

IN THE SUPREME COURT OF THE STATE OF NEVADA

VEGAS UNITED INVESTMENT SERIES)
105, INC., A NEVADA DOMESTIC)
CORPORATION,)
Appellant,)
vs.)
CELTIC BANK CORPORATION,)
SUCCESSOR-IN-INTEREST TO SILVER)
STATE BANK BY ACQUISITION OF)
ASSETS FROM THE FDIC AS RECEIVER)
FOR SILVER STATE BANK, A UTAH)
BANKING CORPORATION ORGANIZED)
AND IN GOOD STANDING WITH THE)
LAWS OF THE STATE OF UTAH,)
Respondents.)
_____)

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APPEAL

From the Eighth Judicial District Court,

The Honorable Susan H. Johnson, District Judge

District Court Case No. A-15-728233-C

JOINT APPENDIX VOLUME VII

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AMENDED INDEX OF APPENDIX – CHRONOLOGICAL

Date	Document	Page
	VOLUME 1	
11/25/2015	Complaint	0001
12/3/2015	Summons - Gibson Business Center Property Owner Association	0099
12/7/2015	Affidavit of Service - Vegas United Investment Series 105 Inc.	0103
12/8/2015	Answer	0105
	VOLUME 2	
1/4/2016	Answer and Counterclaim	0108
1/5/2016	Summons - Gibson Road LLC	0126
2/5/2016	Default - Gibson Road, LLC	0129
2/17/2016	Affidavit - Gibson Road	0131
4/6/2016	Affidavit of Attempted Service	0133
4/8/2016	Affidavit of Service	0135
4/29/2016	Default of Gibson Road, LLC (as to Counterclaim)	0137
5/31/2016	Stipulation and Order Disclaiming Interest and Dismissing Gibson Business Center Property Owner Association Without Prejudice	0140
3/7/2017	Answer to Counterclaim	0143
	VOLUME 3	
5/2/2017	Deposition Transcript of Charles Schmidt	0156
6/30/2017	Plaintiff's Pre-Trial Disclosure	0212
7/28/2017	Amended Notice of 2.67 Conference	0220
8/4/2017	Joint Pre-Trial Memorandum	0223
	VOLUME 4	
8/8/2017	Celtic Bank Corporation's E.D.C.R. 7.27 Civil Trial Memorandum	0248
8/8/2017	Order Granting Stipulation and Order to Dismiss Defendant Republic Services, Inc.	0289
8/15/2017	Notice of Supplemental Authority	0292
8/25/2017	Findings of Fact, Conclusions of Law and Judgment	0306
9/5/2017	Notice of Entry of Order of Findings of Fact, Conclusions of Law and Judgment	0323
	VOLUME 5	
9/6/2017	Memorandum of Costs and Disbursements	0342
9/28/2017	Notice of Appeal	0516
9/28/2017	Case Appeal Statement	0519
10/2/2017	Order and Judgment re: Memorandum of Costs and Disbursements	0524
10/3/2017	Notice of Entry Of Order and Judgment re: Memorandum of Costs and Disbursements	0527
11/6/2017	Amended Notice of Appeal	0532
11/21/2017	Order Denying Vegas United Investment Series 105, Inc.'s Motion for Injunction Pending Appeal on Order Shortening Time	0535
11/21/2017	Notice of Entry of Order Denying Vegas United Investment Series 105, Inc.'s Motion for Injunction Pending Appeal on Order Shortening Time	0538
5/7/2017	Stipulation and Order to Certify Final Judgment	0543
5/10/2017	Notice of Entry of Stipulation and Order to Certify Final Judgment	0548

AMENDED INDEX OF APPENDIX – CHRONOLOGICAL

	VOLUME 6	
8/9/2017	Recorders Transcript of Bench Trial - Day 1	0557
	VOLUME 7	
8/10/2017	Recorders Transcript of Bench Trial - Day 2	0799
	VOLUME 8	
8/11/2017	Recorders Transcript of Bench Trial - Day 3	0928
Stipulated Trial Exhibit No.	Document	PAGE
	VOLUME 9	
1	Declaration of Protective Covenants, Conditions and Restriction Gibson Business Park, Phase One, Clark County Covenant, Conditions and Restrictions recorded 09/11/8	1074
2	First Amendment to Declaration of Protective Covenants, Conditions and Restriction Gibson Business Park, Phase One, Clark County recorded 10/24/94	1124
3	Covenant Condition and Restrictions recorded 03/18/04	1130
4	Promissory Note dated 12/09/05 and Allonge	1162
5	Re-Recorded Deed of Trust recorded 01/23/06	1168
6	Assignment of Rents Recorded 01/23/06	1208
	VOLUME 10	
7	Assignment of Deed of Trust recorded 11/09/09	1234
8	Assignment of Rents Recorded 11/09/09	1237
9	Lien for Delinquent Assessments recorded 08/23/11	1240
10	Notice of Default and Election to Sell recorded 10/14/11	1242
11	First American Title Trustee's Sale Guarantee dated 10/21/11	1246
12	Red Rock Financial letter to Celtic Bank and other entities dated 12/21/11	1260
13	Email from Ashley Panon/Red Rock to Sjones@marwestre.com dated 8/12/13	1268
14	Tax Trustee Certificate recorded 12/26/13	1271
15	Notice of Sale recorded 02/26/14	1273
16	Red Rock Emails dated 03/21/14 re: sale	1282
17	Foreclosure Deed recorded 4/17/14	1285
18	Assessor Correspondence to Vegas United dated 05/03/14	1289
19	Past Due Property Tax Notices to Borrower dated 06/09/14	1296
20	Notice of Default and Election to Sell recorded 03/02/15	1300
21	Cease and Desist Letter to Celtic dated April 30, 2015	1307
22	Tax Trustee Deed recorded 06/11/15	1312
23	Email chain between Jeffrey I. Orgill and Maricela Carrera, et al re: Clark County Trustee Auction-Parcel 178-15-511-042 dated 10/2015	1314
24	Notice of Intent to Deed dated 10/13/15	1319
25	Wire Confirmation from Celtic Bank to Bank of America in the amount of \$18,281.67 dated 10/29/15	1321
26	Treasurer's Deed of Reconveyance recorded 11/05/15	1323

AMENDED INDEX OF APPENDIX – CHRONOLOGICAL

27	Re-recorded Foreclosure Deed recorded 4/4/16	1326
28	First American Title Insurance Company National Commercial Services dated 11/9/15	1334
29	Notices	1357
30	Certified Mailings of Affidavits dated 10/20/11	1393
31	Certificates of Mailing with Affidavit of Service for Notice of Foreclosure Sale Recorded on 2/26/14	1406
32	Certificate of Sale dated 3/21/14	1428
33	Foreclosure Deed dated 4/15/14	1430
34	Excess Proceeds to Dues Accounting	1434
	VOLUME 11	
35	Foreclosure Deed to Charles Schmidt	1456
36	Notice to Proceed with HOA Sale	1463
37	Charles Schmidt \$30,000 Payment	1477
38	Notice of Foreclosure Sale/Affidavit of Mailing	1483
39	Gibson HOA Permission Documents	1500
40	Affidavit of Service -Gibson Road, LLC	1505
41	Certificate of Mailing of Demand for Payment	1512
42	Letter Request Notice of Delinquent Assessment/Recorded on 8/23/11, and Notice of Default and Election to Sue dated 10/14/11	1522
43	Certified Mailings	1551
44	Notice of Default and election to Sell Pursuant to the Lien for Delinquent Assessment (NOD)	1570
45	Mailing Affidavit for NOD	1577
46	Mailing Affidavit for Lien for Delinquent Assessments	1593
47	Stewart Title Preliminary Title Report dated 07/13/14	1602
48	Letter dated 04/30/15	1639
49	Orgill Emails dated 06/05/14	1644
50	Shapiro, Esq. Letter dated 08/01/14	1647
51	Shapiro Email dated 08/01/14	1649
52	Gibson Business Center Property Owner Association pursuant to Subpoena Duces Tecum dated 03/23/17 (the "HOA," and/or "Gibson HOA") Certificates of Mailing	1652
	VOLUME 12	
53	Letter from J. Shapiro, Esq. to Red Rock Financial Services in HOA files with all policies and proofs of service	1688
54	Affidavit of Mailing for Notice of Foreclosure Sale with related documents in HOA files	1767
55	HOA Notice of Sale with Pre Audit Checklist	1787
56	Red Rock Financial Services Homeowners Progress Report	1789
57	Certified Mail Celtic Bank Received dated 10/24/11	1792
58	First American Trustee's Sale Guarantee - HOA Assessment Lien	1811
59	Mailing and NOD	1826

AMENDED INDEX OF APPENDIX – ALPHABETICAL

Document	Volume : Page
Affidavit - Gibson Road	2 : 0131
Affidavit of Attempted Service	2 : 0133
Affidavit of Mailing for Notice of Foreclosure Sale with related documents in HOA files	12 : 1767
Affidavit of Service	2 : 0135
Affidavit of Service - Vegas United Investment Series 105 Inc.	1 : 0103
Affidavit of Service -Gibson Road, LLC	11 : 1505
Amended Notice of 2.67 Conference	3 : 0220
Amended Notice of Appeal	5 : 0532
Answer	1 : 0105
Answer and Counterclaim	2 : 0108
Answer to Counterclaim	2 : 0143
Assessor Correspondence to Vegas United dated 05/03/14	10 : 1289
Assignment of Deed of Trust recorded 11/09/09	10 : 1234
Assignment of Rents Recorded 01/23/06	9 : 1208
Assignment of Rents Recorded 11/09/09	10 : 1237
Case Appeal Statement	5 : 0519
Cease and Desist Letter to Celtic dated April 30, 2015	10 : 1307
Celtic Bank Corporation's E.D.C.R. 7.27 Civil Trial Memorandum	4 : 0248
Certificate of Mailing of Demand for Payment	11 : 1512
Certificate of Sale dated 3/21/14	10 : 1428
Certificates of Mailing with Affidavit of Service for Notice of Foreclosure Sale Recorded on 2/26/14	10 : 1406
Certified Mail Celtic Bank Received dated 10/24/11	12 : 1792
Certified Mailings	11 : 1551
Certified Mailings of Affidavits dated 10/20/11	10 : 1393
Charles Schmidt \$30,000 Payment	11 : 1477
Complaint	1 : 0001
Covenant Condition and Restrictions recorded 03/18/04	9 : 1130
Declaration of Protective Covenants, Conditions and Restriction Gibson Business Park, Phase One, Clark County Covenant, Conditions and Restrictions recorded 09/11/8	9 : 1074
Default - Gibson Road, LLC	2 : 0129
Default of Gibson Road, LLC (as to Counterclaim)	2 : 0137
Deposition Transcript of Charles Schmidt	3 : 0156
Email chain between Jeffrey I. Orgill and Maricela Carrera, et al re: Clark County Trustee Auction-Parcel 178-15-511-042 dated 10/2015	10 : 1314
Email from Ashley Panon/Red Rock to Sjones@marwestre.com dated 8/12/13	10 : 1268
Excess Proceeds to Dues Accounting	10 : 1434

AMENDED INDEX OF APPENDIX – ALPHABETICAL

Findings of Fact, Conclusions of Law and Judgment	4 : 0306
First Amendment to Declaration of Protective Covenants, Conditions and Restriction Gibson Business Park, Phase One, Clark County recorded 10/24/94	9 : 1124
First American Title Insurance Company National Commercial Services dated 11/9/15	10 : 1334
First American Title Trustee's Sale Guarantee dated 10/21/11	10 : 1246
First American Trustee's Sale Guarantee - HOA Assessment Lien	12 : 1811
Foreclosure Deed dated 4/15/14	10 : 1430
Foreclosure Deed recorded 4/17/14	10 : 1285
Foreclosure Deed to Charles Schmidt	11 : 1456
Gibson Business Center Property Owner Association pursuant to Subpoena Duces Tecum dated 03/23/17 (the "HOA," and/or "Gibson HOA") Certificates of Mailing	11 : 1652
Gibson HOA Permission Documents	11 : 1500
HOA Notice of Sale with Pre Audit Checklist	12 : 1787
Joint Pre-Trial Memorandum	3 : 0223
Letter dated 04/30/15	11 : 1639
Letter from J. Shapiro, Esq. to Red Rock Financial Services in HOA files with all policies and proofs of service	12 : 1688
Letter Request Notice of Delinquent Assessment/Recorded on 8/23/11, and Notice of Default and Election to Sue dated 10/14/11	11 : 1522
Lien for Delinquent Assessments recorded 08/23/11	10 : 1240
Mailing Affidavit for Lien for Delinquent Assessments	11 : 1593
Mailing Affidavit for NOD	11 : 1577
Mailing and NOD	12 : 1826
Memorandum of Costs and Disbursements	5 : 0342
Notice of Appeal	5 : 0516
Notice of Default and election to Sell Pursuant to the Lien for Delinquent Assessment (NOD)	11 : 1570
Notice of Default and Election to Sell recorded 03/02/15	10 : 1300
Notice of Default and Election to Sell recorded 10/14/11	10 : 1242
Notice of Entry Of Order and Judgment re: Memorandum of Costs and Disbursements	5 : 0527
Notice of Entry of Order Denying Vegas United Investment Series 105, Inc.'s Motion for Injunction Pending Appeal on Order Shortening Time	5 : 0538
Notice of Entry of Order of Findings of Fact, Conclusions of Law and Judgment	4 : 0323
Notice of Entry of Stipulation and Order to Certify Final Judgment	5 : 0548
Notice of Foreclosure Sale/Affidavit of Mailing	11 : 1483
Notice of Intent to Deed dated 10/13/15	10 : 1319
Notice of Sale recorded 02/26/14	10 : 1273

AMENDED INDEX OF APPENDIX – ALPHABETICAL

Notice of Supplemental Authority	4 : 0292
Notice to Proceed with HOA Sale	11 : 1463
Notices	10 : 1357
Order and Judgment re: Memorandum of Costs and Disbursements	5 : 0524
Order Denying Vegas United Investment Series 105, Inc.'s Motion for Injunction Pending Appeal on Order Shortening Time	5 : 0535
Order Granting Stipulation and Order to Dismiss Defendant Republic Services, Inc.	4 : 0289
Orgill Emails dated 06/05/14	11 : 1644
Past Due Property Tax Notices to Borrower dated 06/09/14	10 : 1296
Plaintiff's Pre-Trial Disclosure	3 : 0212
Promissory Note dated 12/09/05 and Allonge	9 : 1162
Recorders Transcript of Bench Trial - Day 1 August 9, 2017	6 : 0557
Recorders Transcript of Bench Trial - Day 2 August 10, 2017	7 : 0799
Recorders Transcript of Bench Trial - Day 3 August 11, 2017	8 : 0928
Red Rock Emails dated 03/21/14 re: sale	10 : 1282
Red Rock Financial letter to Celtic Bank and other entities dated 12/ 21/1	10 : 1260
Red Rock Financial Services Homeowners Progress Report	12 : 1789
Re-Recorded Deed of Trust recorded 01/23/06	9 : 1168
Re-recorded Foreclosure Deed recorded 4/4/16	10 : 1326
Shapiro Email dated 08/01/14	11 : 1649
Shapiro, Esq. Letter dated 08/01/14	11 : 1647
Stewart Title Preliminary Title Report dated 07/13/14	11 : 1602
Stipulation and Order Disclaiming Interest and Dismissing Gibson Business Center Property Owner Association Without Prejudice	2 : 0140
Stipulation and Order to Certify Final Judgment	5 : 0543
Summons - Gibson Business Center Property Owner Association	1 : 0099
Summons - Gibson Road LLC	2 : 0126
Tax Trustee Certificate recorded 12/26/13	10 : 1271
Tax Trustee Deed recorded 06/11/15	10 : 1312
Treasurer's Deed of Reconveyance recorded 11/05/15	10 : 1323
Wire Confirmation from Celtic Bank to Bank of America in the amount of \$18,281.67 dated 10/29/15	10 : 1321

TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

CELTIC BANK CORPORATION,)
)
Plaintiff,)
)
vs.)
)
VEGAS UNITED INVESTMENT)
SERIES 105, INC.,)
)
Defendant.)

CASE NO. A-15-728233-C
DEPT NO. XXII

**TRANSCRIPT OF
PROCEEDINGS**

BEFORE THE HONORABLE SUSAN JOHNSON, DISTRICT COURT JUDGE

BENCH TRIAL - DAY 2

THURSDAY, AUGUST 10, 2017

APPEARANCES:

FOR THE PLAINTIFF:

ALLYSON R. NOTO, ESQ.
KELLY L. SCHMITT, ESQ.

FOR VEGAS UNITED:

ROGER P. CROTEAU, ESQ.

RECORDED BY: NORMA RAMIREZ, COURT RECORDER
TRANSCRIBED BY: JD REPORTING, INC.

I N D E X

W I T N E S S E S

WITNESSES FOR THE PLAINTIFF:

CHARLES SCHMIDT

Direct Examination by Ms. Noto	4
Cross-Examination by Mr. Croteau	38
Redirect Examination by Ms. Noto	99
Recross-Examination by Mr. Croteau	111

1 **LAS VEGAS, CLARK COUNTY, NEVADA, AUGUST 10, 2017, 1:38 P.M.**

2 *** * * * ***

3 THE COURT: Okay. You all may be seated. And I'm
4 calling the case, Celtic Bank Corporation versus Vegas United
5 Investment Series 105, Inc., and that is Case Number
6 A-15-728233-C.

7 And, Counsel, I apologize to you for the delay. We
8 have literally been in court from 9:00 a.m. till 1:25, and so I
9 said, hurry up, go get a sandwich. So we've got some people
10 eating here, and some of us who wolfed whatever we had down.

11 So are we ready to proceed with trial?

12 MS. NOTO: Yes, Your Honor.

13 THE COURT: Okay. Next witness.

14 MS. NOTO: We'd like to call to the stand Charles
15 Schmidt.

16 **CHARLES SCHMIDT**

17 [having been called as a witness and being first duly sworn,
18 testified as follows:]

19 THE CLERK: Will you please state and spell your full
20 name for the record.

21 THE WITNESS: Charles Schmidt. C-h-a-r-l-e-s,
22 S-c-h-m-i-d-t.

23 MS. NOTO: May I proceed, Your Honor?

24 THE COURT: Yes, you may.

25 / / /

DIRECT EXAMINATION

BY MS. NOTO:

Q Mr. Schmidt, good afternoon. I want to start with a little bit of your background. You are the sole owner of Vegas United; is that correct?

A I believe so.

Q You believe so?

A There may be another stockholder, but I'm not sure.

Q Who do you believe may be the other stockholder?

A No. My father-in-law I thought, but he's not.

Q Okay. So you are the sole --

A Correct.

Q -- stockholder of Vegas United?

A Correct.

Q Okay.

THE COURT: Okay. Sir, make sure the attorney gets her question out first before you respond, okay?

THE WITNESS: Okay.

BY MS. NOTO:

Q And Vegas United is a real estate holding company?

A It is.

Q And you are also the president of that company; correct?

A Correct.

Q And, in fact, you've been involved personally with

1 numerous businesses that hold real estate; correct?

2 A Correct.

3 Q And since 2009, you've been in the business of
4 purchasing properties through association foreclosure sales; is
5 that correct?

6 A Correct.

7 Q Okay. In fact, you've bought more than a dozen since
8 2009; is that right?

9 A I have.

10 THE COURT: I'm sorry. I didn't hear that?

11 THE WITNESS: I'm sorry. I have.

12 THE COURT: Okay.

13 BY MS. NOTO:

14 Q How many would you say you've purchased since 2009?

15 A Since --

16 MR. CROTEAU: Objection. Him individually, Your
17 Honor, or this entity?

18 THE COURT: Well, I thought we were --

19 MS. NOTO: Through any entity --

20 THE COURT: Whoa. Whoa. Wait. I took it that it
21 meant the entity. Do you have another --

22 MS. NOTO: I'll rephrase, Your Honor.

23 THE COURT: Sure.

24 BY MS. NOTO:

25 Q It's my understanding that Vegas United only holds

1 this one property; is that correct?

2 A Correct.

3 Q But you personally are involved with other real
4 estate holding companies that also hold real estate; correct?

5 A Personally, I only have one property.

6 Q Okay. And how about through an entity that you
7 control?

8 A Several. I mean, over 12, as you said.

9 Q Over 12.

10 A Uh-huh.

11 Q So you're knowledge about -- knowledgeable about the
12 process that goes into an association foreclosure sale --

13 A Correct.

14 Q -- is that fair?

15 A I'm sorry. Correct.

16 Q Okay. And, in fact, you learned about this sale
17 through a publication in the Nevada Legal News; right?

18 A That's correct.

19 Q All right. Let's look at stipulated Exhibit 15.

20 While you're turning there, sir, was it your pattern
21 and practice at that time in 2014 to review the Nevada Legal
22 News for properties?

23 A It was.

24 (Pause in the proceedings)

25 / / /

1 BY MS. NOTO:

2 Q And while we're waiting, turn if you would in that
3 exhibit to Red Rock 0077.

4 A Okay.

5 Q Is this the Nevada Legal News publication that you
6 reviewed which led you to this sale?

7 A It appears to be an affidavit of publication. I
8 don't believe I read an affidavit of publication
9 [unintelligible].

10 Q Okay. And looking at that document on the right-hand
11 side, does this represent what would have been -- what you
12 reviewed in the Nevada Legal News? Take a moment to look at
13 it.

14 A It very well could be.

15 Q You'll see on the right side that you'll see that the
16 publication, a copy of which is attached hereto, was published
17 in the said newspaper on the following dates. Do you see that,
18 February 28th, 2014, on the left-hand side?

19 A I do.

20 Q All right. So take a moment and look at that
21 right-hand side and the notice, and let me know if that
22 refreshes your recollection as to what it was that you reviewed
23 to identify the sale.

24 A It appears to be a typical Nevada Legal News sale
25 posting, and I see Gibson Road LLC in the middle, but I can't

1 read much more. It's a little small for me.

2 Q Very good. Well, hopefully, maybe if we get the TV
3 on here, I can --

4 A Are you going to have me read?

5 Q -- amplify it a bit. I'll zoom in for us there. So
6 if you look on this screen, is that a little easier for you to
7 read?

8 A It is.

9 Q Okay. Very good. So if you look at the top of that,
10 it identifies the assessor's parcel number; correct?

11 A Correct.

12 Q And is that the same assessor's parcel number that we
13 have in this case? Is that the Gibson Road assessor's parcel
14 number?

15 A I believe the last three numbers are. So I would
16 assume that the entire thing is, but I'm not positive.

17 Q Very good. And it identifies 181 North Gibson Road;
18 right?

19 A It does.

20 Q It references a lien for delinquent assessments;
21 right?

22 A It does.

23 Q And it references the book number and instrument
24 number of the lien for delinquent assessments. Do you see
25 that?

1 A How far down was that? I -- after all those --

2 Q We are right around here.

3 A Uh-huh.

4 Q Do you see that?

5 A Correct. I see that.

6 Q Okay. It references the notice of default and

7 election to sell. Do you see that?

8 A I do.

9 Q Okay. And it has the book and the instrument number
10 for that also; correct?

11 A It does.

12 Q And then if you'll go down here to the property, do
13 you see it beginning right here --

14 Oh, let me see if I can go up. There you go.

15 -- The property heretofore described. Can you read
16 that into the record through right before the dated
17 February 23rd?

18 MR. CROTEAU: Counsel, will you turn and push that
19 page to the left a little bit.

20 MS. NOTO: Oh, I apologize. There you go.

21 BY MS. NOTO:

22 Q Will you please read into the record starting, The
23 property heretofore described.

24 A The property heretofore described is being sold as
25 is. The sale was made without covenant or warranty, express or

1 implied regarding the --

2 Q You need to slow down for the court reporter.

3 A Okay. Sorry.

4 -- not limited to title or possession, encumbrances,
5 obligations to satisfy, secured or unsecured --

6 THE COURT: Well, here, hold on.

7 THE WITNESS: I didn't know that did that.

8 THE COURT: Okay.

9 THE WITNESS: -- or unsecured liens against all
10 right, title and interest of the owner without equity, right or
11 redemption -- right or redemption to satisfy the indebtedness
12 secured by said lien with interest thereon as provided in the
13 declaration of Covenants, Conditions and Restrictions recorded
14 on 10/24, 1994, and then it gives the book number if you need
15 that.

16 BY MS. NOTO:

17 Q It doesn't list a book number, but I would like you
18 to read in the instrument number.

19 A The Instrument Number 1994, 024-00-0285.

20 Q Very good. So it's my understanding that after you
21 identified this sale in the Nevada Legal News you also went to
22 the recorder's office and reviewed the recorded documents
23 associated with the parcel; correct?

24 A I believe I did.

25 Q Well, did you or did you not?

1 A It was my practice to.

2 Q But in this case, did you go to the recorder's
3 office?

4 A I did go to the recorder's office. I don't recall
5 the time frame.

6 Q Well, certainly you would have reviewed the
7 recorders -- at the recorder's office the instrument by which
8 this property was being sold?

9 A Correct.

10 Q Was that your pattern and practice?

11 A I don't know if we looked at the instruments other
12 than dates. We looked at dates that the documents were
13 recorded on. I don't think I really paid attention to the
14 instrument number, per se.

15 Q Well, you certainly would have reviewed the
16 declaration of Covenants, Conditions and Restrictions recorded
17 on 10/24, 1994, as Instrument Number 194024000285 to ensure
18 that you were purchasing the property with the rights, titles
19 and interests that you were looking for; is that fair?

20 A No. I didn't review the CC&Rs at that time.

21 Q When did you review the CC&Rs?

22 A After our purchase of the property.

23 Q So when did you review 1994 CC&Rs referenced in the
24 Nevada Legal News and all of the notices?

25 A Approximately two weeks after the sale. Wait a

1 minute and all of the notices in there. The CC&Rs as I
2 reviewed as soon as I got them, which was probably two weeks
3 after the sale.

4 Q And what CC&Rs were those that you reviewed?

5 A Almost all that are in the record here and, in fact,
6 probably all of them that are in the record here.

7 Q You reviewed CC&Rs recorded on 10/24, 1994?

8 A Correct.

9 Q Let's take a look at Exhibit 2. Are you with me at
10 Exhibit 2?

11 A I didn't hear the exhibit, but I will be in just one
12 second.

13 I am.

14 Q Are these the CC&Rs recorded on 10/24, 1994, that you
15 reviewed?

16 A It appears to have a 1994 date on the top right. I
17 believe they are.

18 Q Okay. And can you -- is this the document that you
19 believe provided the right of the HOA to foreclose on the
20 property?

21 MR. CROTEAU: Objection. Calls for a legal
22 conclusion.

23 THE COURT: Overruled.

24 THE WITNESS: I believe this document amends the
25 CC&Rs of '89, 1989.

1 BY MS. NOTO:

2 Q Did you review the 1989 CC&Rs?

3 A '89, I did.

4 Q I'm sorry?

5 A I did.

6 Q And did you see any reference to NRS 116 in those
7 1989 CC&Rs?

8 A I saw --

9 Q My question is a yes or no. Did you see a
10 reference --

11 A I did not see a reference.

12 Q Wait till I ask my -- finish my question. Did you
13 see a reference to NRS 116 in the 1989 CC&Rs?

14 A I did not see a reference to NRS 116; however, the
15 reference is in the record --

16 Q That's all I needed to know. You didn't see a
17 reference to NRS 116 in the 1989 CC&Rs?

18 A I did not.

19 Q Did you see a reference to NRS 116 in this document,
20 Exhibit 2, which is the first amendment to the Declaration of
21 Protective Covenants and Conditions and Restrictions?

22 A I did not see it in this document.

23 Q And I believe if I understood your testimony earlier,
24 you did not necessarily at the recorder's office review for
25 instance the lien for delinquent assessments; is that correct?

1 A I would have reviewed the dates that they were
2 recorded for sure.

3 Q But not necessarily the document itself?

4 A Correct.

5 Q But you could have if you wanted to?

6 A I could have, yes.

7 Q Okay. And what about the notice of default? You
8 would have -- again, it was your pattern and practice to review
9 the date but not necessarily the document?

10 A Correct.

11 Q And in this particular case, do you recall whether or
12 not you actually reviewed the document or if you just looked at
13 the date?

14 A I do not, no.

15 Q Okay. But you could have reviewed the notice of
16 default had you wanted to?

17 A Absolutely.

18 Q Okay. And the notice of sale, same; right?

19 A Correct.

20 Q Let's look at the notice of sale.

21 A What exhibit number?

22 Q I believe that that is Exhibit 18.

23 MS. SCHMITT: 15.

24 MS. NOTO: 15. Thank you.

25 / / /

1 BY MS. NOTO:

2 Q If you'll look at the second page of that document,
3 which is Red Rock 0076, are you with me?

4 A I am.

5 Q In the second paragraph of that document, it states
6 again that, The sale is made without covenant or warranty,
7 express or implied, but not limited to title or possession.
8 Did you see that?

9 A I did.

10 Q I'm sorry?

11 A I do see it.

12 Q Did you see it before you purchased the property?

13 A I can't tell you that I read the document, only the
14 dates that they're recorded.

15 Q Okay. This one as well, you don't necessarily know
16 if you read the notice of sale?

17 A That's correct.

18 Q And so but you again had the opportunity to if you
19 wanted to?

20 A I did.

21 Q Okay. And this document provides that the sale is
22 without covenant or warranty as to title, and it again
23 references indebtedness. Do you see that? Satisfy the
24 indebtedness secured by said lien with interest thereon as
25 provided in the Declaration of Covenants, Conditions and

1 Restrictions, again recorded on 10/24, 1994. Do you see that?

2 A I see that.

3 Q Do you have an understanding, as you sit here today,
4 that the sale was conducted to satisfy indebtedness under that
5 document we looked at dated 10/24, 1994, which is an amendment
6 to the 1989 CC&Rs?

7 A If I'm to understand your question, you're asking if
8 it was an indebtedness that was --

9 Q My question -- and I apologize. It was long and
10 probably very confusing. But as you sit here today, in reading
11 this document, is it your understanding that the sale was to
12 satisfy indebtedness under that document recorded 10/24 of
13 1994?

14 A It appears to.

15 Q Okay. Prior to purchasing the property, you drove by
16 the property; right?

17 A I did.

18 Q And you knew that it was a commercial property?

19 A I did.

20 Q You didn't have anyone prepare a preliminary title
21 report though, did you?

22 A I did not.

23 Q You could have; right?

24 A Sure.

25 Q All right. But that wasn't your pattern and practice

1 at the time; is that fair?

2 A We looked at the public record.

3 Q I'm sorry?

4 A We looked at the public record.

5 Q Okay. Very good. And you searched -- in finding
6 those public records, you searched by the parcel number; right?

7 A Correct.

8 Q And you also searched by the name of the current
9 owner?

10 A I did probably.

11 Q And so you knew at the time that you searched that
12 the property was being held in trust by Clark County for unpaid
13 taxes; right?

14 A I know it was held in trust at some time. I don't
15 know if it was held in trust at the time of the sale. I can't
16 testify to that right now --

17 Q Okay. Let's look at a document. Let's look at the
18 certificate.

19 A Did you say an exhibit number?

20 Q I'm sorry?

21 A Did you say an exhibit number?

22 Q I'm going to. Stipulated exhibit --

23 (Pause in the proceedings)

24 BY MS. NOTO:

25 Q Stipulated Exhibit 14.

1 A Okay.

2 Q Do you see that this is a document that was recorded;
3 right?

4 A Okay. I see that it was recorded in 2013, before the
5 sale.

6 Q Okay. And the APN number, just a check, the APN
7 number that you had searched by, it's the same as the APN
8 number that we looked at for the other documents; correct?

9 A It is.

10 Q Okay. So at the time of the foreclosure sale, you
11 knew that the property was being held in trust by the Clark
12 County Treasurer for unpaid taxes; right?

13 A Correct.

14 Q Okay. Let's look at Exhibit Number 9, please. This
15 is the lien for delinquent assessments. Again, this is one of
16 the documents that was available to you; right?

17 A If it was recorded in the county recorder's office in
18 2011, so, yeah.

19 Q Okay. And you'll see in this document as well, the
20 current owner of the property. Can you read into the record
21 who the current owner of the property is listed on the lien for
22 delinquent assessments.

23 A Trustee, Clark County Treasurer, care of Gibson Road
24 LLC.

25 Q Okay. So --

1 THE COURT: Could you say that a little slower.

2 THE WITNESS: I'm sorry. Trustee for the Clark
3 County -- or trustee, Clark County Treasurer, care of Gibson
4 Road LLC.

5 THE COURT: Okay. By the way, you don't have to be
6 that close.

7 THE WITNESS: I'm sorry. I don't why I keep doing
8 that. I'm sorry.

9 THE COURT: Okay. Well I need to make sure you're
10 heard, but --

11 THE WITNESS: Right. Right. Did somebody say -- I
12 thought the guys said sit close, the gentleman.

13 THE COURT: Well, he did, but --

14 THE WITNESS: Close but don't get in it. Don't put
15 it in your mouth; right? Right.

16 BY MS. NOTO:

17 Q So you knew that there were past due taxes that were
18 owed on the property; correct?

19 A I did.

20 Q You knew that those past due taxes would have to be
21 paid to the county before title could be transferred to you;
22 correct?

23 A I don't really believe that to be correct.

24 Q Well, how would you redeem the property from Clark
25 County if you didn't pay the taxes if it was being held in

1 trust?

2 A I don't know the process to redeem.

3 Q Okay. But what you do know is that Vegas United
4 never paid the past due taxes, did it?

5 A No, it did not.

6 Q Okay.

7 A Not in the amount [unintelligible] Clark County.

8 THE COURT: I'm sorry?

9 THE WITNESS: Not the amount for the Clark County
10 taxes.

11 THE COURT: Okay.

12 THE WITNESS: I can't hear it unless it's close.

13 BY MS. NOTO:

14 Q Let's look at the notice of default, Exhibit 10. Are
15 you with me?

16 A On Exhibit 10, yes.

17 Q Exhibit 10. Very good. So this again was recorded
18 with the Clark County Recorder; correct?

19 A It was.

20 Q And a document that would have been available for you
21 to review at the recorder's office?

22 A Yes.

23 Q And in this document, it also references that the
24 owner of the property is who, beginning here, reflecting?

25 A Trustee, Clark County Treasurer, care of Gibson Road

1 LLC.

2 Q And it goes on to say, As owner of record?

3 A Oh, sorry. As owner of record on said lien.

4 Q Okay. And the NOD provides also the same book and
5 instrument number of the CC&Rs, which recites as recorded being
6 1024, 1994; correct?

