevada; is that
19 right?

20 A. That's correct.

21 Q. And so you have familiarity with the business
22 purpose of Pardee Homes of Nevada?

23 A. Yes.

24 Q. When you talk about being a production home
25 builder principally, can you explain what you mean by that

1 to The Court, please?

2 A. We talked last time. Track housing is a bad
3 word, but we're basically -- we're not custom homes.
4 We're basically what we call production builders which is
5 where we take a subdivision and anywhere from like, we
6 would like to bid projects of at least 100 lots. There is
7 a lot of reasons behind that. You know, we don't go into
8 certain neighborhoods and build a couple of houses and
9 take on larger pieces of land and basically build 100 to
10 150, 200 houses, single model home.

11 Q. All right. And if I asked you this question,
12 just simply remind me. Did we talk about Pardee's company
13 slogan?

14 A. To always do the right thing?

15 Q. Yes.

16 A. Yes.

17 Q. Yes, we did?

18 A. Yes.

19 Q. And, in general, do you believe that you've
20 done the right thing by the plaintiffs in this action?

21 A. I would say not in general. Absolutely.

22 Q. All right. Let me turn your attention then
23 to a different topic. Have you since learned that the
24 first introduction of Pardee Homes of Nevada to Coyote
25 Springs was through something different than what is

1 referred to as the "all hands meeting"?

2 A. Yeah. I think I testified last time that
3 Kliff Andrews, our division president actually had an
4 independent meeting with Harvey Whittemore who was the
5 president of CSI unbeknownst to me. I wasn't aware of
6 that meeting. I had a relationship with Jim and Walt, and
7 they brought us this opportunity. And so, you know, I
8 decided we should meet. And that was the all hands
9 meeting. And rather than -- I didn't want to get into
10 dispute. Rather than get into dispute, I said this is
11 going to cost us some money, but we need to do the right
12 thing. And we continued to not only negotiate the deal
13 with CSI, but we negotiated an appropriate commission with
14 Mr. Wolfram and Mr. Wilkes.

15 Q. Now, as part of any of your negotiations with
16 Mr. Wolfram and Mr. Wilkes, did you communicate to them
17 that Coyote Springs was fully mapped, fully entitled and
18 therefore you knew specifically where the land parcels
19 being acquired by Pardee were located?

20 A. No. I -- it's just the opposite. I think we
21 all understood it was just a piece of land that had a lot
22 of issues, and there was going to be a lot of moving
23 parts.

24 Q. All right. Typically can you describe to The
25 Court how is it that Pardee compensates brokers who may

1 bring a deal then to you?

2 A. Well, we have a bunch of different
3 structures. I mean, if we've got a smaller deal of 50 or
4 100 lots, we typically just pay on a percentage. And as
5 the deal gets bigger, usually the percentage goes down.

6 In this particular case, we kind of had the
7 same structure where we said we were going to pay a
8 commission up to a certain dollar amount. And then the
9 commission was reduced going forward. And then because
10 this was such a large deal, rather than try to negotiate a
11 commission on all 40,000 acres, we basically came up with
12 a structure that was going to pay a percentage going
13 forward if we purchased any additional property over and
14 above the purchase property.

15 Q. Now, is Coyote Springs the first transaction
16 that Pardee has ever entered into where the land hasn't
17 been mapped, hasn't been entitled yet, in other words, it's
18 pretty raw in its development?

19 A. No.

20 Q. Have you entered into other broker agreements
21 in those types of situations?

22 A. Yes.

23 Q. And what are those brokers' arrangement
24 typically based upon? In other words, what is the
25 commission typically based upon?

1 A. Commission typically is based on the dollars.
2 A transaction doesn't occur and money doesn't change
3 hands, then typically a broker doesn't get paid. So we
4 try to focus all of our commission agreements based on the
5 dollars spent.

6 Q. And is that -- are you familiar with industry
7 standards in that regard? In other words, builders similar
8 to Pardee, who acquire raw unmapped entitled lands, is it
9 typically based upon price within your industry?

10 A. Yes. We really don't have anything else to
11 go on. If the property is not mapped, you can't count the
12 lots. In this particular case we had a bunch of -- I
13 think I already testified, we had a bunch of open space
14 issues and power line easement and endangered species and
15 everything else. So we really didn't know exactly where
16 that acreage on that map was going to be.

17 Q. Mr. Lash, why don't you at this point in time
18 explain the status then of the lands that were being
19 acquired or at least under negotiations by Pardee from CSI
20 back in the 2004 timeframe when you were negotiating them
21 with Mr. Whittemore.

22 Can you describe that generally to The Court,
23 please?

24 A. Yeah. The property is bounded by the 93 and
25 the 168. It's 40,000 acres. It's got or it has still has

1 environmental issues. We had a big issue with the BLM. A
2 big piece of the property in the center was controlled by
3 the BLM.

4 There was a proposed high tension power line
5 running along the 93 on the east side which we had to deal
6 with. We were also dealing with Jack Nicklaus and trying
7 to design a signature golf course. And that was changing
8 almost daily.

9 He would go out there and want something
10 moved. And acreage we thought we were going to buy, all
11 of a sudden was part of the golf course. So we just had a
12 lot of moving parts.

13 Q. All right. So from this perspective, Mr.
14 Lash, were those issues that were anticipated at the time
15 that the option agreement was entered into with CSI and
16 Pardee?

17 A. Yes.

18 Q. And was it -- how was it expected then that
19 those issues were going to be dealt with between Pardee and
20 CSI as it related to any of the mapping?

21 A. Well, I think what -- just what we said, we
22 were going to pay a fixed price. What the actual
23 definition of the or delineation of the property was bound
24 to move and it did.

25 Q. And so, in other words, you had agreed to pay

1 a fixed price to Coyote Springs, correct?

2 A. Correct.

3 Q. But at the time you entered into the option
4 agreement, was the certainty as to where land boundaries
5 were going to be established?

6 A. There wasn't any certainty. We all
7 understand it was going to be moving as we went through
8 the process, and it moved a lot.

9 Q. All right. Now, has there been any dispute
10 between Pardee and CSI as to the locations of the
11 properties that have been acquired from CSI by Pardee?

12 A. No. We worked mutually through theses
13 issues. And I don't think we would have closed if there
14 was a dispute regarding the boundaries of the property.

15 Q. So, in other words, that each time then that
16 you acquired a piece of property then, the parties reached
17 a mutual agreement; is that correct?

18 A. Absolutely.

19 Q. And since even when Mr. Whittemore has been
20 removed, you know from Coyote Springs, there is no dispute
21 even currently as to the location of the properties that
22 are owned by Pardee at Coyote Springs?

23 A. Correct.

24 Q. Now, you've identified the acquisition of the
25 purchase property by Pardee from CSI. Would it be fair to

1 describe that that was a phased type of an approach based
2 upon the monies that Pardee was paying to CSI? In other
3 words, did it happen in phases or did it happen all at
4 once?

5 A. No. It happened in phases over several
6 years.

7 Q. And how was the option property pursuant to
8 paragraph two supposed to occur? In other words, was that
9 going to be all at once under paragraph two or was that
10 going to happen in phases as well?

11 A. That was going to happen in phases as well.

12 Q. And have you exercised any options to be --
13 to purchase option property pursuant to paragraph two?

14 A. We have not. You keep referring to paragraph
15 two. I think it's paragraph three is the option property.

16 Q. Let me see if I can't make sure that you and
17 I are on the same page then, sir. Pull up tab B, exhibit B
18 which is the option agreement of -- let me direct your
19 attention then to --

20 A. I was looking at the commission agreement.

21 THE COURT: He was testifying off the
22 commission agreement.

23 MS. LUNDVALL: So let me make sure.

24 THE COURT: I was with you too, so I
25 understand.

1 MS. LUNDVALL: Okay.

2 THE COURT: We're okay, Counsel. I honestly
3 was looking down the same way, so I understand the
4 miscommunication.

5 MS. LUNDVALL: Your Honor, this is what
6 happens when you try to --

7 THE WITNESS: That's when we left. It was on
8 the commission agreement.

9 BY MS. LUNDVALL:

10 Q. This is what happens when you try to move
11 things along. So I'm skipping around just a little bit.

12 I'm referring to subsection three of the
13 commission agreement. And it makes reference to option
14 property purchase pursuant to paragraph two of the option
15 agreement?

16 A. Right.

17 Q. Okay. So what I'm trying to get to then, is
18 paragraph two of the option agreement that's found on
19 beginning on page five --

20 THE COURT: Of which exhibit? I apologize.

21 MS. LUNDVALL: Tab B, please.

22 THE COURT: B as in boy. Okay. Okay.
23 That's the original option. Okay. Got it.

24 BY MS. LUNDVALL:

25 Q. All right. As we've established in this case

1 that Pardee didn't exercise the option to purchase the
2 entire site, correct?

3 A. Correct.

4 Q. And then there was a second form of option
5 that was afforded to Pardee under the option agreement,
6 correct?

7 A. Correct.

8 Q. Now, was that going to be in phases or was it
9 going to be all at once as well?

10 A. That was going to be in phases over a series
11 of years.

12 Q. And there was an agreed upon procedure and
13 process then by which that option property would be
14 acquired?

15 A. Correct. It would have been a similar
16 process to what we did on the first property. We would
17 have opened up an escrow and signed a purchase agreement.
18 We would have got the closing statements. We would have
19 got a title report and would have gotten everything you do
20 when you buy a piece of land.

