

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

SUPERPUMPER, INC., an Arizona corporation; EDWARD BAYUK, individually and as Trustee of the EDWARD BAYUK LIVING TRUST; SALVATORE MORABITO, an individual; and SNOWSHOE PETROLEUM, INC., a New York corporation,

Appellants,

vs.

WILLIAM A. LEONARD, Trustee for the Bankruptcy Estate of Paul Anthony Morabito,

Respondent.

Case No. 79355

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Appeal from the Second Judicial  
District Court, the Honorable Connie  
J. Steinheimer Presiding

**APPELLANTS' APPENDIX, VOLUME 36**  
**(Nos. 6046–6286)**

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<b><u>DOCUMENT DESCRIPTION</u></b>		<b><u>LOCATION</u></b>
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Recommendation for Order RE: <i>Defendants' Motion to Quash Subpoena, or, in the Alternative, for a Protective Order Precluding Trustee from Seeking Discovery from Hodgson Russ LLP</i> , filed on July 18, 2017 (filed 08/17/2017)		Vol. 11, 1743–1753
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Statement of Undisputed Facts in Support of Motion for Partial Summary Judgment (filed 08/17/2017)		Vol. 11, 1797–1825

<b><u>DOCUMENT DESCRIPTION</u></b>		<b><u>LOCATION</u></b>
<b>Exhibits to Statement of Undisputed Facts in Support of Motion for Partial Summary Judgment</b>		
<b>Exhibit</b>	<b>Document Description</b>	
1	Declaration of Timothy P. Herbst in Support of Separate Statement of Undisputed Facts in Support of Motion for Partial Summary Judgment	Vol. 12, 1826–1829
2	Findings of Fact, Conclusions of Law, and Judgment in <i>Consolidated Nevada Corp., et al v. JH. et al.</i> ; Case No. CV07-02764 (filed 10/12/2010)	Vol. 12, 1830–1846
3	Judgment in <i>Consolidated Nevada Corp., et al v. JH. et al.</i> ; Case No. CV07-02764 (filed 08/23/2011)	Vol. 12, 1847–1849
4	Excerpted Transcript of July 12, 2017 Deposition of Garry M. Graber	Vol. 12, 1850–1852
5	September 15, 2015 email from Yalamanchili RE: Follow Up Thoughts	Vol. 12, 1853–1854
6	September 23, 2010 email between Garry M. Graber and P. Morabito	Vol. 12, 1855–1857
7	September 20, 2010 email between Yalamanchili and Eileen Crotty RE: Morabito Wire	Vol. 12, 1858–1861
8	September 20, 2010 email between Yalamanchili and Garry M. Graber RE: All Mortgage Balances as of 9/20/2010	Vol. 12, 1862–1863
9	September 20, 2010 email from Garry M. Graber RE: Call	Vol. 12, 1864–1867

<b><u>DOCUMENT DESCRIPTION</u></b>		<b><u>LOCATION</u></b>
10	September 20, 2010 email from P. Morabito to Dennis and Yalamanchili RE: Attorney client privileged communication	Vol. 12, 1868–1870
11	September 20, 2010 email string RE: Attorney client privileged communication	Vol. 12, 1871–1875
12	Appraisal of Real Property: 370 Los Olivos, Laguna Beach, CA, as of Sept. 24, 2010	Vol. 12, 1876–1903
13	Excerpted Transcript of March 21, 2016 Deposition of P. Morabito	Vol. 12, 1904–1919
14	P. Morabito Redacted Investment and Bank Report from Sept. 1 to Sept. 30, 2010	Vol. 12, 1920–1922
15	Excerpted Transcript of June 25, 2015 Deposition of 341 Meeting of Creditors	Vol. 12, 1923–1927
16	Excerpted Transcript of December 5, 2015 Deposition of P. Morabito	Vol. 12, 1928–1952
17	Purchase and Sale Agreement between Arcadia Trust and Bayuk Trust entered effective as of Sept. 27, 2010	Vol. 12, 1953–1961
18	First Amendment to Purchase and Sale Agreement between Arcadia Trust and Bayuk Trust entered effective as of Sept. 28, 2010	Vol. 12, 1962–1964
19	Appraisal Report providing market value estimate of real property located at 8355 Panorama Drive, Reno, NV as of Dec. 7, 2011	Vol. 12, 1965–1995

<b><u>DOCUMENT DESCRIPTION</u></b>		<b><u>LOCATION</u></b>
20	An Appraisal of a vacant .977± Acre Parcel of Industrial Land Located at 49 Clayton Place West of the Pyramid Highway (State Route 445) Sparks, Washoe County, Nevada and a single-family residence located at 8355 Panorama Drive Reno, Washoe County, Nevada 89511 as of October 1, 2010 a retrospective date	Vol. 13, 1996–2073
21	APN: 040-620-09 Declaration of Value (dated 12/31/2012)	Vol. 14, 2074–2075
22	Sellers Closing Statement for real property located at 8355 Panorama Drive, Reno, NV 89511	Vol. 14, 2076–2077
23	Bill of Sale for real property located at 8355 Panorama Drive, Reno, NV 89511	Vol. 14, 2078–2082
24	Operating Agreement of Baruk Properties LLC	Vol. 14, 2083–2093
25	Edward Bayuk, as trustee of the Edward William Bayuk Living Trust’s Answer to Plaintiff’s First Set of Interrogatories (dated 09/14/2014)	Vol. 14, 2094–2104
26	Summary Appraisal Report of real property located at 1461 Glenneyre Street, Laguna Beach, CA 92651, as of Sept. 25, 2010	Vol. 14, 2105–2155
27	Appraisal of Real Property as of Sept. 23, 2010: 1254 Mary Fleming Circle, Palm Springs, CA 92262	Vol. 15, 2156–2185
28	Appraisal of Real Property as of Sept. 23, 2010: 1254 Mary Fleming Circle, Palm Springs, CA 92262	Vol. 15, 2186–2216