7 THE WITNESS: I'm sorry, Your Honor. They're
8 obnoxious, but can I have my sunglasses. They have bifocals,
9 and I tried to do these today, but they're blurry.

10 THE COURT: Okay. Counsel, could you go ahead and --

11 THE WITNESS: I'm sorry they're obnoxious. I didn't
12 think of it until -- let me try these. Thank you.

13 Okay. Same book and instrument number.

14 BY MS. NOTO:

15 Q And maybe I can point you to here. It says that
16 there is a lien described as Gibson Business Park with a legal
17 description, and then it starts here, Makes known the
18 obligations. Do you see that?

19 A I do.

20 Q All right. Read into the record what it says from,
21 Makes known the obligations.

22 A Under the covenants, conditions --

23 Q Sorry. I'm sorry. That was my fault. Start with
24 reading, Makes known the obligations.

25 A Makes known obligations -- makes known the

1 obligations under the Covenants, Conditions and Restrictions
2 recorded 10/24, 1994 in book number as Instrument
3 Number 1994024000285.

4 Q And please continue on, Has.

5 A Has been breached.

6 Q So it was your understanding or could have been your
7 understanding that the obligation that had been breached was
8 under the CC&Rs recorded 10/24, 1994; is that fair?

9 A That would be my understanding reading it today, but,
10 as I said, I probably did not read it then.

11 Q Let's go to Stipulated Exhibit 14.

12 THE COURT: I'm sorry. What exhibit?

13 MS. NOTO: 14.

14 THE COURT: Okay.

15 MS. NOTO: Oh, no. I'm sorry. 26. We already
16 looked at the certificate.

17 BY MS. NOTO:

18 Q Exhibit 26 is the Treasurer's Deed of Reconveyance.
19 Do you see that?

20 A I do.

21 Q Have you ever seen this document before?

22 A Just one second. I'm sorry. I might have the wrong
23 document. I see your document here on the screen.

24 Q Okay. I think it's Exhibit 26.

25 A 26. I didn't hear that.

1 Q I said 14, and that was my fault.

2 A Okay. Okay. I do see the Treasurer's Deed of
3 Reconveyance.

4 Q Have you ever seen this document before?

5 A Possibly. I'm not sure.

6 Q Do you see at the whereas portion right up here,
7 Whereas pursuant to NRS --

8 A I do. I do.

9 Q And can you tell the Court in this paragraph who paid
10 the taxes. Do you see that?

11 A Oh, paid by Celtic Bank.

12 Q Very good. Let's go to the.

13 THE COURT: I'm sorry. We didn't catch that, sir.

14 THE WITNESS: Paid by Celtic Bank. Celtic Bank is
15 it?

16 THE COURT: Okay.

17 BY MS. NOTO:

18 Q There you go. Do you see that?

19 A I'm sorry. I didn't understand what you're showing
20 me.

21 Q No, you're right. And so Celtic Bank paid the taxes
22 on this property to redeem it; is that correct?

23 A Correct.

24 Q And it goes on to say that, Gibson Road LLC, paid by
25 Celtic Bank, is entitled to reconveyance. Do you understand --

1 A Correct.

2 Q -- that the property was reconveyed to Gibson Road
3 LLC after payment of the taxes?

4 A Correct.

5 MR. CROTEAU: Objection. Calls for a legal
6 conclusion.

7 THE COURT: Overruled.

8 BY MS. NOTO:

9 Q Do you understand that?

10 A It's entitled to reconveyance; correct.

11 Q So you -- you --

12 THE COURT: Well, wait a minute. I didn't get the
13 answer.

14 Could you ask your question again.

15 MS. NOTO: Sure.

16 BY MS. NOTO:

17 Q Do you understand that Clark County Treasurer
18 reconveyed the property on 11/5, 2015 to Gibson Road LLC?

19 A Where did you get that date 11/5?

20 Q Oh, I'm sorry. I was looking up here at the
21 recorded -- at the recorded instrument number, a recorded date.

22 A So your question was what date?

23 Q I'll try again. So do you understand that as of
24 11/5, 2015, Clark County reconveyed the property at issue in
25 this case to Gibson Road LLC?

1 A I do. I'm sorry. I didn't realize we were looking
2 at the recorded number.

3 Q Very good. Let's look at Stipulated Exhibit 16.
4 Now, you attended the foreclosure sale personally, didn't you?

5 A I did.

6 Q And there were a lot of people at the sale, wasn't
7 there?

8 A That day there was a lot of people at the sale, yes.

9 Q So this document, which is Red Rock 0117, this is a
10 stipulated exhibit, and I understand this didn't come to you,
11 but this is a document directed to Red Rock Financial Services.
12 Do you see that?

13 MR. CROTEAU: Which exhibit?

14 THE COURT: Exhibit 16.

15 BY MS. NOTO:

16 Q Do you see that?

17 A I do.

18 Q Okay. And in this document, it says that the
19 number -- how many number -- let me start again.

20 How many witnesses does it say was present at the
21 sale?

22 A I wouldn't have any idea. Sometime --

23 MR. CROTEAU: Objection.

24 BY MS. NOTO:

25 Q Look at the documents --

1 THE COURT: Well, wait. Guys, we're talking all over
2 the place here okay.

3 State your question. Go ahead.

4 BY MS. NOTO:

5 Q How many people were present at the sale?

6 THE COURT: Okay. And you had an objection.

7 MR. CROTEAU: I'll withdraw that. She changed it.

8 THE COURT: Okay.

9 THE WITNESS: The document states 70 were present,
10 seven, zero.

11 BY MS. NOTO:

12 Q And you had said a lot of people. Would you have any
13 quarrel with a number that's suggested in this document?

14 A I wouldn't.

15 Q And how many bidders were at the property?

16 A According to the document, three.

17 Q Okay. Would you have any quarrel with the fact that
18 three bidders bid on this property at the sale?

19 A I wouldn't.

20 Q Okay. Is there anything else -- take a moment to
21 look at this document. Is there anything on this document that
22 you believe to be inaccurate based on your personal knowledge
23 of the sale?

24 A I don't see anything.

25 Q Okay. The total amount sold for 30,000; correct?

1 A That's correct.

2 Q Okay. And it said, Said property sold to Charles
3 Schmidt. That's you; right?

4 A Correct.

5 Q Okay. The sale took place at Nevada Legal News?

6 A It did.

7 Q And someone at Nevada Legal News actually cried the
8 sale? Do you know what I mean --

9 A I believe so. I believe so.

10 Q Sorry. You know what I mean when I say "cried the
11 sale"?

12 A I do.

13 Q Okay. And you heard the sale being called?

14 A I did.

15 Q And the representative at Nevada Legal News didn't
16 say anything different than that was contained in the notice in
17 the Nevada Legal News, did they?

18 A I don't know what they said.

19 Q You don't recall?

20 A Well, I mean, they read a lot of legal description,
21 and they probably, you know, read from the Nevada Legal News
22 exactly what was posted, and then they get to the sale. As a
23 bidder, we kind of tune into the address and then the opening.

24 Q Very good. Let's look at Exhibit 17. Are you with
25 me, Mr. Schmidt?

1 A I am.

2 Q Okay. And do you recognize this document?

3 A I do.

4 Q This is a foreclosure deed that was recorded
5 following the sale on March 21st, 2014?

6 A Correct.

7 Q And when was it recorded?

8 A It appears to be recorded April 17th of 2014.

9 Q Okay. And who prepared this foreclosure deed? Do
10 you know?

11 A I don't, no.

12 Q Was it you?

13 A No, it wasn't.

14 Q Okay. If you'll look at this document, in the first
15 paragraph, if I can make that just a little bit smaller, but
16 still so you can read it, let's see, so we can get the whole
17 thing on there.

18 A I believe I can see it.

19 Q Can you see it? Okay. Great. Starting with, The
20 previous owner as reflected on said lien, do you see that?

21 A I do.

22 Q Okay. Going to the next sentence that starts, Red
23 Rock Financial Services, as agent for Gibson Business Center
24 Property Owner's Association, can you read into the record the
25 rest of that sentence, well, at least just up to, Pursuant to

1 116.31168. Go ahead and read that into the record.

2 A What are the first words you want me to pronounce?

3 Q Well, let's start with, Does hereby.

4 A Does hereby grant and convey, but without warranty,
5 expressed or implied, to Vegas United Investment Series 105,
6 herein called grantee, pursuant to NRS 116.3116 through NRS
7 116.31168, all of its right, title and interest in and to that
8 certain property legally described as Gibson Park -- Gibson
9 Business Park 3 Plat Book 5636, part of Lot 1, which is
10 commonly known as 181 North Gibson Road, Henderson, Nevada
11 89014.

12 Q And you knew at the time of the sale that title was
13 being conveyed without warranty, express or implied; correct?

14 A Correct. That's the language in the statute and
15 here.

16 Q This document, if you look at it, also references in
17 the second paragraph the lien for delinquent assessments. Do
18 you see that? I'm sorry, right here in the second paragraph.

19 A I do.

20 Q Very good. And it references the notice of default;
21 correct?

22 A Correct.

23 Q And it references the sale date; right? Here.

24 A It does.

25 Q And it references the purchase price of 30,000;

1 correct?

2 A That's correct.

3 Q All right. And then if you'll go to the third page
4 of that document, which at the bottom corner says 0003; do you
5 see that?

6 A 0002?

7 Q Well, mine says 3. It's the third page.

8 A I'm sorry. Okay. I have it.

9 Q It's the Declaration of Value. Are you with me?

10 A I have it.

11 Q Did you prepare this document, the Declaration of
12 Value?

13 A I did.

14 Q So it was your opinion at the time of the foreclosure
15 sale that the sales price, the total value of the property was
16 \$358,734?

17 A My opinion was that it was worth \$30,000, what I
18 paid. The county's opinion was 358,734 because that's what
19 they wanted to get property taxes on, and at the time, that's
20 what they got.

21 Q Well, you signed this document; right?

22 A I did.

23 Q And you put that the total value sales price of
24 property was \$358,734; correct?

25 A We -- required by the county in order to record

1 documents at the time.

2 Q So if you didn't put a value of the property on, then
3 you would have been unable to record your deed; is that
4 correct?

5 A That's correct. Well --

6 Q Okay. So you put it on there?

7 A Correct.

8 Q Let's look at Exhibit 18, please. Are you with me at
9 Exhibit 18?

10 A I am.

11 Q You've seen this document before?

12 A I have.

13 Q So after the foreclosure sale, Vegas United received
14 a letter from Michelle W. Shafe [phonetic] at the Clark County
15 Assessor's Office. Do you see that at the top of the page?

16 A I do.

17 Q That the legal description on the foreclosure deed,
18 if you're looking at the first paragraph, it's either
19 incorrect, incomplete or missing from the above-referenced
20 document. Do you see that?

21 A I do.

22 Q What was the deficiency with the foreclosure deed?
23 Was the legal description incorrect, incomplete or missing?

24 A Well, the legal description was completely accurate.
25 What they wanted was an additional description. So in other

1 words, the deed says Part 1, and they wanted Part 1 and then
2 all the measurements from the street and, you know, to further
3 narrow down the boundaries of the property that was sold.

4 Q So it was incomplete?

5 A I wouldn't say it was incomplete. She apparently
6 thought it was incomplete, but she's just pulling off the
7 recorder's office. So it's her opinion.

8 Q I heard your testimony to say that the assessor's
9 office was requesting additional information; is that fair?

10 A [No audible response.]

11 Q To further describe the property?

12 A Maybe it says you may wish to contact the title
13 company or attorney for assistance.

14 Q No. I'm sorry. My question, it was confusing. I
15 apologize. I understood your prior testimony to say that they
16 were requesting additional information to further describe the
17 parcel; is that fair?

18 A I guess I don't see where they're requesting
19 anything. It says this is to --

20 Q I'm not looking at the letter.

21 A Oh. Oh.

22 Q You just testified that they were asking you to
23 further describe the parcel; is that correct?

24 A I testified what they liked was a further description
25 of the parcel, yes.

1 Q Okay. So in their mind, and maybe not in your mind,
2 but in their mind it was incomplete; is that fair?

3 A To the assessor.

4 Q Okay.

5 A Who pulled off the recorder and didn't like the
6 document they saw.

7 Q Okay. Very good. But in any event, in May of 2014,
8 you knew that the assessor's office was claiming that there was
9 a problem with the document that you recorded; is that fair?

10 A That the -- I don't think it says that there was a
11 problem.

12 Q Well, incorrect, incomplete or missing.

13 A I guess I don't understand why I would, you know,
14 care what they are -- what their opinion on --

15 THE COURT: Okay. Sir.

16 THE WITNESS: I'm sorry.

17 THE COURT: She's asking a question. You just
18 answer, okay?

19 THE WITNESS: Okay. Okay.

20 Go ahead. I'm sorry. Can you repeat the question.

21 MS. NOTO: I would be happy to.

22 BY MS. NOTO:

23 Q As of May 3rd, 2014, you knew that the assessor's
24 office was claiming that the legal description you recorded was
25 either incorrect, incomplete or missing; is that fair?

1 A Sure. Yes. I'm sorry. Yes.

2 Q All right. And, in fact, you recorded a document
3 later that had that further information that the assessor's
4 office was requesting; is that fair?

5 A I did.

6 Q Okay. And when was it that you recorded the
7 foreclosure deed with the additional information that the
8 assessor's office had been requesting?

9 A Do you have an exhibit number?

10 Q I believe I do. Let's look at Exhibit 27. Take a
11 look at this document and tell me what it is.

12 A It is the rerecorded foreclosure document with the
13 additional -- with the additional -- let's verify here -- with
14 the additional measurements on it.

15 Q And what date was that recorded?

16 A It appears to be recorded on 4/4 of 2016.

17 Q So two years after the foreclosure sale is when you
18 recorded this document; right?

19 A Yes.

20 Q Is it your testimony, Mr. Schmidt, that the original
21 foreclosure deed in April of 2014 transferred title to Vegas
22 United?

23 A It is.

24 Q But at that time the property was held in trust by
25 the Clark County Treasurer; correct?

1 A Correct.

2 Q So how could it transfer title to Vegas United if
3 Clark County Trustee was holding it in trust?

4 A Because Clark County was holding it in trust. When
5 it comes out of trust, it will follow the chain of the recorded
6 documents and title.

7 Q Who was Clark County holding it in trust for?

8 A At the time, Gibson -- Gibson LLC. Is it Gibson
9 Park? Gibson something -- Gibson Road LLC. I'm sorry.

10 Q All right. Well, let's go look back at again at the
11 reconveyance document.

12 A Which was item --

13 Q Which was -- I believe that is Exhibit 26. So your
14 testimony is that title had transferred and that they were
15 holding in trust in essence for the owner of the property; is
16 that fair?

17 A Correct.

18 Q Okay. So the foreclosure happened in March of 2014;
19 right?

20 A Yes, it did.

21 Q So in your mind, the treasurer then should have
22 reconveyed the property to you?

23 A No.

24 Q I mean, sorry, to Vegas United?

25 A No.

1 Q Why not?

2 A Well, because they hold it in trust for Gibson
3 Road LLC that day. They have to then reconvey it with the same
4 name in order to get the cloud off the title. They wouldn't be
5 able to just shuffle it because there would be no recorded
6 tracking in the recorder's office to show --

7 Q There's still no tracking in the recorder's office.
8 If Clark County had done a title search following your
9 foreclosure sale, it's your testimony that your title would
10 have shown up?

11 A Yes.

12 Q And you would have been the record owner of the
13 property?

14 A Correct.

15 Q Do you understand that the treasurer reconveys to
16 either the owner or someone who has a beneficial interest?

17 A I understand that the treasurer reconveys to whoever
18 they took it from and held it in trust as not to cloud the
19 title, to put it back exactly how they found it. The record
20 would determine who is the record owner.

21 Q And how do you develop that -- how did you develop
22 that understanding?

23 A I deal a little bit with tax sales.

24 Q All right. How did you develop that understanding
25 that Clark County would reconvey it to a prior owner?

1 A I don't believe I've ever seen a reconveyance filed
2 that wasn't who they were taken from. So in other words, I
3 haven't ever seen a reconveyance filed in a different name.

4 Q Have you ever seen a reconveyance filed where someone
5 else paid the taxes, and they reconveyed it to the owner?

6 A I already know I haven't seen -- I'm not purporting
7 to have seen every reconveyance or read it. I just haven't
8 seen one that ever reconveyed it to somebody else.

9 Q But your --

10 A It's reconvey.

11 Q I'm sorry. Your understanding is that Clark County
12 will -- I just want to make sure I understand. Your
13 understanding is that Clark County is going to record a
14 reconveyance to a prior owner of a property. That's your
15 testimony?

16 A If it's a prior owner that they held it in trust for
17 in the first place, yes.

18 Q Okay. When you went to the county recorder's office
19 and you saw that the sale was pursuant to declaration of
20 Covenants, Conditions and Restrictions recorded on 10/24,
21 1994 in Book Number as Instrument Number 19940240000285, did
22 you make any attempt at that time to review CC&Rs that were
23 recorded on 10/24, 1994?

24 A I'm sorry. Did you just ask me when I reviewed the
25 '94 --

1 Q When you reviewed the document in the Nevada Legal
2 News that referenced you to that declaration of covenants and
3 conditions and restrictions recorded on 10/24, 1994, did you
4 make any effort to review the document that was referenced in
5 the Nevada Legal News?

6 A And just to clarify, are you talking before or after
7 the sale?

8 Q Before the sale.

9 A No.

10 Q Okay. I don't have any other questions.

11 THE COURT: Okay. Cross.

12 MR. CROTEAU: Absolutely.

13 CROSS-EXAMINATION

14 BY MR. CROTEAU:

15 Q Mr. Schmidt, since we just got done talking about
16 taxes, why don't we continue doing that for a minute. You've
17 been sitting in trial; right?

18 A I have.

19 Q You've been here. And you've heard testimony that
20 Celtic Bank paid the tax payment; correct?

21 A Correct.

22 Q Counsel just asked you, Well, if somebody else pays
23 it, you don't -- you expect them to put it back in the entity's
24 name that had it before or in the name that paid it. Remember,
25 she asked you that?

1 A She did.

2 Q Okay. Do you have an explanation --

3 MS. NOTO: Objection. Misstates my question, Your
4 Honor.

5 THE COURT: Okay. Why don't you rephrase it.

6 BY MR. CROTEAU:

7 Q Okay. Counsel questioned you on whether or not
8 reconveyance would go back to a prior owner that wasn't still
9 record owner versus going to the person who paid it. Make
10 sense?

11 A She did.

12 MS. NOTO: Objection. Again, Your Honor, that's not
13 the question that I asked him. It's confusing and misstates
14 it.

15 THE COURT: I understand.

16 Why don't you rephrase.

17 MR. CROTEAU: I'll do it differently. Fine.

18 THE COURT: Okay.

19 BY MR. CROTEAU:

20 Q Sir, do you have any explanation as to how Celtic
21 Bank could come in and pay the tax certificate, and it would
22 end up reverting not to Celtic Bank, but to Gibson Road LLC?
23 If you know.

24 A Anybody could have paid it, when it reverted back to
25 Gibson Road LLC.

1 Q Now, just so I'm also clear, had an auction actually
2 occurred --

3 You're familiar with tax sales; correct?

4 A I am.

5 Q All right. And had an auction actually occurred at
6 the point of a certificate of trust being issued by Clark
7 County with a two-year right of redemption?

8 A It has not. It had not and will not.

9 Q All right. So from the purposes of the tax sale, it
10 was holding the property subject to a two-year right of
11 redemption administratively subject to somebody paying the tax?

12 A Just to correct, it was holding it for a two-year
13 holding period because they did away with the right of
14 redemption period in order to hold it in the trustee's name,
15 that bypassing that two-year right of redemption.

16 Q All right. So if someone were to, in your opinion,
17 if someone were to go in, pay that sum at this stage of the
18 process, it would have to revert back to where they took it
19 from, the name that it had at that time?

20 A It's my understanding that any payment prior to the
21 sale date to the public it would revert back -- well, not
22 revert. It would just take it out of trust and put it back in
23 the name of the -- in the prior owner or if it's a current
24 owner or whatever the name is that they are initially held it
25 in trust for.

1 MS. NOTO: Objection. Lack of foundation. Ask to
2 strike.

3 MR. CROTEAU: Your Honor, he's already laid
4 foundation that he has familiarity with public tax sales. He's
5 participated in them. He understands them, and I don't think
6 counsel understands them because in this particular case the
7 property did not transfer hands of any kind. It is simply held
8 in trust. It is still owned --

9 THE COURT: Well, I think you need to lay some
10 foundation for that, if nothing else, for me because I probably
11 don't know near as much as both of -- all three of you guys.

12 MR. CROTEAU: That's fair, Your Honor. That's fair.

13 THE COURT: Okay.

14 MR. CROTEAU: That's fair.

15 BY MR. CROTEAU:

16 Q Let's go look at the -- wait a minute.

17 A I can explain it.

18 Q I'm sorry?

19 A I can explain it.

20 Q Yeah, I understand, and I'm going to have you do
21 that. Hang on.

22 Go to 14, please.

23 THE COURT: I'm sorry. Which exhibit?

24 MR. CROTEAU: 14, Your Honor.

25 THE COURT: 14.

1 BY MR. CROTEAU:

2 Q Okay. So this certificate is recorded on 12/26 of
3 2013; correct?

4 A Correct.

5 Q All right. And at that time, and this is prior to
6 the common-interest community sale; correct?

7 A It was.

8 Q And you did not acquire interest at that point in
9 time; correct?

10 A Not yet.

11 Q All right. Now, when the sale -- I'm sorry. When
12 this certificate is filed, there's a delinquency on there of
13 \$4,584.71. Do you see that?

14 A I do.

15 Q Okay. Now, this says it's a Treasurer's Certificate
16 for Holding Delinquent Real Property Parcel; correct?

17 A It does.

18 Q All right. What does that connote for you? What
19 is your understanding of what a certificate to hold is?

20 A If I may, they used to sell certificates and charge
21 interest. The county took this process in-house, and so the
22 certificate is an interest-bearing certificate on the past due
23 amount of the taxes, and for the two years, it used to be
24 2 percent a month. It sits with the county, and the county
25 collects that 2 percent a month.

1 They administer the property sold at -- when they
2 have it, they have a free and clear title versus the old where
3 they used to do it which you had to try to get a hold of them,
4 of the prior owner or whoever the owner, and then, if you
5 couldn't get a hold of them within a certain period of time,
6 you got deed. So they cleaned the process up here.
7 Certificate is a interest-bearing certificate on the past due
8 property tax.

9 Q Okay. So this is sort of like the advertisement, or
10 at least it used to be, invest in tax certificates?

11 A That's correct.

12 Q All right. So it does not divest the prior owner of
13 ownership; correct?

14 A Correct.

15 Q Okay. Now, if you'll take a look at the -- I'll call
16 it the second to the last paragraph, it says,

17 A certificate is issued for this
18 property on which all or a portion of the
19 real property taxes levied for the Fiscal
20 Year 2012-2013, has not been paid by
21 5:00 p.m. on the first Monday in June, the
22 third day of June 2013.

23 This certificate authorizes the county
24 treasurer to hold the property -- hold -- for
25 a period of two years after the first Monday

1 in June unless sooner redeemed by payment of
2 the taxes and accruing taxes, penalties and
3 costs together with interest on the taxes at
4 a rate of 10 percent per annum from the date
5 due until paid.

6 Does that comport with your understanding?

7 A It does.

8 Q All right. So basically they're holding it. They
9 say you got to pay it. If you don't pay it, you got two years
10 to pay it. At the end of the two years; however, we're going
11 to auction your property; is that correct?

12 A Correct.

13 Q All right. And that's when you go to a tax sale;
14 correct?

15 A Correct.

16 Q And the tax sale -- what's your understanding or
17 implications of a tax sale? Do you get full and clear title to
18 a property on a tax sale?

19 A You do. Because the county held the certificate for
20 the two-year period which formally would have been right of
21 redemption, the title is absolute. It's a tax sale title
22 subject to only to a two year. If the county completely
23 fumbled the sale, it's subject to a two-year statute of
24 limitations.

25 Q All right. In other words, for a callback to be sued

1 on?

2 A Correct.

3 Q All right. Now, it says -- the last paragraph says,
4 The title to the property, if not redeemed by the expiration of
5 the period of redemption, will vest in the county for the
6 benefit of the State and County. Do you see that?

7 A That's correct.

8 Q All right. So title doesn't transfer. It doesn't
9 transfer. It doesn't vest in the county for two years after
10 the certificate; correct?

11 A Correct.

12 Q That's by its own terms what it says?

13 A That's correct.

14 Q All right. And that's your understanding of the
15 operation of a tax certificate?

16 A My understanding that it sometimes could be later
17 because the county dabbles around between --

18 Q All right. Were you concerned, as a buyer of this
19 property, that it had a tax certificate on the property?

20 A I was not.

21 Q Okay. Tell us why.

22 A Because I would let it go to tax sale and purchase it
23 at the tax sale where I would get a refund as the owner for
24 every dollar that I paid over the amount due at that time.

25 Q All right. I want to make sure that's clear, okay,

1 as a strategy. That's your strategy; correct?

2 A Correct.

3 Q All right. Let's drill it down so we have more
4 understanding, okay. You have asserted in this case through a
5 complaint that you are the rightful title holder of this
6 particular property; correct?

7 A Correct.

8 Q Without the benefit of having a Celtic Bank lien on
9 the property; correct?

10 A That's correct.

11 Q All right. So tell me by operation, if you will,
12 that had you let it go to tax sale at the end of two years
13 redemption period how what you're saying works.

14 A We would've avoided this suit because of the nature
15 of the flux at that time in NRS 116.

16 Q All right. But you didn't explain it. So let's go
17 back.

18 A Right.

19 Q All right. If you let the property sit there till
20 the end of the two-year period, that would expire theoretically
21 June 2015; right?

22 A Right.

23 Q Okay. What would happen?

24 A The property would be sent to a tax sale, and I would
25 have shown up and bid on the property at the tax sale.

1 Q Okay. All right. Now, when you say you would have
2 shown up and bid, what would happen?

3 A You have to qualify, get a seat, and they would
4 auction the property off at that sale.

5 Q Okay. What could you afford to pay for the property?

6 A In theory, anything that I had. I mean, I could pay
7 millions for the property because, as the record owner that I
8 believe -- as the record owner, I would've received all the
9 monies back since there was no --

10 Q Right. And you say all the money back. In other
11 words, the tax sale would occur. The property would be sold
12 for whatever number. Let's say for a hypothetical speaking,
13 let's say it gets sold for \$500,000.

14 A Okay.

15 Q What would be the math on that transaction?

16 A The guy next to me, if he paid \$500,000, he would pay
17 \$500,000. If I paid \$500,000, I would pay \$500,000 but be
18 entitled to a refund from the county for everything over and
19 above the opening bid at the tax sale.

20 Q Okay. So in other words --

21 THE COURT: And if the guy next do you bid 500,000,
22 he -- in essence part of the money would go to pay the tax
23 sale. The other money would go to you to pay for the property?

24 THE WITNESS: It would go to the record holder of the
25 property, right, as an overage of payment.

1 THE COURT: But if Gibson Road was the record owner,
2 the money would go to Gibson Road LLC?

3 THE WITNESS: Right. It is my understanding the
4 record holder is in the record of the recording, and you have
5 to make a claim for overage funds and then prove a little bit
6 what -- what the condition of the title is. So if there's two
7 competing people, Gibson and me, who both show up and say I'd
8 like to have that check back --

9 THE COURT: Okay. No. No. No. Let's just say it's
10 you and third party, okay?

11 THE WITNESS: Okay.

12 THE COURT: So you and third party get into a bidding
13 war at this tax sale.

14 THE WITNESS: Correct.

15 THE COURT: And let's say that the price does go up
16 to what was the fair market value. Let's say it goes up to
17 700,000, okay?

18 THE WITNESS: Okay.

19 THE COURT: So 700,000 would be paid. Let's say
20 third-party guy bought the property for 700,000.

21 THE WITNESS: Okay.

22 THE COURT: Part of the money would go to pay the
23 taxes and interest.

24 THE WITNESS: Correct.

25 THE COURT: Which accrued at 2 percent a month;

1 right?

2 THE WITNESS: Correct.

3 THE COURT: And then the remainder would go to the
4 record owner?

5 THE WITNESS: No. The remainder would still go to
6 me. So in other words, if the price got that high, and I was
7 sitting next to somebody with 500,000, and they want to pay
8 700,000, I would be thrilled. I would let them pay 700,000. I
9 would still receive the excess proceeds from the sale.

10 THE COURT: Why? What if you weren't the record
11 owner?

12 THE WITNESS: Well, I guess I'm misunderstanding the
13 use --

14 MR. CROTEAU: Your Honor, with all due respect, I
15 want to -- I'm fine with these things. My only question is are
16 we saying that the 116 sale is not good or good? If we assume
17 116 --

18 THE COURT: Well, okay. I guess what I'm asking is
19 it'd still be a battle between you and Gibson Road?

20 THE WITNESS: Yeah, I guess for the overage money. I
21 guess there could be, right. I don't --

22 MR. CROTEAU: That's fair, unless they're submitting.
23 Resolving this case, yes, but all we're saying and what he's
24 testifying to is that --

25 THE COURT: Well, you can't testify. I want to know

1 from him. Okay.

2 So you say you were not concerned because you would
3 have simply bid on the property, and then the part would go to
4 the taxes and interest, and the other part would go back to
5 you.

6 THE WITNESS: Right.

7 THE COURT: But if there is a dispute about
8 ownership, then you'd have the same battle you've got right now
9 with Gibson Road.

10 THE WITNESS: I don't believe there's a dispute of
11 ownership between me and Gibson Road. Gibson Road, without a
12 doubt, was foreclosed out on at this foreclosure sale. They're
13 not disputing the Gibson Road LLC was foreclosed out in the, I
14 don't believe. I mean, I haven't seen an HOA claim that. So
15 Gibson Road LLC was absolutely foreclosed out, and I'm the new
16 guy. So I guess there's a slight chance that Celtic Bank could
17 find out about the excess proceeds. Maybe they could show up.
18 I don't know how that would work.

19 THE COURT: Well, if the property were subject to a
20 first, and there's a dispute about that, a debate. I get that.

21 THE WITNESS: Sure.

22 THE COURT: But then you'd also have Celtic Bank to
23 have to deal with; right?

24 THE WITNESS: Sure. That could happen, yes.

25 THE COURT: Okay. And you're not concerned even

1 though this taxes is accruing interest at a right of 2 percent
2 a month?

3 THE WITNESS: Well, no, Your Honor, because I would
4 pay -- let's say I would pay fair market, and we said fair
5 market value for the property. So the worst case scenario is I
6 pay fair market value for the property and then fight over the
7 excess proceeds that I give at the sale; right? So this fight
8 now is about money, dollar for dollar rather than title, and
9 so -- and it's a long shot that this actually gets here, I
10 believe, because of the way that the refund process works.

11 In other words, you have like -- I don't -- I'm just
12 guessing. This is completely a guess. But I think it's 90
13 days because I've never got excess proceeds. I think it's 90
14 days or six months to apply for the excess proceeds. If two
15 people apply for it, then they go to the next step. If only
16 one person applies in that time, you get -- that person gets
17 the check.

18 THE COURT: Okay. But you're still not concerned
19 about this?

20 THE WITNESS: No. Because I wouldn't pay over that,
21 and then I would still have the exact same fight I have here at
22 the very worst, but I would have a tax deed. I have the
23 property, again in another layer of absolute title. I'd have
24 the property still, and we'd be fighting over money assumedly,
25 and it would be overage. The tax sale really is, like,

1 70 percent of value.

2 THE COURT: Okay.

3 THE WITNESS: So in other words I couldn't lose I
4 guess is what I'm trying to say. I don't feel like I'd lose
5 money in the transaction.

6 THE COURT: Okay. Go ahead.

7 BY MR. CROTEAU:

8 Q What's the understanding, to the extent of tax
9 auction -- tax auction buyers, as to what quality of title they
10 get?

11 MS. NOTO: Object to the form. Foundation.

12 THE COURT: Restate your question, please.

13 MR. CROTEAU: Sure.

14 BY MR. CROTEAU:

15 Q As a tax purchaser, tax sale purchaser, okay, what is
16 your understanding of the title you get at this tax sale?

17 A Pretty much absolute title. There's a few exceptions
18 but not many. It forecloses -- it has old law that forecloses
19 out first trust deeds and any lien holders for materials and
20 workmanship, things like that.

21 Q Okay. So is it your understanding the tax sale, an
22 actual sale would take out a first deed of trust?

23 A Correct.

24 Q Would it take out a materialman's lien?

25 A It would.

1 Q So you would stand in clear title, so to speak, with
2 this property at that point in time if you chose to go that
3 route?

4 A Correct. And the reason that the title is somewhat,
5 at a regular tax sale, a little discounted is because you have
6 that two-year threaten where the -- I'm sorry, the title
7 company will not issue title until the two-year statute of
8 limitations in case the county completely messed it up has
9 passed. So when you're bidding at the tax sale, you are
10 essentially underpaying to have absolute title, but you're not
11 going to be able to sell it for two years unless you do a quiet
12 title action.

13 Q All right. Let's stop you. You have no prohibition
14 from selling it for two years?

15 A I don't. I don't.

16 Q After a tax sale?

17 A Correct.

18 Q All right. Are you saying that the statute of
19 limitations to contest a tax auction is two years?

20 A Correct.

21 Q Okay. And that it would be prudent, and you'd get
22 higher value if you waited the two years without claim to then
23 sell it and be able to get title insurance?

24 A Title companies don't like to do anything but collect
25 money. So if they don't get -- they try not to insure during

1 that two year period.