21 Q. And in addition, there was an option property
22 deed that the parties had agreed to use as well, correct?

23 A. Correct.

24 Q. And that deed would have been recorded if, in
25 fact, you would have purchased option property?

1 A. Correct.

2 Q. And all that process that you just described
3 would have created paper, created documents, correct?

4 A. Correct.

5 Q. And Pardee wouldn't have been the only
6 recipient of those documents; is that right?

7 A. Correct.

8 Q. If you had done this, CSI would have had some
9 documents; is that right?

10 A. Correct.

11 Q. If you had purchased option property, the
12 escrow company would have had documents, correct?

13 A. Correct.

14 Q. If you had purchased option property, there
15 would be documents in the public record; is that right?

16 A. Your Honor, I swear we haven't purchased
17 anything. I don't know how else to make it.

18 THE COURT: You're under oath.

19 THE WITNESS: I don't know how to make it
20 anymore clear. We haven't done it.

21 BY MS. LUNDVALL:

22 Q. All right. What I intend to do is ask you a
23 few general questions, if I could, before I get to some of
24 the exhibits.

25 Did you do anything intentional to try to

1 cheat Mr. Wolfram or Mr. Wilkes out of their commissions?

2 A. Absolutely not.

3 Q. Are you aware of anyone else at Pardee who
4 did so?

5 A. No.

6 Q. In your dealings with agents or real estate
7 brokers, is it your understanding that they are generally
8 familiar with documents that can be found within the public
9 record?

10 A. Yes.

11 Q. Now, you were the person that negotiated the
12 commission agreement with Mr. Wolfram and Mr. Wilkes; is
13 that right?

14 A. That's correct.

15 Q. And do you recall that the commission
16 agreement has a provision for attorney's fees contained
17 within there; is that right?

18 A. Yes.

19 Q. And is that -- the attorney fee provision, is
20 that what you -- the circumstances under which that the
21 parties had negotiated to allow one or the other to recover
22 attorney fees?

23 A. Correct.

24 Q. Was there any other provision that the
25 parties had negotiated for the recovery of attorney fees?

1 A. No.

2 Q. Now, let me ask you a few questions about
3 your own personal background.

4 How long have you been with Pardee?

5 A. Twenty-seven. Coming up on 28 years.

6 Q. All right. Can you trace for The Court then
7 a little bit about your job progression then with Pardee
8 Homes?

9 A. I started I think the summer of '86 as an
10 intern. And then when I graduated college, I worked in
11 the commercial industrial department starting in doing a
12 lot of property management and leasing and ultimately into
13 construction. Did that for approximately 10 years.

14 Then I got into the land acquisition side of
15 the business primarily here in Las Vegas and was the
16 director of land acquisition for several years. Promoted
17 to senior vice president or actually vice president of the
18 land acquisition and senior vice president of land
19 acquisition. And then I've been in my current role of
20 chief operating officer for about five years.

21 Q. Now, do you get paid on an hourly basis?

22 A. Yes.

23 Q. On an hourly basis?

24 A. To the balance of about twenty cents an hour.

25 THE COURT: I knew he was going somewhere

1 with that.

2 BY MS. LUNDVALL:

3 Q. I guess we all need to have a sense of humor.
4 My apologies.

5 A. No. I get a salary.

6 Q. All right. To your knowledge is there a
7 market rate for developers with your background or your
8 experiences?

9 A. I'm sure there is.

10 Q. Have you ever tried to figure out what that
11 market rate might be?

12 A. At my level you have salary. You have bonus.
13 You have stock options. And then there is a lot of
14 components that go into a compensation.

15 Q. But you're not aware if there is some type of
16 market rate? Like attorneys, I know what my rate is
17 compared to other law firms here in town.

18 Do you know what a market rate would be for
19 yourself compared to other companies comparable to Pardee
20 Homes?

21 A. Yes.

22 Q. And do you know what that market is?

23 A. Approximately.

24 Q. Okay. So you know approximately what that
25 market rate would be. Can you calculate that on an hourly

1 basis?

2 A. Yeah.

3 Q. Okay. What I would like to do is turn your
4 attention a little bit to the information then that is
5 found within the commission agreement with the obligation
6 to provide information to Mr. Wolfram and Mr. Wilkes.

7 You negotiated that portion of the agreement
8 as well, did you not?

9 A. Yes.

10 Q. That's found on the second page of the
11 commission agreement, correct?

12 A. Yes.

13 Q. Commission agreements found at tab L. Other
14 than the paragraph that is found on the second page of the
15 commission agreement, was there any other information set
16 within the four corners of the commission agreement that
17 Pardee was obligated to give to the plaintiffs?

18 A. No.

19 Q. All right. And that first sentence then
20 deals with the option property; is that correct?

21 A. Yes.

22 Q. And as we've established, you never gave a
23 written notice of exercise option to CSI?

24 A. Because we haven't taken down any option
25 property.

1 Q. All right. So, in other words, there was no
2 notice to give to the plaintiffs?

3 A. Correct.

4 Q. And did you set up --

5 MR. J.J. JIMMERSON: Can I just object, your
6 Honor, to all the leading questions. Judge, please.
7 Every sentence. Every question.

8 THE COURT: I know it's leading, Mr.
9 Jimmerson.

10 Do you really want us to not do leading? I'm
11 only allowing it because this has pretty much been a lot
12 of leading with your witnesses too. And we didn't object,
13 and it's a bench trial. But if you want me to sustain
14 it...

15 MR. J.J. JIMMERSON: There is no effort on
16 the part of Ms. Lundvall to curve the leading questions.
17 You know, listen it is a judge trial and we're counting on
18 you to separate the weak from the strong, Judge. I've
19 worked in front of you before. I know you well. I know
20 you understand the difference easily. It's just we're not
21 hearing from Mr. Lash.

22 THE COURT: Well, but I'm trying -- as you
23 know, I'm trying to do a balance. I tried to do with Mr.
24 Wolfram. I know the issues so well now. This is our
25 third week and honestly --

1 MS. LUNDVALL: All I'm trying to do is rocket
2 fire through some of this stuff, your Honor.

3 THE COURT: I know. I appreciate you. You
4 were trying to do that this morning too. The young Mr.
5 Jimmerson was trying to do that this morning too. So I do
6 appreciate. Please understand we want your testimony. So
7 if she gives you a question, make sure you're answering it
8 honestly and not being lead into any kind of answer. I
9 don't think you are.

10 THE WITNESS: Absolutely correct.

11 THE COURT: I just want to reiterate that to
12 you. That's Mr. Jimmerson's concern. That's what leading
13 questions are. Just having them testify and the questions
14 are ones that we have been using honestly for three weeks.
15 So I understand your point, Mr. Jimmerson. I just want to
16 do a balance.

17 MR. J.J. JIMMERSON: Thank you, ma'am. I
18 appreciate that.

19 THE COURT: Let's keep going. I got it.
20 Okay.

21 MS. LUNDVALL: All right.

22 THE COURT: We're back at the commission
23 agreement.

24 BY MS. LUNDVALL:

25 Q. Back at the commission agreement and the

1 information that Pardee agree to give to the plaintiffs?

2 A. Correct.

3 Q. All right. So there was no notice of any
4 exercise options, correct?

5 A. Because we haven't exercised any of the
6 option property.

7 Q. All right. Second sentence then of that
8 particular paragraph, it talks about keeping you reasonably
9 informed as to all matters related to amount on and the due
10 dates of the commission?

11 A. Correct.

12 Q. All right.

13 A. And I believe we've done that since they are
14 through the title companies.

15 Q. In the process then, can you explain to The
16 Court how you went about doing that?

17 A. Well, I think I've already testified that at
18 each release of the funds, we not only showed the amount
19 of money, we have Mr. Wilkes and Mr. Wolfram's commission
20 separated. I've actually signed each one of those
21 transactions. I think you know it's very clear. And as I
22 also testified, we have done this 49 times and never had
23 an issue with the way we were doing it.

24 Q. Mr. Lash, do you believe that that sentence
25 obligated you to give anything else to Mr. Wolfram or Mr.

1 Wilkes?

2 A. No.

3 Q. Do you believe it obligated you to give them
4 specific locations of land?

5 A. No.

6 Q. Of closings?

7 A. No.

8 Q. Of using of land?

9 A. When we went down that path to try to clear
10 up the misunderstanding and inform them that they were --
11 we were not doing something we were not supposed to be
12 doing. That they had been paid and we got all into the
13 maps and all into writing letters. But per the commission
14 agreement we didn't have to do any of that.

15 Q. Were you trying to -- what is it that you
16 were trying to accomplish then by giving them the
17 additional information?

18 A. We wanted them to know, you know, feel good
19 about what we had done and not feel like, you know, they
20 had a misunderstanding or we were taking advantage of them
21 or they didn't get paid per the agreement.

22 Q. Do you still have Exhibit L open and in front
23 of you, Mr. Lash?

24 A. Yes.

25 Q. The commission agreement?

1 A. Yes.

2 Q. Now, there is a paragraph in there that is
3 towards the bottom page that talks about this being a fully
4 integrated agreement. Take you to page two.

5 Brian, can you blow up, I think, that last
6 paragraph?

7 A. It says this agreement represents our entire
8 understanding concerning the subject matter.

9 Q. There you go.

10 A. This agreement may not be modified except by
11 written instrument.

12 Q. Explain to The Court what you understood that
13 language to mean, please.

14 A. Simply that this was the entire agreement.
15 If we wanted to modify, change it, we would have made the
16 modifications and put them in writing and both signed off,
17 and we didn't.

18 Q. All right. So if there were an additional
19 agreement between Pardee and the plaintiffs concerning the
20 multifamily or the commercial or the custom lots that would
21 have been acquired to have a separate writing?

22 A. Correct. Either amending the existing
23 commission agreement or signing a new commission agreement
24 for those transactions.