2 Q Okay.

3 A But it is a marketable title. You could sell it,
4 absolutely.

5 Q Okay. Fair enough. All right. So the tax
6 certificate that we've looked at here as Exhibit 14 is really a
7 debt instrument, is it not?

8 A Yes. It's a debt instrument.

9 Q All right. And, in fact, it was redeemed, if you
10 will, by Celtic Bank, was it not?

11 A Correct. One of the previous exhibits said that
12 Celtic Bank had paid the money on behalf of Gibson Road LLC.

13 Q Okay. So they transferred it back to Gibson Road
14 LLC; correct?

15 A Correct.

16 Q All right. Now, you said something a minute ago.
17 You're very familiar with the statutes. You're very familiar
18 with 116, are you not?

19 A I am.

20 Q Does Gibson Road LLC in a proper sale, you know, not
21 assuming there's any defects in the sale, under 116, have a
22 right of redemption of any sort after the sale?

23 MS. NOTO: Object to the form and foundation.

24 THE COURT: I'm going to overrule.

25 Go ahead.

1 THE WITNESS: I don't believe so.

2 BY MR. CROTEAU:

3 Q Okay. Is there a question under 116 as to whether or
4 not Celtic Bank is extinguished?

5 MS. NOTO: Object to the form. Calls for a legal
6 conclusion. Foundation.

7 THE COURT: That one does. I think that's ultimately
8 for me to decide.

9 MR. CROTEAU: With all due respect, I think the
10 ultimate issue that's outstanding in this case, yes. I think
11 his interpretation of 116 as to what --

12 THE COURT: Unless I see his law degree and it's
13 bigger than mine, I don't need to hear.

14 MR. CROTEAU: Fair enough. But I wanted you to have
15 his understanding. That's all.

16 THE COURT: I understand.

17 BY MR. CROTEAU:

18 Q Okay. All right. Do you think that when you
19 undertake these sales, after the sale has occurred, that there
20 is any concerns with the owners if you will, the record title
21 owners prior in time?

22 MS. NOTO: Object to the form. Vague, overbroad.

23 THE COURT: I'll let him answer it if he understands
24 it.

25 THE WITNESS: Say the last thing. A record title,

1 owners prior title, is that what you said? I'm sorry.

2 BY MR. CROTEAU:

3 Q Yeah. The record owner of the property prior to the
4 common interest sale?

5 A No. All the notices are delivered to them. They're
6 addressed to them. They are without a doubt noticed because
7 that's who the foreclosure is addressed against. So they are
8 almost absolutely foreclosed out because there is no dispute
9 that they were the target of the foreclosure for the property.

10 Q Do they have any redemption rights under 116 that you
11 know of?

12 A I don't know -- no. There was none. There's none.

13 Q I'm sorry?

14 A There was no redemption right under NRS 116, old or
15 new.

16 Q Okay. Sir, you have been involved in buying real
17 estate for a number of years; correct?

18 A Correct.

19 Q All right. And you have been involved in common
20 interest foreclosure sales substantially over those number of
21 years?

22 A I have.

23 Q All right. When did you first begin, if you will, if
24 you can recall, buying common interest sales?

25 A Approximately 2008 or '9, late '8 or early '9.

1 Q Okay. So in all of that period of time, you've
2 attended a number of auctions; correct?

3 A Hundred.

4 Q How many?

5 A Over a hundred.

6 Q Okay. And has your practice and procedure during
7 that time been relatively the same, or has it morphed into
8 something else on how you did this?

9 A When we first started doing it, we did it a little
10 different, and probably about 2010, we changed our strategy.

11 Q Okay. And the particular property in question was
12 purchased when?

13 A In 2014.

14 Q Okay.

15 THE COURT: I'm sorry. 2000 --

16 THE WITNESS: '14, Your Honor.

17 BY MR. CROTEAU:

18 Q So were you reasonably sophisticated in what you were
19 doing by 2014?

20 A I believe so.

21 Q All right. Now, counsel keeps asking you as to
22 whether or not you went and ran and checked the CC&Rs at the
23 time of preforeclosure sale?

24 A Correct.

25 Q Was that your practice and procedure?

1 A I didn't review the CC&Rs. My practice and procedure
2 was to review the dates on the notices, of default notice of
3 lien and the delinquent assessment.

4 Q Okay. Would you do any background work at the
5 recorder's office?

6 A I would. I would look at -- I would, yes.

7 Q Would you have pulled actually the notices of lien
8 and so forth and read the actual copies?

9 A No.

10 Q Okay. You would just look to see when they were
11 filed and calculate your dates?

12 A That's correct. I might read them on the computer.
13 I might read the date or something or the reference number or
14 what CC&Rs or something like that, but typically I did not
15 print them or read them, read the documents.

16 Q All right. Did you rely upon the recitals in your
17 deeds?

18 A I did.

19 THE COURT: I'm sorry. You do?

20 THE WITNESS: I do. I do.

21 BY MR. CROTEAU:

22 Q Now, do you have a specific recollection of this
23 actual sale date?

24 A Not the date, but I remember the sale.

25 Q Okay. All right. Counsel asked you if there were 70

1 people there. You said you probably think that's probably
2 right?

3 A Sure.

4 Q Okay. And then she said, gee-whiz, there's only
5 three bidders.

6 A That's right.

7 Q Did you have any, I guess, any involvement that there
8 were only being three bidders?

9 A No.

10 Q Was the bidding competitive?

11 A Actually, it was quite competitive for an HOA sale at
12 the time.

13 Q At the time; right?

14 A Correct.

15 Q At the time. Now, this was in March of 2014;
16 correct?

17 A It was.

18 Q And you're familiar with the SFR decision we all talk
19 about; right?

20 A Of course.

21 Q Okay. And this was preSFR; correct?

22 A It was.

23 Q All right. So why don't you tell us a little bit
24 about what the environment was like for someone in your shoes
25 buying these HOA sales pre2014 -- or 2014, before SFR?

1 A Risky and opinionated.

2 Q Okay. A lot of litigation?

3 A A lot of litigation. Every Judge had a different
4 opinion.

5 Q Okay. All right. So when you paid \$30,000 for this
6 property, in your opinion, was that stepping up? I mean, were
7 you paying competitive rates there, bidding?

8 A It was a lot of money at the time, yes.

9 Q Okay. All right. Let's go to Exhibit 15 for a
10 second. Counsel asked you all about that. Now, in this
11 document, second page, 0076, she asked you to read into the
12 record a portion of this and talk about it, okay. If you'd
13 look at that.

14 A Yes.

15 Q All right. In all the notices you've seen, were
16 CC&Rs actually identified at book and page numbers?

17 A Not often.

18 Q You okay?

19 A Yeah.

20 Q Take your time.

21 THE COURT: Do you need a break?

22 THE WITNESS: No. I'm okay.

23 THE COURT: There's water there for you if you need
24 it.

25 THE WITNESS: I've been drinking. Thank you.

1 MR. CROTEAU: You okay?

2 THE WITNESS: I'm good.

3 MR. CROTEAU: And just I want the Court to know --

4 And I apologize, Charles.

5 -- he's got a heart condition, this is not -- he's

6 coughing because of his heart. That's --

7 THE COURT: I understand. You told me about that
8 yesterday.

9 MR. CROTEAU: Okay. Do you want to take a break?

10 THE WITNESS: And fine. I'm fine. I'm fine.

11 MR. CROTEAU: It's good?

12 THE WITNESS: Yep.

13 MR. CROTEAU: All right. All right.

14 THE WITNESS: No, I'm sorry. Ask the question. I'm
15 sorry. Ask the question. I'm ready.

16 MR. CROTEAU: All right. All right.

17 BY MR. CROTEAU:

18 Q Is it common that the notices of sale and so forth
19 that you've reviewed actually cites the CC&Rs by page number
20 and instrument number?

21 A You know what, I don't know. I have never, like, got
22 into that right there. I mean, I get into where it was
23 recorded, an instrument number if I'm looking up the CC&Rs. So
24 I think it does.

25 Q Okay. All right.

1 A You're asking about the recording date, just to
2 confirm, of the CC&Rs; correct?

3 Q Well, the page numbers of the -- I mean when they're
4 saying the document number. So in any event that's fine.

5 Counsel said, Did you go to the recorder's office to
6 look at it, and you said you thought you might, but you
7 would've looked at the computer screen, I assume, as opposed to
8 the actual documents?

9 A So maybe a better explanation is on the Internet you
10 can go to the county and see document titles and their
11 recording dates but not documents. Save that for Washoe
12 County.

13 Q Well, then let's clarify. She asked you, did you go
14 to the recorder's office? You said, yes. Did you? I want to
15 clarify. Did you walk to the recorder's office, go through the
16 front door and start doing this, or did you do it from home?

17 A You know, if I recall, I probably didn't. I probably
18 looked online, and then I looked at the document and the date
19 it was recorded.

20 Q All right. When you go to a sale like this, are you
21 there for one property, or is it multiple properties that were
22 going on?

23 A It depends on the day.

24 Q All right. Do you know if you bought anything else
25 this day?

1 A I don't believe I did.

2 Q Okay. Did you bid on anything else that day if you
3 remember?

4 A I might -- I don't -- I don't believe I did. No, I
5 don't think so.

6 Q Okay. Fair enough. Let's go to Exhibit 2. Now,
7 Mr. Schmidt, do you know how to read a CC&R?

8 A I do.

9 Q All right. What is your understanding of an
10 amendment to a prior CC&R? This is the first amendment to the
11 declaration of a prior CC&R filed in 1989. What is the
12 significance to that for you?

13 A It's my opinion that -- or it's my understanding that
14 any amendment to the document amends that document to include
15 or incorporate or change around the language that's in the
16 amendment of the document.

17 Q Okay. So explain to me how the 1989 CC&Rs relate to
18 this first amendment in 1994, your understanding.

19 A Well, you can only amend the 1989 CC&Rs because there
20 are no other recorded CC&Rs. So the only ability to amend it
21 would be this 1989 document. At the very least you'd have to
22 look.

23 Q That's fine. Go to CB 436, Item Number 4.

24 THE COURT: Are you talking about Article IV?

25 MR. CROTEAU: Yes, Your Honor. I apologize.

1 Paragraph 4.

2 THE COURT: Oh, that's all right. Let me get there.
3 Article IV?

4 MR. CROTEAU: Yes, ma'am.

5 THE COURT: On --

6 MR. CROTEAU: No other amendments.

7 THE COURT: Okay. 395?

8 MR. CROTEAU: 436, Your Honor.

9 THE COURT: 436. Okay. Let me get there.

10 MR. CROTEAU: It's Exhibit 2, Your Honor.

11 THE COURT: Exhibit 2, okay. I'm sorry.

12 MR. CROTEAU: Yes, Your Honor. That's okay.

13 THE COURT: Okay. Got it.

14 BY MR. CROTEAU:

15 Q So where it says no other amendments, it says, Except
16 as expressly provided in this first amendment, all of the
17 provisions of the declaration shall continue in full force and
18 effect and unmodified hereby. What does that mean to you?

19 A It means that everything is still in full force
20 except for the amendment -- except for whatever is in this
21 amendment.

22 Q All right. And if you look at A on the front of
23 page 435, it defines declaration because you can see where it
24 says, otherwise, the declaration continues, right, in full
25 force and effect?

1 A I'm sorry. Did you say 435?

2 Q Yeah. Just the previous page.

3 A And point me to it. What --

4 Q A.

5 A Okay.

6 Q Here it says under A that on September 11th of '89,
7 Ampac, as the declarant, and enjoining parties named therein
8 file for property records of the Clark County, Nevada, a
9 certain Declaration of Protective Covenants, Conditions and
10 Restrictions, and they defined that as the declaration; right?

11 A Correct.

12 Q All right. So paragraph 4, no other amendment says
13 the declaration shall continue in full force and effect, right,
14 which is the 1989 version?

15 A Correct.

16 Q All right. Except for whatever change is done here;
17 correct?

18 A That's my understanding, yes.

19 Q Okay. Counsel also asked you repetitively how the
20 notice of lien sale, the notice of NOD and so forth cited this
21 particular document, the 1994; correct?

22 A It did.

23 Q All right. But this is the last amendment that also
24 still refers to the '89 in this CC&R; right?

25 A That's actually the most up-to-date version of the

1 CC&Rs. Correct.

2 Q Okay. Is this 1994 here?

3 A That's correct.

4 Q Okay. Let's go to the '89, which is Exhibit 1, for a
5 minute, and I'd like to go to Section 809, which is found at CB
6 419.

7 THE COURT: CB what?

8 MR. CROTEAU: 419, Your Honor.

9 THE COURT: 419, right. Okay. I just heard four,
10 nine.

11 Okay. All right.

12 MR. CROTEAU: They all roll together these days.
13 I've got to tell you.

14 THE WITNESS: Okay. I'm there.

15 BY MR. CROTEAU:

16 Q You're there?

17 A I do. I am.

18 Q All right. Now, this section, it says liens to
19 secure assessments. Do you know -- what would your
20 understanding of secure mean?

21 A The assessments are secured against the property in
22 which -- in the common-interest community.

23 Q All right. So this says, and I'm going to read it to
24 you, and we'll talk about it. It says,

25 All assessments, including interest and

1 other amounts due with respect to unpaid
2 assessments, shall constitute and shall be
3 secured by a separately valid and existing
4 lien on the portions of the premises to which
5 they were late, and upon all improvements at
6 any time erected or constructed thereon.

7 What does that mean to you?

8 A That there is a lien for everything within the
9 community.

10 Q And would that be a lien for an assessment against
11 property that you may own?

12 A Correct. Assessment lien obviously is an assessment
13 against the property on which it's assessed.

14 Q All right. It also says, The provisions of Nevada
15 Revised Statute Section 278A.170 are incorporated herein by
16 reference. Do you see that?

17 A I do.

18 Q Okay. Did you have an opportunity to go to 278A.170
19 and look at that law?

20 A I have had an opportunity to do so.

21 Q Okay. And does 278A.170 cite NRS 116?

22 A It does.

23 Q Okay. Particularly the lien sections; correct?

24 A Particularly the foreclosure statutes in lien
25 Section 31168 -- 3116 through, I believe, 31168.

1 Q Correct. Okay. All right. So is it your
2 understanding from reviewing that and this section that NRS 116
3 is incorporated by reference into the 1989 CC&Rs pursuant to
4 278A.170?

5 MS. NOTO: Object to the form. Calls for a legal
6 conclusion.

7 THE COURT: It does.

8 MR. CROTEAU: It's his understanding.

9 THE COURT: Well, I understand, but it's his
10 understanding giving a legal conclusion. I mean, ultimately
11 it's not going to matter to me. Now, what he may think about
12 certain things and why he acted based upon what he thinks is
13 important, you know, but and if you want to lay a foundation
14 for that, that's fine.

15 BY MR. CROTEAU:

16 Q Okay. All right. Sir, after you've reviewed -- and
17 you said you reviewed 278A.170; correct?

18 A That's correct.

19 Q All right. Did you in your mind's eye have any
20 concerns as to whether or not this was not going to be a 116
21 governed foreclosure for your purposes?

22 A It's my understanding that 278A.170 was amended and
23 almost replaced in 1991 by the NRS 116 entire chapter.

24 Q Okay.

25 A I'm sorry. I misstated. I misstated. Not the

1 entire chapter, the enforcement of liens section.

2 Q Enforcement of lien section?

3 A That's correct.

4 MR. CROTEAU: All right. Would this be a good
5 opportunity to break for an afternoon break? I'm going to be a
6 bit longer. I've got witnesses.

7 THE COURT: Well, since we started later, I was going
8 to go a little bit longer. We can go another 15 minutes.

9 MR. CROTEAU: That's fine. I just wanted to talk the
10 witnesses that are out there. That's all.

11 THE COURT: You wanted to what?

12 MR. CROTEAU: I have witnesses out there. I wanted
13 to talk to them for a second.

14 THE COURT: Well, I understand, but --

15 MR. CROTEAU: Okay. That's fine.

16 THE COURT: -- why don't we go ahead and finish with
17 this witness.

18 MR. CROTEAU: Well, it's going to be longer than
19 that. So, okay. That's fine.

20 BY MR. CROTEAU:

21 Q All right. Go to Exhibit 15, sir. All right. In
22 2014, how did you find properties that were being sold subject
23 to common community interest sales?

24 A Typically, in the Nevada Legal News. There was a
25 small publication out of Pahrump called the Clark County Legal

1 News as well, but --

2 Q Were you on any websites? Did you have any
3 subscriptions to any websites, that kind of thing?

4 A I subscribed to the Nevada Legal News, yes, and I
5 subscribed to the paper which filled my house up.

6 Q Now, would you sit here, and if you were looking at a
7 sale, would you, like, read this entire publication that's
8 found at 77, Red Rock 77?

9 A I would not.

10 Q Okay. What would be your key terms that you'd care
11 about?

12 A The address, type of sale and the date that I guess
13 it was filed.

14 Q Okay. All right. Go to Red Rock 76, and it's the
15 second -- well, the first full paragraph but the second
16 paragraph on that page.

17 A Okay.

18 Q Did you have any cause, concern or care, frankly,
19 that the sale would be made without covenant or warranty,
20 express or implied, regarding, but not limited to title or
21 possession, encumbrances, obligations to satisfy any secured or
22 unsecured liens or against all right, title and interest of the
23 owner without equity or right of redemption to satisfy the
24 indebtedness secured by said lien with interest thereon?

25 A I did not.

1 Q Now, interestingly enough -- never mind. Sorry. Any
2 particular reason why you had no concerns for the other
3 information on the page?

4 A I've done a lot of research, and in what I believe to
5 the legislative history. I've seen several times a reference
6 without equity or right of redemption or without warranty,
7 and -- what is it? -- without warranty, expressed or implied in
8 a publicly noticed sale was as strong as type of title.

9 Q Okay.

10 A For a publicly held sale.

11 THE COURT: I'm sorry. Sir, you're mumbling. So
12 could you repeat what you just said.

13 THE WITNESS: So it's my belief from reading the
14 legislative history that without warranty, expressed or
15 implied, with -- I'm sorry, without warranty, expressed, or I
16 don't know, without warranty -- or what does NRS 16 say? And
17 without warranty. I don't know what it says exactly, but it's
18 like without warranty. It's similar to the language here. I
19 believe it to be strong language.

20 MS. NOTO: Object to the form. Again, he's
21 testifying as to a legal conclusion and legislative history he
22 hasn't even identified.

23 THE COURT: Okay.

24 MS. NOTO: As to what statute he's looking at, what
25 basis he has to provide a legal conclusion on the legislative

1 history of the statute.

2 THE COURT: Okay. Ms. Noto, your point is well
3 taken. Look, I'm okay listening to what he thinks about, you
4 know, and what he interprets certain things are in terms of the
5 legal conclusion if it bears on why he acted the way he did.

6 MR. CROTEAU: And that's why I brought it out.
7 That's the only reason. I'm not asking for him to provide us
8 with legal knowledge.

9 THE COURT: But you are having him testify about
10 legal conclusions, but not getting into what he didn't -- why
11 he acted the way he did given. That's what my problem is.

12 MR. CROTEAU: Okay. That's fair.

13 THE WITNESS: I'm sorry, Your Honor. I prefaced that
14 with I'm not educated at all. I mean, high school, but --
15 BY MR. CROTEAU:

16 Q So when you did your research, what was the purpose
17 of doing your research?

18 A For the -- it was early on, for the effects of -- I
19 was trying to figure out what I was buying at the HOA sales.

20 Q All right. And you went and what did you do
21 specifically to educate yourself?

22 A From then till now?

23 Q Well, no. From when you started in -- when you
24 started doing research, what did you do?

25 A When we started doing research, we were basically

1 seeing how long it would take if a bank were to foreclose then,
2 and in our research -- and, again, I dropped out of 10th
3 grade -- it's black-and-white letters to me. It was my
4 opinion, nobody at the time, that it wiped out the first deed
5 of trust if this number wasn't paid, this.

6 Q So the number being what?

7 A The superpriority at the -- the superpriority. And
8 then my research went from there because I was trying to find
9 out what that meant.

10 Q All right. And when you did that, what kind of
11 things did you look at for your research when you educated
12 yourself?

13 A Everything.

14 Q Tell the Court what everything is.

15 A Judges' opinions, opinions of anything that had been
16 brought up in different states, legislative history because I
17 learned that was something, and the uniform common interest and
18 how that was adopted and the professor who put that together,
19 things like that. I tried to figure out what our money was
20 going to do, what our risk was here.

21 Q All right. And after you did all of that research,
22 did you come to an opinion, your own opinion?

23 A I came to an opinion before when I read the statute,
24 but, yes, I believed the research backed up my opinion.

25 Q Okay. And what was that opinion?

1 A That unless the bank paid a superpriority amount,
2 that the first deed of trust -- that the first deed of trust
3 would be wiped out by the sale if the sale carried forward
4 without a superpriority payment being made by the secured first
5 deed of trust lender.

6 THE COURT: Which is why you bought the property?

7 THE WITNESS: That's correct.

8 BY MR. CROTEAU:

9 Q Okay. Let's go to 26, please. Exhibit 26. You've
10 bought a lot of properties; correct?

11 A I have.

12 Q Okay. When you buy a property, do you get conveyed
13 the property?

14 A We get deed of the property. So -- or in most of our
15 properties, we get a trustee's deed or a deed for the property.

16 Q Okay. Do you know what a conveyance is?

17 A I do.

18 Q What's a conveyance?

19 A When you transfer a property to someone.

20 Q Okay. Do you know what a reconveyance is?

21 A It can be either a note getting taken off. So the
22 note conveys the property into a trust for first deed of trust
23 for something like Celtic Bank, and the reconveyance then takes
24 it back out again, similar to the trustee sale.

25 Q So if you look at Exhibit 26, it says very

1 particularly,

2 Gibson Road LLC, paid by Celtic Bank, is
3 entitled to reconveyance having paid on
4 10/29 of '15 to the Clark County Treasurer in
5 an amount equal to all taxes accrued together
6 with any costs, penalties and interest
7 legally chargeable against the herein
8 described property.

9 Do you see that?

10 A I do.

11 Q Okay. Your understanding of this reconveyance does
12 what again, so we're clear?

13 A That the county would've conveyed the property into
14 the trust for the treasurer, and now they're reconveying it
15 back to the original condition that they found it in.

16 Q Removing the cloud of their certificate, so to speak?

17 A Yeah. Essentially removing the deed from being in
18 trust over here. They put the deed back where they found it,
19 leave everything as they found it.

20 Q Thank you. All right. Now, just so I'm clear, sir,
21 had this gone to tax sale, would you have attended?

22 A I would.

23 THE COURT: I'm sorry. What was your question?

24 MR. CROTEAU: Had it gone to tax sale, the property,
25 would he have attended.

1 THE COURT: What would he have -- and then I can't
2 hear what you just --

3 MR. CROTEAU: Would he have attended the sale.

4 THE COURT: Okay. Well, didn't he testify to that?

5 MR. CROTEAU: Yeah. I was just --

6 THE COURT: Okay. Well, we don't need to hear it
7 twice.

8 MR. CROTEAU: All right.

9 THE WITNESS: May I point out that the document is
10 made by the treasurer.

11 BY MR. CROTEAU:

12 Q Sir, why don't you go for a moment, if you would, to
13 Exhibit 17. Are you there?

14 A I am.

15 Q Okay. And you previously testified that you did not
16 create this deed; correct?

17 A I didn't.

18 Q Do you know who did?

19 A I don't.

20 Q Okay. Did you get it from Red Rock Financial
21 Services?

22 A I believe so.

23 Q Okay.

24 A I mean, yes, I would've got it from them.

25 Q All right. Fair enough. Here, in this particular

1 deed -- one, to, three, four, five -- six sentences down or six
2 lines down I should say from the top, it's saying that you are
3 being hereby granted and convey is how you received this deed;
4 correct?

5 A Correct.

6 Q All right. And it was to Vegas United Investment
7 Series 105; correct?

8 A Correct.

9 Q All right. Now, it also talks that you obtained this
10 as a result of, if you go down to, The agent states that the
11 conveyance is made pursuant to the powers conferred upon the
12 Nevada Revised Statutes, the Gibson Business Center Property
13 Owner's Association governing document CC&Rs and that certain
14 lien for delinquent assessments; correct?

15 A [No audible response.]

16 Q Correct?

17 A Correct.

18 Q Okay. All right. Now, there is no mention in here
19 of the CC&Rs by book and page number, is there?

20 A There's not.

21 Q Okay. This Declaration of Value, was this a
22 negotiable item with someone, or was this a, take this, this is
23 what you got to pay?

24 A This is what the county requires to record a document
25 transferring ownership.

1 Q Would you prefer to put 30,000 in there?

2 A Very much so.

3 Q Okay. All right. So who prepared this document?

4 It's all typed in. Who prepared that?

5 A The Declaration of Value?

6 Q Yes, sir.

7 A Well, I -- when you say who prepared the document,
8 you mean the 178, as typed in?

9 Q No. Well, let's do it better.

10 A Okay.

11 Q Exhibit 17, page 3, who prepared this document?

12 A It looks to be prepared both by this person here,
13 which was the agent, the scribble on the bottom, and then I
14 probably wrote in the value because that's what you do at the
15 window.

16 Q All right.

17 A That value is the current assessed value of the
18 property on that day.

19 Q All right. So let me ask you this. To the extent
20 this is not handwriting, but do you recognize these as your
21 numbers?

22 A I do.

23 Q Okay. Fair enough.

24 A The 358 I recognize my handwriting. I don't know
25 what you said about handwriting. That's my handwriting it

1 looks like.

2 THE COURT: That is your handwriting. So you didn't
3 just probably write it. You wrote it.

4 THE WITNESS: Right. But I wrote it at the direction
5 of the clerk at the recorder's office.

6 MR. CROTEAU: Right. We're going to get to that.

7 BY MR. CROTEAU:

8 Q So how does this work? You go down to record your
9 foreclosure deed. Is that how you do it?

10 A Correct, and; correct.

11 Q Right. You don't hire a title company to do that.
12 You get your foreclosure deed mailed to you directly; right?

13 A I do.

14 Q And then you take that foreclosure deed and march
15 yourself down to the recorder's office and do the recording?

16 A Correct.

17 Q But you have to pay the tax first, correct, before
18 they'll record it?

19 A Correct.

20 Q Okay. So how do you get this number to fill this in?
21 Tell me the process. You walk into the recorder's office.
22 What happens first?

23 A The information guy will look up the property here.
24 He'll tell you write this -- he'll give you a pen and tell you
25 to write this number if you don't have a pen. If you got a

1 pen, either way, you've got to write it. They don't touch --
2 they don't write things.

3 Q Okay.

4 A And he'll say you have to write here. Here's the
5 number, and that would have been the taxable value. Later, a
6 little before and a little after that and completely after
7 that, they started accepting the actual value of the sale, but
8 the assessor -- the assessor for the recorder to collect any
9 taxes.

10 THE COURT: Okay. And you paid the tax?

11 THE WITNESS: I do.

12 THE COURT: The transfer tax?

13 THE WITNESS: I did. So we paid the transfer tax and
14 the filing fee for the document.

15 BY MR. CROTEAU:

16 Q Just to be clear, was there a time at the recorder's
17 office where they would accept the actual price of the sale as
18 being what they were transferring tax on --

19 MS. NOTO: Objection. Relevance.

20 THE COURT: Go ahead. I'll overrule.

21 BY MR. CROTEAU:

22 Q Go ahead.

23 A There was a time that they accepted the sale, just
24 like any other sale. I mean, the sale was the number, and
25 that's the number of -- that you pay on tax. It's the fair

1 number, and the assessors -- the assessor decided that more
2 money should be collected.

3 Q Okay. And that's the reason for the increase in the
4 number; right? There's no benefit to you either way, is there,
5 whether it would be written down here as 30,000 or 358- except
6 that you pay more money?

7 A That's correct, except I pay more money. The benefit
8 would be I pay the fair amount.

9 Q All right. Okay. Let's go to Exhibit 18. Now,
10 Mr. Schmidt, you acquired this property on 3/21 of '14. Is
11 that accurate?

12 A 3/21 of '14.

13 Q Sir.

14 A I'm sorry. Was it 3/14, 14?

15 Q 3/21 of '14?

16 A Okay.

17 THE COURT: Okay. Now, we're on Exhibit 18; right?

18 MR. CROTEAU: Yes, Your Honor.

19 THE COURT: Okay.

20 THE WITNESS: Yes.

21 BY MR. CROTEAU:

22 Q So the foreclosure deed got filed, and if you look at
23 17, I'll represent to you the foreclosure deed was recorded on
24 4/17 of 2014; right? The original foreclosure deed.

25 A Right. So the sale took place 4/14 of '14.

1 THE COURT: I'm sorry. What? Okay. Sir, could you
2 state that again.

3 THE WITNESS: In the prior question, I thought I
4 corrected the sale date, and so, yes. I'm sorry. The
5 foreclosure deed was recorded on that date, the 17th.

6 BY MR. CROTEAU:

7 Q Go to 17 and look at it just so we're clear, okay? I
8 don't want this record messed up.

9 The sale happened on 3/21 of '14, as a result and as
10 set forth in this foreclosure deed; correct?

11 A I'm sorry. My facts were wrong. Correct.

12 Q All right. And it was recorded, up on the recorder
13 stamp on the right-hand side on page 1 of Exhibit 17, as
14 4/17 of 2014; correct?

15 A That's correct.

16 Q All right. Now, you get this deed sent to you from
17 Red Rock; is that correct?

18 A I do.

19 Q All right. So there's a lapse between the time the
20 sale actually occurs before you even have a deed to record;
21 correct?

22 A That's correct.

23 Q All right. But when you got it, you went and you
24 recorded it; correct?

25 A That's correct.

1 Q Go to page -- Exhibit 18.

2 A Okay.

3 Q You got a letter on May 3rd of '14, is that
4 accurate?

5 A Correct.

6 Q All right. And it cites the correct APN number;
7 right?

8 A It does.

9 Q All right. And then it says to you,
10 This is to inform you the assessor's
11 office has encountered difficulty in
12 processing the above-referenced documents as
13 the legal description is either incorrect,
14 incomplete or missing from the
15 above-referenced document.

16 Do you see that?

17 A I do.

18 Q All right. Now, just so we're clear, the deed was,
19 in fact, recorded at the Clark County Recorder's Office
20 already; correct?

21 A Correct.

22 Q This is the assessor telling you that there's some
23 problem with the legal description for their recorder, for
24 their processing if you will.

25 MS. NOTO: Your Honor, I'm just going to -- I've

1 allowed Mr. Croteau to go through a lot of leading questions,
2 but at this juncture, he's testifying, and he's leading the
3 witness --

4 THE COURT: Sustained.

5 MS. NOTO: -- all through all these documents.

6 THE COURT: Sustained. Rephrase.

7 BY MR. CROTEAU:

8 Q Based upon Exhibit 17, your foreclosure deed was
9 recorded in the Clark County Recorder's Office in April;
10 correct?

11 A It was.

12 Q Did anything get changed in the Clark County -- well,
13 strike that. Did your foreclosure deed not get recorded
14 because of some legal description issue?

15 A This document has nothing to do with the foreclosure
16 deed. It only purports to they draw it off just like every
17 other marketing company that's sent to the recorder, and they
18 draw it off, and they look at the records, and they kindly
19 adjust the records, the assessor's records, and what they're
20 saying is we don't feel like adjusting it. They ain't even
21 saying they weren't adjusting it. It just says to inform you
22 that the assessor's office encountered it. It could be to
23 inform me the Nevada Legal News has encountered a difficulty in
24 this section. I mean, in other words, it's an informational
25 document. It has nothing to do with the deed.

1 Q All right. So the accompanying letter provides
2 CB 93; is that correct?

3 A That's correct.

4 Q All right. And then what do you do, sir?

5 A I went down and talked to a map person about what
6 this was, and two or three people later, we came up with -- he
7 came up with a document which I believe is actually the Celtic
8 Bank rerecorded deed of trust because they recorded -- they
9 rerecorded and did the same correction [unintelligible] least
10 in there. So they essentially gave me that document and said
11 you need to have this information -- I'm sorry, this
12 information in and just rerecord it with this at the end.

13 Q Okay.

14 A And just to clarify, that information further details
15 the property. So the foreclosure deed is in no way inaccurate.

16 Q All right. Do me a favor then and look at CB 95.

17 A Okay.

18 Q All right. CB 95 was recorded, or I should say it
19 says rerecorded 1/23 of '06; right?

20 A Correct.

21 Q Do you see that up top there?

22 A I do.

23 Q Now, you told us a couple of minutes ago that you
24 used the Celtic Bank rerecorded deed of trust as your guide?

25 A I didn't use it as my guide. The guy at the

1 assessor's office --

2 Q Perfect. So I'll represent -- we can go back and
3 look, but the 1/23 of '06 is the rerecording of the legal
4 description for Celtic Bank. You can find that at --

5 MS. NOTO: Your Honor, it's just that he's doing the
6 same thing. He's testifying and leading the witness.

7 MR. CROTEAU: I'm taking him to Exhibit 6, Your
8 Honor. It's very simple. I will drill it down. We'll be here
9 all day.

10 BY MR. CROTEAU:

11 Q Exhibit 6 then. Go look at that, sir.
12 [Unintelligible] what they are.

13 A Okay.

14 Q What's the recording of the assignment of rents that
15 is correcting the legal description filed by Celtic Bank? What
16 date did they file it?

17 A They filed it 1/23, 2006.

18 Q Okay. And is that the same date that you can find --
19 well, hang on. I'll do it even better, and I apologize. The
20 one you used was the deed. So let's go to Exhibit 5.

21 A I'm sorry. Exhibit 5. Okay.

22 Q Are you there?

23 A I am.

24 Q All right. On Exhibit 5, do you see the number at
25 the top, 020060123?

1 A I do.

2 Q 0000482, top, top of the page, right side.

3 A I see it. I see it.

4 Q Do you see it?

5 A I see it.

6 THE COURT: Okay. Okay. One thing I'm having
7 trouble with, you keep hitting that microphone, and I'm having
8 trouble hearing, and I'm only getting bits and pieces.

9 MR. CROTEAU: All right. Then --

10 THE COURT: Do you want to take a break?

11 (No audible response)

12 THE COURT: All right. Why don't we go ahead and
13 take a 15-minute break. All right?

14 THE WITNESS: Thank you.

15 (Proceedings recessed 3:22 p.m. to 3:38 p.m.)

16 THE COURT RECORDER: Okay. Okay. We are good.

17 THE COURT: All right. We are back on the record.

18 And, sir, I just want to remind you again that you've
19 been sworn, okay, and do your best not to flip the book around
20 the microphone. I know it's got to be really hard on my court
21 recorder, and it is a bit distracting.

22 THE WITNESS: Okay.

23 THE COURT: Okay. Make sure it's pointed to you.

24 THE WITNESS: I'm sorry. Let me get it out of my
25 face so I don't knock it.

1 THE COURT: Okay. All right. Mr. Croteau.

2 MR. CROTEAU: Thank you, Your Honor.

3 BY MR. CROTEAU:

4 Q All right. Sir, if you will take a look at Exhibit
5 Number 5 for a moment.

6 A Okay.

7 Q And I'd like you to look at the -- I guess it's the
8 Clark County Recorder's information at the top.

9 A Okay.

10 Q And do you have an understanding who filed this
11 rerecorded to correct legal description deed of trust?

12 A Do I have an understanding of the document?

13 Q Do you have an understanding of who filed it?

14 A It looks like the Lawyers Title did it.

15 Q On behalf of who? Who requested it?

16 A [No audible response.]

17 Q Actually, it's not there, is it? Yeah, it does. It
18 says, When recorded, mail to Silver State Bank?

19 A It does.

20 Q Do you see that on page 19, CB 19?

21 A Yes.

22 Q Okay. And if you go to the first page, which is
23 CB 18, do you see this number here, 20060123000482?

24 A Yes.

25 Q All right. I'm going to write that down,

1 20060123000482. Now, this is a rerecording of a deed of trust;
2 right?

3 A It is.

4 Q All right. You had testified previously that --
5 well, why don't you testify again. Where did you get the legal
6 description, to the best of your knowledge, to correct the
7 legal description that was requested of you by the assessor's
8 office?

9 A I got it from the assessor who got it apparently from
10 this document.

11 I've reviewed this document before, but I don't know
12 what page --

13 Q Hang on. I'll get it for you. Hang on. I
14 apologize.

15 (Pause in the proceedings)

16 BY MR. CROTEAU:

17 Q Okay. And if you go to 18 --

18 THE COURT: Now, are we talking about page 18?

19 MR. CROTEAU: I apologize. Exhibit 18.

20 THE COURT: Exhibit 18. Okay.

21 MR. CROTEAU: Right. We were at Exhibit 5. Now
22 we're going to 18.

23 THE COURT: Okay.

24 BY MR. CROTEAU:

25 Q And we started talking about this document already;

1 right? Right, Charlie?

2 A We're on Exhibit 18.

3 Q Yes, sir.

4 A Yes, sir.

5 Q And we've already seen this. We talked about this a
6 few minutes ago; right?

7 A I have.

8 Q Okay. Now, at page CB 93, this handwritten changes
9 or handwritten notations on here, did you put that on there?

10 A No.

11 Q Who did, sir? Do you know?

12 A So when I was in person, they did essentially this
13 same thing and wrote it, and this apparently -- this appears to
14 be a mailing with this attached.

15 Q All right. So you got this in the mail. Then you
16 went down to somebody to see them. Who did you go see?

17 A [No audible response.]

18 Q Charlie.

19 A I'm sorry.

20 Q Who did you go see? You got this in the mail --

21 A Yes, I did. The assessor in the map section.

22 Q All right. Now --

23 THE COURT: The assessor in the what?

24 THE WITNESS: Map section. They have maps for the
25 tax parcels.

1 THE COURT: Okay.

2 THE WITNESS: People in the back of the assessor's
3 office.

4 BY MR. CROTEAU:

5 Q Okay. Now, if you'll go to CB 000095.

6 A Okay.

7 Q Now, this is all written on; right? I mean, these
8 changes, did you write anything on here?

9 A No.

10 Q Okay. Now, we talked about Exhibit 5, right, and we
11 just recorded those numbers down, the recording numbers at the
12 top of the page, remember? I wrote those down.

13 A Of this same document.

14 Q Well, of a document; right?

15 A Correct.

16 Q Will you tell me what this document says, CB 95 as
17 being the instrument number on the right-hand side.

18 A 20060123-000481.

19 Q Correct. The number on the -- the number in
20 Exhibit 5 was 20060123-000482. So it's one number off; right?

21 A If that's the number that was on that --

22 Q I'll represent to you that's what the record holds.

23 A Okay. Yes.

24 THE COURT: Guys, we're talking over each other.
25 Don't, please.

1 MR. CROTEAU: My apologies.

2 THE WITNESS: Yes. It's one number off if you're --

3 BY MR. CROTEAU:

4 Q All right. And you got this. Someone at the
5 recorder's office handed this to you?

6 A So someone at the recorder's office handed me a
7 recorded -- somebody at the recorder's office handed me these
8 same documents.

9 Q Okay. All right. Go to CB 96.

10 THE COURT: Okay. Hold on a second. You're going
11 between exhibits, and I just want to make sure I've got --

12 MR. CROTEAU: I'm still on 18, Your Honor. I haven't
13 got off.

14 THE COURT: Well, you got on to 5 because we got into
15 one number off.

16 MR. CROTEAU: I referenced 5. All right. Meaning
17 that, yeah.

18 THE COURT: Right?

19 MR. CROTEAU: Yeah.

20 THE COURT: Okay.

21 MR. CROTEAU: Meaning it's just -- yes. But that's
22 the instrument number.

23 THE COURT: Okay. Hold on a second. Let me go ahead
24 and put this in my notes.

25 MR. CROTEAU: They may have recorded two of the first

1 pages, I don't know. But that's the one we have.

2 THE COURT: Okay. All right. So now where are we?
3 We're on 18?

4 MR. CROTEAU: CB 96 of Exhibit 18.

5 MS. NOTO: Your Honor, I'm just going to object that
6 it misstates the document. If you'll see on page CB 00095 that
7 he's referencing, this is a grant bargain and sale deed. This
8 is not the deed of trust in Exhibit Number 5.

9 THE COURT: I understand.

10 MS. NOTO: Okay.

11 MR. CROTEAU: And that was denoted by the fact it was
12 one number off. I was simply getting to the fact that these
13 were all recorded at the same time. That's all I'm saying, and
14 I was going to clean that up in argument, but that's the issue.
15 BY MR. CROTEAU:

16 Q So at CB 00096, how did you obtain this with an X
17 through it?

18 A So I obtained that document, I believe, by mail as
19 well as on a different occasion was handed it at the assessor's
20 office.

21 Q Okay. Did you put an X through to it?

22 A No. I believe they put an X through it because they
23 wanted it retyped.

24 Q Okay. Let's go to CB 0097. How did you get this
25 document, same thing?

1 A That document was drawn from the previous document
2 without the handwritten "East."

3 Q Okay. And who wrote "good legal" there?

4 A So then I had it reviewed by the assessor who
5 would've wrote "good legal."

6 Q All right. Let's take a look at, and if you want to
7 open your book up to do that and take it out, let's compare
8 CB 96 to CB 97. Are you there?

9 A I am.

10 Q Okay. If I take out CB 96, this is the one with the
11 big X through it; right?

12 A Correct.

13 Q Okay. Now, I'm going to do this paragraph by
14 paragraph, okay, so we keep it simple?

15 A You're going to do it how?

16 Q Go paragraph by paragraph.

17 A Okay.

18 Q Okay. I'm going to start from the bottom for a
19 reason. I'm going to start at the bottom where it says, A
20 nonexclusive easement. Do you see that?

21 A I do.

22 Q Okay. Is that the same language in the corrected
23 deed?

24 A It is.

25 Q And that's under Parcel 2; right?

1 A Parcel 2; correct.

2 Q Okay. And then I'm going to ask you to check where
3 it begins, Commencing by, and ending with Beginning over here.
4 Do you see that?

5 A I do.

6 Q All right. I want you to compare 97 to 96. Are they
7 the same except for the hand inclusion of "East"?

8 A And the words "of the north" versus the words -- oh,
9 what's that say? I'm sorry. Just one moment.

10 They are the same.

11 Q They're the same; correct?

12 A Correct.

13 Q All right. And that's adding the word "East" in that
14 one note here. Do you see that there, this "East"?

15 A Correct.

16 Q And that's here, right here. See that, it's typed
17 in.

18 A Correct.

19 Q But for that, they're the same; is that correct?

20 A They are.

21 Q All right.

22 A They're the same. Just one is not handwritten, and
23 one's typed in.

24 Q That's fine. Let's go here where it says, A portion
25 of the north, ending with, As follows. Do you see that?

1 A Yes.

2 Q All right. Compare CB 96 to the good legal
3 description. It says, A portion of the north, and it ends
4 with, As follows; right?

5 A Correct. I will represent everything is the same
6 except for the handwritten "East" is now typed in.

7 Q All right. Well, this one is still not done yet.
8 All right. And then it says, And Parcel 1. It says Parcel
9 1 there; right?

10 A Correct.

11 Q On CB 97. It also says Parcel 1 on CB 96. Do you
12 see that?

13 A Correct.

14 Q All right. So here's the change. Do you see they
15 added an extra, I guess, one line? Do you see that right here?

16 A I do. Oh, I'm sorry. That line?

17 Q Yes. Instead of it being, All that certain real
18 property situated in Clark County, State of Nevada, described
19 as follows, they turned it into, Being a portion of Lot 1 of
20 Gibson Business Park 3 on file in book 56 of plats, page 36 in
21 the Office of the County Records of Clark County, Nevada,
22 more particularly described as follows. Do you see that?

23 A I do. I do see that.

24 Q Okay. So that's the change that you had to correct;
25 right?

1 A I believe so.

2 Q Okay. So as far as the metes and bounds go -- you
3 know what metes and bounds are, do you?

4 A Yes.

5 Q Okay. So as far as metes and bounds go, both are
6 basically exactly the same; correct?

7 A Correct.

8 Q The only thing that was changed is this prefatory --
9 this beginning provision where it says it's a portion of Lot 1?

10 A Correct.

11 Q And did you in fact rerecord a corrected deed for
12 that purpose?

13 A I rerecorded a corrected deed so that they would
14 change that [unintelligible] sorry. I rerecorded the corrected
15 deed so that the assessor would change who the mailings went
16 to.

17 Q Okay. And if you'll take a look at Exhibit 27, is
18 this your rerecorded deed incorporating that change?

19 A It is.

20 Q Okay. Do you have any understanding that somehow
21 your rights to the property were impaired as a result of
22 correcting this deed or waiting to correct this deed or
23 anything of that nature?

24 A No. My rights were impaired because the assessor
25 liked to have a different language.

1 Q Okay. Go to Exhibit 29, sir.

2 A Okay. Okay.

3 Q Is this a copy of a mailing to you or a certificate
4 of mailing to you from Red Rock?

5 A Okay.

6 Q Yes?

7 A Yes, it is.

8 Q Okay. Is this where they sent you your deed? Let me
9 rephrase the question.

10 Did you get any mailings from Red Rock until after
11 you purchased the property?

12 A Not regarding this -- no, not regarding this
13 property.

14 Q Okay. All right. And you did get a mailing from Red
15 Rock when you were provided the deed, did you not?

16 A Yes.

17 Q Okay. And did they send it certified to you?

18 A It appears so.

19 Q Okay.

20 A I don't remember this document.

21 Q Okay. 32, please, sir.

22 A Okay.

23 Q Is this certificate of sale accurate from 3/21 of
24 2014, at 10:00 a.m.? You purchased the property in question
25 that we're here about today for the sum of \$30,000?

1 A It is.

2 Q Okay. Did you have any dealings whatsoever with Red
3 Rock on this particular property prior to the sale of that?

4 A I try not to deal with Red Rock. So, no.

5 Q Okay.

6 A They're a collection company.

7 MR. CROTEAU: Okay. I have no further questions.

8 THE COURT: Okay. Okay. Redirect.

9 MS. NOTO: Thank you.

10 REDIRECT EXAMINATION

11 BY MS. NOTO:

12 Q Mr. Schmidt, you testified extensively that title to
13 the -- excuse me -- that title had not actually transferred
14 because based on the certificate of holding for delinquent
15 assessments that the county was just holding it in trust, but
16 there was no transfer of title. Was that your testimony?

17 A I believe my testimony was that the document was
18 recorded. So I don't exactly -- I don't agree with what you
19 just said. So I don't believe I -- I hope I don't testify to
20 that.

21 Q Okay. I want to be clear. I understood your
22 testimony to say that title had not transferred to anyone by
23 virtue of the tax certificate. Is that fair?

24 A No. No. I don't know how we're misunderstanding how
25 title works.

1 Q Okay.

2 A We record in the county recorder's office.

3 Q I want to talk just about the taxes.

4 A Oh, I'm sorry. Oh, okay.

5 Q So you testified that you knew that there was a
6 certificate of tax that had been recorded; right?

7 A That's fair. Yes.

8 Q And you testified that Clark County was holding the
9 property in trust for Gibson Road LLC. You testified to that;
10 correct?

11 A Correct.

12 Q Right. You testified that there was not a tax sale;
13 right?

14 A Correct.

15 Q And so you also testified, if I recall, that Clark
16 County can, if the taxes are paid, reconvey it back to a prior
17 owner, whoever they were holding it in trust for. That was
18 your testimony?

19 A Correct.

20 Q Okay. But my understanding was that at all times
21 during that period it was being held in trust for Gibson Road
22 LLC. Is that your testimony?

23 A Correct.

24 Q I want you to look at Exhibit --

25 MS. NOTO: Exhibit 29?

1 THE COURT: Which one?

2 MS. NOTO: I think it's Exhibit --

3 MS. SCHMITT: 22.

4 MS. NOTO: 22.

5 BY MS. NOTO:

6 Q Let's look at Exhibit 22.

7 A I'm sorry. Okay.

8 Q Have you seen this document before?

9 A I have.

10 Q Okay. This is a tax trustee deed; correct?

11 A Correct.

12 Q When was it recorded?

13 A 6/11 of 2015.

14 Q That was after your foreclosure sale; correct?

15 A It was.

16 Q Okay. Let's look at the second page:

17 The property described above was not

18 redeemed as of the end of the redemption

19 period, i.e., the 3rd day of June 2015.

20 Therefore the deeding transfer and conveyance

21 of said property is made together with all

22 singular tenements, rudiments and

23 appurtenances hereto belonging or in

24 otherwise appertaining.

25 Who was it deeded to? Look at the first page if that

1 will be helpful.

2 A [Unintelligible.]

3 Q If I can help, I can point you to right here.

4 A If you can point me, that'd be great.

5 Q Delivers to whom?

6 A Laura B. Fitzpatrick, the Treasurer of Clark County

7 as trustee for the state of -- of the county --

8 Q Right. As trustee. What is being recorded? What is
9 being delivered?

10 A A deed to the property described below.

11 Q Okay. So who held title to the property as of June
12 11th, 2015?

13 A It would appear that the county [unintelligible].

14 Q Correct. Okay. So you testified earlier in my
15 direct and also in your conversations with Mr. Croteau that you
16 have a great understanding of tax sales; is that fair?

17 A Sure.

18 Q And you testified to me that the county could only
19 convey it back to whoever it had originally held it in trust.
20 Do you remember that conversation?

21 A Sure. Correct.

22 Q Okay. So certainly you're familiar with NRS 361585
23 that talks about who the taxing authority can reconvey to. You
24 certainly are familiar with that?

25 A I'm not familiar with any taxing authority

1 NRS statutes.

2 Q Well, you testified you knew who the taxing authority
3 could reconvey to. You extensively testified about that;
4 correct?

5 A I think I testified that I didn't see a lot of them,
6 but this is what I've seen. You know, this is my
7 understanding. They always go back.

8 Q Would it surprise you then that NRS 361585 says that
9 it can only be transferred to an owner, beneficiary under a
10 note of deed of trust, a mortgagee under a mortgage, or a
11 creditor under a judgment?

12 A That wouldn't surprise me. Is that what you said?
13 Would it surprise me? No, it wouldn't surprise me.

14 Q But you testified it could be transferred back to a
15 former owner.

16 A I think you're --

17 Q Or it had to be transferred back to a former owner;
18 correct?

19 A Maybe you're making the distinction that it could be
20 transfer back to a former owner. It says "owner" in the NRS
21 statute you just read. So --

22 Q Okay. But you claimed you were the owner at that
23 time.

24 A Well --

25 Q Right?

1 A But now you added the word "former" to it; right?

2 Q No. You added the word former.

3 MR. CROTEAU: Argumentative, Your Honor.

4 THE WITNESS: Okay. Well, I added the word "former"
5 to it, but it's still an owner, is it not?

6 MS. NOTO: No.

7 THE WITNESS: What did you say former or --

8 BY MS. NOTO:

9 Q There's a former owner, and there's an owner of the
10 property; is that fair?

11 A That's what your attorneys are supposed to -- you
12 know, that's what you guys are for, to argue --

13 Q Well, Mr. Schmidt, it was your testimony that you
14 believed that the taxing authority, pursuant to that
15 reconveyance, could and would reconvey to the named owner in
16 the certificate; is that correct?

17 A I did testify to that. I also testified that you
18 could pay any day up until the sale date, and it would revert
19 back to the prior owner, that it would transfer back to the
20 prior owner.

21 Q That's not what the statute says. It says the taxing
22 authority can reconvey to an owner, again, Owner, beneficiary
23 under the note and deed of trust and mortgagee under a mortgage
24 or a creditor under a judgment. You claim you were the owner
25 at that time; correct?

1 A I'm sorry. I thought you were asking me about my
2 testimony, and my testimony said any day prior to the sale
3 date, if you go and pay the taxes, it would get transferred
4 back to the owner, back to whoever they took it from.

5 THE COURT: Ms. Noto, you can go ahead and argue that
6 during closing as well. I understand.

7 MS. NOTO: Very good. Thank you, Your Honor.
8 BY MS. NOTO:

9 Q And as far as liens on the property, you testified
10 you weren't worried about going to the tax sale because you
11 were going to be able to get it free and clear; is that
12 correct?

13 A That's correct.

14 Q And yet you've allowed a Republic Services lien to
15 stay on the property; isn't that fair?

16 A I don't know of one, but there's --

17 Q You don't know if there is a Republic Services lien
18 on the property?

19 A I don't know if there's a Republic Services lien on
20 the property.

21 Q They were a party in this action. You didn't know
22 that?

23 A I did not know that.

24 Q Okay. You testified that the 1994 amendment was the
25 most up-to-date version of the CC&Rs; is that correct?

1 A That's correct.

2 Q Okay. And let's look at that document again on
3 Exhibit 2.

4 THE COURT: I'm sorry. What exhibit are you on?

5 MS. NOTO: Exhibit 2.

6 THE WITNESS: I'm sorry. I thought you said we're
7 going to, and I was waiting for the answer.

8 MS. NOTO: Oh, I'm sorry.

9 THE WITNESS: No problem.

10 MS. NOTO: That was my mistake.

11 BY MS. NOTO:

12 Q You also testified that you have extensive knowledge
13 of NRS 116; correct?

14 A Sure. Yes, I do.

15 Q And you know that it was enacted in 1991; right?

16 A Correct.

17 Q Okay. So this document -- look up here -- was
18 recorded in when?

19 A 1994.

20 Q Okay. And we've already established that there's
21 nothing in this document that incorporates or even mentions
22 NRS 116. Is that fair?

23 A Your specific line says, In this document.

24 Q Right.

25 A And in this document it does not reference 116.

1 Q NRS 116. But it could have because NRS 116 had been
2 enacted then; correct?

3 A Well, if you read it as a whole, it is the up-to-date
4 version of the CC&Rs which were recorded in 1989, which
5 referenced 279, I believe, and 279 was replaced with --

6 Q Okay.

7 A So it does reference NRS 116, but you wouldn't let me
8 have the answer.

9 Q Well, let's look at that statute that you're so
10 familiar with, 279. Let's look at that. Let's talk about that
11 one.

12 MR. CROTEAU: It's 278A.

13 THE WITNESS: I'm not too familiar with 279.

14 MR. CROTEAU: For the record, is 278A.

15 MS. NOTO: Oh, 278A.

16 BY MS. NOTO:

17 Q Let's look at that.

18 A And I'm not too familiar with it. I just know that
19 when I look at older associations I know that that's how the
20 compliance gets to NRS 116.

21 Q Are you familiar that that NRS 278.170 references the
22 incorporation of 116 for open spaces?

23 A Well, actually 279 currently today --

24 Q On 278A.170.

25 A References open spaces generally.

1 Q Right. It incorporates 116 for open spaces; correct?

2 A That's a distinction --

3 Q No, I'm asking --

4 A -- that's the current law, right?

5 Q I'm asking you because you said that --

6 A It does say open spaces.

7 THE COURT: Well, okay. We are interrupting each
8 other.

9 MS. NOTO: Yes.

10 THE COURT: So we're going to stop that right now.

11 MS. NOTO: Thank you, Your Honor.

12 THE COURT: So ask your question, and then you
13 answer, and you don't interrupt, and you don't interrupt, okay?

14 THE WITNESS: Okay. Sorry.

15 MS. NOTO: Fair enough.

16 BY MS. NOTO:

17 Q You said in your testimony that you were with 278A
18 and that it was incorporated in the 1989 CC&Rs. Do you
19 remember that?

20 A Correct. Yes.

21 Q Okay. And you said you were familiar with 278A;
22 right? And your testimony is that because 278A is referenced
23 in the 1989 CC&Rs it incorporates 116?

24 A It does.

25 Q Okay. But 278A only incorporates 116 for open

1 spaces. Do you know that?

2 A I feel like you're making a distinction between what
3 278A references today versus what it may have referenced in
4 1991.

5 Q Okay. Did you look at the 1991 version?

6 A It's been a very long time, but I have.

7 Q Okay. I did. Do you know that it references open
8 spaces in 1991?

9 A So in 1991 or when the '91 statute was enacted?

10 Q In 1991 --

11 A I guess both of it is current.

12 Q -- 278A, the version of the statute referenced the
13 incorporation of 116 for open spaces. Do you know that?

14 A So I will submit to you that it references open
15 spaces if that helps you.

16 Q Okay. And this property is not an open space;
17 correct?

18 A Well, the common-interest community, which is the
19 CC&Rs, has open space.

20 Q Okay.

21 A Okay.

22 Q But was this foreclosure pursuant to an open space or
23 a property?

24 A I don't see a distinction.

25 Q Okay. You said that you had done a lot of legal

1 research prior to the sale. So you understood NRS 116;
2 correct?

3 A Uh-huh. I did.

4 Q And you had looked at the legislative history;
5 correct?

6 A Correct.

7 Q And you were very familiar with SFR; correct?

8 A Correct.

9 Q But SFR wasn't decided until much later. Your sale
10 was in 2014, in March of 2014; correct?

11 A Correct.

12 Q Do you know when SFR came out?

13 A I don't know when SFR came out, but SFR didn't change
14 anything.

15 Q Okay.

16 A Okay.

17 Q But your testimony was that you had looked at that?

18 A Correct.

19 Q Okay. We talked a lot, your counsel talked a lot
20 about the legal description of the property. It's your
21 testimony that your amended recorded, rerecorded deed did
22 correct the legal description just simply to assist the
23 assessor; correct?

24 A Simply to the assessor, right. Correct.

25 MS. NOTO: Okay. I don't have any other questions.

1 THE COURT: Recross.

2 RECROSS-EXAMINATION

3 BY MR. CROTEAU:

4 Q Did Republic Services' lien concern you?

5 A No.

6 Q Okay.

7 MS. NOTO: Objection, Your Honor. He just testified
8 he didn't even know there was a lien on the property. So how
9 could it concern him or not concern him?

10 BY MR. CROTEAU:

11 Q Would a Republic lien concern you?

12 THE COURT: Okay. I understand.

13 BY MR. CROTEAU:

14 Q Would a Republic lien concern you?

15 A It would not. I mean, I would like to pay it if I
16 saw it, but it doesn't have anything --

17 Q Okay.

18 A -- problem with title.

19 Q Your testimony earlier is when we were discussing the
20 tax certificate, correct, regarding whether or not it was
21 interest-bearing and held in trust and so forth; correct?

22 A Correct.

23 MR. CROTEAU: I think the rest is legal argument.

24 THE COURT: Okay. Sir, you may step down.

25 Next witness.

1 MS. NOTO: Your Honor, at this time the plaintiff
2 rests.

3 THE COURT: All right. Counsel, first witness.

4 MR. CROTEAU: I think we rest.

5 THE COURT: Okay. Argument.

6 MR. CROTEAU: Your Honor, with respect, is it --

7 THE COURT: Pardon me?

8 MR. CROTEAU: If it's possible, I would prefer to
9 come back tomorrow for an hour and collect our thoughts. It
10 would be a lot cleaner closing argument. I want to pull some
11 statutes. I want to discuss with you some of the law, and I'd
12 respectfully request -- I know you said we could go tomorrow,
13 but maybe an hour tomorrow for closing.

14 MS. NOTO: Your Honor, I'm prepared to close. My
15 client is here today. He doesn't need to go until tomorrow. I
16 think if Mr. -- if Mr. Croteau is going to rest, then -- and he
17 knew he wasn't going to call his witnesses, he should be ready
18 to finish trial today.

19 MR. CROTEAU: Well, I wasn't -- I wasn't actually
20 prepared to, but based upon the testimony today and stuff that
21 has gone on in this case, I don't believe we need to go any
22 further. I'm actually saving counsel the time coming back
23 tomorrow and taking testimony again tomorrow because we would
24 never finish.

25 MS. NOTO: You would save me time to do my closing

1 today.

2 MR. CROTEAU: Well, I don't have time. We will not
3 be done closing --

4 THE COURT: Well, any reason why I can't listen to
5 Ms. Noto?

6 MR. CROTEAU: Absolutely. Sure.

7 THE COURT: Okay.

8 MR. CROTEAU: Let's hear her.

9 MS. NOTO: I'm not going to give my closing argument
10 and let him go prepare his closing argument based on mine.
11 That seems unfair to me.

12 THE COURT: Well, we're talking 45 minutes here.
13 So --

14 MS. NOTO: I understand. My closing is not 45
15 minutes.

16 MR. CROTEAU: Well, mine is going to be rather
17 extensive. I can tell you that. There's a lot to talk about.
18 There's a lot of documents to refer.

19 THE COURT: How long did you plan to go?

20 MR. CROTEAU: For closing?

21 THE COURT: Uh-huh.

22 MR. CROTEAU: Honestly, I'll probably be at least 45
23 minutes or a half hour. I mean, seriously, I'm going to go
24 through the exhibits. I think, Your Honor, with all due
25 respect, some of these areas are relatively new. You seem to

1 be unclear a little bit, not unclear, but not familiar, if you
2 will, with tax sales. I want to bring you the statute and talk
3 about them at the time of the arguments, to walk through them
4 so we understand what we're doing, so it's all clear because I
5 don't want to have confusion. I want to cite to you the
6 statutes.

7 I want to make your life a little bit easier in
8 giving you a clear roadmap as to what the case is. Counsel,
9 I'm sure, wants to do the same thing, but so that's all. I
10 mean, and I think it's going to take some time. I apologize,
11 but I did save the Court a couple of witnesses and the task of
12 going through any more of this. I think there's enough in the
13 record to go from where we're at. So that was my only reason,
14 and given the late hour, I thought it was more appropriate to
15 do it the other way.

16 THE COURT: Okay. But usually I like to have full
17 days, but --

18 MR. CROTEAU: No. No. And no disrespect.
19 Absolutely. It's certainly -- I have no qualms about the
20 Court's issues timewise.

21 THE COURT: Okay. Ms. Noto, I'm going to just tell
22 you this. Even if you took a half hour, he took a half hour,
23 and then, of course, you're going to get time for rebuttal, we
24 are clearly going to have to come back tomorrow anyway.

25 MS. NOTO: Fair enough, Your Honor.

1 THE COURT: And I agree with you, splitting it around
2 might not -- I don't want to put anybody at a disadvantage. So
3 why don't we go ahead and start tomorrow morning.

4 MS. NOTO: That sounds fine, Your Honor. Thank you.

5 THE COURT: All right.

6 MR. CROTEAU: What time, Your Honor?

7 THE COURT: 8:30, how's that?

8 MR. CROTEAU: That's fine.

9 THE COURT: 8:30 good?

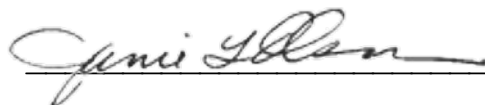
10 MS. NOTO: Yes. Absolutely. Yes. Thank you.

11 THE COURT: Okay. We'll see you tomorrow at 8:30.

12 (Proceedings recessed for the evening 4:13 p.m.)

13 -oOo-

14 ATTEST: I do hereby certify that I have truly and correctly
15 transcribed the audio/video proceedings in the above-entitled
16 case.

17
18 

19 Janie L. Olsen
20 Transcriber
21
22
23
24
25

BY MR. CROTEAU:
[36] 38/14 39/6 39/19
41/15 42/1 52/7 52/14
55/2 55/17 56/2 57/17
58/21 61/17 64/14
66/15 68/15 69/20
72/15 74/8 76/11 79/7
80/15 80/21 81/21 82/6
84/7 86/10 88/3 89/16
89/24 91/4 92/3 93/15
111/3 111/10 111/13
BY MS. NOTO: [29]
4/2 4/19 5/13 5/24 7/1
9/21 10/16 13/1 15/1
17/24 19/16 20/13
21/14 22/17 23/17 24/8
24/16 25/15 25/24 26/4
26/11 33/22 99/11
101/5 104/8 105/8
106/11 107/16 108/16
MR. CROTEAU: [77]
5/16 9/18 12/21 24/5
25/13 25/23 26/7 38/12
39/17 41/3 41/12 41/14
41/24 49/14 49/22
52/13 55/9 55/14 61/1
61/3 61/9 61/11 61/13
61/16 63/25 64/4 64/6
64/8 64/10 64/12 66/8
66/12 68/8 69/4 69/9
69/12 69/15 69/18 72/6
72/12 75/24 76/3 76/5
76/8 79/6 81/18 86/7
87/9 88/2 89/19 89/21
92/1 92/12 92/16 92/19
92/21 92/25 93/4 93/11
99/7 104/3 107/12
107/14 111/23 112/4
112/6 112/8 112/19
113/2 113/6 113/8
113/16 113/20 113/22
114/18 115/6 115/8
MS. NOTO: [50] 3/12
3/14 3/23 5/19 5/22
9/20 14/24 22/13 22/15
24/15 33/21 39/3 39/12
41/1 52/11 54/23 55/5
55/22 68/5 71/20 71/24
80/19 83/25 84/5 86/5
93/5 93/10 99/9 100/25
101/2 101/4 104/6
105/7 106/5 106/8
106/10 107/15 108/9
108/11 108/15 110/25
111/7 112/1 112/14
112/25 113/9 113/14
114/25 115/4 115/10
MS. SCHMITT: [2]
14/23 101/3
THE CLERK: [1] 3/19
THE COURT
RECORDER: [1] 87/16
THE COURT: [146]
THE WITNESS: [68]
3/21 4/18 5/11 10/7
10/9 12/24 19/2 19/7
19/11 19/14 20/9 20/12

21/7 21/11 23/14 26/9
33/16 33/19 47/24 48/3
48/11 48/14 48/18
48/21 48/24 49/2 49/5
49/12 49/20 50/6 50/10
50/21 50/24 51/3 51/20
52/3 55/1 55/25 57/16
58/20 60/22 60/25 61/2
61/10 61/12 61/14
66/14 71/13 72/13 74/7
76/9 79/4 80/11 80/13
81/20 82/3 87/14 87/22
87/24 90/24 91/2 92/2
104/4 104/7 106/6
106/9 107/13 108/14
\$
\$30,000 [3] 30/17 60/5
98/25
\$358,734 [2] 30/16
30/24
\$4,584.71 [1] 42/13
\$500,000 [5] 47/13
47/16 47/17 47/17
47/17
'
'06 [2] 85/19 86/3
'14 [4] 81/10 81/12
81/15 81/25
'14, [3] 57/16 82/9 83/3
'14, as [1] 82/9
'14, is [1] 83/3
'14, Your [1] 57/16
'15 [1] 75/4
'15 to [1] 75/4
'8 [1] 56/25
'8 or [1] 56/25
'89 [5] 12/25 13/3 65/6
65/24 66/4
'89 in [1] 65/24
'9 [2] 56/25 56/25
'91 [1] 109/9
'91 statute [1] 109/9
'94 [1] 37/25
-
-oOo [1] 115/13
0
0000482 [1] 87/2
000095 [1] 91/5
0002 [1] 30/6
0003 [1] 30/4
000481 [1] 91/18
000482 [1] 91/20
00095 [1] 93/6
00096 [1] 93/16
0076 [2] 15/3 60/11
0077 [1] 7/3
0097 [1] 93/24
0117 [1] 25/9
020060123 [1] 86/25
024-00-0285 [1] 10/19
0285 [1] 10/19
1
1 and [1] 32/1
1 there [1] 96/9