25 Q. And was that ever done?

1 A. No.

2 MS. LUNDVALL: No further questions, your
3 Honor. I'll pass the witness.

4 THE COURT: I guess it's redirect then,
5 right?

6 MR. J.J. JIMMERSON: Redirect, yes, your
7 Honor. Thank you.

8

9 REDIRECT EXAMINATION

10 BY MR. J.J. JIMMERSON:

11 Q. Good afternoon, Mr. Lash.

12 A. Good afternoon.

13 Q. Good seeing you today, sir.

14 You were asked a question about your
15 testimony on Monday, October 28th, 2013 about a
16 hypothetical that I posed to you. And you answered, "yes,
17 I remember that question. I think I answered it wrong?"

18 Do you recall giving that answer today?

19 A. Yes.

20 Q. All right. In fact, Ms. Lundvall and Mr.
21 Shipley gave you a complete transcript of your trial
22 transcript. Your trial testimony of Monday, October 28 and
23 the days that followed, correct?

24 A. Correct.

25 Q. And so you've had a chance to fully read all

1 the questions of myself, all of your answers and then
2 beginning questions of Ms. Lundvall on October 28 of 2013
3 and your answers; is that right?

4 A. Yes.

5 Q. Okay. So now if we could just take the
6 sequentially, just take it in chronological order. And I
7 know that just like the Judge says, against our will. We
8 have gotten familiar with these documents. We know them
9 pretty well, and we've had -- we have a fundamental
10 difference as to what they translate to in terms of
11 liability or not. We can certainly be more convergent
12 today. I will certainly say I was on Monday, October 28.

13 MS. LUNDVALL: Your Honor, is there a
14 question along the line?

15 MR. J.J. JIMMERSON: No question.

16 MS. LUNDVALL: All right. Thank you.

17 BY MR. J.J. JIMMERSON:

18 Q. Would you say it would be doing the right
19 thing, your company's motto if you owed our clients money,
20 Mr. Wolfram and Mr. Wilkes, and didn't pay them?

21 A. That would not be the right thing and that's
22 not the case.

23 Q. Understood. That's your position.

24 Would it be the right thing if you went to
25 the extreme, if The Court found that you had been unfair to

1 them, had cheated them knowingly and not paid them money
2 you knew you owed them, would that be the right thing?

3 A. No.

4 Q. Now, let's just start chronologically,
5 please, Exhibit 2 is the option agreement. I'll place it
6 in front of you. And we went over in some detail on
7 October 28th and Ms. Lundvall went back over it in quite a
8 bit of detail today.

9 MS. LUNDVALL: Actually, I did not go over it
10 in any detail as I asked one question concerning paragraph
11 number two.

12 MR. J.J. JIMMERSON: You asked more
13 questions. I'm not here to debate with you, Counsel.

14 THE COURT: You're on Exhibit 2, right, the
15 option agreement which we had?

16 MR. J.J. JIMMERSON: Right. I'm using the
17 first page.

18 THE COURT: I remember the testimony. Your
19 point is in your cross. You only asked the one question.

20 MS. LUNDVALL: That's correct. I don't think
21 that he's able to as far as explore areas that he already
22 had the opportunity to do.

23 MR. J.J. JIMMERSON: I agree.

24 THE COURT: I know that's the law. I did try
25 to see. I tried to look over my notes from the testimony.

1 MR. J.J. JIMMERSON: Why would she assume the
2 worst? I haven't even had a chance to ask the question.
3 This really is unfair to me.

4 THE COURT: It makes things difficult. Okay.
5 Let's see what the questions are.

6 BY MR. J.J. JIMMERSON:

7 Q. Do you recall that I asked you --

8 THE COURT: I know there is a problem that
9 when you bring people back, but I also don't want to cut
10 him off. Let's get started and I'll see, because I did
11 read the testimony.

12 MR. J.J. JIMMERSON: There was a lot of
13 rebounding by Ms. Lundvall because in part five weeks have
14 passed. I wasn't objecting on that basis.

15 THE COURT: I understand. In all honesty,
16 there was.

17 BY MR. J.J. JIMMERSON:

18 Q. All right. Thank you. So I don't have very
19 many questions, but I have a couple.

20 Would you agree that option two, the option
21 agreement, Exhibit 2 as signed on or about June 1 of 2004
22 was the first contract between yourself and Coyote Springs
23 Investments?

24 A. I believe so.

25 Q. As it relates to the land in Nevada that the

1 subject matter of this litigation, right?

2 A. Correct.

3 Q. All right. And so as you indicated, it had
4 been negotiated after the all hands meeting without the
5 presence of Mr. Wilkes and Mr. Wolfram between all of your
6 representatives of Pardee and all the representatives of
7 CSI to reach this point where it was inked and became
8 effective on June one 2004, correct?

9 A. Yes.

10 Q. Okay. Now, you indicated that -- and in
11 response to a question on cross-examination that Kliff --
12 you later learned that Kliff Andrews had some sort of
13 conversation or communication with Harry Whittemore in the
14 2003-2004 time period that you weren't aware of; is that
15 right?

16 A. That's correct.

17 Q. Nonetheless, you agreed that Jim Wilkes
18 through their companies were the procuring cause for this
19 property being purchased by Pardee; is that right?

20 A. Well, it was my decision to do the right
21 thing. And I just thought, you know, I didn't know. You
22 know, we'll take full responsibility. I didn't know Kliff
23 had already met with Harvey. And yet from the broker's
24 perspective, they had arranged the initial meeting. So I
25 want to do the right thing.

1 THE COURT: So you're purposes --

2 THE WITNESS: This was going to cost us so
3 much money, but we should do the right thing. And I had,
4 you know, past dealings with both Jim and Walt. And, you
5 know, we always had a good relationship. I wanted to do
6 the right thing.

7 BY MR. J.J. JIMMERSON:

8 Q. So do you recall testifying before her Honor
9 on October 28, 2013 in transcript you have reviewed that
10 Mr. Wilkes and Mr. Wolfram were the procuring cause?

11 MS. LUNDVALL: Once again, your Honor, I'm
12 going to object. It goes beyond the scope of my cross.

13 MR. J.J. JIMMERSON: It does not.

14 MS. LUNDVALL: He cannot re-plow this old
15 ground.

16 MR. J.J. JIMMERSON: The question on
17 cross-examination is tell me about the conversation
18 between Kliff Andrews and Harvey Whittemore.

19 MS. LUNDVALL: I asked no questions about
20 procuring cause.

21 THE COURT: From what I'm supposed to get
22 from that the inference is touching upon whether he was or
23 was not the one procuring cause. I understand. That's
24 why he wants to clarify it. So I'm going to overrule that
25 and let you go forward.

1 BY MR. J.J. JIMMERSON:

2 Q. Do you recall, sir, actually in answer that
3 you gave on October 28th specifically identifying Mr.
4 Wilkes and Mr. Wolfram as the procuring cause for the
5 property that was placed under contract as Exhibit 2?

6 A. Yes.

7 Q. Thank you. And Exhibit 2 being the option.
8 Thank you.

9 Now, so there was questions asked to you
10 about corporate entities. Let's just have a clarification
11 on the record. We'll spend one minute on that, and we'll
12 get onto that.

13 What is the difference between Pardee Homes,
14 Inc. and Pardee Homes of Nevada, Inc.?

15 A. We just set up a different company for the
16 Nevada operations versus the California operation.

17 Q. When -- your current position is with what
18 entity or if it's both, tell us both.

19 A. It's basically I have the same role in both
20 corporations.

21 Q. Okay. And that role is chief operating
22 officer?

23 A. Executive vice president chief operating
24 officer.

25 Q. I don't mean to slight you. Both Pardee

1 Homes of Nevada, Inc. And Pardee Homes, Inc.?

2 A. Correct.

3 Q. And if I'm -- you know, I'm guessing, but if
4 I'm guessing correctly, Pardee Homes of Nevada, Inc. Is a
5 subsidiary of Pardee Homes, Inc.; is that correct?

6 A. Yes.

7 Q. Okay. So the stock of Pardee Homes of
8 Nevada, Inc. Is owned by Pardee Homes, Inc.; is that right?

9 A. Yes.

10 Q. Thank you. And when you signed, was your
11 position, your position was different in 2004 when you
12 signed the commission agreement on or about September 1,
13 September 6, September 4, 2004, do you recall that?

14 A. Correct. And it was a senior vice president
15 of...?

16 THE COURT: Of land acquisition?

17 THE WITNESS: Yes.

18 BY MR. J.J. JIMMERSON:

19 Q. Was that true for both companies?

20 A. Yes.

21 Q. Okay. So you were senior vice president of
22 land acquisition for Pardee Homes of Nevada, Inc. And
23 senior vice president of land acquisition for Pardee Homes,
24 Inc., the parent of Pardee Homes of Nevada, Inc.?

25 A. Correct.

1 Q. Thank you, sir.

2 And as it relates to the contract that was
3 signed between Pardee Homes of Nevada, Inc. And Award
4 Realty, Award General Realty, Walter Wilkes, it was with
5 Pardee Homes of Nevada, Inc.; isn't that right?

6 A. Correct.

7 Q. Thank you, sir.

8 And that's because as you've indicated, the
9 subsidiary deals with property in Nevada, and there is a
10 lot of reasons for it, limitations liability, all kind of
11 things, but that's the structure that you're company chose
12 to employ?

13 A. That's correct.

14 Q. Now, focusing your attention upon Exhibit 2,
15 the option agreement and naturally with the benefit of
16 working with your counsel after October 28th, listening to
17 testimony including Mr. Wolfram's testimony this morning
18 and other testimony, would you agree that within the 2,100
19 acres purchased by Pardee Homes of Nevada, Inc., some
20 portion of acres of that land was outside that parcel known
21 as parcel one designated the original option agreement,
22 Exhibit 2 before you?