1/23 [2] 85/19 86/17
1/23 of [1] 86/3
10 [5] 1/13 3/1 20/14
20/16 20/17
10 percent [1] 44/4
10/24 [11] 10/14 11/17
12/7 12/14 16/1 16/5
22/2 22/8 37/20 37/23
38/3
10/24 of [1] 16/12
10/29 of [1] 75/4
1024 [1] 21/6
105 [4] 1/8 3/5 29/5
77/7
10:00 a.m [1] 98/24
10th [1] 73/2
11 [1] 101/13
11/5 [3] 24/18 24/19
24/24
116 [31] 13/6 13/13
13/14 13/17 13/19
46/15 49/16 49/17
54/18 54/21 55/3 55/11
56/10 56/14 67/21 68/2
68/20 68/23 106/13
106/22 106/25 107/1
107/1 107/7 107/20
107/22 108/1 108/23
108/25 109/13 110/1
116.3116 [1] 29/6
116.31168 [2] 29/1
29/7
11th [2] 65/6 102/12
12 [2] 6/8 6/9
12/26 [1] 42/2
14 [10] 17/25 22/11
22/13 23/1 41/22 41/24
41/25 54/6 81/14 81/14
15 [6] 6/19 14/23 14/24
60/9 69/8 69/21
15-minute [1] 87/13
16 [3] 25/3 25/14 71/16
17 [7] 27/24 76/13
78/11 81/23 82/7 82/13
84/8
178 [1] 78/8
17th [2] 28/8 82/5
18 [16] 14/22 31/8 31/9
81/9 81/17 83/1 88/23
89/17 89/18 89/19
89/20 89/22 90/2 92/12
93/3 93/4
181 [2] 8/17 29/10
19 [2] 88/20 88/20
194024000285 [1]
11/17
1989 [15] 12/25 13/2
13/7 13/13 13/17 16/6
63/11 63/17 63/19
63/21 65/14 68/3 107/4
108/18 108/23
1991 [7] 68/23 106/15
109/4 109/5 109/8
109/9 109/10
1994 [20] 10/14 10/19
11/17 11/23 12/7 12/14
12/16 16/1 16/5 16/13
21/6 22/2 22/8 37/23
38/3 63/18 65/21 66/2

105/24 106/19
1994 in [1] 37/21
19940240000285 [1]
37/21
19940240000285 [1]
22/3
1:25 [1] 3/8
1:38 P.M [1] 3/1
2
2 percent [4] 42/24
42/25 48/25 51/1
2000 [1] 57/15
2006 [1] 86/17
20060123-000481 [1]
91/18
20060123-000482 [1]
91/20
20060123000482 [2]
88/23 89/1
2008 [1] 56/25
2009 [3] 5/3 5/8 5/14
2010 [1] 57/10
2011 [1] 18/18
2012-2013 [1] 43/20
2013 [4] 18/4 42/3
43/20 43/22
2014 [18] 6/21 7/18
28/5 28/8 33/7 33/23
34/21 35/18 57/13
57/19 59/15 59/25
69/22 81/24 82/14
98/24 110/10 110/10
2015 [5] 24/24 46/21
101/13 101/19 102/12
2015 to [1] 24/18
2016 [1] 34/16
2017 [2] 1/13 3/1
21st [1] 28/5
22 [3] 101/3 101/4
101/6
23 [2] 85/19 86/17
23rd [1] 9/17
24 [11] 10/14 11/17
12/7 12/14 16/1 16/5
22/2 22/8 37/20 37/23
38/3
26 [9] 22/15 22/18
22/24 22/25 35/13 42/2
74/9 74/9 74/25
27 [2] 34/10 97/17
278.170 [1] 107/21
278A [9] 107/12 107/14
107/15 108/17 108/21
108/22 108/25 109/3
109/12
278A.170 [7] 67/15
67/18 67/21 68/4 68/17
68/22 107/24
279 [5] 107/5 107/5
107/10 107/13 107/23
28th [1] 7/18
29 [2] 98/1 100/25
3
3/21 of [5] 81/10 81/12
81/15 82/9 98/23
30,000 [4] 26/25 29/25
78/1 81/5

3116 [1] 67/25
31168 [2] 67/25 67/25
32 [1] 98/21
358 [1] 78/24
358,734 [1] 30/18
358- except [1] 81/5
36 [1] 96/20
361585 [2] 102/22
103/8
395 [1] 64/7
3:22 p.m [1] 87/15
3:38 p.m [1] 87/15
3rd [3] 33/23 83/3
101/19
4
4/14 of [1] 81/25
4/17 of [2] 81/24 82/14
4/4 of [1] 34/16
419 [3] 66/6 66/8 66/9
435 [2] 64/23 65/1
436 [3] 63/23 64/8 64/9
45 [3] 113/12 113/14
113/22
4:13 p.m [1] 115/12
5
5 because [1] 92/14
500,000 [2] 47/21 49/7
56 [1] 96/20
5636 [1] 29/9
5:00 p.m [1] 43/21
6
6/11 [1] 101/13
7
70 [2] 26/9 58/25
70 percent [1] 52/1
700,000 [5] 48/17
48/19 48/20 49/8 49/8
76 [1] 70/14
77 [2] 70/8 70/8
8
809 [1] 66/5
89014 [1] 29/11
8:30 [2] 115/7 115/11
8:30 good [1] 115/9
9
90 [2] 51/12 51/13
93 [2] 85/2 90/8
95 [3] 85/16 85/18
91/16
96 [7] 92/9 93/4 94/8
94/10 95/6 96/2 96/11
97 [3] 94/8 95/6 96/11
9:00 a.m [1] 3/8
A
a.m [2] 3/8 98/24
ability [1] 63/20
able [4] 36/5 53/11
53/23 105/11
about [41] 6/6 6/11
6/11 6/16 14/7 38/15
50/7 50/17 50/20 51/8
51/19 57/10 59/19

A	45/9 53/16 54/22 55/19 68/16 73/21 80/6 80/6 98/10 101/14 afternoon [2] 4/3 69/5 again [23] 14/8 15/6 15/18 15/22 16/1 18/15 20/17 24/14 24/23 25/19 35/10 39/12 51/23 71/20 73/2 74/24 75/12 82/2 87/18 89/5 104/22 106/2 112/23 against [7] 10/9 56/7 66/21 67/10 67/13 70/22 75/7 agent [3] 28/23 77/10 78/13 ago [3] 54/16 85/23 90/6 agree [2] 99/18 115/1 ahead [13] 21/10 26/3 29/1 33/20 52/6 54/25 69/16 80/20 80/22 87/12 92/23 105/5 115/3 ain't [1] 84/20 all [163] allowed [2] 84/1 105/14 ALLYSON [1] 1/16 almost [3] 12/5 56/8 68/23 already [7] 22/15 37/6 41/3 83/20 89/25 90/5 106/20 also [19] 4/22 6/4 9/10 10/21 17/8 20/23 21/4 29/16 40/1 50/22 65/19 65/23 67/14 77/9 96/11 100/15 102/15 104/17 106/12 always [1] 103/7 am [10] 12/13 15/4 28/1 31/10 40/4 54/19 66/17 76/14 86/23 94/9 amend [2] 63/19 63/20 amended [2] 68/22 110/21 amendment [13] 13/20 16/5 63/10 63/10 63/14 63/16 63/18 64/16 64/20 64/21 65/12 65/23 105/24 amendments [2] 64/6 64/15 amends [2] 12/24 63/14 amount [8] 20/7 20/9 26/25 42/23 45/24 74/1 75/5 81/8 amounts [1] 67/1 Ampac [1] 65/7 amplify [1] 8/5 annum [1] 44/4 another [4] 4/8 5/21 51/23 69/8 answer [6] 24/13 33/18 55/23 106/7 107/8 108/13 any [43] 5/19 13/6	25/22 26/12 26/17 33/7 37/22 38/4 38/10 39/20 40/20 41/7 52/19 54/21 54/22 55/20 56/10 58/4 59/7 59/7 62/4 63/14 67/6 68/19 70/2 70/2 70/3 70/18 70/21 71/1 75/6 80/8 80/24 97/20 98/10 99/2 102/25 104/18 105/2 110/25 112/21 113/4 114/12 anybody [2] 39/24 115/2 anyone [2] 16/20 99/22 anything [15] 26/20 26/21 26/24 27/16 32/19 47/6 53/24 62/24 63/2 73/15 84/12 91/8 97/23 110/14 111/16 anyway [1] 114/24 APN [4] 18/6 18/6 18/7 83/6 apologies [1] 92/1 apologize [10] 3/7 9/20 16/9 32/15 61/4 63/25 86/19 89/14 89/19 114/10 apparently [3] 32/5 89/9 90/13 appear [1] 102/13 APPEARANCES [1] 1/15 appears [8] 7/7 7/24 12/16 16/14 28/8 34/16 90/13 98/18 appertaining [1] 101/24 applies [1] 51/16 apply [2] 51/14 51/15 appropriate [1] 114/14 Approximately [2] 11/25 56/25 appurtenances [1] 101/23 April [3] 28/8 34/21 84/9 are [61] 3/11 4/4 4/11 4/22 6/3 8/4 8/15 9/2 12/5 12/6 12/9 12/14 12/17 15/3 20/14 27/24 29/2 30/9 31/8 33/14 38/6 40/24 46/5 49/15 53/9 53/18 54/18 56/5 56/6 56/7 62/20 63/20 63/24 66/21 67/15 69/10 72/4 72/9 76/13 77/2 86/12 86/22 87/16 87/17 89/18 93/2 94/8 95/6 95/10 95/20 97/3 97/5 100/16 102/24 104/11 104/12 106/4 107/21 108/7 113/25 114/24 areas [1] 113/25 argue [2] 104/12 105/5 argument [6] 93/14 111/23 112/5 112/10 113/9 113/10 Argumentative [1]	104/3 arguments [1] 114/3 around [5] 9/2 45/17 63/15 87/19 115/1 Article [2] 63/24 64/3 Article IV [2] 63/24 64/3 as [90] 3/17 3/18 6/8 7/22 9/24 10/12 11/17 12/1 12/2 12/2 15/15 15/22 15/24 16/3 16/10 18/7 18/19 21/2 21/3 21/5 21/16 22/2 22/10 24/23 27/22 28/20 28/23 29/8 29/10 33/23 36/18 37/21 39/20 41/11 41/11 45/18 45/23 46/1 47/7 47/8 47/25 52/9 52/15 54/6 55/3 55/11 57/21 62/7 64/16 65/7 65/10 68/20 70/1 71/8 71/8 71/21 71/24 75/19 77/10 78/8 78/20 80/17 81/5 82/9 82/9 82/13 83/12 85/24 85/25 91/16 93/18 93/19 95/25 96/4 96/19 96/22 97/2 97/2 97/5 97/5 97/21 101/18 102/7 102/8 102/11 105/6 105/9 105/9 107/3 114/8 ask [9] 13/12 24/14 37/24 41/1 61/14 61/15 78/19 95/2 108/12 asked [8] 38/22 38/25 39/13 58/25 60/10 60/11 62/13 65/19 asking [10] 16/7 32/22 33/17 49/18 57/21 62/1 72/7 105/1 108/3 108/5 asserted [1] 46/4 assessed [2] 67/13 78/17 assessment [4] 58/3 67/10 67/12 67/12 assessments [12] 8/20 8/24 13/25 18/15 18/22 29/17 66/19 66/21 66/25 67/2 77/14 99/15 assessor [13] 33/3 80/8 80/8 81/1 83/22 89/9 90/21 90/23 94/4 97/15 97/24 110/23 110/24 assessor's [16] 8/10 8/12 8/13 31/15 32/8 33/8 33/23 34/3 34/8 83/10 84/19 84/22 86/1 89/7 91/2 93/19 assessors [1] 81/1 assignment [1] 86/14 assist [1] 110/22 assistance [1] 32/13 associated [1] 10/23 association [4] 5/4 6/12 28/24 77/13 associations [1] 107/19	assume [3] 8/16 49/16 62/7 assumedly [1] 51/24 assuming [1] 54/21 at [177] attached [2] 7/16 90/14 attempt [1] 37/22 attended [5] 25/4 57/2 75/21 75/25 76/3 attention [1] 11/13 ATTEST [1] 115/14 attorney [2] 4/16 32/13 attorneys [1] 104/11 auction [7] 40/1 40/5 44/11 47/4 52/9 52/9 53/19 auctions [1] 57/2 audible [5] 32/10 77/15 87/11 88/16 90/17 audio [1] 115/15 audio/video [1] 115/15 AUGUST [2] 1/13 3/1 AUGUST 10 [1] 3/1 authority [5] 102/23 102/25 103/2 104/14 104/22 authorizes [1] 43/23 available [2] 18/16 20/20 avoided [1] 46/14 away [1] 40/13
B			back [33] 35/10 36/19 38/23 39/8 39/24 40/18 40/21 40/22 46/17 47/9 47/10 48/8 50/4 54/13 74/24 75/15 75/18 86/2 87/17 91/2 100/16 102/19 103/7 103/14 103/17 103/20 104/19 104/19 105/4 105/4 112/9 112/22 114/24 backed [1] 73/24 background [2] 4/4 58/4 bank [25] 1/5 3/4 23/11 23/14 23/14 23/21 23/25 38/20 39/21 39/22 46/8 50/16 50/22 54/10 54/12 55/4 73/1 74/1 74/23 75/2 85/8 85/24 86/4 86/15 88/18 bargain [1] 93/7 based [6] 26/22 68/12 84/8 99/14 112/20 113/10 basically [3] 44/8 72/25 97/6 basis [1] 71/25 battle [2] 49/19 50/8 be [70] 3/3 4/8 4/9 7/7 7/14 7/24 12/11 19/5 19/20 19/21 19/23 22/9 26/22 28/8 33/21 34/16 36/4 36/5 42/23 43/10 44/25 45/16 46/24 47/11 47/15 47/17 48/19 49/8 49/19 49/21	

B	below [1] 102/10 BENCH [1] 1/12 beneficial [1] 36/16 beneficiary [2] 103/9 104/22 benefit [4] 45/6 46/8 81/4 81/7 best [2] 87/19 89/6 better [3] 62/9 78/9 86/19 between [6] 45/17 49/19 50/11 82/19 92/11 109/2 bid [7] 26/18 46/25 47/2 47/19 47/21 50/3 63/2 bidder [1] 27/23 bidders [4] 26/15 26/18 59/5 59/8 bidding [4] 48/12 53/9 59/10 60/7 bifocals [1] 21/8 big [1] 94/11 bigger [1] 55/13 bit [12] 4/4 8/5 9/19 28/15 36/23 48/5 59/23 69/6 69/8 87/21 114/1 114/7 bits [1] 87/8 black [1] 73/3 blurry [1] 21/9 book [14] 8/23 9/9 10/14 10/17 21/4 21/13 22/2 29/9 37/21 60/16 77/19 87/19 94/7 96/20 both [5] 41/11 48/7 78/12 97/5 109/11 bottom [4] 30/4 78/13 94/18 94/19 bought [5] 5/7 48/20 62/24 74/6 74/10 boundaries [1] 32/3 bounds [3] 97/2 97/3 97/5 breached [2] 22/5 22/7 break [6] 60/21 61/9 69/5 69/5 87/10 87/13 bring [1] 114/2 brought [2] 72/6 73/16 business [6] 5/3 21/16 28/23 29/9 77/12 96/20 businesses [1] 5/1 but [98] 4/8 4/10 6/3 7/25 8/16 10/17 11/2 12/11 14/3 14/5 14/9 14/15 15/7 15/18 16/10 16/25 19/10 19/13 19/14 20/3 21/8 21/9 22/9 25/11 28/15 29/4 32/6 33/2 33/7 34/24 37/9 39/22 46/16 47/17 48/1 49/23 50/7 50/22 51/12 51/18 51/22 52/18 53/10 53/24 54/3 55/14 58/14 58/24 62/6 62/11 65/23 68/9 68/13 69/14 70/1 70/15 70/20 71/17 72/9 72/10 72/14 73/24 78/20 79/4 79/17	80/7 82/23 84/2 86/3 89/11 92/21 93/1 93/14 95/19 99/15 100/20 103/6 103/14 103/22 104/1 104/5 105/16 107/1 107/7 108/25 109/6 109/22 110/9 110/13 110/17 111/16 112/13 112/20 114/1 114/9 114/11 114/16 114/17 buy [1] 74/12 buyer [1] 45/18 buyers [1] 52/9 buying [4] 56/16 56/24 59/25 72/19 bypassing [1] 40/15	C C-h-a-r-l-e-s [1] 3/21 calculate [1] 58/11 call [3] 3/14 43/15 112/17 callback [1] 44/25 called [4] 3/17 27/13 29/6 69/25 calling [1] 3/4 Calls [4] 12/21 24/5 55/5 68/5 came [5] 73/23 85/6 85/7 110/12 110/13 can [35] 8/3 9/14 9/15 12/18 18/20 21/8 21/15 23/9 28/15 28/16 28/16 28/18 28/19 28/24 33/20 41/17 41/19 56/24 62/10 63/19 64/23 69/8 74/21 86/2 86/4 86/18 100/16 102/3 102/3 102/4 102/23 103/9 104/22 105/5 113/17 can't [7] 7/25 15/13 17/15 20/12 49/25 76/1 113/4 care [6] 18/23 19/3 20/25 33/14 70/10 70/18 carried [1] 74/3 case [16] 1/6 3/4 3/5 8/13 11/2 14/11 24/25 41/6 46/4 49/23 51/5 53/8 55/10 112/21 114/8 115/16 catch [1] 23/13 cause [1] 70/18 CB [22] 63/23 66/5 66/7 85/2 85/16 85/18 88/20 88/23 90/8 91/5 91/16 92/9 93/4 93/6 93/16 93/24 94/8 94/8 94/10 96/2 96/11 96/11 CB 18 [1] 88/23 CB 93 [1] 85/2 CB 96 [3] 94/8 94/10 96/2 CB 97 [1] 94/8 CC [39] 11/20 11/21 11/23 12/1 12/4 12/7	12/14 12/25 13/2 13/7 13/13 13/17 16/6 21/5 22/8 37/22 57/22 58/1 58/14 60/16 61/19 61/23 62/2 63/7 63/10 63/11 63/17 63/19 63/20 65/24 66/1 68/3 77/13 77/19 105/25 107/4 108/18 108/23 109/19 CELTIC [22] 1/5 3/4 23/11 23/14 23/14 23/21 23/25 38/20 39/20 39/22 46/8 50/16 50/22 54/10 54/12 55/4 74/23 75/2 85/7 85/24 86/4 86/15 Center [2] 28/23 77/12 certain [7] 29/8 43/5 65/9 68/12 72/4 77/13 96/17 certainly [5] 11/6 11/15 102/22 102/24 114/19 certificate [27] 17/18 22/16 39/21 40/6 42/2 42/12 42/15 42/19 42/22 42/22 43/7 43/7 43/17 43/23 44/19 45/10 45/15 45/19 54/6 75/16 98/3 98/23 99/14 99/23 100/6 104/16 111/20 certificates [2] 42/20 43/10 certified [1] 98/17 certify [1] 115/14 chain [1] 35/5 chance [1] 50/16 change [8] 63/15 65/16 96/14 96/24 97/14 97/15 97/18 110/13 changed [4] 26/7 57/10 84/12 97/8 changes [2] 90/8 91/8 chapter [2] 68/23 69/1 charge [1] 42/20 chargeable [1] 75/7 Charles [5] 3/14 3/16 3/21 27/2 61/4 Charlie [2] 90/1 90/18 check [4] 18/6 48/8 51/17 95/2 checked [1] 57/22 chose [1] 53/2 cite [2] 67/21 114/5 cited [1] 65/20 cites [2] 61/19 83/6 claim [4] 48/5 50/14 53/22 104/24 claimed [1] 103/22 claiming [2] 33/8 33/24 clarify [4] 38/6 62/13 62/15 85/14 CLARK [36] 1/2 3/1 17/12 18/11 18/23 19/2 19/3 19/24 20/7 20/9 20/18 20/25 24/17 24/24 31/14 34/25 35/3 35/4 35/7 36/8 36/25	37/11 37/13 40/6 65/8 69/25 75/4 83/19 84/9 84/12 88/8 96/18 96/21 100/8 100/15 102/6 clean [1] 93/14 cleaned [1] 43/6 cleaner [1] 112/10 clear [14] 40/1 43/2 44/17 45/25 53/1 75/12 75/20 80/16 82/7 83/18 99/21 105/11 114/4 114/8 clearly [1] 114/24 clerk [1] 79/5 client [1] 112/15 close [5] 19/6 19/12 19/14 20/12 112/14 closing [9] 105/6 112/10 112/13 112/25 113/3 113/9 113/10 113/14 113/20 cloud [3] 36/4 36/18 75/16 collect [3] 53/24 80/8 112/9 collected [1] 81/2 collection [1] 99/6 collects [1] 42/25 come [5] 25/10 39/21 73/22 112/9 114/24 comes [1] 35/5 coming [1] 112/22 Commencing [1] 95/3 commercial [1] 16/18 common [9] 42/6 56/4 56/19 56/24 61/18 66/22 69/23 73/17 109/18 common-interest [3] 42/6 66/22 109/18 commonly [1] 29/10 community [5] 42/6 66/22 67/9 69/23 109/18 companies [2] 6/4 53/24 company [7] 4/20 4/22 32/13 53/7 79/11 84/17 99/6 compare [3] 94/7 95/6 96/2 competing [1] 48/7 competitive [3] 59/10 59/11 60/7 complaint [1] 46/5 completely [5] 31/24 44/22 51/12 53/8 80/6 compliance [1] 107/20 comport [1] 44/6 computer [2] 58/12 62/7 concern [6] 70/18 111/4 111/9 111/9 111/11 111/14 concerned [4] 45/18 50/2 50/25 51/18 concerns [3] 55/20 68/20 71/2 conclusion [8] 12/22
----------	---	--	---	---	---

<p>C</p> <p>conclusion... [7] 24/6 55/6 68/6 68/10 71/21 71/25 72/5</p> <p>conclusions [1] 72/10</p> <p>condition [3] 48/6 61/5 75/15</p> <p>conditions [9] 10/13 11/16 13/21 15/25 21/22 22/1 37/20 38/3 65/9</p> <p>conducted [1] 16/4</p> <p>conferred [1] 77/11</p> <p>confirm [1] 62/2</p> <p>confusing [3] 16/10 32/14 39/13</p> <p>confusion [1] 114/5</p> <p>connotate [1] 42/18</p> <p>constitute [1] 67/2</p> <p>constructed [1] 67/6</p> <p>contact [1] 32/12</p> <p>contained [1] 27/16</p> <p>contest [1] 53/19</p> <p>continue [4] 22/4 38/16 64/17 65/13</p> <p>continues [1] 64/24</p> <p>control [1] 6/7</p> <p>conversation [1] 102/20</p> <p>conversations [1] 102/15</p> <p>convey [3] 29/4 77/3 102/19</p> <p>conveyance [4] 74/16 74/18 77/11 101/20</p> <p>conveyed [3] 29/13 74/12 75/13</p> <p>conveys [1] 74/22</p> <p>copies [1] 58/8</p> <p>copy [2] 7/16 98/3</p> <p>corner [1] 30/4</p> <p>CORPORATION [2] 1/5 3/4</p> <p>correct [207]</p> <p>corrected [5] 82/4 94/22 97/11 97/13 97/14</p> <p>correcting [2] 86/15 97/22</p> <p>correction [1] 85/9</p> <p>correctly [1] 115/14</p> <p>costs [2] 44/3 75/6</p> <p>coughing [1] 61/6</p> <p>could [33] 7/14 14/5 14/6 14/15 16/23 19/1 19/21 21/10 22/6 24/14 35/2 39/21 39/24 45/16 47/5 47/6 49/21 50/16 50/17 50/24 54/3 71/12 82/1 84/22 102/18 103/3 103/14 103/19 104/15 104/18 107/1 111/9 112/12</p> <p>couldn't [2] 43/5 52/3</p> <p>counsel [15] 3/7 9/18 21/10 38/22 39/7 41/6 57/21 58/25 60/10 62/5 65/19 110/19 112/3</p>	<p>112/22 114/8</p> <p>county [62] 1/2 3/1 17/12 18/12 18/17 18/23 19/3 19/3 19/21 19/25 20/7 20/9 20/18 20/25 24/17 24/24 30/25 31/14 34/25 35/3 35/4 35/7 36/8 36/25 37/11 37/13 37/18 40/7 42/21 42/24 42/24 43/23 44/19 44/22 45/5 45/6 45/9 45/17 47/18 53/8 62/10 62/12 65/8 69/25 75/4 75/13 77/24 83/19 84/9 84/12 88/8 96/18 96/21 96/21 99/15 100/2 100/8 100/16 102/6 102/7 102/13 102/18</p> <p>county's [1] 30/18</p> <p>couple [2] 85/23 114/11</p> <p>course [2] 59/20 114/23</p> <p>court [10] 1/2 1/11 1/24 3/8 10/2 23/9 61/3 73/14 87/20 114/11</p> <p>Court's [1] 114/20</p> <p>covenant [4] 9/25 15/6 15/22 70/19</p> <p>covenants [9] 10/13 11/16 13/21 15/25 21/22 22/1 37/20 38/2 65/9</p> <p>create [1] 76/16</p> <p>creditor [2] 103/11 104/24</p> <p>cried [2] 27/7 27/10</p> <p>Cross [3] 2/6 38/11 38/13</p> <p>Cross-Examination [2] 2/6 38/13</p> <p>CRATEAU [7] 1/18 2/6 2/8 84/1 88/1 102/15 112/16</p> <p>current [7] 17/8 18/20 18/21 40/23 78/17 108/4 109/11</p> <p>currently [1] 107/23</p> <p>D</p> <p>date [25] 12/16 14/9 14/13 24/19 24/21 24/22 29/23 34/15 40/21 44/4 58/13 58/23 58/24 62/1 62/18 65/25 70/12 82/4 82/5 86/16 86/18 104/18 105/3 105/25 107/3</p> <p>dated [2] 9/16 16/5</p> <p>dates [8] 7/17 11/12 11/12 14/1 15/14 58/2 58/11 62/11</p> <p>day [12] 1/12 25/8 36/3 43/22 62/23 62/25 63/2 78/18 86/9 101/19 104/18 105/2</p> <p>days [4] 51/13 51/14 66/12 114/17</p>	<p>deal [3] 36/23 50/23 99/4</p> <p>dealings [1] 99/2</p> <p>debate [1] 50/20</p> <p>debt [2] 54/7 54/8</p> <p>decide [1] 55/8</p> <p>decided [2] 81/1 110/9</p> <p>decision [1] 59/18</p> <p>declarant [1] 65/7</p> <p>declaration [17] 10/13 11/16 13/20 15/25 30/9 30/11 37/19 38/2 63/11 64/17 64/23 64/24 65/9 65/10 65/13 77/21 78/5</p> <p>deed [63] 22/18 23/2 28/4 28/9 31/3 31/17 31/22 32/1 34/7 34/21 43/6 51/22 52/22 73/4 74/2 74/2 74/5 74/14 74/15 74/15 74/22 75/17 75/18 76/16 77/1 77/3 79/9 79/12 79/14 81/22 81/23 81/24 82/5 82/10 82/16 82/20 83/18 84/8 84/13 84/16 84/25 85/8 85/15 85/24 86/20 88/11 89/1 93/7 93/8 94/23 97/11 97/13 97/15 97/18 97/22 97/22 98/8 98/15 101/10 102/10 103/10 104/23 110/21</p> <p>deeded [1] 101/25</p> <p>deeding [1] 101/20</p> <p>deeds [2] 52/19 58/17</p> <p>default [6] 9/6 14/7 14/16 20/14 29/20 58/2</p> <p>defects [1] 54/21</p> <p>Defendant [1] 1/9</p> <p>deficiency [1] 31/22</p> <p>defined [1] 65/10</p> <p>defines [1] 64/23</p> <p>degree [1] 55/12</p> <p>delay [1] 3/7</p> <p>delinquency [1] 42/12</p> <p>delinquent [10] 8/20 8/24 13/25 18/15 18/22 29/17 42/16 58/3 77/14 99/14</p> <p>delivered [2] 56/5 102/9</p> <p>Delivers [1] 102/5</p> <p>denoted [1] 93/11</p> <p>depends [1] 62/23</p> <p>DEPT [1] 1/6</p> <p>describe [3] 32/11 32/16 32/23</p> <p>described [10] 9/15 9/23 9/24 21/16 29/8 75/8 96/18 96/22 101/17 102/10</p> <p>description [19] 21/17 27/20 31/17 31/23 31/24 31/25 32/24 33/24 83/13 83/23 84/14 86/4 86/15 88/11 89/6 89/7 96/3 110/20 110/22</p> <p>details [1] 85/14</p>	<p>determine [1] 36/20</p> <p>develop [3] 36/21 36/21 36/24</p> <p>dibbles [1] 45/17</p> <p>did [125]</p> <p>didn't [30] 5/10 10/7 11/20 12/11 13/16 16/20 19/25 21/11 22/25 23/13 23/19 24/12 25/1 25/4 25/10 27/15 31/2 33/5 46/16 58/1 62/17 72/10 76/4 76/17 79/2 85/25 103/5 105/21 110/13 111/8</p> <p>different [7] 27/16 37/3 57/10 60/3 73/16 93/19 97/25</p> <p>differently [1] 39/17</p> <p>difficulty [2] 83/11 84/23</p> <p>direct [3] 2/5 4/1 102/15</p> <p>directed [1] 25/11</p> <p>direction [1] 79/4</p> <p>directly [1] 79/12</p> <p>disadvantage [1] 115/2</p> <p>discounted [1] 53/5</p> <p>discuss [1] 112/11</p> <p>discussing [1] 111/19</p> <p>dispute [4] 50/7 50/10 50/20 56/8</p> <p>disputing [1] 50/13</p> <p>disrespect [1] 114/18</p> <p>distinction [4] 103/19 108/2 109/2 109/24</p> <p>distracting [1] 87/21</p> <p>DISTRICT [2] 1/2 1/11</p> <p>divest [1] 43/12</p> <p>do [156]</p> <p>document [90] 7/10 12/18 12/24 13/19 13/22 14/3 14/9 14/12 15/2 15/5 15/13 15/21 16/5 16/11 16/12 17/17 18/2 18/19 20/20 20/23 22/21 22/23 22/23 23/4 25/9 25/11 25/18 26/9 26/13 26/16 26/21 26/21 28/2 28/14 29/16 30/4 30/11 30/21 31/11 31/20 33/6 33/9 34/2 34/11 34/12 34/18 35/11 38/1 38/4 60/11 62/4 62/10 62/18 63/14 63/14 63/16 63/21 65/21 76/9 77/13 77/24 78/3 78/7 78/11 80/14 83/15 84/15 84/25 85/7 85/10 88/12 89/10 89/11 89/25 91/13 91/14 91/16 93/6 93/18 93/25 94/1 94/1 98/20 99/17 101/8 106/2 106/17 106/21 106/23 106/25</p> <p>documents [14] 10/22 11/12 18/8 18/16 25/25 31/1 35/6 58/15 62/8</p>	<p>62/11 83/12 84/5 92/8 113/18</p> <p>does [32] 7/11 8/19 8/22 9/11 25/20 29/3 29/4 29/24 42/17 42/18 43/12 44/6 44/7 48/15 54/20 55/7 61/24 64/18 67/7 67/21 67/22 68/7 71/16 75/11 79/8 83/8 88/17 88/19 106/25 107/7 108/6 108/24</p> <p>doesn't [6] 10/17 45/8 45/8 45/9 111/16 112/15</p> <p>doing [10] 19/7 38/16 57/9 57/19 62/16 72/17 72/24 72/25 86/5 114/4</p> <p>dollar [3] 45/24 51/8 51/8</p> <p>don't [85] 7/8 11/4 11/11 11/13 15/15 17/14 19/5 19/7 19/14 19/14 19/23 20/2 26/24 27/18 27/19 28/11 32/18 33/10 33/13 37/1 38/10 38/16 38/23 39/5 39/16 41/5 41/11 44/9 49/21 50/10 50/14 50/18 51/11 52/4 53/15 53/15 53/24 53/25 55/1 55/13 56/12 59/23 61/21 63/1 63/4 63/4 63/5 69/16 71/16 71/17 76/6 76/12 76/19 78/24 79/11 79/25 80/1 80/2 82/8 84/20 87/12 87/25 89/5 89/11 91/25 93/1 98/20 99/18 99/18 99/19 99/19 99/24 105/16 105/17 105/19 108/13 108/13 109/24 110/13 110/25 112/21 113/2 114/5 115/2 115/3</p> <p>done [7] 36/8 38/15 65/16 71/4 96/7 109/25 113/3</p> <p>door [1] 62/16</p> <p>doubt [2] 50/12 56/6</p> <p>down [19] 3/10 9/1 9/12 10/2 32/3 46/3 77/1 77/2 77/10 79/8 79/15 81/5 85/5 86/8 88/25 90/16 91/11 91/12 111/24</p> <p>dozen [1] 5/7</p> <p>draw [2] 84/16 84/18</p> <p>drawn [1] 94/1</p> <p>drill [2] 46/3 86/8</p> <p>drinking [1] 60/25</p> <p>dropped [1] 73/2</p> <p>drove [1] 16/15</p> <p>due [11] 19/17 19/20 20/4 42/22 43/7 44/5 45/24 49/14 55/9 67/1 113/24</p> <p>duly [1] 3/17</p> <p>during [4] 53/25 57/6 100/21 105/6</p>
--	---	--	--	---