23 MS. LUNDVALL: Objection, your Honor. It's
24 beyond the scope of my cross-examination.

25 MR. J.J. JIMMERSON: She asked about option

1 property, your Honor. She specifically asked about option
2 property.

3 THE COURT: I'm going to go ahead and allow a
4 little more of this, but make sure we can clarify. I'm
5 going to go ahead and allow a few questions on this.
6 We're not going to go through -- I don't want to go
7 through the language of does this say this. We've been --

8 MR. J.J. JIMMERSON: I respect you so much.
9 I'm just saying I'm well prepared.

10 THE COURT: I'm not being a factitious. I'm
11 concerned about that, because I read through the
12 transcripts and you did that.

13 MR. J.J. JIMMERSON: I sure did.

14 THE COURT: All right. I just want to make
15 sure he's just asking your information now. You
16 understand that?

17 THE WITNESS: Yes. So I understand that
18 question. You're talking about the 3,600 acres.

19 Did we purchase some property outside the
20 boundary of that 3,600 acre parcel?

21 BY MR. J.J. JIMMERSON:

22 Q. That's the question.

23 A. Yes, we did.

24 Q. And then I asked you do you know how many
25 acres are outside of that and generally specifically I

1 think you would agree to the east of the eastern boundary
2 of parcel one?

3 A. Yes. Versus the north.

4 Q. And do you know how much acres were purchased
5 outside of parcel one, sir?

6 A. I don't.

7 Q. Now, I have a better understanding as to
8 maybe what you're thinking or Mr. Whittemore's thinking as
9 listening to the testimony. It's your contention both on
10 October 28th and presume today, that Pardee Homes never
11 bought, quote, capital O, capital P option property as
12 defined in Exhibit 2?

13 A. Correct.

14 Q. And never bought option property as that it
15 was changed -- that definition was changed in Exhibit 5,
16 the amended restated agreement of March 28th of 2005, seven
17 or eight months later?

18 MS. LUNDVALL: I'm going to object, your
19 Honor. Definition of the option property did not change
20 from those two documents. Therefore, the question
21 contains a false premise.

22 THE COURT: We went through this in the first
23 round, because I actually read that so...

24 MR. J.J. JIMMERSON: When I hear the
25 objection --

1 THE COURT: I just ask because is there a
2 way --

3 THE WITNESS: I don't remember paragraph five
4 of option something says. So I don't know if this is a
5 trick question.

6 MR. J.J. JIMMERSON: Not a problem.

7 THE COURT: Honestly we're not trying to do
8 that. So could you rephrase it.

9 BY MR. J.J. JIMMERSON:

10 Q. I would be happy to. Your interpretation of
11 the option agreement originally and then this document was
12 deemed no longer in full force and effect, no longer in
13 effect at all. And by the amended and restated agreement
14 of March 28, was that what happened after March 28 going
15 forward, was that you bought all property as you and Mr. --
16 you and CSI defined it as purchased property; is that
17 right?

18 A. Correct.

19 THE COURT: That's fine.

20 BY MR. J.J. JIMMERSON:

21 Q. Isn't it true that you did not consult with
22 Mr. Wolfram or Mr. Wilkes with regard to the change of
23 definitions of purchase property and the change of
24 definitions of option property to the extent that the Judge
25 finds that they changed after or contemporaneous to the

1 March 28, 2005?

2 MS. LUNDVALL: Objection. Asked and
3 answered.

4 BY MR. J.J. JIMMERSON:

5 Q. You can answer the question, sir.

6 THE COURT: Go ahead and answer that one.

7 THE WITNESS: I don't believe the definition
8 has ever changed.

9 BY MR. J.J. JIMMERSON:

10 Q. But assuming you're in error, did you notify
11 them of any changes in definitions referring to Mr. Wolfram
12 and Mr. Wilkes?

13 THE COURT: Can you rephrase that one because
14 he didn't -- he just said he didn't think the definition
15 changed, so it's a little confusing.

16 BY MR. J.J. JIMMERSON:

17 Q. If The Court finds that the purchase property
18 was found as 1958 acres through September of 2004 and
19 changed 511 acres in March 2005, that change as the
20 definition of purchase property was never communicated to
21 Mr. Wolfram or Mr. Wilkes by yourself personally, was it?

22 MS. LUNDVALL: Your Honor, from this
23 standpoint, I once again need to place an objection. It's
24 been established within this record that the amended
25 restated option agreement for which that Mr. Jimmerson is

1 now comparing and contrasting to the option agreement
2 contending there is definitional changes, those documents
3 were given to the plaintiffs. They have identified that
4 they have been given to the plaintiffs.

5 MR. J.J. JIMMERSON: I understand that.

6 MS. LUNDVALL: Therefore, this question is
7 misleading to this particular witness.

8 THE COURT: No. I disagree with that. What
9 he's trying to find out, now that they have all the
10 information, he's just trying to find out saying did you
11 get -- did you give this information to them?

12 MR. J.J. JIMMERSON: Correct.

13 THE COURT: The answer is going to be no, as
14 we know, because he didn't even feel that was the
15 information. This is kind of getting out. We're getting
16 off the low branch of the tree here. Can we come back
17 towards the main body of the tree? We're getting far out
18 there, and I'm not being facetious.

19 MR. J.J. JIMMERSON: I understand.

20 MS. LUNDVALL: But moreover, to the extent
21 that even if Mr. Jimmerson is remotely accurate, that
22 information was given to the plaintiff.

23 THE COURT: And I know that from the record.

24 MS. LUNDVALL: All right. And so that's why
25 -- that's why his question contains a false premise.

1 BY MR. J.J. JIMMERSON:

2 Q. To the extent it was given to the plaintiffs,
3 it was not delivered by you, was it?

4 A. Correct.

5 THE COURT: Okey dokey.

6 BY MR. J.J. JIMMERSON:

7 Q. And you had no conversations with Mr. Wilkes
8 or Wolfram about the amended agreement, correct?

9 A. Correct.

10 THE COURT: You have been doing excellent.
11 Let's keep it up. Let's keep up the professional level.
12 Both of you have done excellent jobs. Let's not do the
13 personal comments. It spirals down so quickly.

14 MR. J.J. JIMMERSON: We agree, Judge.

15 THE COURT: And it's tough.

16 BY MR. J.J. JIMMERSON:

17 Q. Defendants Exhibit 1 of 2, you have it there?

18 A. Yes.

19 Q. This is without Exhibit O. Now look at
20 Exhibit P in there. This just completes what we were just
21 talking about together. And that is that Stewart Title
22 caused the amended and restated agreement of March 28, 2005
23 to be delivered to Mr. Wilkes on April 12 of 2005 on or
24 about that date?

25 Do you see that, sir?

1 A. Yes.

2 Q. All right. Now, in looking at the agreement,
3 Exhibit 5, would you look at that? That's our Exhibit 5.
4 It may be Defendant's exhibit. I've asked the witness to
5 look at Exhibit 5, the amended restated option agreement.

6 And was this document marked confidential?

7 A. There is a stamp at the bottom that says
8 confidential.

9 Q. Do you know whether or not it was marked
10 confidential on March 28th of 2005 as opposed to marked
11 confidential as a result of this litigation?

12 A. I don't know.

13 Q. And in any event, it was delivered to Mr.
14 Wilkes and Mr. Wolfram on or about April 12th of 2005?

15 Do you see that?

16 A. Where would I see that?

17 Q. Exhibit B, the document we looked at, the
18 previous document.

19 THE COURT: The escrow. I think he already
20 answered yes.

21 THE WITNESS: Yes.

22 BY MR. J.J. JIMMERSON:

23 Q. And you understand that our clients both
24 announced in court here and in your presence just like
25 this me standing there, you standing there as well as ages

1 ago have signed a protective order in a confidentiality
2 agreement that allows my clients to receive documents
3 produced by Pardee and/or Pardee and CSI, but agrees to use
4 it for this litigation only and to keep it confidential,
5 otherwise outside the confines of this courtroom?

6 Do you understand that?

7 A. Yes.

8 Q. Okay. Now, as you sit here today, do you
9 have any belief or understanding of Mr. Wolfram or Mr.
10 Wilkes or of our law firm in representing him has violated
11 the confidentiality agreement to this court?

12 A. I have no knowledge.

13 Q. All right. Now, we're in chronological
14 order. We're in June 1, 2004. Are you with me? Option
15 agreement, Exhibit 2.

16 A. Yes.

17 Q. Then the next event that occurs is an -- and
18 it's called an amendment -- is the first amendment which
19 doesn't play any role in this case as far as I know, July
20 of 2004, correct?

21 A. Correct.

22 Q. All right. And then the second amendment
23 does play a role in this case which is marked as Exhibit 4.
24 And as you testified on the first day -- and I won't
25 restate it. Defendant Exhibit 4, there is several

1 benefits. But two big ones are it raises the definition of
2 the money to be paid to \$84 million and 66 six million.

3 And the other part is it attaches all of the
4 exhibits that were contemplated to be attached in Exhibit 2
5 of the option agreement of June 1, 2004, and then makes
6 references that these are the now agreed to exhibits,
7 correct?

8 A. Correct.

9 Q. So in combination with the option agreement
10 of June 1, 2004, Exhibit 2, and the second amendment,
11 Exhibit 4 of the roughly September 1, August 31 of 2004, we
12 have a complete agreement with complete exhibits.

13 Would you agree to that point in time?

14 A. At that point in time, correct.

15 Q. Thank you. Now, further negotiations occur
16 between CSI and Pardee Homes following September 1 of 2004
17 following the execution of this second amendment, correct?