E	37/1 37/3 37/4 37/8 each [2] 91/24 108/7 earlier [3] 13/23 102/14 111/19 early [2] 56/25 72/18 easement [1] 94/20 easier [2] 8/6 114/7 East [5] 94/2 95/7 95/13 95/14 96/6 eating [1] 3/10 educate [1] 72/21 educated [2] 72/14 73/11 effect [3] 64/18 64/25 65/13 effects [1] 72/18 effort [1] 38/4 either [7] 31/18 33/25 36/16 74/21 80/1 81/4 83/13 election [1] 9/7 else [8] 26/20 37/5 37/8 38/22 41/10 57/8 62/24 63/2 enacted [3] 106/15 107/2 109/9 encountered [3] 83/11 84/22 84/23 encumbrances [2] 10/4 70/21 end [6] 39/22 44/10 46/12 46/20 85/12 101/18 ending [2] 95/3 95/25 ends [1] 96/3 enforcement [2] 69/1 69/2 enjoining [1] 65/7 enough [9] 54/5 55/14 63/6 71/1 76/25 78/23 108/15 114/12 114/25 ensure [1] 11/17 entire [4] 8/16 68/23 69/1 70/7 entitled [5] 23/25 24/10 47/18 75/3 115/15 entity [4] 5/17 5/19 5/21 6/6 entity's [1] 38/23 environment [1] 59/24 equal [1] 75/5 equity [3] 10/10 70/23 71/6 erected [1] 67/6 ESQ [3] 1/16 1/17 1/18 essence [2] 35/15 47/22 essentially [4] 53/10 75/17 85/10 90/12 established [1] 106/20 estate [5] 4/20 5/1 6/4 6/4 56/17 even [8] 50/25 71/22 82/20 84/20 86/19 106/21 111/8 114/22 evening [1] 115/12 event [2] 33/7 62/4 ever [6] 22/21 23/4	37/1 37/3 37/4 37/8 every [4] 37/7 45/24 60/3 84/16 everything [7] 47/18 64/19 67/8 73/13 73/14 75/19 96/5 exact [1] 51/21 exactly [5] 27/22 36/19 71/17 97/6 99/18 Examination [8] 2/5 2/6 2/7 2/8 4/1 38/13 99/10 111/2 except [8] 64/15 64/20 64/20 65/16 81/5 81/7 95/7 96/6 exceptions [1] 52/17 excess [5] 49/9 50/17 51/7 51/13 51/14 excuse [1] 99/13 exhibit [70] 6/19 7/3 12/9 12/10 12/11 13/20 14/21 14/22 17/19 17/21 17/22 17/25 18/14 20/14 20/16 20/17 22/11 22/12 22/18 22/24 25/3 25/10 25/13 25/14 27/24 31/8 31/9 34/9 34/10 35/13 41/23 54/6 60/9 63/6 64/10 64/11 66/4 69/21 74/9 74/25 76/13 78/11 81/9 81/17 82/13 83/1 84/8 86/7 86/11 86/20 86/21 86/24 88/4 89/19 89/20 89/21 90/2 91/10 91/20 93/4 93/8 97/17 98/1 100/24 100/25 101/2 101/6 106/3 106/4 106/5 Exhibit 1 [1] 66/4 Exhibit 10 [3] 20/14 20/16 20/17 Exhibit 14 [3] 17/25 22/11 54/6 Exhibit 15 [3] 6/19 60/9 69/21 Exhibit 16 [2] 25/3 25/14 Exhibit 17 [5] 27/24 76/13 78/11 82/13 84/8 Exhibit 18 [10] 14/22 31/8 31/9 81/9 81/17 83/1 89/19 89/20 90/2 93/4 Exhibit 2 [7] 12/9 12/10 13/20 63/6 64/11 106/3 106/5 Exhibit 2, Your [1] 64/10 Exhibit 22 [1] 101/6 Exhibit 26 [5] 22/18 22/24 35/13 74/9 74/25 Exhibit 27 [2] 34/10 97/17 Exhibit 29 [2] 98/1 100/25 Exhibit 5 [6] 86/20 86/21 86/24 89/21 91/10 91/20	Exhibit 6 [2] 86/7 86/11 exhibits [3] 54/11 92/11 113/24 existing [1] 67/3 expect [1] 38/23 expiration [1] 45/4 expire [1] 46/20 explain [4] 41/17 41/19 46/16 63/17 explanation [3] 39/2 39/20 62/9 express [4] 9/25 15/7 29/13 70/20 expressed [4] 29/5 71/7 71/14 71/15 expressly [1] 64/16 extensive [2] 106/12 113/17 extensively [2] 99/12 103/3 extent [2] 52/8 78/19 extinguished [1] 55/4 extra [1] 96/15 eye [1] 68/19	70/13 81/22 86/15 86/17 88/10 88/13 filing [1] 80/14 fill [1] 79/20 filled [1] 70/5 Financial [3] 25/11 28/23 76/20 find [5] 50/17 69/22 73/8 86/4 86/18 finding [1] 17/5 fine [14] 39/17 49/15 61/10 61/10 61/10 62/4 63/23 68/14 69/9 69/15 69/19 95/24 115/4 115/8 finish [4] 13/12 69/16 112/18 112/24 first [29] 3/17 4/17 13/20 28/14 29/2 31/18 37/17 43/21 43/25 50/20 52/19 52/22 56/23 57/9 63/10 63/18 64/16 70/15 73/4 74/2 74/2 74/4 74/22 79/17 79/22 88/22 92/25 101/25 112/3 Fiscal [1] 43/19 Fitzpatrick [1] 102/6 five [1] 77/1 flip [1] 87/19 flux [1] 46/15 follow [1] 35/5 following [3] 7/17 28/5 36/8 follows [5] 3/18 95/25 96/4 96/19 96/22 force [4] 64/17 64/19 64/25 65/13 foreclose [2] 12/19 73/1 foreclosed [4] 50/12 50/13 50/15 56/8 forecloses [2] 52/18 52/18 foreclosure [36] 5/4 6/12 18/10 25/4 28/4 28/9 30/14 31/13 31/17 31/22 34/7 34/12 34/17 34/21 35/18 36/9 50/12 56/7 56/9 56/20 67/24 68/21 79/9 79/12 79/14 81/22 81/23 81/24 82/5 82/10 84/8 84/13 84/15 85/15 101/14 109/22 form [6] 52/11 54/23 55/5 55/22 68/5 71/20 formally [1] 44/20 former [8] 103/15 103/17 103/20 104/1 104/2 104/4 104/7 104/9 forth [5] 58/8 61/18 65/20 82/10 111/21 forward [1] 74/3 found [6] 36/19 66/5 70/8 75/15 75/18 75/19 foundation [7] 41/1 41/4 41/10 52/11 54/23 55/6 68/13	four [2] 66/9 77/1 frame [1] 11/5 frankly [1] 70/18 free [2] 43/2 105/11 front [2] 62/16 64/22 full [8] 3/19 44/17 64/17 64/19 64/24 65/13 70/15 114/16 fumbled [1] 44/23 funds [1] 48/5 further [9] 32/2 32/11 32/16 32/23 32/24 34/3 85/14 99/7 112/22
G					
				gave [1] 85/10 gee [1] 59/4 gee-whiz [1] 59/4 generally [1] 107/25 gentleman [1] 19/12 get [44] 3/9 8/2 19/14 24/12 24/19 27/22 28/16 30/19 36/4 43/3 43/5 44/17 45/23 47/3 48/12 50/20 51/16 52/10 52/16 53/21 53/23 53/25 61/22 64/2 64/9 74/12 74/14 74/15 76/20 79/6 79/12 79/20 82/16 84/12 84/13 87/24 89/5 89/13 93/24 98/10 98/14 105/3 105/11 114/23 gets [5] 4/16 47/13 51/9 51/16 107/20 getting [4] 72/10 74/21 87/8 93/12 Gibson [40] 7/25 8/13 8/17 18/23 19/3 20/25 21/16 23/24 24/2 24/18 24/25 28/23 29/8 29/8 29/10 35/8 35/8 35/8 35/9 35/9 36/2 39/22 39/25 48/1 48/2 48/7 49/19 50/9 50/11 50/11 50/13 50/15 54/12 54/13 54/20 75/2 77/12 96/20 100/9 100/21 give [3] 51/7 79/24 113/9 given [2] 72/11 114/14 gives [1] 10/14 giving [2] 68/10 114/8 go [92] 3/9 9/12 9/14 9/14 9/20 11/2 11/4 21/10 22/11 23/12 23/18 26/3 29/1 30/3 33/20 35/10 39/8 40/17 41/16 41/22 44/13 45/22 46/12 46/16 47/22 47/23 47/24 48/2 48/15 48/22 49/3 49/5 50/3 50/4 51/15 52/6 53/2 54/25 60/9 62/5 62/10 62/13 62/15 62/20 63/6 63/23 66/4 66/5 67/18 69/8 69/8 69/16 69/21 70/14 74/9 76/12 77/10 79/8 80/20	

<p>G</p> <p>go... [33] 80/22 81/9 82/7 83/1 84/1 86/2 86/11 86/20 87/12 88/22 89/17 90/16 90/20 91/5 92/9 92/23 93/24 94/16 95/24 97/2 97/5 98/1 103/7 105/3 105/5 112/12 112/15 112/21 113/10 113/19 113/23 114/13 115/3</p> <p>goes [4] 6/12 21/2 23/24 48/16</p> <p>going [43] 8/4 17/22 28/22 37/13 39/9 41/20 44/10 53/11 54/24 62/22 66/23 68/11 68/20 69/5 69/7 69/18 73/20 79/6 83/25 88/25 89/22 92/10 93/5 93/14 94/13 94/15 94/18 94/19 95/2 105/10 105/11 106/7 108/10 112/16 112/17 113/9 113/16 113/23 114/10 114/12 114/21 114/23 114/24</p> <p>gone [3] 75/21 75/24 112/21</p> <p>good [23] 4/3 8/2 8/9 8/17 10/20 17/5 20/17 23/12 25/3 27/24 29/20 33/7 49/16 49/16 61/2 61/11 69/4 87/16 94/3 94/5 96/2 105/7 115/9</p> <p>got [32] 3/9 12/2 30/20 38/15 43/6 44/9 44/9 49/6 50/8 51/13 61/5 61/21 64/13 66/13 69/6 76/24 77/23 79/25 80/1 81/22 82/23 83/3 87/20 89/9 89/9 90/15 90/20 92/4 92/11 92/13 92/14 92/14</p> <p>governed [1] 68/21</p> <p>governing [1] 77/13</p> <p>grade [1] 73/3</p> <p>grant [2] 29/4 93/7</p> <p>granted [1] 77/3</p> <p>grantee [1] 29/6</p> <p>great [3] 28/19 102/4 102/16</p> <p>guess [14] 32/18 33/13 49/12 49/18 49/20 49/21 50/16 51/12 52/4 59/7 70/12 88/7 96/15 109/11</p> <p>guessing [1] 51/12</p> <p>guide [2] 85/24 85/25</p> <p>guy [6] 47/16 47/21 48/20 50/16 79/23 85/25</p> <p>guys [5] 19/12 26/1 41/11 91/24 104/12</p> <p>H</p> <p>had [39] 3/10 14/16 15/18 18/7 22/7 26/6</p>	<p>26/12 34/3 34/8 35/14 36/8 38/24 40/1 40/5 40/8 40/19 43/3 45/19 46/12 47/6 54/12 60/3 67/20 71/2 73/15 75/21 75/24 89/4 94/4 96/24 99/13 99/22 100/6 102/19 103/17 107/1 109/25 110/4 110/17</p> <p>half [3] 113/23 114/22 114/22</p> <p>hand [6] 7/10 7/18 7/21 82/13 91/17 95/7</p> <p>handed [4] 92/5 92/6 92/7 93/19</p> <p>hands [1] 41/7</p> <p>handwriting [5] 78/20 78/24 78/25 78/25 79/2</p> <p>handwritten [5] 90/8 90/9 94/2 95/22 96/6</p> <p>hang [4] 41/21 86/19 89/13 89/13</p> <p>happen [3] 46/23 47/2 50/24</p> <p>happened [2] 35/18 82/9</p> <p>happens [1] 79/22</p> <p>happy [1] 33/21</p> <p>hard [1] 87/20</p> <p>has [19] 9/9 22/4 22/5 36/16 40/8 41/4 43/20 52/18 53/8 55/19 57/6 57/7 71/25 83/11 84/15 84/23 84/25 109/19 112/21</p> <p>hasn't [1] 71/22</p> <p>have [127]</p> <p>haven't [5] 37/3 37/6 37/7 50/14 92/12</p> <p>having [6] 3/17 46/8 72/9 75/3 87/6 87/7</p> <p>he [31] 19/13 41/4 41/5 47/16 47/16 47/22 55/23 68/11 68/12 68/12 71/21 71/25 72/3 72/4 72/5 72/5 72/10 72/11 72/11 75/25 76/1 76/3 76/4 85/6 111/7 111/8 112/15 112/16 112/17 112/17 114/22</p> <p>he'll [3] 79/24 79/24 80/4</p> <p>he's [13] 4/10 41/3 41/4 49/23 61/5 61/5 71/20 71/24 84/2 84/2 86/5 86/6 93/7</p> <p>hear [8] 5/10 12/11 20/12 22/25 55/13 76/2 76/6 113/8</p> <p>heard [5] 19/10 27/13 32/8 38/19 66/9</p> <p>hearing [1] 87/8</p> <p>heart [2] 61/5 61/6</p> <p>held [16] 17/12 17/14 17/15 18/11 19/25 34/24 36/18 37/16 40/24 41/7 44/19 71/10 100/21 102/11 102/19 111/21</p>	<p>help [1] 102/3</p> <p>helpful [1] 102/1</p> <p>helps [1] 109/15</p> <p>Henderson [1] 29/10</p> <p>her [3] 4/17 32/7 113/8</p> <p>here [54] 3/10 8/3 9/2 9/12 9/13 10/6 12/5 12/6 16/3 16/10 20/24 21/15 21/17 22/23 23/6 24/20 26/2 29/15 29/18 29/23 34/13 38/19 43/6 51/9 51/21 54/6 65/6 65/16 66/2 70/6 71/18 73/20 75/18 76/25 77/18 78/12 79/23 80/4 81/5 86/8 88/23 90/9 91/8 95/3 95/14 95/16 95/16 95/24 96/15 98/25 102/3 106/17 112/15 113/12</p> <p>here's [2] 80/4 96/14</p> <p>hereby [5] 29/3 29/4 64/18 77/3 115/14</p> <p>herein [3] 29/6 67/15 75/7</p> <p>hereto [2] 7/16 101/23</p> <p>heretofore [3] 9/15 9/23 9/24</p> <p>high [2] 49/6 72/14</p> <p>higher [1] 53/22</p> <p>him [10] 5/16 39/13 50/1 55/23 72/7 72/9 86/7 111/9 111/9 113/10</p> <p>hire [1] 79/11</p> <p>his [8] 55/11 55/12 55/15 61/6 68/8 68/9 112/17 113/10</p> <p>history [6] 71/5 71/14 71/21 72/1 73/16 110/4</p> <p>hitting [1] 87/7</p> <p>HOA [5] 12/19 50/14 59/11 59/25 72/19</p> <p>hold [12] 5/1 6/4 10/6 36/2 40/14 42/19 43/3 43/5 43/24 43/24 92/10 92/23</p> <p>holder [3] 46/5 47/24 48/4</p> <p>holders [1] 52/19</p> <p>holding [15] 4/20 6/4 35/3 35/4 35/7 35/15 40/10 40/12 40/13 42/16 44/8 99/14 99/15 100/8 100/17</p> <p>holds [2] 5/25 91/22</p> <p>home [1] 62/16</p> <p>Honestly [1] 113/22</p> <p>Honor [37] 3/12 3/23 5/17 5/22 21/7 39/4 39/12 41/3 41/12 41/24 49/14 51/3 57/16 63/25 64/8 64/10 64/12 66/8 72/13 81/18 83/25 86/5 86/8 88/2 92/12 93/5 104/3 105/7 108/11 111/7 112/1 112/6 112/14 113/24 114/25 115/4 115/6</p>	<p>HONORABLE [1] 1/11</p> <p>hope [1] 99/19</p> <p>hopefully [1] 8/2</p> <p>hour [6] 112/9 112/13 113/23 114/14 114/22 114/22</p> <p>house [2] 42/21 70/5</p> <p>how [36] 5/14 6/6 9/1 19/24 25/19 25/20 26/5 26/15 35/2 36/19 36/21 36/21 36/24 39/20 46/13 50/18 57/4 57/8 63/7 63/17 65/19 69/22 73/1 73/18 77/3 79/8 79/9 79/20 93/16 93/24 94/15 99/24 99/24 107/19 111/8 113/19</p> <p>how's [1] 115/7</p> <p>however [2] 13/14 44/10</p> <p>huh [4] 6/10 9/3 110/3 113/21</p> <p>hundred [2] 57/3 57/5</p> <p>hurry [1] 3/9</p> <p>hypothetical [1] 47/12</p> <p>I</p> <p>I'd [6] 48/7 51/23 52/4 66/5 88/7 112/11</p> <p>I'll [14] 5/22 8/5 24/23 26/7 39/17 43/15 55/23 80/20 81/23 86/2 86/19 89/13 91/22 113/22</p> <p>I'm [117]</p> <p>I've [11] 37/1 51/13 60/25 66/13 69/6 71/4 71/5 83/25 89/11 92/11 103/6</p> <p>i.e [1] 101/19</p> <p>idea [1] 25/22</p> <p>identified [3] 10/21 60/16 71/22</p> <p>identifies [2] 8/10 8/17</p> <p>identify [1] 7/23</p> <p>if [111] 7/2 7/21 8/2 8/6 8/9 9/12 9/14 10/14 11/11 13/23 14/5 14/12 15/2 15/16 15/18 16/7 16/7 17/15 18/17 19/25 19/25 28/14 28/15 29/16 30/3 31/2 31/18 35/2 36/8 37/16 38/22 39/23 40/16 40/17 40/23 41/10 42/20 43/4 43/15 44/9 44/22 45/4 46/11 46/19 47/16 47/17 47/21 48/1 48/6 49/6 49/10 49/16 50/7 50/19 51/14 51/15 53/2 53/22 53/25 54/9 55/20 55/23 56/23 56/23 58/25 60/12 60/23 61/23 62/17 62/24 63/2 64/22 68/13 70/6 72/5 73/1 73/5 74/3 74/25 76/12 77/10 79/25 79/25 81/22 83/24 88/4 88/22 89/17 91/5 91/21 92/2 93/6 94/6 94/10</p>	<p>97/17 100/15 100/16 101/25 102/3 102/4 105/3 105/17 105/19 107/3 109/15 111/15 112/8 112/16 112/16 114/1 114/22</p> <p>impaired [2] 97/21 97/24</p> <p>implications [1] 44/17</p> <p>implied [7] 10/1 15/7 29/5 29/13 70/20 71/7 71/15</p> <p>important [1] 68/13</p> <p>improvements [1] 67/5</p> <p>in [248]</p> <p>in-house [1] 42/21</p> <p>inaccurate [2] 26/22 85/15</p> <p>INC [3] 1/8 1/25 3/5</p> <p>include [1] 63/14</p> <p>including [1] 66/25</p> <p>inclusion [1] 95/7</p> <p>incomplete [9] 31/19 31/23 32/4 32/5 32/6 33/2 33/12 33/25 83/14</p> <p>incorporate [1] 63/15</p> <p>incorporated [3] 67/15 68/3 108/18</p> <p>incorporates [4] 106/21 108/1 108/23 108/25</p> <p>incorporating [1] 97/18</p> <p>incorporation [2] 107/22 109/13</p> <p>incorrect [5] 31/19 31/23 33/12 33/25 83/13</p> <p>increase [1] 81/3</p> <p>indebtedness [7] 10/11 15/23 15/24 16/4 16/8 16/12 70/24</p> <p>individually [1] 5/16</p> <p>inform [3] 83/10 84/21 84/23</p> <p>information [10] 32/9 32/16 34/3 34/7 71/3 79/23 85/11 85/12 85/14 88/8</p> <p>informational [1] 84/24</p> <p>initially [1] 40/24</p> <p>instance [1] 13/25</p> <p>Instead [1] 96/17</p> <p>instrument [18] 8/23 9/9 10/18 10/19 11/7 11/14 11/17 21/5 21/13 22/2 24/21 37/21 54/7 54/8 61/20 61/23 91/17 92/22</p> <p>instruments [1] 11/11</p> <p>insurance [1] 53/23</p> <p>insure [1] 53/25</p> <p>interest [26] 10/10 10/12 15/24 29/7 36/16 42/6 42/8 42/21 42/22 43/7 44/3 48/23 50/4 51/1 56/4 56/20 56/24 66/22 66/25 69/23</p>
---	---	--	---	---

<div>I</div> <div>interest... [6] 70/22 70/24 73/17 75/6 109/18 111/21</div> <div>interest-bearing [3] 42/22 43/7 111/21</div> <div>interestingly [1] 71/1</div> <div>interests [1] 11/19</div> <div>Internet [1] 62/9</div> <div>interpretation [1] 55/11</div> <div>interprets [1] 72/4</div> <div>interrupt [2] 108/13 108/13</div> <div>interrupting [1] 108/7</div> <div>into [20] 6/12 9/16 9/22 18/20 21/20 27/23 28/24 29/1 48/12 57/7 60/11 61/22 61/22 68/3 72/10 74/22 75/13 79/21 92/14 96/19</div> <div>invest [1] 43/10</div> <div>INVESTMENT [4] 1/8 3/5 29/5 77/6</div> <div>involved [4] 4/25 6/3 56/16 56/19</div> <div>involvement [1] 59/7</div> <div>is [223]</div> <div>isn't [1] 105/15</div> <div>issue [5] 24/24 53/7 55/10 84/14 93/14</div> <div>issued [2] 40/6 43/17</div> <div>issues [1] 114/20</div> <div>it [395]</div> <div>it 3/14 [1] 81/14</div> <div>it'd [1] 49/19</div> <div>it's [65] 5/25 8/1 10/20 18/7 20/12 22/24 24/10 30/7 30/9 31/18 32/7 36/9 37/10 37/16 39/13 40/20 40/23 42/15 44/21 44/23 48/9 51/9 51/12 51/13 54/8 55/12 61/11 63/13 63/13 64/10 67/13 68/8 68/9 68/11 68/22 69/18 70/14 71/13 71/17 71/18 73/3 77/2 78/4 80/25 84/24 86/5 86/8 87/20 87/23 88/7 88/17 91/20 92/2 92/21 95/16 97/9 101/2 104/5 107/12 109/6 110/20 112/8 114/4 114/10 114/19</div> <div>item [3] 35/12 63/23 77/22</div> <div>its [2] 29/7 45/12</div> <div>itself [1] 14/3</div> <div>IV [2] 63/24 64/3</div> <div>J</div> <div>Janie [1] 115/19</div> <div>JD [1] 1/25</div> <div>JOHNSON [1] 1/11</div> <div>JUDGE [2] 1/11 60/3</div> <div>Judges' [1] 73/15</div> <div>judgment [2] 103/11</div>	<div>104/24</div> <div>juncture [1] 84/2</div> <div>June [6] 43/21 43/22 44/1 46/21 101/19 102/11</div> <div>June 2015 [1] 46/21</div> <div>just [57] 12/11 14/12 18/6 22/22 28/15 28/25 32/6 32/22 33/17 36/5 37/7 37/12 37/24 38/6 38/15 38/22 40/1 40/12 40/22 48/9 51/11 58/10 61/3 62/1 65/2 66/9 69/9 71/12 75/20 76/2 76/5 79/3 80/16 80/23 82/7 83/18 83/25 84/16 84/21 85/12 85/14 86/5 87/18 91/11 92/11 92/21 93/5 95/9 95/22 99/15 99/19 100/3 103/21 107/18 110/22 111/7 114/21</div> <div>K</div> <div>keep [3] 19/7 87/7 94/14</div> <div>keeps [1] 57/21</div> <div>KELLY [1] 1/17</div> <div>key [1] 70/10</div> <div>kind [4] 27/23 41/7 70/3 73/10</div> <div>kindly [1] 84/18</div> <div>knew [11] 16/18 17/11 18/11 19/17 19/20 29/12 33/8 33/23 100/5 103/2 112/17</div> <div>knock [1] 87/25</div> <div>know [62] 7/21 10/7 11/11 13/16 15/15 17/14 17/15 20/2 20/3 27/8 27/10 27/18 27/21 28/10 32/2 33/13 37/6 39/23 41/11 49/25 50/18 54/20 56/11 56/12 61/3 61/21 61/21 62/17 62/24 63/7 66/19 68/13 71/16 71/17 72/4 74/16 74/20 76/18 78/24 87/20 89/11 90/11 93/1 97/3 99/24 103/6 104/12 105/16 105/17 105/19 105/21 105/23 106/15 107/18 107/19 109/1 109/7 109/13 110/12 110/13 111/8 112/12</div> <div>knowledge [5] 6/11 26/22 72/8 89/6 106/12</div> <div>knowledgeable [1] 6/11</div> <div>known [6] 21/17 21/21 21/24 21/25 21/25 29/10</div> <div>L</div> <div>Lack [1] 41/1</div> <div>laid [1] 41/3</div> <div>language [6] 29/14 63/15 71/18 71/19</div>	<div>94/22 97/25</div> <div>lapse [1] 82/19</div> <div>LAS [1] 3/1</div> <div>last [5] 8/15 43/16 45/3 55/25 65/23</div> <div>late [3] 56/25 67/5 114/14</div> <div>later [6] 34/3 45/16 69/7 80/5 85/6 110/9</div> <div>Laura [1] 102/6</div> <div>law [6] 4/10 52/18 55/12 67/19 108/4 112/11</div> <div>Lawyers [1] 88/14</div> <div>lay [2] 41/9 68/13</div> <div>layer [1] 51/23</div> <div>leading [3] 84/1 84/2 86/6</div> <div>learned [2] 6/16 73/17</div> <div>least [5] 28/25 43/10 63/21 85/9 113/22</div> <div>leave [1] 75/19</div> <div>led [1] 7/6</div> <div>left [2] 7/18 9/19</div> <div>left-hand [1] 7/18</div> <div>legal [49] 6/17 6/21 7/5 7/12 7/24 10/21 11/24 12/21 21/16 24/5 27/5 27/7 27/15 27/17 27/20 27/21 31/17 31/23 31/24 33/24 38/1 38/5 55/5 68/5 68/10 69/24 69/25 70/4 71/21 71/25 72/5 72/8 72/10 83/13 83/23 84/14 84/23 86/3 86/15 88/11 89/5 89/7 94/3 94/5 96/2 109/25 110/20 110/22 111/23</div> <div>legally [2] 29/8 75/7</div> <div>legislative [6] 71/5 71/14 71/21 71/25 73/16 110/4</div> <div>lender [1] 74/5</div> <div>let [17] 7/21 9/14 21/12 25/19 45/22 46/12 46/19 49/8 55/23 64/2 64/9 78/19 87/24 92/23 98/8 107/7 113/10</div> <div>let's [48] 6/19 12/9 14/20 17/17 17/17 18/14 20/14 22/11 23/12 25/3 27/24 28/16 29/3 31/8 34/10 34/13 35/10 41/16 46/3 46/16 47/12 47/13 48/9 48/15 48/16 48/19 51/4 53/13 60/9 62/13 63/6 66/4 74/9 78/9 81/9 86/20 93/24 94/6 94/7 95/24 101/6 101/16 106/2 107/9 107/10 107/10 107/17 113/8</div> <div>letter [4] 31/14 32/20 83/3 85/1</div> <div>letters [1] 73/3</div> <div>levied [1] 43/19</div> <div>lien [33] 8/20 8/24 10/12 13/25 15/24 18/15 18/21 21/3 21/16</div>	<div>28/20 29/17 46/8 52/19 52/24 58/3 58/7 65/20 67/4 67/8 67/10 67/12 67/23 67/24 69/2 70/24 77/14 105/14 105/17 105/19 111/4 111/8 111/11 111/14</div> <div>liens [5] 10/9 66/18 69/1 70/22 105/9</div> <div>life [1] 114/7</div> <div>like [28] 3/14 10/17 33/5 43/9 48/8 51/11 51/25 52/4 52/20 53/24 58/14 59/24 61/21 62/20 66/5 70/7 71/18 73/19 74/23 79/1 80/24 84/16 84/20 88/7 88/14 109/2 111/15 114/16</div> <div>liked [2] 32/24 97/25</div> <div>limitations [3] 44/24 53/8 53/19</div> <div>limited [3] 10/4 15/7 70/20</div> <div>line [3] 96/15 96/16 106/23</div> <div>lines [1] 77/2</div> <div>list [1] 10/17</div> <div>listed [1] 18/21</div> <div>listen [1] 113/4</div> <div>listening [1] 72/3</div> <div>literally [1] 3/8</div> <div>litigation [2] 60/2 60/3</div> <div>little [16] 4/4 8/1 8/6 9/19 19/1 28/15 36/23 48/5 53/5 57/9 59/23 69/8 80/6 80/6 114/1 114/7</div> <div>LLC [22] 7/25 18/24 19/4 21/1 23/24 24/3 24/18 24/25 35/8 35/9 36/3 39/22 39/25 48/2 50/13 50/15 54/12 54/14 54/20 75/2 100/9 100/22</div> <div>long [5] 16/9 51/9 73/1 109/6 113/19</div> <div>longer [3] 69/6 69/8 69/18</div> <div>look [56] 6/19 7/12 7/20 8/6 8/9 12/9 14/20 15/2 17/17 17/17 18/14 20/14 25/3 25/25 26/21 27/24 28/14 29/16 31/8 34/10 34/11 35/10 41/16 43/15 58/6 58/10 60/13 62/6 63/22 64/22 67/19 72/3 73/11 74/25 79/23 81/22 82/7 84/18 85/16 86/3 86/11 88/4 88/7 94/6 97/17 100/24 101/6 101/16 101/25 106/2 106/17 107/9 107/10 107/17 107/19 109/5</div> <div>looked [14] 11/11 11/12 14/12 16/5 17/2 17/4 18/8 22/16 54/6 62/7 62/18 62/18 110/4 110/17</div>	<div>looking [9] 7/10 11/19 24/20 25/1 31/18 32/20 61/23 70/6 71/24</div> <div>looks [3] 78/12 79/1 88/14</div> <div>lose [2] 52/3 52/4</div> <div>lot [20] 25/6 25/8 26/12 27/20 29/9 60/2 60/3 60/8 71/4 74/10 84/1 96/19 97/9 103/5 109/25 110/19 110/19 112/10 113/17 113/18</div> <div>M</div> <div>ma'am [1] 64/4</div> <div>made [7] 9/25 15/6 70/19 74/4 76/10 77/11 101/21</div> <div>mail [4] 88/18 90/15 90/20 93/18</div> <div>mailed [1] 79/12</div> <div>mailing [4] 90/14 98/3 98/4 98/14</div> <div>mailings [2] 97/15 98/10</div> <div>make [12] 4/16 19/9 28/15 37/12 37/22 38/4 39/9 45/25 48/5 87/23 92/11 114/7</div> <div>makes [5] 21/17 21/21 21/24 21/25 21/25</div> <div>making [2] 103/19 109/2</div> <div>many [7] 5/14 25/19 25/20 26/5 26/15 52/18 57/4</div> <div>map [3] 85/5 90/21 90/24</div> <div>maps [1] 90/24</div> <div>march [5] 28/5 35/18 59/15 79/14 110/10</div> <div>market [4] 48/16 51/4 51/5 51/6</div> <div>marketable [1] 54/3</div> <div>marketing [1] 84/17</div> <div>materialman's [1] 52/24</div> <div>materials [1] 52/19</div> <div>math [1] 47/15</div> <div>matter [1] 68/11</div> <div>may [16] 3/3 3/23 3/24 4/8 4/9 32/12 33/7 33/23 42/20 67/11 68/11 76/9 83/3 92/25 109/3 111/24</div> <div>maybe [8] 8/2 21/15 32/12 33/1 50/17 62/9 103/19 112/13</div> <div>me [52] 7/21 8/1 8/4 9/14 12/9 15/3 20/15 21/12 23/20 25/19 27/25 29/2 30/9 31/8 34/11 37/24 41/10 46/11 47/16 48/7 49/6 50/11 55/8 61/7 63/17 64/2 64/9 65/3 68/11 73/3 78/19 79/21 84/23 85/10 85/16 87/24 91/16 92/6 92/7 92/23</div>
--	--	---	--	--

09/2

<p>M</p> <p>me... [12] 98/8 99/13 102/4 102/18 103/12 103/13 103/13 105/1 107/7 112/7 112/25 113/11</p> <p>mean [23] 6/8 27/8 27/10 27/20 35/24 47/6 50/14 60/6 61/22 62/3 64/18 66/20 67/7 68/10 72/14 76/24 78/8 80/24 84/24 91/7 111/15 113/23 114/10</p> <p>Meaning [2] 92/16 92/21</p> <p>means [1] 64/19</p> <p>meant [2] 5/21 73/9</p> <p>measurements [2] 32/2 34/14</p> <p>mention [1] 77/18</p> <p>mentions [1] 106/21</p> <p>messed [2] 53/8 82/8</p> <p>metes [3] 97/2 97/3 97/5</p> <p>Michelle [1] 31/14</p> <p>microphone [2] 87/7 87/20</p> <p>middle [1] 7/25</p> <p>might [6] 22/22 58/12 58/13 62/6 63/4 115/2</p> <p>millions [1] 47/7</p> <p>mind [5] 33/1 33/1 33/2 35/21 71/1</p> <p>mind's [1] 68/19</p> <p>mine [4] 30/7 55/13 113/10 113/16</p> <p>minute [7] 12/1 24/12 38/16 41/16 54/16 66/5 87/13</p> <p>minutes [6] 69/8 85/23 90/6 113/12 113/15 113/23</p> <p>missing [5] 31/19 31/23 33/12 33/25 83/14</p> <p>misstated [2] 68/25 68/25</p> <p>misstates [3] 39/3 39/13 93/6</p> <p>mistake [1] 106/10</p> <p>misunderstanding [2] 49/12 99/24</p> <p>moment [6] 7/12 7/20 26/20 76/12 88/5 95/9</p> <p>Monday [2] 43/21 43/25</p> <p>money [16] 47/10 47/22 47/23 48/2 48/22 49/20 51/8 51/24 52/5 53/25 54/12 60/8 73/19 81/2 81/6 81/7</p> <p>monies [1] 47/9</p> <p>month [4] 42/24 42/25 48/25 51/2</p> <p>months [1] 51/14</p> <p>more [9] 5/7 8/1 46/3 81/1 81/6 81/7 96/22 114/12 114/14</p>	<p>morning [1] 115/3</p> <p>morphed [1] 57/7</p> <p>mortgage [2] 103/10 104/23</p> <p>mortgagee [2] 103/10 104/23</p> <p>most [3] 65/25 74/14 105/25</p> <p>mouth [1] 19/15</p> <p>Mr [3] 2/6 2/8 112/16</p> <p>Mr. [12] 4/3 27/25 34/20 38/15 63/7 81/10 84/1 88/1 99/12 102/15 104/13 112/16</p> <p>Mr. Croteau [4] 84/1 88/1 102/15 112/16</p> <p>Mr. Schmidt [8] 4/3 27/25 34/20 38/15 63/7 81/10 99/12 104/13</p> <p>Ms [2] 2/5 2/7</p> <p>Ms. [4] 72/2 105/5 113/5 114/21</p> <p>Ms. Noto [4] 72/2 105/5 113/5 114/21</p> <p>much [5] 8/1 41/11 52/17 78/2 110/9</p> <p>multiple [1] 62/21</p> <p>mumbling [1] 71/11</p> <p>my [51] 4/10 5/25 10/20 11/1 13/9 13/12 13/12 16/9 21/8 21/23 22/9 23/1 30/17 32/14 39/3 40/20 45/16 48/3 49/15 58/1 63/13 63/13 65/18 68/22 70/5 71/13 72/11 73/3 73/8 73/24 78/24 78/25 82/11 85/25 87/20 87/24 92/1 92/24 97/24 99/17 100/20 102/14 103/6 105/1 105/2 106/10 112/14 112/25 113/9 113/14 114/13</p> <p>N</p> <p>name [10] 3/20 17/8 36/4 37/3 38/24 38/24 40/14 40/19 40/23 40/24</p> <p>named [2] 65/7 104/15</p> <p>narrow [1] 32/3</p> <p>nature [2] 46/14 97/23</p> <p>near [1] 41/11</p> <p>necessarily [4] 13/24 14/3 14/9 15/15</p> <p>need [11] 10/2 10/14 19/9 41/9 55/13 60/21 60/23 76/6 85/11 112/15 112/21</p> <p>needed [1] 13/16</p> <p>negotiable [1] 77/22</p> <p>NEVADA [25] 1/2 3/1 6/17 6/21 7/5 7/12 7/24 10/21 11/24 27/5 27/7 27/15 27/17 27/21 29/10 38/1 38/5 65/8 67/14 69/24 70/4 77/12 84/23 96/18 96/21</p> <p>never [5] 20/4 51/13</p>	<p>61/21 71/1 112/24</p> <p>new [3] 50/15 56/15 113/25</p> <p>News [18] 6/17 6/22 7/5 7/12 7/24 10/21 11/24 27/5 27/7 27/15 27/17 27/21 38/2 38/5 69/24 70/1 70/4 84/23</p> <p>newspaper [1] 7/17</p> <p>next [7] 3/13 28/22 47/16 47/21 49/7 51/15 111/25</p> <p>nine [1] 66/10</p> <p>no [69] 1/6 1/6 4/10 11/20 13/9 14/14 20/5 22/15 23/21 28/11 28/13 32/10 32/14 35/23 35/25 36/5 36/7 38/9 47/9 48/9 48/9 48/9 49/5 51/3 51/20 53/13 56/5 56/8 56/12 56/14 58/9 59/9 60/22 61/14 63/4 63/20 64/6 64/15 65/12 71/2 72/23 77/15 77/18 78/9 81/4 85/15 87/11 88/16 90/10 90/17 91/9 93/22 97/24 98/12 99/4 99/7 99/16 99/24 99/24 103/13 104/2 104/6 106/9 108/3 111/5 114/18 114/18 114/18 114/19</p> <p>nobody [1] 73/4</p> <p>NOB [2] 21/4 65/20</p> <p>none [2] 56/12 56/12</p> <p>nonexclusive [1] 94/20</p> <p>NORMA [1] 1/24</p> <p>north [5] 8/17 29/10 95/8 95/25 96/3</p> <p>not [104] 4/8 4/10 8/16 10/4 10/25 13/11 13/14 13/18 13/22 13/24 14/3 14/9 14/12 14/14 15/7 16/22 20/5 20/7 20/9 22/10 23/5 32/20 33/1 36/1 36/18 37/6 39/7 39/12 39/22 40/8 40/8 40/8 40/21 41/7 42/8 42/10 43/12 43/20 45/4 45/20 49/16 50/2 50/13 50/25 51/18 52/18 53/7 53/10 53/25 54/7 54/10 54/18 54/20 55/4 57/22 58/14 58/24 60/17 61/5 62/11 68/11 68/20 68/20 68/25 70/9 70/20 70/25 72/7 72/10 72/14 76/15 77/20 78/20 84/13 87/19 88/17 93/8 95/22 96/7 98/12 98/12 98/15 99/4 99/13 99/22 100/12 101/17 102/25 104/5 104/21 105/23 106/25 107/13 107/18 109/16 111/9 111/15 111/20 113/2 113/9 113/14 114/1 114/1 115/2</p>	<p>notations [1] 90/9</p> <p>note [5] 74/21 74/22 95/14 103/10 104/23</p> <p>notes [1] 92/24</p> <p>nothing [4] 41/10 84/15 84/25 106/21</p> <p>notice [13] 7/21 9/6 14/7 14/15 14/18 14/20 15/16 20/14 27/16 29/20 58/2 65/20 65/20</p> <p>noticed [2] 56/6 71/8</p> <p>notices [7] 11/24 12/1 56/5 58/2 58/7 60/15 61/18</p> <p>NOTO [7] 1/16 2/5 2/7 72/2 105/5 113/5 114/21</p> <p>now [43] 17/16 25/4 40/1 42/11 42/15 43/15 45/3 47/1 50/8 51/8 54/16 57/21 58/22 59/15 60/10 63/6 66/18 68/11 70/6 71/1 72/22 75/14 75/20 77/9 77/18 81/9 81/17 82/16 83/18 85/23 89/1 89/18 89/21 90/8 90/22 91/5 91/7 91/10 93/2 94/13 96/6 104/1 108/10</p> <p>NRS [26] 13/6 13/13 13/14 13/17 13/19 23/7 29/6 29/6 46/15 56/14 67/21 68/2 68/23 71/16 102/22 103/1 103/8 103/20 106/13 106/22 107/1 107/1 107/7 107/20 107/20 107/21 110/1</p> <p>NRS 116 [17] 13/6 13/13 13/14 13/17 13/19 46/15 56/14 67/21 68/2 68/23 106/13 106/22 107/1 107/1 107/7 107/20 110/1</p> <p>NRS 16 [1] 71/16</p> <p>NRS 278.170 [1] 107/21</p> <p>NRS 361585 [2] 102/22 103/8</p> <p>NRS statutes [1] 103/1</p> <p>number [67] 3/5 8/10 8/12 8/14 8/23 8/24 9/9 10/14 10/17 10/18 10/19 11/14 11/17 14/21 17/6 17/19 17/21 18/6 18/7 18/8 18/14 21/5 21/13 22/2 22/3 24/21 25/2 25/19 25/19 26/13 34/9 37/21 37/21 47/12 56/17 56/20 57/2 58/13 61/19 61/20 61/23 62/4 63/23 73/5 73/6 77/19 79/20 79/25 80/5 80/24 80/25 81/1 81/4 83/6 86/24 88/5 88/23 91/17 91/19 91/19 91/20 91/21 92/2 92/15 92/22 93/8 93/12</p> <p>Number 194024000285 [1] 11/17</p>	<p>Number 1994 [1] 10/19</p> <p>Number 19940240000285 [1] 37/21</p> <p>Number 1994024000285 [1] 22/3</p> <p>Number 4 [1] 63/23</p> <p>Number 5 [2] 88/5 93/8</p> <p>Number 9, please [1] 18/14</p> <p>numbers [6] 8/15 60/16 62/3 78/21 91/11 91/11</p> <p>numerous [1] 5/1</p> <p>O</p> <p>object [7] 52/11 54/23 55/5 55/22 68/5 71/20 93/5</p> <p>objection [10] 5/16 12/21 24/5 25/23 26/6 39/3 39/12 41/1 80/19 111/7</p> <p>obligation [1] 22/7</p> <p>obligations [7] 10/5 21/18 21/21 21/24 21/25 22/1 70/21</p> <p>obnoxious [2] 21/8 21/11</p> <p>obtain [1] 93/16</p> <p>obtained [2] 77/9 93/18</p> <p>obviously [1] 67/12</p> <p>occasion [1] 93/19</p> <p>occur [1] 47/11</p> <p>occurred [3] 40/2 40/5 55/19</p> <p>occurs [1] 82/20</p> <p>off [12] 32/6 33/5 36/4 47/4 74/21 84/16 84/18 91/20 92/2 92/13 92/15 93/12</p> <p>office [38] 10/22 11/3 11/4 11/7 13/24 18/17 20/21 31/15 32/7 32/9 33/8 33/24 34/4 34/8 36/6 36/7 37/18 58/5 62/5 62/14 62/15 79/5 79/15 79/21 80/17 83/11 83/19 84/9 84/22 86/1 89/8 91/3 92/5 92/6 92/7 93/20 96/21 100/2</p> <p>often [1] 60/17</p> <p>oh [15] 9/14 9/20 21/3 22/15 23/11 24/20 32/21 32/21 64/2 95/8 96/16 100/4 100/4 106/8 107/15</p> <p>okay [292]</p> <p>old [3] 43/2 52/18 56/14</p> <p>older [1] 107/19</p> <p>Olsen [1] 115/19</p> <p>on [129]</p> <p>one [28] 6/1 6/5 12/11 15/15 18/15 22/22 37/8 51/16 54/11 55/7 62/21</p>
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<p>O</p> <p>one... [17] 77/1 86/20 87/6 91/20 92/2 92/15 93/1 93/12 94/10 95/9 95/14 95/22 96/7 96/15 101/1 105/16 107/11</p> <p>one's [1] 95/23</p> <p>online [1] 62/18</p> <p>only [18] 5/25 6/5 15/13 44/22 49/15 51/15 59/4 59/8 63/19 63/20 72/7 84/16 87/8 97/8 102/18 103/9 108/25 114/13</p> <p>oOo [1] 115/13</p> <p>open [12] 94/7 107/22 107/25 108/1 108/6 108/25 109/7 109/13 109/14 109/16 109/19 109/22</p> <p>opening [2] 27/23 47/19</p> <p>operation [2] 45/15 46/11</p> <p>opinion [15] 30/14 30/17 30/18 32/7 33/14 40/16 60/4 60/6 63/13 73/4 73/22 73/22 73/23 73/24 73/25</p> <p>opinionated [1] 60/1</p> <p>opinions [2] 73/15 73/15</p> <p>opportunity [4] 15/18 67/18 67/20 69/5</p> <p>opposed [1] 62/7</p> <p>or [93] 5/17 9/25 9/25 10/4 10/5 10/9 10/10 10/11 10/25 13/9 14/11 14/12 15/6 15/7 15/7 15/22 19/3 22/6 29/5 29/13 31/19 31/23 32/13 33/12 33/25 36/16 37/7 38/6 38/24 39/7 40/23 40/24 43/4 43/9 43/18 44/16 49/16 51/14 55/3 56/14 56/25 56/25 57/7 57/22 58/13 58/13 58/13 58/14 58/15 59/25 62/16 62/21 63/13 63/15 63/15 67/6 68/20 70/18 70/19 70/20 70/20 70/21 70/22 70/23 71/6 71/6 71/7 71/14 71/15 71/16 74/14 74/15 77/1 77/22 81/5 83/14 85/6 85/18 90/9 97/22 97/22 98/3 101/23 103/10 103/17 104/7 104/24 106/21 109/9 109/22 111/9 111/20 113/23</p> <p>order [3] 30/25 36/4 40/14</p> <p>original [3] 34/20 75/15 81/24</p> <p>originally [1] 102/19</p> <p>other [28] 4/9 6/3 11/11 18/8 31/25 37/2</p>	<p>38/10 44/25 47/10 47/20 47/23 49/6 50/4 51/11 52/3 63/20 64/6 64/15 65/12 67/1 71/2 80/24 84/17 84/24 91/24 108/8 110/25 114/15</p> <p>otherwise [2] 64/24 101/24</p> <p>our [7] 11/22 57/10 73/2 73/19 73/20 74/14 112/9</p> <p>out [28] 4/17 35/5 40/22 50/12 50/13 50/15 50/17 52/19 52/22 52/24 56/8 69/10 69/12 69/25 72/6 72/19 73/2 73/4 73/9 73/19 74/3 74/24 76/9 87/24 94/7 94/10 110/12 110/13</p> <p>outstanding [1] 55/10</p> <p>over [13] 6/8 6/9 26/1 45/24 47/18 51/6 51/20 51/24 56/20 57/5 75/18 91/24 95/3</p> <p>overage [4] 47/25 48/5 49/20 51/25</p> <p>overbroad [1] 55/22</p> <p>overrule [2] 54/24 80/20</p> <p>Overruled [2] 12/23 24/7</p> <p>owed [1] 19/18</p> <p>own [3] 45/12 67/11 73/22</p> <p>owned [1] 41/8</p> <p>owner [49] 4/4 10/10 17/9 18/20 18/21 20/24 21/2 21/3 28/20 35/15 36/12 36/16 36/20 36/25 37/5 37/14 37/16 39/8 39/9 40/23 40/24 43/4 43/4 43/12 45/23 47/7 47/8 48/1 49/4 49/11 56/3 70/23 100/17 103/9 103/15 103/17 103/20 103/20 103/22 104/5 104/9 104/9 104/15 104/19 104/20 104/22 104/22 104/24 105/4</p> <p>Owner's [2] 28/24 77/13</p> <p>owners [3] 55/20 55/21 56/1</p> <p>ownership [4] 43/13 50/8 50/11 77/25</p> <hr/> <p>P</p> <p>p.m [5] 3/1 43/21 87/15 87/15 115/12</p> <p>page [28] 9/19 15/2 30/3 30/7 31/15 60/11 60/16 61/19 62/3 64/23 65/2 70/16 71/3 77/19 78/11 82/13 83/1 87/2 88/20 88/22 89/12 89/18 90/8 91/12 93/6</p>	<p>96/20 101/16 101/25</p> <p>page 1 of [1] 82/13</p> <p>page 18 [1] 89/18</p> <p>page 19 [1] 88/20</p> <p>page 3 [1] 78/11</p> <p>page 36 [1] 96/20</p> <p>page 435 [1] 64/23</p> <p>pages [1] 93/1</p> <p>Pahrump [1] 69/25</p> <p>paid [29] 11/13 19/21 20/4 23/9 23/11 23/14 23/21 23/24 30/18 37/5 38/20 38/24 39/9 39/24 43/20 44/5 45/24 47/16 47/17 48/19 54/12 60/5 73/5 74/1 75/2 75/3 80/10 80/13 100/16</p> <p>paper [1] 70/5</p> <p>paragraph [16] 15/5 23/9 28/15 29/17 29/18 31/18 43/16 45/3 64/1 65/12 70/15 70/16 94/13 94/14 94/16 94/16</p> <p>Paragraph 4 [1] 64/1</p> <p>parcel [14] 8/10 8/12 8/13 10/23 17/6 32/17 32/23 32/25 42/16 94/25 95/1 96/8 96/8 96/11</p> <p>parcels [1] 90/25</p> <p>Pardon [1] 112/7</p> <p>Park [5] 21/16 29/8 29/9 35/9 96/20</p> <p>part [7] 29/9 32/1 32/1 47/22 48/22 50/3 50/4</p> <p>participated [1] 41/5</p> <p>particular [8] 14/11 41/6 46/6 57/11 65/21 71/2 76/25 99/3</p> <p>particularly [4] 67/23 67/24 75/1 96/22</p> <p>parties [1] 65/7</p> <p>party [4] 48/10 48/12 48/20 105/21</p> <p>passed [1] 53/9</p> <p>past [5] 19/17 19/20 20/4 42/22 43/7</p> <p>pattern [4] 6/20 11/10 14/8 16/25</p> <p>Pause [3] 6/24 17/23 89/15</p> <p>pay [28] 19/25 39/21 40/17 44/9 44/9 44/10 47/5 47/6 47/16 47/17 47/22 47/23 48/22 49/7 49/8 51/4 51/4 51/6 51/20 77/23 79/17 80/25 81/6 81/7 81/8 104/18 105/3 111/15</p> <p>paying [2] 40/11 60/7</p> <p>payment [6] 24/3 38/20 40/20 44/1 47/25 74/4</p> <p>pays [1] 38/22</p> <p>pen [3] 79/24 79/25 80/1</p> <p>penalties [2] 44/2 75/6</p> <p>people [10] 3/9 25/6 25/8 26/5 26/12 48/7</p>	<p>51/15 59/1 85/6 91/2</p> <p>per [2] 11/14 44/4</p> <p>percent [6] 42/24 42/25 44/4 48/25 51/1 52/1</p> <p>Perfect [1] 86/2</p> <p>period [12] 40/13 40/14 43/5 43/25 44/20 45/5 46/13 46/20 54/1 57/1 100/21 101/19</p> <p>person [6] 39/9 51/16 51/16 78/12 85/5 90/12</p> <p>personal [1] 26/22</p> <p>personally [4] 4/25 6/3 6/5 25/4</p> <p>phonetic [1] 31/14</p> <p>pieces [1] 87/8</p> <p>place [4] 26/2 27/5 37/17 81/25</p> <p>plaintiff [4] 1/6 1/16 2/3 112/1</p> <p>plan [1] 113/19</p> <p>Plat [1] 29/9</p> <p>plats [1] 96/20</p> <p>please [10] 3/19 9/22 18/14 22/4 31/8 41/22 52/12 74/9 91/25 98/21</p> <p>point [9] 21/15 40/6 42/8 53/2 65/3 72/2 76/9 102/3 102/4</p> <p>pointed [1] 87/23</p> <p>portion [7] 23/6 43/18 60/12 95/24 96/3 96/19 97/9</p> <p>portions [1] 67/4</p> <p>positive [1] 8/16</p> <p>possession [3] 10/4 15/7 70/21</p> <p>possible [1] 112/8</p> <p>Possibly [1] 23/5</p> <p>posted [1] 27/22</p> <p>posting [1] 7/25</p> <p>powers [1] 77/11</p> <p>practice [8] 6/21 11/1 11/10 14/8 16/25 57/6 57/25 58/1</p> <p>pre2014 [1] 59/25</p> <p>prefaced [1] 72/13</p> <p>prefatory [1] 97/8</p> <p>prefer [2] 78/1 112/8</p> <p>preforeclosure [1] 57/23</p> <p>preliminary [1] 16/20</p> <p>premises [1] 67/4</p> <p>prepare [3] 16/20 30/11 113/10</p> <p>prepared [8] 28/9 78/3 78/4 78/7 78/11 78/12 112/14 112/20</p> <p>present [3] 25/20 26/5 26/9</p> <p>preSFR [1] 59/21</p> <p>president [1] 4/22</p> <p>Pretty [1] 52/17</p> <p>previous [4] 28/20 54/11 65/2 94/1</p> <p>previously [2] 76/15 89/4</p> <p>price [6] 29/25 30/15</p>	<p>30/23 48/15 49/6 80/17</p> <p>print [1] 58/15</p> <p>prior [23] 16/15 32/15 36/25 37/14 37/16 39/8 40/20 40/23 42/5 43/4 43/12 55/21 56/1 56/3 63/10 63/11 82/3 99/3 100/16 104/19 104/20 105/2 110/1</p> <p>probably [15] 12/2 12/6 16/10 17/10 22/10 27/21 41/10 57/10 59/1 59/1 62/17 62/17 78/14 79/3 113/22</p> <p>problem [6] 33/9 33/11 72/11 83/23 106/9 111/18</p> <p>procedure [3] 57/6 57/25 58/1</p> <p>proceed [2] 3/11 3/23</p> <p>proceedings [7] 1/9 6/24 17/23 87/15 89/15 115/12 115/15</p> <p>proceeds [5] 49/9 50/17 51/7 51/13 51/14</p> <p>process [7] 6/12 20/2 40/18 42/21 43/6 51/10 79/21</p> <p>processing [2] 83/12 83/24</p> <p>professor [1] 73/18</p> <p>prohibition [1] 53/13</p> <p>pronounce [1] 29/2</p> <p>proper [1] 54/20</p> <p>properties [6] 5/4 6/22 62/21 69/22 74/10 74/15</p> <p>property [117]</p> <p>Protective [2] 13/21 65/9</p> <p>prove [1] 48/5</p> <p>provide [2] 71/25 72/7</p> <p>provided [5] 10/12 12/19 15/25 64/16 98/15</p> <p>provides [3] 15/21 21/4 85/1</p> <p>provision [1] 97/9</p> <p>provisions [2] 64/17 67/14</p> <p>prudent [1] 53/21</p> <p>public [5] 17/2 17/4 17/6 40/21 41/4</p> <p>publication [7] 6/17 7/5 7/7 7/8 7/16 69/25 70/7</p> <p>publicly [2] 71/8 71/10</p> <p>published [1] 7/16</p> <p>pull [1] 112/10</p> <p>pulled [2] 33/5 58/7</p> <p>pulling [1] 32/6</p> <p>purchase [3] 11/22 29/25 45/22</p> <p>purchased [5] 5/14 15/12 57/12 98/11 98/24</p> <p>purchaser [2] 52/15 52/15</p> <p>purchasing [3] 5/4</p>
--	---	--	---	---

<p>P</p> <p>purchasing... [2] 11/18 16/15</p> <p>purporting [1] 37/6</p> <p>purports [1] 84/16</p> <p>purpose [2] 72/16 97/12</p> <p>purposes [2] 40/9 68/21</p> <p>pursuant [8] 23/7 28/25 29/6 37/19 68/3 77/11 104/14 109/22</p> <p>push [1] 9/18</p> <p>put [15] 19/14 30/23 31/2 31/6 36/19 38/23 40/22 73/18 75/18 78/1 90/9 92/24 93/21 93/22 115/2</p>	<p>100/15</p> <p>receive [1] 49/9</p> <p>received [3] 31/13 47/8 77/3</p> <p>recessed [2] 87/15 115/12</p> <p>recitals [1] 58/16</p> <p>recites [1] 21/5</p> <p>recognize [3] 28/2 78/20 78/24</p> <p>recollection [2] 7/22 58/22</p> <p>reconvey [8] 36/3 36/25 37/10 100/16 102/23 103/3 104/15 104/22</p> <p>reconveyance [16] 22/18 23/3 23/25 24/10 35/11 37/1 37/3 37/4 37/7 37/14 39/8 74/20 74/23 75/3 75/11 104/15</p> <p>reconveyed [6] 24/2 24/18 24/24 35/22 37/5 37/8</p> <p>reconveying [1] 75/14</p> <p>reconveys [2] 36/15 36/17</p> <p>record [43] 3/20 9/16 9/22 12/5 12/6 13/15 17/2 17/4 18/20 21/2 21/3 21/20 28/24 29/1 30/25 31/3 36/12 36/19 36/20 37/13 39/9 47/7 47/8 47/24 48/1 48/4 48/4 49/4 49/10 55/20 55/25 56/3 60/12 77/24 79/8 79/18 82/8 82/20 87/17 91/22 100/2 107/14 114/13</p> <p>recorded [62] 1/24 10/13 10/22 11/13 11/16 12/7 12/14 14/2 15/14 16/1 16/12 18/2 18/4 18/17 20/17 21/5 22/2 22/8 24/21 24/21 24/21 25/2 28/4 28/7 28/8 33/9 33/24 34/2 34/6 34/15 34/16 34/18 35/5 36/5 37/20 37/23 38/3 42/2 61/23 62/19 63/20 81/23 82/5 82/12 82/24 83/19 84/9 84/13 85/8 85/18 88/18 91/11 92/7 92/25 93/13 99/18 100/6 101/12 102/8 106/18 107/4 110/21</p> <p>recorder [8] 1/24 20/18 33/5 80/8 82/12 83/23 84/17 87/21</p> <p>recorder's [26] 10/22 11/2 11/4 11/7 13/24 18/17 20/21 32/7 36/6 36/7 37/18 58/5 62/5 62/14 62/15 79/5 79/15 79/21 80/16 83/19 84/9 88/8 92/5 92/6 92/7 100/2</p> <p>recorders [2] 11/7</p>	<p>96/21</p> <p>recording [6] 48/4 62/1 62/11 79/15 86/14 91/11</p> <p>records [5] 17/6 65/8 84/18 84/19 84/19</p> <p>Recross [3] 2/8 111/1 111/2</p> <p>Recross-Examination [2] 2/8 111/2</p> <p>Red [14] 7/3 15/3 25/9 25/11 28/22 70/8 70/14 76/20 82/17 98/4 98/10 98/14 99/2 99/4</p> <p>redeem [3] 19/24 20/2 23/22</p> <p>redeemed [4] 44/1 45/4 54/9 101/18</p> <p>redemption [15] 10/11 10/11 40/7 40/11 40/14 40/15 44/21 45/5 46/13 54/22 56/10 56/14 70/23 71/6 101/18</p> <p>Redirect [3] 2/7 99/8 99/10</p> <p>refer [1] 113/18</p> <p>reference [14] 13/6 13/10 13/11 13/13 13/14 13/15 13/17 13/19 58/13 67/16 68/3 71/5 106/25 107/7</p> <p>referenced [11] 11/23 31/19 38/2 38/4 83/12 83/15 92/16 107/5 108/22 109/3 109/12</p> <p>references [14] 8/20 8/23 9/6 15/23 20/23 29/16 29/20 29/23 29/25 107/21 107/25 109/3 109/7 109/14</p> <p>referencing [1] 93/7</p> <p>refers [1] 65/24</p> <p>reflected [1] 28/20</p> <p>reflecting [1] 20/24</p> <p>refreshes [1] 7/22</p> <p>refund [3] 45/23 47/18 51/10</p> <p>regarding [5] 10/1 70/20 98/12 98/12 111/20</p> <p>regular [1] 53/5</p> <p>relate [1] 63/17</p> <p>relatively [2] 57/7 113/25</p> <p>Relevance [1] 80/19</p> <p>rely [1] 58/16</p> <p>remainder [2] 49/3 49/5</p> <p>remember [7] 38/24 58/24 63/3 91/12 98/20 102/20 108/19</p> <p>remind [1] 87/18</p> <p>removing [2] 75/16 75/17</p> <p>rents [1] 86/14</p> <p>repeat [2] 33/20 71/12</p> <p>repetitively [1] 65/19</p> <p>rephrase [5] 5/22 39/5 39/16 84/6 98/9</p>	<p>replaced [2] 68/23 107/5</p> <p>report [1] 16/21</p> <p>reporter [1] 10/2</p> <p>REPORTING [1] 1/25</p> <p>represent [5] 7/11 81/23 86/2 91/22 96/5</p> <p>representative [1] 27/15</p> <p>Republic [6] 105/14 105/17 105/19 111/4 111/11 111/14</p> <p>request [1] 112/12</p> <p>requested [2] 88/15 89/7</p> <p>requesting [5] 32/9 32/16 32/18 34/4 34/8</p> <p>required [1] 30/25</p> <p>requires [1] 77/24</p> <p>rerecord [2] 85/12 97/11</p> <p>rerecorded [10] 34/12 85/8 85/9 85/19 85/24 88/11 97/13 97/14 97/18 110/21</p> <p>rerecording [2] 86/3 89/1</p> <p>research [11] 71/4 72/16 72/17 72/24 72/25 73/2 73/8 73/11 73/21 73/24 110/1</p> <p>Resolving [1] 49/23</p> <p>respect [5] 49/14 55/9 67/1 112/6 113/25</p> <p>responsfully [1] 112/12</p> <p>respond [1] 4/17</p> <p>response [5] 32/10 77/15 87/11 88/16 90/17</p> <p>rest [4] 28/25 111/23 112/4 112/16</p> <p>Restate [1] 52/12</p> <p>restrictions [8] 10/13 11/16 13/21 16/1 22/1 37/20 38/3 65/10</p> <p>rests [1] 112/2</p> <p>result [3] 77/10 82/9 97/21</p> <p>retyped [1] 93/23</p> <p>revert [4] 40/18 40/21 40/22 104/18</p> <p>reverted [1] 39/24</p> <p>reverting [1] 39/22</p> <p>review [12] 6/21 11/20 11/21 11/23 13/2 13/24 14/8 20/21 37/22 38/4 58/1 58/2</p> <p>reviewed [20] 7/6 7/12 7/22 10/22 11/6 11/15 12/2 12/4 12/7 12/15 14/1 14/12 14/15 37/24 38/1 61/19 68/16 68/17 89/11 94/4</p> <p>reviewing [1] 68/2</p> <p>Revised [2] 67/15 77/12</p> <p>right [232]</p> <p>right-hand [4] 7/10 7/21 82/13 91/17</p>	<p>rightful [1] 46/5</p> <p>rights [4] 11/18 56/10 97/21 97/24</p> <p>risk [1] 73/20</p> <p>Risky [1] 60/1</p> <p>Road [29] 7/25 8/13 8/17 18/23 19/4 20/25 23/24 24/2 24/18 24/25 29/10 35/9 36/3 39/22 39/25 48/1 48/2 49/19 50/9 50/11 50/11 50/13 50/15 54/12 54/13 54/20 75/2 100/9 100/21</p> <p>Road LLC [1] 36/3</p> <p>roadmap [1] 114/8</p> <p>Rock [14] 7/3 15/3 25/9 25/11 28/23 70/8 70/14 76/20 82/17 98/4 98/10 98/15 99/3 99/4</p> <p>ROGER [1] 1/18</p> <p>roll [1] 66/12</p> <p>route [1] 53/3</p> <p>Rs [35] 11/20 11/21 11/23 12/1 12/4 12/7 12/14 12/25 13/2 13/7 13/13 13/17 16/6 21/5 22/8 37/22 57/22 58/1 58/14 60/16 61/19 61/23 62/2 63/17 63/19 63/20 66/1 68/3 77/13 77/19 105/25 107/4 108/18 108/23 109/19</p> <p>rudiments [1] 101/22</p>
<p>Q</p> <p>qualify [1] 47/3</p> <p>quality [1] 52/9</p> <p>qualms [1] 114/19</p> <p>quarrel [2] 26/13 26/17</p> <p>question [24] 4/17 13/9 13/12 16/7 16/9 24/14 24/22 26/3 32/14 33/17 33/20 39/3 39/13 49/15 52/12 55/3 57/11 61/14 61/15 75/23 82/3 98/9 98/24 108/12</p> <p>questioned [1] 39/7</p> <p>questions [4] 38/10 84/1 99/7 110/25</p> <p>quiet [1] 53/11</p> <p>quite [1] 59/11</p>				
<p>R</p> <p>RAMIREZ [1] 1/24</p> <p>ran [1] 57/22</p> <p>rate [1] 44/4</p> <p>rates [1] 60/7</p> <p>rather [2] 51/8 113/16</p> <p>read [30] 7/8 8/1 8/4 8/7 9/15 9/22 10/18 15/13 15/16 18/20 21/20 22/10 27/20 27/21 28/16 28/24 29/1 37/7 58/8 58/12 58/13 58/15 58/15 60/11 63/7 66/23 70/7 73/23 103/21 107/3</p> <p>reading [4] 16/10 21/24 22/9 71/13</p> <p>ready [3] 3/11 61/15 112/17</p> <p>real [8] 4/20 5/1 6/3 6/4 42/16 43/19 56/16 96/17</p> <p>realize [1] 25/1</p> <p>really [5] 11/13 19/23 51/25 54/6 87/20</p> <p>reason [7] 53/4 71/2 72/7 81/3 94/19 113/4 114/13</p> <p>reasonably [1] 57/18</p> <p>rebuttal [1] 114/23</p> <p>recall [6] 11/4 14/11 27/19 56/24 62/17</p>				<p>S</p> <p>S-c-h-m-i-d-t [1] 3/22</p> <p>said [38] 3/9 6/8 7/17 10/12 15/24 19/12 21/3 22/10 23/1 26/12 27/2 27/2 27/18 28/20 51/4 54/11 54/16 56/1 59/1 59/4 62/5 62/6 62/14 68/17 70/24 71/12 78/25 85/10 99/19 101/21 103/12 105/2 106/6 108/5 108/17 108/21 109/25 112/12</p> <p>sale [115] 6/12 6/16 7/6 7/23 7/24 9/25 10/21 11/25 12/3 14/18 14/20 15/6 15/16 15/21 16/4 16/11 17/15 18/5 18/10 25/4 25/6 25/8 25/21 26/5 26/18 26/23 27/5 27/8 27/11 27/13 27/22 28/5 29/12 29/23 30/15 31/13 34/17 36/9 37/19 38/7 38/8 40/9 40/21 42/6 42/11 44/13 44/16 44/17 44/18 44/21 44/23 45/22 45/23 46/12 46/24 46/25 47/4 47/11 47/19 47/23 48/13 49/9 49/16 50/12 51/7 51/25 52/15 52/16 52/21 52/22 53/5 53/9 53/16 54/20 54/21 54/22 55/19 56/4 57/23</p>