18 A. Correct.

19 Q. Okay. And those negotiations resulted in a
20 number of many, many changes which you recall on the first
21 day of your testimony, October 28, a lot of cleanup, a lot
22 of new terms that found itself into the amended and
23 restated agreement, correct?

24 MS. LUNDVALL: Once again, beyond the scope
25 my cross.

1 MR. J.J. JIMMERSON: I'm trying to follow
2 this chronologically.

3 MS. LUNDVALL: What he's trying to do is go
4 repeat and go back to right back where we were at in
5 October.

6 MR. J.J. JIMMERSON: I have given nothing to
7 suggest that.

8 THE COURT: We're doing okay. I'm going to
9 overrule. If he starts going back too much -- I did read
10 it. I don't remember a lot, but I did read it during my
11 lunch hour. I know this is -- it's always a problem. I
12 did couple years. Also were overlapping. If it gets too
13 much into it, but then I will since it's a bench trial,
14 you know --

15 MS. LUNDVALL: I understand.

16 THE COURT: And, Mr. Lash, you understand
17 that I don't know if that was word for what word what he
18 quoted, I don't know. I remember the area. You just said
19 something about he said it was so...

20 BY MR. J.J. JIMMERSON:

21 Q. Do you recall during -- do you recall using
22 the word cleanup, Mr. Lash?

23 A. I think I used the word cleanup and it
24 provided more clarity in than the original.

25 MR. J.J. JIMMERSON: No problem. Happy with

1 that.

2 THE COURT: That is fine as long as you don't
3 have an issue with that.

4 BY MR. J.J. JIMMERSON:

5 Q. And you as part of the agreement made is
6 rather upon execution of the amended, the restated option,
7 the original agreement shall be deemed to be no longer in
8 full force and effect, correct?

9 A. Correct.

10 Q. So essentially you have a new stated deal
11 with cleanup with new interpretation with better
12 understanding how this is going to be developed together
13 with CSI? Agreed?

14 A. Yes.

15 Q. Okay. Now, although it -- now, would you
16 turn to Exhibit 1 of the book in front of you, sir, the
17 commission agreement contract between Pardee Homes and
18 Nevada, Inc. And Award Realty, the law firm generality
19 Walter Wilkes?

20 A. Yes.

21 Q. We covered this in some detail, not
22 exhaustively on October 28. I want to address the
23 questions that were posed to you by opposing counsel today
24 about this agreement. Okay.

25 So this is an agreement that is dated

1 approximately September 1, 2004; is that right?

2 A. Correct.

3 Q. And it's on Pardee's letterhead; is that
4 right?

5 A. You are correct.

6 Q. Now here is the question I have. Is it
7 Pardee of Nevada, Inc. Letterhead or Pardee Homes Inc.
8 letterhead?

9 A. It's Pardee Homes letterhead. I don't know
10 if it's Inc. Or Nevada.

11 Q. But with that being said --

12 A. I don't think we necessarily have separate
13 stationery.

14 Q. Not a problem. While I could see it's the
15 parent company letterhead, it's clear that the contracting
16 party is Pardee Homes Nevada, Inc. As evidenced by your
17 signature at page one. I think it's the third page at the
18 top of the page. Bates stamp 137.

19 A. Correct.

20 Q. And Mr. Wilkes or Mr. Wolfram, Mr. Wilkes
21 signed on the behalf of respective realty companies below
22 yours and on the next page?

23 A. Yes. And then each of us had it notarized.

24 Q. So we know that the people that signed it
25 were there. All right.

1 Now, we've gone over the payment and as it
2 relates to purchase property, it's four percent and one and
3 a half percent depending upon how much has been expended up
4 to \$84 million?

5 Agreed?

6 A. It's four percent up to the first 50 million.

7 Q. Great. And then?

8 A. To one and a half percent thereafter.

9 Q. For 34 million?

10 A. Correct.

11 Q. Then Roman Numeral III is to the extent
12 option purchase property is purchased, one and a half
13 percent times \$40,000 an acre, times the number of acres?

14 A. Correct.

15 Q. Now, turn to the next page three. Second
16 page you were asked questions about this. Party shall make
17 the first commission payment to you upon the initial
18 purchase closing which is scheduled to occur 30 days
19 following the settlement date with respect to the aggregate
20 deposits made prior to that time period.

21 Do you see that?

22 A. Yes.

23 Q. And you're going to see this throughout. I
24 don't think there is a question about it, but the capital
25 letters are defined terms within Exhibit 2 option agreement

1 of June 1, 2004, correct?

2 A. You're referring to like settlement date?

3 Q. Yes. Exactly. Those are the words.

4 A. Yes.

5 Q. Initial purchase closing, IPC, all of that
6 are referring to the defined terms?

7 A. Of the reinstated option agreement.

8 Q. That's not true. Of the option agreement of
9 June 1, 2004.

10 Do you understand there is a difference?
11 Well, let's clarify?

12 THE COURT: You're saying literally it
13 referred to that, because the reinstated one wasn't even
14 in existence. So I certainly understand that's not doing
15 an admission. That it didn't change with all his
16 testimony so...

17 MR. J.J. JIMMERSON: The only option
18 agreement --

19 THE COURT: You can only limit it to what was
20 available at the time.

21 BY MR. J.J. JIMMERSON:

22 Q. The only option agreement in place as of
23 September 1, 2004 just as Judge Earley indicated, the
24 option agreement of June 1, 2004?

25 A. Correct.

1 Q. So, therefore, the commission agreement does
2 not refer to any terms in the amended restated agreement
3 eight months later, March of 2005?

4 Agreed?

5 A. Well, I think we just talked about it. It
6 can't.

7 THE COURT: Can't refer to something that is
8 not in existence.

9 BY MR. J.J. JIMMERSON:

10 Q. Can I have a clean answer to this question?
11 Are the capitalized terms, definitional terms found in the
12 option agreement June 1, 2004?

13 A. Yes.

14 Q. Then it says that Pardee shall make each
15 additional commission payment pursuant to clauses one and
16 two above concurrently with the applicable purchase
17 property price payment to Coyote. Thereafter Pardee shall
18 make each commission payment pursuant to clause three
19 currently with the close of escrow of the applicable
20 portion of the option property. Provided, however that in
21 the event required parcel map creating the parcel has not
22 been recorded as of the scheduled option closing as defined
23 by paragraph 9C of the option. The commission shall be
24 paid into escrow concurrently. Pardee deposit the property
25 price into escrow and the commission shall be paid directly

1 from the proceeding as said escrow.

2 Have I read that accurately?

3 A. Yes.

4 Q. Okay. And so if you go back to the first
5 sentence of those sentences regarding payments, what you
6 say is that Pardee shall make each additional commission
7 payment pursuant to clauses one and two above concurrently
8 with the applicable purchase property price payment to
9 Coyote.

10 Do you see that?

11 A. Yes.

12 Q. And that is what Pardee did in Exhibit A, the
13 49 payments that I discussed with you and opposing counsel
14 discussed with you shown collectively in Exhibit A, the
15 defendants' exhibits; is that correct?

16 A. Correct.

17 Q. Okay. And it is the position again of Pardee
18 that it never exercises -- excuse me. It never purchased
19 Capital O, Capital P as defined in the original option
20 agreement defined in June 4 and therefore made no payments
21 of the dollars they did pay in Exhibit A for option
22 property?

23 A. That is correct.

24 Q. And as further evidence of that, you would
25 say, well, according to this I wouldn't pay that until the

1 close of escrow. I would be obliged to make deposit up
2 front in escrow, but the money wouldn't be released to
3 Award or General until I actually bought that extra piece
4 of option property, that new piece of option property?
5 Agreed?

6 A. Correct.

7 Q. All right. And concurrent with that, you
8 also didn't submit an exercise of option property notice
9 that's represented in paragraph two of Exhibit 2? You
10 didn't go down those steps that are found in that contract
11 of 2004 let alone the contract of March of 2005?

12 A. Correct.

13 Q. Okay.

14 A. I'm fully prepared to do it when we do
15 exercise option property, but we haven't gotten there yet.

16 Q. I understand. Thank you, sir.

17 Then if you look, please, at paragraph three
18 of the second page, it talks about the option given notice
19 under the option agreement in paragraph three. In the
20 event the option agreement terminates for any reason
21 whatsoever prior to Pardee's purchasing the option
22 agreement that is referenced there in Exhibit 2, the June
23 1, 2004 option agreement, correct, sir?

24 MS. LUNDVALL: The option agreement is
25 defined in the clause and the ray clause that reverts to

1 the amendments is there.

2 BY MR. J.J. JIMMERSON:

3 Q. And if you'll turn back to first page. Ms.
4 Lundvall points out that the definition of option agreement
5 is that of June 1, 2004. So your testimony is accurate.

6 Do you understand that, sir?

7 MS. LUNDVALL: As amended?

8 THE WITNESS: Yes.

9 By MR. J.J. JIMMERSON:

10 Q. Okay. And as amended, so we don't have a
11 misunderstanding is only amendments called or amendments
12 July 2004 and second amendment of September 2004, right?

13 A. Correct.

14 Q. All right. Thank you.

15 Continuing then it says whatsoever prior to
16 the party purchasing the entire purchase property and
17 option property and party thereafter purchases any portion,
18 Pardee shall pay to you a commission in the amount
19 determined as ascribed above as if the option agreement
20 remained in effect?

21 Do you see that, sir?

22 A. Yes.

23 Q. What does that paragraph mean to you?

24 A. It means that if we stop and the option was
25 terminated, then we came back and purchased property, we

1 would have to pay them a commission.