S	62/7	29/5 77/7	37/8 38/22 40/11 49/7	44/23 53/7 53/18 67/15
sale... [36] 58/23 58/24	scribble [1] 78/13	seriously [1] 113/23	90/16 92/7	71/24 72/1 73/23
59/11 61/18 62/20	se [1] 11/14	Services [6] 25/11	somehow [1] 97/20	103/21 104/21 107/9
65/20 70/7 70/12 70/19	search [1] 36/8	28/23 76/21 105/14	someone [10] 27/7	109/9 109/12
71/8 71/10 74/3 74/3	searched [5] 17/5 17/6	105/17 105/19	36/16 37/4 40/16 40/17	statutes [6] 54/17
74/24 75/21 75/24 76/3	17/8 17/11 18/7	Services' [1] 111/4	59/24 74/19 77/22 92/4	67/24 77/12 103/1
80/7 80/17 80/23 80/24	seat [1] 47/3	set [1] 82/10	92/6	112/11 114/6
80/24 81/25 82/4 82/9	seated [1] 3/3	seven [1] 26/10	something [7] 35/9	stay [1] 105/15
82/20 93/7 98/23 99/3	second [15] 12/12 15/2	several [2] 6/8 71/5	54/16 57/8 58/13 58/14	step [2] 51/15 111/24
100/12 101/14 104/18	15/5 22/22 29/17 29/18	SFR [7] 59/18 59/25	73/17 74/23	stepping [1] 60/6
105/2 105/10 110/1	43/16 60/10 60/11	110/7 110/9 110/12	Sometime [1] 25/22	still [15] 28/16 36/7
110/9	69/13 70/15 70/15	110/13 110/13	sometimes [1] 45/16	39/8 41/8 49/5 49/9
sales [14] 5/4 30/15	92/10 92/23 101/16	Shafe [1] 31/14	somewhat [1] 53/4	49/19 51/18 51/21
30/23 36/23 40/3 41/4	section [10] 66/5 66/18	shall [4] 64/17 65/13	soon [1] 12/2	51/24 64/19 65/24
55/19 56/20 56/24	67/15 67/25 68/2 69/1	67/2 67/2	sooner [1] 44/1	92/12 96/7 104/5
59/25 69/23 72/19	69/2 84/24 90/21 90/24	she [8] 26/7 32/5 38/25	sophisticated [1]	stipulated [6] 6/19
102/16 114/2	Section 278A.170 [1]	39/1 39/11 59/4 60/11	57/18	17/22 17/25 22/11 25/3
same [26] 8/12 14/18	67/15	62/13	sorry [71] 5/10 5/11	25/10
18/7 21/4 21/13 36/3	Section 31168 [1]	she's [2] 32/6 33/17	6/15 10/3 13/4 15/10	stockholder [3] 4/8 4/9
50/8 51/21 57/7 85/9	67/25	shoes [1] 59/24	17/3 17/20 19/2 19/7	4/13
86/6 86/18 90/13 91/13	Section 809 [1] 66/5	shot [1] 51/9	19/8 20/8 21/3 21/7	stop [2] 53/13 108/10
92/8 93/13 93/25 94/22	sections [1] 67/23	should [5] 35/21 77/2	21/11 21/23 21/23	strategy [3] 46/1 46/1
95/7 95/10 95/11 95/19	secure [2] 66/19 66/20	81/2 85/18 112/17	22/12 22/15 22/22	57/10
95/22 96/5 97/6 114/9	secured [8] 10/5 10/12	show [3] 36/6 48/7	23/13 23/19 24/20 25/1	street [1] 32/2
sandwich [1] 3/9	15/24 66/21 67/3 70/21	50/17	27/10 29/18 30/8 32/14	strike [2] 41/2 84/13
satisfy [7] 10/5 10/11	70/24 74/4	showing [1] 23/19	33/16 33/20 34/1 35/9	strong [2] 71/8 71/19
15/23 16/4 16/12 70/21	see [80] 7/15 7/15 7/17	shown [3] 36/10 46/25	35/24 37/11 37/24	stuff [1] 112/20
70/23	7/25 8/24 9/4 9/5 9/7	47/2	41/18 41/23 42/11 53/6	subject [6] 40/10 40/11
save [3] 62/11 112/25	9/13 9/14 13/6 13/9	shuffle [1] 36/5	56/1 56/13 57/15 58/19	44/22 44/23 50/19
114/11	13/11 13/13 13/14	side [7] 7/11 7/15 7/18	61/14 61/15 64/11 65/1	69/22
saving [1] 112/22	13/16 13/19 13/22 15/8	7/21 82/13 87/2 91/17	68/25 71/1 71/11 71/15	submit [1] 109/14
saw [4] 13/8 33/6	15/11 15/12 15/23 16/1	signed [1] 30/21	72/13 75/23 81/14 82/1	submitting [1] 49/22
37/19 111/16	16/2 18/2 18/4 18/19	significance [1] 63/12	82/4 82/11 85/11 86/21	subscribed [2] 70/4
say [37] 5/14 17/19	21/18 22/19 22/23 23/2	Silver [1] 88/18	87/24 90/19 95/9 96/16	70/5
17/21 19/1 19/11 21/2	23/6 23/10 23/18 25/12	similar [2] 71/18 74/24	97/14 100/4 101/7	subscriptions [1] 70/3
23/24 25/20 27/10	25/16 26/24 28/16	simple [2] 86/8 94/14	105/1 106/4 106/6	substantially [1] 56/20
27/16 32/5 32/8 32/15	28/18 28/19 28/20	simply [5] 41/7 50/3	106/8 108/14	sued [1] 44/25
44/9 47/1 47/10 47/12	29/18 30/5 31/15 31/20	93/12 110/22 110/24	sort [2] 43/9 54/22	suggested [1] 26/13
47/13 48/7 48/9 48/15	32/18 42/13 45/6 55/12	since [7] 5/3 5/7 5/14	sounds [1] 115/4	suit [1] 46/14
48/16 48/19 50/2 51/4	58/10 62/10 64/23	5/15 38/15 47/9 69/7	space [3] 109/16	sum [2] 40/17 98/25
52/4 55/25 65/1 71/16	67/16 75/9 83/16 85/21	singular [1] 101/22	109/19 109/22	sunglasses [1] 21/8
77/2 78/7 80/4 85/18	86/24 87/3 87/3 87/4	sir [24] 4/16 6/20 23/13	spaces [8] 107/22	superpriority [4] 73/7
95/9 99/22 104/7 108/6	87/5 88/20 88/23 90/16	33/15 39/20 56/16	107/25 108/1 108/6	73/7 74/1 74/4
say you've [1] 5/14	90/16 90/20 93/6 94/20	68/16 69/21 71/11	109/1 109/8 109/13	supposed [1] 104/11
saying [9] 46/13 49/16	95/4 95/14 95/16 95/25	75/20 76/12 78/6 81/13	109/15	sure [22] 4/8 4/16 5/23
49/23 53/18 62/4 77/2	96/12 96/14 96/15	82/1 85/4 86/11 87/18	speak [2] 53/1 75/16	14/2 16/24 19/9 23/5
84/20 84/21 93/13	96/22 96/23 103/5	88/4 90/3 90/4 90/11	speaking [1] 47/12	24/15 34/1 37/12 45/25
says [42] 21/15 21/20	109/24 115/11	98/1 98/21 111/24	specific [2] 58/22	50/21 50/24 52/13 59/3
25/18 30/4 30/7 32/1	seeing [1] 73/1	sit [5] 16/3 16/10 19/12	106/23	87/23 92/11 102/17
32/12 32/19 33/10	seem [1] 113/25	46/19 70/6	specifically [1] 72/21	102/21 106/14 113/6
42/15 43/16 45/3 45/3	seems [1] 113/11	sits [1] 42/24	spell [1] 3/19	114/9
45/12 64/15 64/15	seen [15] 22/21 23/4	sitting [2] 38/17 49/7	splitting [1] 115/1	surprise [4] 103/8
64/24 65/6 65/12 66/18	31/11 37/1 37/3 37/4	situated [1] 96/18	stage [1] 40/17	103/12 103/13 103/13
66/23 66/24 67/14	37/6 37/7 37/8 50/14	six [3] 51/14 77/1 77/1	stamp [1] 82/13	SUSAN [1] 1/11
71/17 74/25 83/9 84/21	60/15 71/5 90/5 101/8	slight [1] 50/16	stand [2] 3/14 53/1	Sustained [2] 84/4
85/19 88/18 91/16	103/6	slow [1] 10/2	start [8] 4/3 21/23	84/6
94/19 95/24 96/3 96/8	sell [5] 9/7 42/20 53/11	slower [1] 19/1	25/19 29/3 62/16 94/18	sworn [2] 3/17 87/19
96/8 96/11 97/9 103/8	53/23 54/3	small [2] 8/1 69/25	94/19 115/3	
103/20 104/21 104/21	selling [1] 53/14	smaller [1] 28/15	started [7] 57/9 69/7	T
106/23	send [1] 98/17	so [170]	72/23 72/24 72/25 80/7	take [22] 7/12 7/20
scenario [1] 51/5	sense [1] 39/10	sold [9] 9/24 11/8	89/25	12/9 26/20 34/10 40/22
Schmidt [12] 3/15 3/16	sent [4] 46/24 82/16	26/25 27/2 32/3 43/1	starting [2] 9/22 28/19	43/15 52/22 52/24
3/21 4/3 27/3 27/25	84/17 98/8	47/11 47/13 69/22	starts [2] 21/17 28/22	60/20 61/9 73/1 77/22
34/20 38/15 63/7 81/10	sentence [2] 28/22	sole [2] 4/4 4/11	state [7] 3/19 26/3 45/6	79/14 87/10 87/13 88/4
99/12 104/13	28/25	some [10] 3/9 3/10	82/2 88/18 96/18 102/7	94/6 94/7 94/10 97/17
SCHMITT [1] 1/17	sentences [1] 77/1	17/14 41/9 83/22 84/14	states [4] 15/5 26/9	114/10
school [1] 72/14	separately [1] 67/3	112/10 112/11 113/25	73/16 77/10	taken [3] 37/2 72/3
screen [3] 8/6 22/23	September [1] 65/6	114/10	statue [1] 114/2	74/21
	SERIES [4] 1/8 3/5	somebody [7] 19/11	statute [13] 29/14	takes [1] 74/23

T	100/22 104/13 105/2 105/2 108/17 108/22 110/17 110/21 111/19 112/20 112/23 than [6] 5/7 11/12 27/16 51/8 55/13 69/18 Thank [11] 14/24 21/12 60/25 75/20 87/14 88/2 99/9 105/7 108/11 115/4 115/10 that [498] that'd [1] 102/4 that's [87] 6/18 13/16 15/17 26/13 27/1 27/3 29/14 30/2 30/18 30/19 31/5 37/14 39/12 41/12 41/12 41/14 43/11 44/13 45/7 45/12 45/13 45/14 45/25 46/1 46/10 49/22 55/7 55/10 55/15 56/7 58/12 59/1 59/6 61/6 62/4 63/15 63/23 64/2 64/12 65/18 65/25 66/3 68/14 68/18 69/3 69/9 69/10 69/15 69/19 70/7 72/6 72/7 72/11 72/12 74/7 78/14 78/25 80/25 81/3 81/7 82/15 82/22 82/25 84/17 85/3 91/21 91/22 92/21 93/1 93/13 93/14 94/25 95/13 95/16 95/24 96/24 100/7 104/11 104/12 104/21 105/13 106/1 107/19 108/2 108/4 114/9 115/8 their [7] 33/1 33/2 33/14 62/10 75/16 83/23 83/24 them [20] 12/2 12/6 38/23 41/5 41/5 41/6 43/3 43/5 49/8 56/5 56/6 58/12 58/15 58/15 69/13 76/24 90/16 103/5 114/3 114/3 then [45] 9/12 10/14 21/17 22/10 27/22 27/23 30/3 31/2 32/1 35/21 36/3 43/4 48/5 49/3 50/3 50/8 50/22 51/6 51/15 51/21 53/22 59/4 62/13 62/18 72/22 73/1 73/8 74/23 76/1 78/13 79/14 83/9 85/4 85/16 86/11 87/9 90/15 94/4 95/2 96/8 103/8 107/2 108/12 112/16 114/23 theoretically [1] 46/20 theory [1] 47/6 there [67] 4/8 6/20 8/5 9/14 9/20 12/1 19/17 21/16 23/18 25/6 25/7 25/8 26/20 26/21 28/17 31/6 33/8 33/10 36/5 42/12 46/19 47/9 49/21 50/7 55/3 55/19 56/8 56/12 56/14 58/25 59/1 59/7 60/7 60/23 61/22	62/21 63/19 64/2 64/9 66/14 66/16 67/8 69/10 69/12 69/24 73/8 76/13 77/18 77/19 78/1 80/16 80/23 81/4 85/10 85/21 86/22 88/17 90/9 94/3 94/8 95/14 96/9 99/16 100/5 100/12 105/17 111/8 there's [23] 36/7 42/12 48/6 50/10 50/16 50/20 52/17 54/21 56/12 59/4 60/23 77/20 81/4 82/19 83/22 104/9 104/9 105/16 105/19 106/20 113/17 113/18 114/12 Therefore [1] 101/20 therein [1] 65/7 thereon [4] 10/12 15/24 67/6 70/24 these [13] 12/14 21/9 21/12 49/15 55/19 59/25 66/12 78/20 84/5 91/7 92/7 93/12 113/25 they [91] 12/17 14/1 21/8 27/17 27/18 27/20 27/21 27/22 30/19 30/20 31/25 32/1 32/15 32/22 32/24 33/6 33/14 35/14 36/2 36/3 36/4 36/18 36/19 37/2 37/5 37/16 40/13 40/18 40/24 42/20 43/1 43/1 43/2 43/3 43/6 44/8 47/3 49/7 50/17 51/15 52/9 53/25 53/25 54/13 56/6 56/7 56/9 56/10 58/10 65/10 66/12 67/5 75/15 75/18 75/18 75/19 80/1 80/2 80/7 80/17 80/18 80/23 84/16 84/17 84/18 84/18 84/20 84/21 85/8 85/8 85/10 86/12 86/16 86/17 90/12 90/24 92/25 93/22 93/22 95/6 95/10 95/20 96/14 96/19 97/13 98/8 98/17 100/17 103/7 105/4 105/21 they'll [1] 79/18 they're [16] 15/14 21/7 21/9 21/11 32/18 44/8 49/22 50/12 56/5 62/3 75/14 84/19 95/11 95/19 95/22 99/6 thing [10] 8/16 28/17 55/25 70/3 86/6 87/6 90/13 93/25 97/8 114/9 things [7] 49/15 52/20 68/12 72/4 73/11 73/19 80/2 think [25] 11/13 21/12 22/24 33/10 41/5 41/9 51/12 51/13 55/7 55/9 55/10 55/18 59/1 61/24 63/5 68/11 101/2 103/5 103/16 111/23 112/4 112/16 113/24 114/10	114/12 thinks [2] 68/12 72/3 third [6] 30/3 30/7 43/22 48/10 48/12 48/20 third-party [1] 48/20 this [195] those [8] 9/1 12/4 13/6 17/6 19/20 56/20 91/11 91/12 though [2] 16/21 51/1 thought [9] 4/10 5/18 19/12 32/6 62/6 82/3 105/1 106/6 114/14 thoughts [1] 112/9 threaten [1] 53/6 three [8] 8/15 26/16 26/18 41/11 59/5 59/8 77/1 85/6 thrilled [1] 49/8 through [18] 5/4 5/19 6/6 6/17 9/16 29/6 46/4 62/15 67/25 84/1 84/5 93/17 93/21 93/22 94/11 113/24 114/3 114/12 THURSDAY [1] 1/13 till [4] 3/8 13/12 46/19 72/22 time [49] 6/21 11/5 11/20 17/1 17/11 17/14 17/15 18/10 29/12 30/14 30/19 31/1 34/24 35/8 37/22 40/19 42/5 42/9 43/5 45/24 46/15 51/16 53/2 55/21 57/1 57/7 57/23 59/12 59/13 59/15 60/8 60/20 67/6 73/4 80/16 80/23 82/19 93/13 103/23 104/25 109/6 112/1 112/22 112/25 113/2 114/3 114/10 114/23 115/6 times [2] 71/5 100/20 timewise [1] 114/20 title [54] 10/4 10/10 15/7 15/22 16/20 19/21 29/7 29/12 32/12 34/21 35/2 35/6 35/14 36/4 36/8 36/9 36/19 43/2 44/17 44/21 44/21 45/4 45/8 46/5 48/6 51/8 51/23 52/9 52/16 52/17 53/1 53/4 53/6 53/7 53/10 53/12 53/23 53/24 54/3 55/20 55/25 56/1 70/20 70/22 71/8 79/11 88/14 99/12 99/13 99/16 99/22 99/25 102/11 111/18 titles [2] 11/18 62/10 today [11] 16/3 16/10 21/9 22/9 98/25 107/23 109/3 112/15 112/18 112/20 113/1 together [5] 44/3 66/12 73/18 75/5 101/21 told [2] 61/7 85/23 tomorrow [9] 112/9	112/12 112/13 112/15 112/23 112/23 114/24 115/3 115/11 too [2] 107/13 107/18 took [9] 5/20 27/5 36/18 40/18 42/21 81/25 105/4 114/22 114/22 top [10] 8/9 12/16 31/15 77/2 85/21 86/25 87/2 87/2 88/8 91/12 total [3] 26/25 30/15 30/23 touch [1] 80/1 tracking [2] 36/6 36/7 TRAN [1] 1/1 transaction [2] 47/15 52/5 transcribed [2] 1/25 115/15 Transcriber [1] 115/19 TRANSCRIPT [1] 1/8 transfer [11] 35/2 41/7 45/8 45/9 74/19 80/12 80/13 99/16 101/20 103/20 104/19 transferred [10] 19/21 34/21 35/14 54/13 99/13 99/22 103/9 103/14 103/17 105/3 transferring [2] 77/25 80/18 treasurer [14] 18/12 18/23 19/3 20/25 24/17 34/25 35/21 36/15 36/17 43/24 75/4 75/14 76/10 102/6 Treasurer's [3] 22/18 23/2 42/15 trial [4] 1/12 3/11 38/17 112/18 tried [2] 21/9 73/19 trouble [2] 87/7 87/8 truly [1] 115/14 trust [41] 17/12 17/14 17/15 18/11 20/1 34/24 35/3 35/4 35/5 35/7 35/15 36/2 36/18 37/16 40/6 40/22 40/25 41/8 52/19 52/22 73/5 74/2 74/2 74/5 74/22 74/22 75/14 75/18 85/8 85/24 88/11 89/1 93/8 99/15 100/9 100/17 100/21 102/19 103/10 104/23 111/21 trustee [9] 18/23 19/2 19/3 20/25 35/3 74/24 101/10 102/7 102/8 trustee's [2] 40/14 74/15 try [5] 21/12 24/23 43/3 53/25 99/4 trying [3] 52/4 72/19 73/8 tune [1] 27/23 turn [2] 7/2 9/18 turned [1] 96/19 turning [1] 6/20
----------	--	---	---	---

T	102/2 102/13 UNITED [14] 1/8 1/18 3/4 4/5 4/13 4/20 5/25 20/3 29/5 31/13 34/22 35/2 35/24 77/6 unless [6] 20/12 44/1 49/22 53/11 55/12 74/1 unmodified [1] 64/18 unpaid [3] 17/12 18/12 67/1 unsecured [3] 10/5 10/9 70/22 until [7] 21/12 44/5 53/7 98/10 104/18 110/9 112/15 up [33] 3/9 9/14 23/6 24/20 28/25 36/10 39/22 43/6 46/25 47/2 48/7 48/15 48/16 50/17 53/8 60/6 61/23 65/25 70/5 73/16 73/24 79/23 82/8 82/12 85/6 85/7 85/21 93/14 94/7 104/18 105/25 106/17 107/3 upon [6] 58/16 67/5 68/12 77/11 84/8 112/20 us [6] 3/10 8/5 45/21 59/23 72/7 85/23 use [2] 49/13 85/25 used [6] 42/20 42/23 43/3 43/10 85/24 86/20 usually [1] 114/16	walk [3] 62/15 79/21 114/3 want [27] 4/3 29/2 37/12 45/25 49/7 49/15 49/25 61/3 61/9 62/14 68/13 82/8 87/10 87/18 92/11 94/6 95/6 99/21 100/3 100/24 112/10 112/11 114/2 114/5 114/5 114/7 115/2 wanted [11] 14/5 14/16 15/19 30/19 31/25 32/1 55/14 69/9 69/11 69/12 93/23 wants [1] 114/9 war [1] 48/13 warranty [13] 9/25 15/6 15/22 29/4 29/13 70/19 71/6 71/7 71/14 71/15 71/16 71/17 71/18 was [185] Washoe [1] 62/11 wasn't [10] 16/25 25/6 28/13 37/2 39/8 73/5 110/9 112/17 112/19 112/19 water [1] 60/23 way [8] 19/5 51/10 72/5 72/11 80/1 81/4 85/15 114/15 we [67] 3/7 3/10 3/11 5/18 8/2 8/12 9/2 11/11 11/12 16/5 17/2 17/4 18/8 22/15 23/13 25/1 27/23 28/16 30/25 38/15 38/16 46/3 46/14 49/16 49/16 51/4 57/9 57/9 57/10 59/18 69/7 69/8 69/16 72/25 72/25 74/14 74/15 76/6 80/13 84/20 85/6 86/2 87/12 87/16 87/17 89/18 89/21 89/25 90/5 91/10 91/10 92/14 93/1 93/2 94/14 100/2 108/7 110/19 111/19 112/4 112/12 112/21 112/23 113/2 114/4 114/23 115/3 we'd [2] 3/14 51/24 we'll [3] 66/24 86/8 115/11 we're [20] 7/2 26/1 44/10 49/23 75/12 79/6 81/17 82/7 83/18 89/22 90/2 91/24 93/3 98/25 99/24 106/6 108/10 113/12 114/4 114/13 we've [4] 3/9 54/6 90/5 106/20 websites [2] 70/2 70/3 weeks [2] 11/25 12/2 well [69] 5/18 7/14 8/2 10/6 10/25 11/6 11/15 15/15 18/19 19/9 19/13 19/24 24/12 26/1 27/20 28/25 29/3 30/7 30/21 31/5 31/24 33/12 35/10	36/2 38/22 40/21 41/9 49/12 49/18 49/25 50/19 51/3 62/3 62/13 63/19 68/9 69/7 69/14 69/18 70/1 70/15 72/2 72/23 76/4 76/6 78/7 78/9 84/12 86/19 89/5 91/14 92/14 93/19 96/7 103/2 103/24 104/4 104/13 105/6 107/3 107/9 107/23 108/7 109/18 112/19 113/2 113/4 113/12 113/16 went [9] 10/21 37/18 57/22 72/20 73/8 82/23 85/5 90/16 97/15 were [56] 5/18 11/12 11/18 11/19 12/4 14/1 19/17 19/17 25/1 25/6 26/5 26/9 26/15 32/16 32/22 35/14 37/2 37/22 40/16 40/17 45/18 50/2 50/19 56/9 57/18 57/18 58/10 58/25 59/8 60/6 60/15 62/21 67/5 69/22 70/2 70/6 72/25 73/1 80/18 82/11 89/21 93/13 97/21 97/24 98/15 100/17 103/22 104/24 105/1 105/11 105/21 107/4 108/17 108/21 110/7 111/19 weren't [3] 49/10 84/21 105/10 what [121] what's [5] 44/16 52/8 74/18 86/14 95/9 whatever [5] 3/10 40/24 47/12 64/20 65/16 whatsoever [1] 99/2 when [46] 11/21 11/23 27/10 28/7 34/6 34/17 35/4 37/18 37/24 38/1 39/24 42/11 42/11 43/1 44/13 47/1 53/9 55/18 56/23 57/9 57/12 58/10 60/5 62/3 62/20 72/16 72/23 72/23 72/25 73/10 73/11 73/23 74/12 74/19 78/7 82/23 88/18 90/12 98/15 101/12 106/18 107/19 109/9 110/12 110/13 111/19 where [20] 24/19 32/18 37/4 40/18 43/2 45/23 53/6 61/22 64/15 64/23 75/18 80/17 89/5 93/2 94/19 95/2 95/24 97/9 98/8 114/13 whereas [2] 23/6 23/7 whether [7] 14/11 39/7 55/3 57/22 68/20 81/5 111/20 which [34] 7/6 7/16 11/7 12/2 13/20 15/3 16/5 21/5 25/9 25/13 29/9 30/4 35/12 35/13	41/23 43/3 43/18 44/20 48/25 65/14 66/4 66/5 66/22 67/4 67/13 70/5 74/6 78/13 85/7 88/22 101/1 107/4 107/4 109/18 while [2] 6/20 7/2 white [1] 73/3 whiz [1] 59/4 who [35] 3/10 4/9 18/21 20/24 23/9 28/9 33/5 35/7 36/16 36/20 37/2 39/9 48/7 56/7 73/18 76/18 78/3 78/4 78/7 78/11 88/10 88/13 88/15 88/15 89/9 90/11 90/16 90/20 94/3 94/4 97/15 101/25 102/11 102/23 103/2 Whoa [2] 5/20 5/20 whoever [5] 36/17 43/4 100/17 102/19 105/4 whole [2] 28/16 107/3 whom [1] 102/5 why [21] 19/7 33/13 36/1 38/16 39/5 39/16 45/21 49/10 59/23 68/12 69/16 71/2 72/5 72/6 72/10 74/6 76/12 87/12 89/5 113/4 115/3 will [23] 3/19 9/18 9/22 12/11 35/5 37/12 40/8 45/5 46/11 53/7 54/10 55/20 56/23 79/23 83/24 86/8 88/4 91/16 96/5 102/1 109/14 113/2 114/2 window [1] 78/15 wiped [2] 73/4 74/3 wish [1] 32/12 withdraw [1] 26/7 within [2] 43/5 67/8 without [22] 9/25 10/10 15/6 15/22 29/4 29/13 46/8 50/11 53/22 56/6 70/19 70/23 71/6 71/6 71/7 71/14 71/15 71/16 71/17 71/18 74/4 94/2 witness [7] 3/13 3/17 69/17 84/3 86/6 111/25 112/3 witnesses [7] 2/3 25/20 69/6 69/10 69/12 112/17 114/11 wolfed [1] 3/10 word [4] 95/13 104/1 104/2 104/4 words [12] 29/2 32/1 37/2 44/25 47/11 47/20 49/6 51/11 52/3 84/24 95/8 95/8 work [3] 50/18 58/4 79/8 workmanship [1] 52/20 works [3] 46/13 51/10 99/25 worried [1] 105/10
U	Uh [4] 6/10 9/3 110/3 113/21 Uh-huh [4] 6/10 9/3 110/3 113/21 ultimate [1] 55/10 ultimately [2] 55/7 68/10 unable [1] 31/3 unclear [2] 114/1 114/1 under [17] 16/4 16/12 21/22 22/1 22/8 54/21 55/3 56/10 56/14 65/6 94/25 103/9 103/10 103/11 104/23 104/23 104/24 underpaying [1] 53/10 understand [22] 16/7 23/19 23/25 24/9 24/17 24/23 25/10 33/13 36/15 36/17 37/12 39/15 41/20 55/16 61/7 68/9 69/14 93/9 105/6 111/12 113/14 114/4 understanding [40] 5/25 10/20 16/3 16/11 22/6 22/7 22/9 36/22 36/24 37/11 37/13 40/20 42/19 44/6 44/16 45/14 45/16 46/4 48/3 52/8 52/16 52/21 55/15 63/9 63/13 63/18 65/18 66/20 68/2 68/8 68/10 68/22 75/11 88/10 88/12 88/13 97/20 100/20 102/16 103/7 understands [3] 41/5 41/6 55/23 understood [4] 13/23 32/15 99/21 110/1 undertake [1] 55/19 unfair [1] 113/11 uniform [1] 73/17 unintelligible [7] 7/9 20/7 85/9 86/12 97/14	wait [6] 5/20 11/25 13/12 24/12 26/1 41/16 waited [1] 53/22 waiting [3] 7/2 97/22 106/7	wait [3] 62/15 79/21 114/3 want [27] 4/3 29/2 37/12 45/25 49/7 49/15 49/25 61/3 61/9 62/14 68/13 82/8 87/10 87/18 92/11 94/6 95/6 99/21 100/3 100/24 112/10 112/11 114/2 114/5 114/5 114/7 115/2 wanted [11] 14/5 14/16 15/19 30/19 31/25 32/1 55/14 69/9 69/11 69/12 93/23 wants [1] 114/9 war [1] 48/13 warranty [13] 9/25 15/6 15/22 29/4 29/13 70/19 71/6 71/7 71/14 71/15 71/16 71/17 71/18 was [185] Washoe [1] 62/11 wasn't [10] 16/25 25/6 28/13 37/2 39/8 73/5 110/9 112/17 112/19 112/19 water [1] 60/23 way [8] 19/5 51/10 72/5 72/11 80/1 81/4 85/15 114/15 we [67] 3/7 3/10 3/11 5/18 8/2 8/12 9/2 11/11 11/12 16/5 17/2 17/4 18/8 22/15 23/13 25/1 27/23 28/16 30/25 38/15 38/16 46/3 46/14 49/16 49/16 51/4 57/9 57/9 57/10 59/18 69/7 69/8 69/16 72/25 72/25 74/14 74/15 76/6 80/13 84/20 85/6 86/2 87/12 87/16 87/17 89/18 89/21 89/25 90/5 91/10 91/10 92/14 93/1 93/2 94/14 100/2 108/7 110/19 111/19 112/4 112/12 112/21 112/23 113/2 114/4 114/23 115/3 we'd [2] 3/14 51/24 we'll [3] 66/24 86/8 115/11 we're [20] 7/2 26/1 44/10 49/23 75/12 79/6 81/17 82/7 83/18 89/22 90/2 91/24 93/3 98/25 99/24 106/6 108/10 113/12 114/4 114/13 we've [4] 3/9 54/6 90/5 106/20 websites [2] 70/2 70/3 weeks [2] 11/25 12/2 well [69] 5/18 7/14 8/2 10/6 10/25 11/6 11/15 15/15 18/19 19/9 19/13 19/24 24/12 26/1 27/20 28/25 29/3 30/7 30/21 31/5 31/24 33/12 35/10	41/23 43/3 43/18 44/20 48/25 65/14 66/4 66/5 66/22 67/4 67/13 70/5 74/6 78/13 85/7 88/22 101/1 107/4 107/4 109/18 while [2] 6/20 7/2 white [1] 73/3 whiz [1] 59/4 who [35] 3/10 4/9 18/21 20/24 23/9 28/9 33/5 35/7 36/16 36/20 37/2 39/9 48/7 56/7 73/18 76/18 78/3 78/4 78/7 78/11 88/10 88/13 88/15 88/15 89/9 90/11 90/16 90/20 94/3 94/4 97/15 101/25 102/11 102/23 103/2 Whoa [2] 5/20 5/20 whoever [5] 36/17 43/4 100/17 102/19 105/4 whole [2] 28/16 107/3 whom [1] 102/5 why [21] 19/7 33/13 36/1 38/16 39/5 39/16 45/21 49/10 59/23 68/12 69/16 71/2 72/5 72/6 72/10 74/6 76/12 87/12 89/5 113/4 115/3 will [23] 3/19 9/18 9/22 12/11 35/5 37/12 40/8 45/5 46/11 53/7 54/10 55/20 56/23 79/23 83/24 86/8 88/4 91/16 96/5 102/1 109/14 113/2 114/2 window [1] 78/15 wiped [2] 73/4 74/3 wish [1] 32/12 withdraw [1] 26/7 within [2] 43/5 67/8 without [22] 9/25 10/10 15/6 15/22 29/4 29/13 46/8 50/11 53/22 56/6 70/19 70/23 71/6 71/6 71/7 71/14 71/15 71/16 71/17 71/18 74/4 94/2 witness [7] 3/13 3/17 69/17 84/3 86/6 111/25 112/3 witnesses [7] 2/3 25/20 69/6 69/10 69/12 112/17 114/11 wolfed [1] 3/10 word [4] 95/13 104/1 104/2 104/4 words [12] 29/2 32/1 37/2 44/25 47/11 47/20 49/6 51/11 52/3 84/24 95/8 95/8 work [3] 50/18 58/4 79/8 workmanship [1] 52/20 works [3] 46/13 51/10 99/25 worried [1] 105/10

<p>W</p> <p>worst [2] 51/5 51/22</p> <p>worth [1] 30/17</p> <p>would [113] 5/14 7/2 7/11 8/15 10/17 11/6 11/15 14/1 14/8 19/20 19/24 20/20 22/9 26/12 26/17 31/3 33/13 33/21 36/5 36/9 36/12 36/20 36/25 39/8 39/21 40/18 40/21 40/22 44/20 45/22 45/23 46/20 46/23 46/24 46/24 47/1 47/2 47/3 47/11 47/11 47/15 47/16 47/17 47/22 47/23 47/24 48/2 48/19 48/22 49/3 49/5 49/8 49/8 49/9 50/2 50/3 50/4 50/18 51/3 51/4 51/21 51/22 51/25 52/22 52/24 52/25 53/1 53/21 58/4 58/6 58/6 58/6 58/7 58/10 63/21 66/19 67/10 69/4 70/6 70/7 70/9 70/10 70/19 73/1 74/3 75/21 75/22 75/25 76/1 76/3 76/12 78/1 80/5 80/17 81/5 81/8 97/13 97/15 102/13 103/8 103/13 104/15 104/18 104/19 105/3 111/11 111/14 111/15 111/15 112/8 112/10 112/23 112/25</p> <p>would've [6] 46/14 47/8 62/7 75/13 76/24 94/5</p> <p>wouldn't [9] 25/22 26/14 26/19 32/5 36/4 51/20 103/12 103/13 107/7</p> <p>write [8] 79/3 79/24 79/25 80/1 80/2 80/4 88/25 91/8</p> <p>written [2] 81/5 91/7</p> <p>wrong [2] 22/22 82/11</p> <p>wrote [7] 78/14 79/3 79/4 90/13 91/12 94/3 94/5</p>	<p>14/6 20/16 20/22 25/8 32/25 34/1 34/1 34/19 35/20 36/11 37/17 49/23 50/24 54/8 55/10 58/6 60/8 60/14 62/14 63/25 64/4 64/12 65/18 70/4 73/24 76/24 78/6 81/18 81/20 82/4 88/21 88/24 90/3 90/4 90/21 91/23 92/2 92/21 96/1 96/17 97/4 98/6 98/7 98/16 100/7 106/14 108/9 108/20 115/10 115/10</p> <p>yesterday [1] 61/8</p> <p>yet [3] 42/10 96/7 105/14</p> <p>you [613]</p> <p>you'd [6] 50/8 50/22 53/21 60/12 63/21 70/10</p> <p>you'll [11] 7/15 7/15 9/12 15/2 18/19 28/14 30/3 43/15 91/5 93/6 97/17</p> <p>you're [28] 6/11 6/20 16/7 19/9 23/19 23/21 31/18 40/3 46/13 50/25 51/18 53/9 53/10 54/17 54/17 59/18 62/1 66/16 71/11 92/2 92/10 94/15 102/22 103/16 103/19 107/9 109/2 114/23</p> <p>you've [17] 4/25 5/3 5/7 5/14 31/11 38/16 38/19 38/19 50/8 57/1 60/15 61/19 68/16 74/9 80/1 87/18 105/14</p> <p>your [133]</p> <p>yourself [3] 72/21 73/12 79/15</p>			
<p>X</p> <p>XXII [1] 1/6</p>				
<p>Y</p> <p>yeah [11] 18/18 41/20 49/20 56/3 60/19 65/2 75/17 76/5 88/17 92/17 92/19</p> <p>year [12] 40/7 40/10 40/12 40/15 43/20 44/20 44/22 44/23 46/20 53/6 53/7 54/1</p> <p>years [13] 34/17 42/23 43/25 44/9 44/10 45/9 46/12 53/11 53/14 53/19 53/22 56/17 56/21</p> <p>Yep [1] 61/12</p> <p>yes [53] 3/12 3/24 13/9</p>				