2 Q. For single family residential production lots
3 -- what's called production residential property?

4 A. Correct.

5 Q. Okay. And those words are defined words
6 within the option agreement of June 1, 2004? Agreed?

7 A. I'm not that familiar with it, but that would
8 be a good place to have it.

9 Q. All right. Thank you.

10 So here is a line of questions that I wanted
11 to begin with you. Therefore, in July and August of 2004,
12 leading up to the signing of the commission agreement of
13 September 1 of 2004 and with reference to the option
14 agreement that is largely being referenced in and
15 incorporated into this agreement, did you understand that
16 the option agreement had a rough 40 year shelf life?

17 A. Yes.

18 Q. Okay. And, also, that the option could
19 expire and we knew there was two types of options, \$1.2
20 million and by all 30,000 acres, 30,000 times 40,000 an
21 acre. And the second option would be after we finish
22 purchasing property of \$84 million, the next purchase and
23 the purchase thereafter is option property; is that
24 correct?

25 A. Yes.

1 Q. And if it's for single family homes or what
2 we call residential production property, because as those
3 terms are used in the options agreement, there would be a
4 commission of one and a half percent of the acreage times
5 the price of 40,000?

6 A. After the original \$84 million purchase, yes.

7 Q. So, and the parties negotiated an additional
8 provision as you've just read now in the record, that even
9 if the option agreement went by the buy, it's no longer in
10 existence, if Pardee goes back in 2024 and buys a hundred
11 acres, commission of hundred acres times 40,000 at one and
12 a half percent will be due to the estate of Mr. Wolfram and
13 Mr. Wilkes? Agreed?

14 A. That's correct.

15 Q. So what I'm saying to you at least on behalf
16 of Pardee Homes, Jon Lash, you understood that the term or
17 the application of this commission agreement was 40 years
18 -- up to 40 years?

19 A. Correct.

20 Q. And then next paragraph you reference that
21 Pardee means your company's successors and assigns. And
22 that -- let me just finish it. Pardee shall make no action
23 to circumvent or avoid its obligation to you as set forth
24 in the agreement.

25 And I asked you about that on October 28, and

1 you told me that means you wouldn't try to go around them?

2 Do you recall that?

3 A. Yes.

4 Q. And I went so far to ask another question.

5 You wouldn't play a game, right?

6 A. Correct.

7 Q. All right. Now, let's turn to your testimony
8 then. I want to ask you about your testimony today, sir.

9 I do want to ask you.

10 Do you recall -- withdrawn?

11 Is it true, Mr. Lash, that Mr. Wilkes,
12 neither Mr. Wilkes, nor Mr. Wolfram were privy to the
13 changes in the language of the agreement between Exhibit 2
14 option agreement of June 1, 2004, and the amended restated
15 option agreement Exhibit 5 of March 28 of 2005?

16 A. I don't believe they were part of any of the
17 discussion.

18 Q. All right. Looking at the commission
19 agreement which you have before you, Exhibit 1, and
20 certainly it's an issue that is central to Judge Earley's
21 determination is Pardee Homes of Nevada, Inc.'s contractual
22 obligation to provide information to Mr. Wolfram and Mr.
23 Wilkes.

24 Would you agree that's an issue in this case?

25 A. Yes.

1 Q. All right. Would you look at the paragraph
2 then that speaks to paragraph two of the document of page
3 two? Sorry. Document to, one Exhibit 1 commission
4 agreement June 1, September 1 2004, second paragraph, page
5 two. Pardee shall provide to each of you a copy of each
6 written option exercise notice given pursuant to paragraph
7 two of the option agreement together with information as to
8 the number of acres involved and the scheduled closing
9 date. In addition, Pardee shall keep each of you
10 reasonably informed as to all matters relating to the
11 amount and due dates of your commission payments and the
12 course.

13 Did I accurately read that into the record?

14 A. Yes.

15 Q. And do you recall -- isn't it true that that
16 provision, that second paragraph of that provision of the
17 commission agreement, Exhibit 1, from Pardee's perspective
18 was that Pardee would provide enough information so that
19 Mr. Wilkes and Mr. Wolfram could, independent of taking
20 your word for it, taking Pardee's word for it, confirm the
21 accuracy of Pardee's representation or your representations
22 on whatever of Pardee?

23 MS. LUNDVALL: Your Honor, I'm going to
24 object. That goes beyond the plain meaning of this
25 language.

1 THE COURT: I think you asked what his
2 understanding was.

3 MR. J.J. JIMMERSON: That's exactly what I
4 asked.

5 THE COURT: He was the one that negotiated
6 the contract, so I mean --

7 MS. LUNDVALL: No. He says is this your
8 understanding, and then he cited a long term that went far
9 beyond.

10 THE COURT: Why don't we just ask. It is
11 cross. It is direct, but it's really redirect but...

12 THE WITNESS: Your Honor, I've already
13 testified that we had the obligation to let them know when
14 we made payments to CSI and to pay them as it pertains to
15 the 84 million. We haven't gotten to the option property,
16 so there is no option notice.

17 THE COURT: I understand that. But here's --
18 there is that sentence, in addition, Pardee shall keep
19 each of you reasonably informed as to all matters relating
20 to the amount and due dates of your commission payments.

21 I think he's trying to ask what was your
22 understanding, because you were involved, Mr. Lash. You
23 actually drafted it I think. What on behalf of Pardee --
24 what was your understanding.

25 THE WITNESS: On behalf of the company?

1 THE COURT: Right. Is that the question we
2 need to do?

3 BY MR. J.J. JIMMERSON:

4 Q. Right. Let me pose the question.

5 A. Communication that was given.

6 THE COURT: I think he wants to rephrase my
7 question.

8 BY MR. J.J. JIMMERSON:

9 Q. Sure. Now I want you to answer the question
10 and I want you to -- isn't it true that from Pardee's
11 perspective when reviewing its obligation to Mr. Wolfram
12 and Mr. Wilkes, in the second paragraph, last sentence that
13 we just read to you on at the second page of Exhibit 1, was
14 that Pardee was obliged to provide enough information so
15 that Wilkes and Wolfram could independent of taking Jon
16 Lash's or Pardee's word for it confirm the accuracy of what
17 they are being told by Pardee? Yes or no, sir?

18 A. I believe we did that by giving them 49
19 separate statements that showed the money that was paid in
20 and the commission owed.

21 Q. So answer the question. So is the answer to
22 my question yes?

23 A. Yes. I believe that we reasonably informed
24 them.

25 Q. And that was your understanding and then I'll

1 follow that up, yes, you understood that to be a good
2 definition of reasonably informed; is that right?

3 MS. LUNDVALL: Your Honor...

4 THE WITNESS: Yes.

5 MS. LUNDVALL: -- from his perspective --

6 MR. J.J. JIMMERSON: He answered, Counsel.

7 MS. LUNDVALL: Hold on. He keeps leaving out
8 the operative term of this, the "reasonably informed"
9 relates to the amount in the due dates.

10 MR. J.J. JIMMERSON: It does not say -- it
11 says all information.

12 MS. LUNDVALL: What he's now trying to do is
13 he's trying to draft evidence that changes the plain
14 meaning of this particular agreement.

15 MR. J.J. JIMMERSON: I would like to object
16 to the speaking objection, Judge.

17 MS. LUNDVALL: Hold on. And that's been
18 prohibited by The Court.

19 THE COURT: Here's what I look at it. I
20 still need to know what the intent of the contract by the
21 parties were. That is case law I'm interested in. So, and
22 since Mr. Lash was the person who negotiated this, I would
23 like an answer.

24 Now, it's a little more difficult, because
25 now you've answered a question. He's going to use that

1 definition. I understand that. I know where it's going.
2 I'm going to overrule that. That is important testimony
3 for me. You certainly, you know, can come back. I will
4 give you a chance obviously to go over that. I understand
5 your law and I understand.

6 So when I look at the case law, I will decide
7 how it applies, but I need that factual information. I
8 would like that. Whether it does apply or not, looking at
9 the parole evidence, I understand. We have talked that
10 route, and I understand your position very well on it.
11 But I still would like a factual answer to --

12 MS. LUNDVALL: Understood, your Honor. And
13 but let me make sure that as far as for purposes of the
14 record that my objection is clear.

15 THE COURT: Sure.

16 MS. LUNDVALL: Is the words that Mr.
17 Jimmerson is trying to put into Mr. Lash's mouth
18 contradict the plain meaning of this contract. And,
19 therefore, that's why I believe that --

20 THE COURT: That's your objection.

21 MS. LUNDVALL: -- it would be lead to
22 evidence that's prohibited and in accordance with your
23 court's order. I don't want anyone to argue that somehow
24 I've waived it.

25 Now, to the extent he's entitled to ask what

1 his intent is, that's one thing. But he is not entitled
2 to say this was your intent and completely contradicts the
3 main meaning of it. I think there is a difference with a
4 distinction there.

5 THE COURT: Well, I know he's already asked
6 him what the intent was. And so what he's trying -- and I
7 understand it, you know, if you were the one that were
8 involved in this. So just make sure any follow-up
9 questions you listen to the question. That's all I can do
10 at this point, because he testified. And certainly, Ms.
11 Lundvall, that is something that should probably come up
12 when you ask questions.

13 MS. LUNDVALL: Thank you, your Honor.

14 THE COURT: What would you be then?

15 MR. J.J. JIMMERSON: Recross.

16 THE COURT: Reversing it is for some reason
17 giving me a problem. But I understand. And, for the
18 record, it is noted. And I do understand what you're
19 saying, Ms. Lundvall. I guess where we are now is maybe
20 you need to ask the follow-up question to refresh his
21 recollection of what the answer was.

22 MR. J.J. JIMMERSON: Ms. Court Reporter,
23 would you be kind enough to read the last question and
24 answer?

25 THE COURT: Can we take a quick break?

1 Because it's almost 3:00 o'clock. I was thinking maybe we
2 could stretch it out, but I'm getting there. So let's
3 just take like a 15 minute quick break, because I've got
4 some work, and we'll be back and she can find, Mr.
5 Jimmerson, where you want.

6 (Short break.)

7 BY MR. J.J. JIMMERSON:

8 Q. After our comfort break, Mr. Lash, the
9 question that, the last two questions I asked you are not a
10 surprise to you. I asked the very identical question on
11 October 28, and you gave the identical answer.

12 Do you recall?

13 A. Yes.

14 Q. All right. Now, let me explore this subject.
15 When it says in the second paragraph, last sentence, it
16 uses this language. And for this I don't think there is
17 any disagreement, but when it says in addition Pardee shall
18 keep each of you reasonably informed as to all matters
19 relating to the amount and due dates of your commission
20 payments, end of quote.

21 Did you understand that due amounts and dues
22 of the commission payments referred to all commission
23 payments? What I mean by this, commission payments arising
24 from purchase property or commission payments arising from
25 option property?

1 A. Yeah. Well, I think there is two
2 definitions. One, when it concerns purchase property, it
3 has to do when you're buying it, how much we're paying.

4 Q. So called 84 million?

5 A. When it gets to option property, I think it's
6 a little more detailed. We have to give them a notice,
7 and we have to show them or tell them how many acres we're
8 buying and do the calculation and how many acres times
9 40,000 an acre times one and a half percent.

10 Q. And so to answer my question then, when it
11 talks in terms of the last sentence that in addition Pardee
12 shall keep each of you reasonably informed as to all
13 matters relating to the amount and due dates of your
14 commission payments, you understood commission payments to
15 include commission payments for purchase property,
16 commission payments arising from option property?

17 A. Yes.

18 Q. All right. And did you understand that the
19 word all and the word all matters meant exactly that, all?

20 A. Yes.

21 Q. Okay. Thank you.

22 Now, in listening to your answers to my
23 questions on your first day of testimony, October 28th and
24 answers that you gave to Ms. Lundvall later in that day on
25 the 28th of October and today, there is some understanding,

1 some commonality or common agreements as to what was
2 provided to Mr. Wilkes and some agreement as to things that
3 were not provided.

4 Would you agree?

5 A. Yes.

6 Q. For example, it's been drilled in the head,
7 but you never provided any of the amendments 1 through 8 to
8 the amended restatement to the plaintiffs?

9 A. That's correct.

10 Q. Likewise, you provided 49 payments,
11 statements signed by them. Maybe not everyone signed, but
12 they are not correlated, acknowledging they were paid that
13 plus \$2 million, \$400,000 for four percent of the down of
14 60,000 payment, and the last payment was I think 15,000 a
15 piece. There was a midway correction because of Mr.
16 Wolfram communicating with you and him communicating to you
17 in the letter of 2007 make up to the 50,000 overpayment the
18 point being there is Exhibit A evidence of payment
19 commissions. Agreed?

20 A. Yes.

21 Q. Those are two examples of things you know you
22 didn't provide, things you know you did provide?

23 A. Correct.

24 Q. Okay. Would you agree with this simple
25 statement? Nothing recorded with the Clark County

1 Recorders Office by Pardee Homes in conjunction, of course,
2 with the five takedowns that they had and the five deeds
3 that followed evidenced designation of use for any of the
4 five takedowns referenced by those five deeds?

5 A. I'm not sure the county has a map that shows
6 what the use of. I'm not sure the timing of when it was.
7 Was it at the closing or was is sometime after? But it is
8 public record that you can go and see the use.

9 Q. Okay.

10 A. Of this property.

11 Q. Let's stay with my question, and then I'll
12 explore your answer. You know one of the things that
13 you'll see with me, I give you plenty of time, and the
14 chips will fall maybe below or the Judge. I'm not the kind
15 of guy that be selective --

16 MS. LUNDVALL: Your Honor --

17 BY MR. J.J. JIMMERSON:

18 Q. To answer my question then, would you agree
19 with me that the simple proposition that nothing within the
20 deeds that are recorded with the Clark County Recorders
21 Office of the five takedowns and closings of escrows under
22 the same escrow number that Pardee took references or
23 explains to a viewer, the public, that designation of use
24 in any of the properties?

25 A. That's correct. Most deeds don't have the

1 use on it.

2 Q. And would you also agree that those deeds do
3 not -- withdrawn. Let's follow-up your answer. Where
4 within the county would Pardee evidence designation of use
5 within the meaning of your answers three times ago, three
6 questions ago?

7 A. I believe it's at the planning department.

8 THE COURT: The what department?

9 THE WITNESS: Planning.

10 BY MR. J.J. JIMMERSON:

11 Q. Clark County Planning. And is that otherwise
12 known as zoning department?

13 A. Yeah. It's one in the same.

14 Q. One in the same. I thought so. And the
15 zoning commission is the same seven commissioners of the
16 Clark County Comission, correct?

17 A. Yes.

18 Q. They just sit as a zoning commission on a day
19 during the week as opposed to the County Commission on the
20 day and the week, correct?

21 A. Yes.

22 Q. Just like they do for the hospital, for the
23 airport, subdivisions of the county? Agreed?

24 A. I believe that's true.

25 Q. All right. Now, why would your company,

1 Pardee Homes of Nevada, Inc. approach Clark County Zoning,
2 Clark County Planning being one in the same regarding use?

3 A. Why would we approach them?

4 Q. Right.

5 A. I'm not sure I understand the question.

6 Q. Why did Pardee go to Clark County Planning,
7 Clark County Zoning being one in the same? Why did they
8 regarding use?

9 A. I still don't understand the question.

10 Q. Well, you said there would be evidence of use
11 with the Clark County planning also known as Clark County
12 Zoning of use by Pardee of the Coyote Springs property
13 purchased from Coyote Springs?

14 A. Yes. It's public knowledge. We didn't go to
15 the County, but when the -- a map is recorded, it resides
16 in the planning department, and the zoning department is
17 part of the planning department.

18 Q. Now, you use the word --

19 MS. LUNDVALL: I would note this is far
20 beyond the scope of my cross-examination.

21 MR. J.J. JIMMERSON: No. The
22 cross-examination opened this door very wide when it
23 talked in terms of do you think you have the right to --
24 are you changing your testimony and do you think you have
25 the right to buy multifamily property and pay a higher

1 price for it and then later on change it to single family
2 residential as defined in our agreement and not be obliged
3 to pay a commission to Mr. Wolfram and Mr. Wilkes. And he
4 said I hadn't really thought about it. Maybe wouldn't be
5 obliged, and he changed his testimony from October 28
6 where he said, no, Mr. Wolfram would be entitled to a
7 commission if we changed the use.

8 THE COURT: Okay. So --

9 MS. LUNDVALL: From this standpoint, I asked
10 him nothing about public records and use designations.
11 Nothing. Absolutely not.

12 THE COURT: And I assume you're using this
13 from what happened yesterday as a foundation. Is that
14 what you're doing right now?

15 MR. J.J. JIMMERSON: That's part of it, but
16 the other part of it is to demonstrate to The Court that
17 recording a deed didn't answer the question, is this a
18 single family use.

19 THE COURT: He just agreed to that.

20 MS. LUNDVALL: I never suggested.

21 THE COURT: I get that, but I think it's just
22 --

23 MR. J.J. JIMMERSON: Let me talk in terms
24 of --

25 THE COURT: I don't understand. I'll be

1 honest. Right now this is a new concept. First time it's
2 come up about planning maps.

3 MR. J.J. JIMMERSON: Judge, but the answer
4 to, respectfully to opposing counsel's objection, she
5 opened the door far and wide.

6 THE COURT: If that's your foundation then,
7 because it is an issue in the case. Where could they have
8 gone to find the information?

9 MS. LUNDVALL: No. I asked for his
10 interpretation of the commission agreement.

11 THE COURT: You did.

12 MS. LUNDVALL: Did the commission agreement
13 allow for them to recover a commission if Pardee had
14 purchased both multifamily land and then later changed its
15 use. I followed the exact same hypothetical used by Mr.
16 Jimmerson. I asked nothing about zoning. I asked nothing
17 about the maps. I asked nothing about public recordings
18 of use designations of this witness.

19 MR. J.J. JIMMERSON: She talked about deeds.

20 THE COURT: I think that's where we're going,
21 because the context has to be within the commission
22 agreement, because that's what relevant to this case.

23 MR. J.J. JIMMERSON: Is it all matters?
24 That's the issue for The Court.

25 THE COURT: What you're trying to find out,

1 correct, is whether what understanding he had as far as
2 recorded documents? What was available as far as
3 reasonably informed? Is that where we're going?

4 MR. J.J. JIMMERSON: Exactly. As to all
5 matters regarding payments of commissions reasonably
6 informed.

7 MS. LUNDVALL: The amount and due dates.

8 MR. J.J. JIMMERSON: All matters relating to.

9 THE COURT: That's the dispute in this case.
10 I get it. So I'm going to -- I have it. I promise you.
11 I have it.

12 So I'm going to overrule your objection. I
13 know it's in the context of the commission agreement,
14 because that's what is relevant. And I think your
15 question is in the context of that.

16 MR. J.J. JIMMERSON: Sure it is.

17 MS. LUNDVALL: If he keeps it within the
18 context of the commission agreement, then I will withdraw
19 the objection.

20 If he tries to expand it beyond the scope,
21 and to try to introduce brand new exhibits which is where
22 I believe that he's going, then that's where my objection
23 lie.

24 THE COURT: Let's wait and see if he goes
25 there and maybe this discussion we weren't even going to

1 go there.

2 MR. J.J. JIMMERSON: Right.

3 THE COURT: But he certainly has a right,
4 because it's in context of the commission agreement which
5 is the gist of this lawsuit so...

6 MR. J.J. JIMMERSON: Do you remember your
7 last answer?

8 THE COURT: I don't remember the last
9 question.

10 BY MR. J.J. JIMMERSON: Do you remember the
11 last question and answer? I think you generally do, but
12 let's go back. Just read the question and answer. We'll
13 start because you use the word recorded. You may have
14 been mistaken in that limited regards. So let's read it
15 back.

16 (Record read by reporter.)

17 BY MR. J.J. JIMMERSON:

18 Q. Thank you. Now I just want to ask this
19 question. You may have been mistaken when you say that
20 the maps are recorded through the Clark County?

21 MS. LUNDVALL: He didn't say the maps are
22 recorded.

23 MR. J.J. JIMMERSON: Yes, he did. She just
24 read it.

25 THE COURT: My understanding is he said

1 that's where the maps are recorded, but clarify for us.

2 THE WITNESS: That's where the maps are
3 recorded. I don't know if they are recorded. That's
4 where you record a map, and that's where the designation
5 resides. If you want to go anywhere in the city and ask
6 about a piece of property, go to the planning and zoning
7 department.

8 BY MR. J.J. JIMMERSON:

9 Q. All right. And did Pardee at any time
10 between 2004, you know, 2005 when you actually got a deed
11 in March of 2005, going forward, has Pardee applied for
12 zoning of single family residential use property with the
13 county?

14 A. I'm not sure.

15 Q. Have they approached the county with a
16 tentative map showing the Coyote Springs property that it
17 has purchased, that the Pardee has purchased and mapped out
18 for single family homes?

19 A. I believe so.

20 Q. All right. And when did Pardee do so
21 relative to the 2005 to present time period?

22 A. Not sure how to answer that. It wasn't in
23 2005. It was probably in later years. I just don't have
24 a better understanding of...

25 THE COURT: Just say you don't know the date.

1 It would have been after.

2 THE WITNESS: 2005.

3 THE COURT: But you can't get anymore
4 specific than that, because I understand you weren't doing
5 the day. We all know the foundation here.

6 BY MR. J.J. JIMMERSON:

7 Q. And what is the basis for your belief that it
8 did go to the county? And we don't use the word record but
9 demonstrate a map and obtain zoning for the map so you
10 could build compact residential homes?

11 A. It's based on the information we're getting
12 from the Las Vegas team. That's what has happened.

13 Q. Who is the Las Vegas team?

14 A. Jim Rizzi primarily and then oversaw the
15 divisions, overseen by Kliff Andrews, the division
16 president.

17 Q. All right. Thank you.

18 A. There is also a guy by the name of Jim
19 Giordano (phonetic) who has other specialties with
20 utilities and water. He works closely with Jim Rizzi.

21 THE COURT: And he's in Nevada?

22 THE WITNESS: Yeah.

23 THE COURT: Okay.

24 BY MR. J.J. JIMMERSON:

25 Q. And, now, let's turn to the testimony that

1 you gave on October 28th, 2013. And the testimony that you
2 now seek to change by the question asked by your lawyer,
3 Ms. Lundvall this morning, okay. All right.

4 The question that you were asked by Ms.
5 Lundvall was something along the lines, do you recall that
6 Mr. Jimmerson asked you a hypothetical when you last
7 testified. I'll share with you. You know is October 28th,
8 2013, because you studied your transcript, your testimony.

9 And do you recall that you answered that if
10 Pardee were to change the designation of multifamily
11 property to single family residential production homes,
12 that you testified, Mr. Lash, that Pardee would owe Wilkes
13 and Wolfram a commission, and you said, yes, I remember I
14 said yes, I would owe them a commission?

15 Do you recall that question being asked of
16 you?

17 A. Yes.

18 Q. All right. And then you were asked the
19 question, is that still your position or have you now
20 changed your position now, and you volunteered, yes, I want
21 to change, and I think I answered it wrong.

22 Do you recall that answer and question?

23 A. Yes.

24 Q. And so what you've done, you think is you've
25 gone back to the words of the commission agreement, Exhibit

1 1, and you're taking the position on behalf of Pardee today
2 as opposed to what you said five weeks ago, October 28,
3 2013, to say that the language allows you to buy property
4 separately from Coyote Springs that initially is not
5 designated as single family production residential homes.

6 Those words were used in the option
7 agreement, and later change designation back to a lowered
8 dense use, specifically production residential property.
9 And you can do that and not have to pay Wilkes and Wolfram
10 commission?

11 Is that your current position? Your new
12 position?

13 A. That is my current position, yes.

14 Q. You understand that is directly at odds with
15 what you testified to on October 28th, 2013, right, sir?

16 A. Yes. I also testified that I rethought about
17 it since I testified back in October.

18 Q. I thank you, sir.

19 Do you not think that the specifically
20 negotiated language about no circumvention would apply to
21 prevent this type of mischief by Pardee to buy property
22 originally intended for a use other than production of
23 residential property and then later change it to
24 residential property and thereby stiff my client?

25 MS. LUNDVALL: I'm going to object to that

1 question as to the claim or the contention that somehow
2 that that is mischief and that we were attempting to stiff
3 the plaintiff.

4 MR. J.J. JIMMERSON: Your Honor, they can buy
5 all 30,000 acres and all multifamily and build all single
6 family homes. Under this theory my client would not be
7 entitled to a single dollar of commission. And they are
8 the procuring for all 30,000 acres as it relates to single
9 family homes.

10 THE COURT: I understand.

11 MS. LUNDVALL: There has not been a stitch of
12 evidence in this trial that somehow that there was some
13 type of intentional violation or an intentional act.

14 MR. J.J. JIMMERSON: It doesn't have to be
15 intentional.

16 MS. LUNDVALL: Hold on. Do not interrupt me
17 when I'm making an objection.

18 MR. J.J. JIMMERSON: Thank you, Counsel.

19 MS. LUNDVALL: That would be this. There has
20 not been a stitch of evidence to suggest that Pardee
21 intentionally tried to practice any mischief or that we
22 tried to practice any opportunity to stiff the plaintiff.

23 THE COURT: I understand the testimony was by
24 Mr. Whittemore based on his relationship and his
25 experience with his based on Mr. Lash's, I understand

1 that. I think you're just trying to do cross-exam. And I
2 understand that, and I have to give him a big leeway.
3 What's hard for me and difficult, sometimes, Mr.
4 Jimmerson, you put so many preamble. Preamble isn't the
5 word. But so many contingencies before you get to the
6 question that sometimes -- so could you just rephrase it,
7 because I was really trying to follow it. And I feel if
8 I'm having a difficult time, Mr. Lash may also. He may be
9 smarter than I am. But could you shorten it up a little?
10 Because I know where you were going on the part of the
11 contract, but then you got off on another things.

12 BY MR. J.J. JIMMERSON:

13 Q. You understand, Mr. Lash?

14 THE COURT: Just change the form of the
15 question?

16 BY MR. J.J. JIMMERSON:

17 Q. For purposes of this question, I'm not
18 charging you or Pardee with an intentional fraudulent
19 claim. Whether that exists or not, that's how the evidence
20 develops. But as I stand before you, my question doesn't
21 speak to --

22 MS. LUNDVALL: I move to strike as far as all
23 this preamble again.

24 MR. J.J. JIMMERSON: The objection by counsel
25 though did not speak to my sentence at all. She adds the

1 words we didn't intentionally do something which is
2 foreshadowing -- sincerely, Judge, foreshadowing the fact
3 they have done exactly what I'm telling you. They have
4 gone back and taken a portion of the multifamily property
5 and redesignated single family production residential in
6 the midst of this trial. That is why we're not provided
7 the multifamily agreement.

8 THE COURT: I don't have any of that evidence
9 in front of me.

10 MR. J.J. JIMMERSON: That's where I'm going.
11 I'm signaling my line of questions to Mr. Lash. He know
12 it well, because he's married to my testimony as I would
13 too were I in his shoes. He understands his
14 responsibility to his client.

15 By the way, I did the math. Theirs is 9,706
16 hours in a year, times 20. His salary is less than \$2,000
17 a year.

18 THE WITNESS: I live in California. I pay
19 property taxes.

20 THE COURT: Let's stop.

21 MR. J.J. JIMMERSON: For a light moment I did
22 that math just to have some fun with you at the end of my
23 examination.

24 THE COURT: Let's go back to the question
25 that's pending, because I don't have any -- so your

1 question pending right now is -- read it back again.

2 MR. J.J. JIMMERSON: Okay.

3 (Record read by reporter.)

4 THE COURT: And this type of mischief is what
5 you're talking about from the hypothetical?

6 MR. J.J. JIMMERSON: The mischief is.

7 THE COURT: So why don't --

8 MR. J.J. JIMMERSON: Let me rephrase it.

9 THE COURT: If you would rephrase it.

10 BY MR. J.J. JIMMERSON:

11 Q. Do you believe that Pardee has the ability to
12 buy property from Coyote Springs under either a ruse or an
13 intent other than single family production real estate and
14 then later on five years later on -- I use the example 2024
15 which is, what, 11 years from now, could then lessen the
16 density.

17 Go back and have it zoned R2. Single family
18 residential production homes. And by doing so defeat my
19 clients' entitlement to commission?

20 A. My answer is yes.

21 Q. And what is the basis?

22 A. I don't feel it's mischief. I feel when we
23 negotiated the original single family deal, the
24 multifamily, the custom lot and the golf course wasn't
25 contemplated.