<b><u>DOCUMENT DESCRIPTION</u></b>		<b><u>LOCATION</u></b>
29	Membership Interest Transfer Agreement between Arcadia Trust and Bayuk Trust entered effective as of Oct. 1, 2010	Vol. 15, 2217–2224
30	PROMISSORY NOTE [Edward William Bayuk Living Trust (“Borrower”) promises to pay Arcadia Living Trust (“Lender”) the principal sum of \$1,617,050.00, plus applicable interest] (dated 10/01/2010)	Vol. 15, 2225–2228
31	Certificate of Merger dated Oct. 4, 2010	Vol. 15, 2229–2230
32	Articles of Merger Document No. 20100746864-78 (recorded date 10/04/2010)	Vol. 15, 2231–2241
33	Excerpted Transcript of September 28, 2015 Deposition of Edward William Bayuk	Vol. 15, 2242–2256
34	Grant Deed for real property 1254 Mary Fleming Circle, Palm Springs, CA 92262; APN: 507-520-015 (recorded 11/04/2010)	Vol. 15, 2257–2258
35	General Conveyance made as of Oct. 31, 2010 between Woodland Heights Limited (“Vendor”) and Arcadia Living Trust (“Purchaser”)	Vol. 15, 2259–2265
36	Appraisal of Real Property as of Sept. 24, 2010: 371 El Camino Del Mar, Laguna Beach, CA 92651	Vol. 15, 2266–2292
37	Excerpted Transcript of December 6, 2016 Deposition of P. Morabito	Vol. 15, 2293–2295
38	Page intentionally left blank	Vol. 15, 2296–2297
39	Ledger of Edward Bayuk to P. Morabito	Vol. 15, 2298–2300

<b><u>DOCUMENT DESCRIPTION</u></b>		<b><u>LOCATION</u></b>
40	Loan Calculator: Payment Amount (Standard Loan Amortization)	Vol. 15, 2301–2304
41	Payment Schedule of Edward Bayuk Note in Favor of P. Morabito	Vol. 15, 2305–2308
42	November 10, 2011 email from Vacco RE: Baruk Properties, LLC/P. Morabito/Bank of America, N.A.	Vol. 15, 2309–2312
43	May 23, 2012 email from Vacco to Steve Peek RE: Formal Settlement Proposal to resolve the Morabito matter	Vol. 15, 2313–2319
44	Excerpted Transcript of March 12, 2015 Deposition of 341 Meeting of Creditors	Vol. 15, 2320–2326
45	Shareholder Interest Purchase Agreement between P. Morabito and Snowshoe Petroleum, Inc. (dated 09/30/2010)	Vol. 15, 2327–2332
46	P. Morabito Statement of Assets & Liabilities as of May 5, 2009	Vol. 15, 2333–2334
47	March 10, 2010 email from Naz Afshar, CPA to Darren Takemoto, CPA RE: Current Personal Financial Statement	Vol. 15, 2335–2337
48	March 10, 2010 email from P. Morabito to Jon RE: ExxonMobil CIM for Florida and associated maps	Vol. 15, 2338–2339
49	March 20, 2010 email from P. Morabito to Vacco RE: proceed with placing binding bid on June 22nd with ExxonMobil	Vol. 15, 2340–2341



<b><u>DOCUMENT DESCRIPTION</u></b>		<b><u>LOCATION</u></b>
50	P. Morabito Statement of Assets & Liabilities as of May 30, 2010	Vol. 15, 2342–2343
51	June 28, 2010 email from P. Morabito to George R. Garner RE: ExxonMobil Chicago Market Business Plan Review	Vol. 15, 2344–2345
52	Plan of Merger of Consolidated Western Corp. with and into Superpumper, Inc. (dated 09/28/2010)	Vol. 15, 2346–2364
53	Page intentionally left blank	Vol. 15, 2365–2366
54	BBVA Compass Proposed Request on behalf of Superpumper, Inc. (dated 12/15/2010)	Vol. 15, 2367–2397
55	Business Valuation Agreement between Matrix Capital Markets Group, Inc. and Superpumper, Inc. (dated 09/30/2010)	Vol. 15, 2398–2434
56	Expert report of James L. McGovern, CPA/CFF, CVA (dated 01/25/2016)	Vol. 16, 2435–2509
57	June 18, 2014 email from Sam Morabito to Michael Vanek RE: SPI Analysis	Vol. 17, 2510–2511
58	Declaration of P. Morabito in Support of Opposition to Motion of JH, Inc., Jerry Herbst, and Berry-Hinckley Industries for Order Prohibiting Debtor from Using, Acquiring, or Disposing of or Transferring Assets Pursuant to 11 U.S.C. §§ 105 and 303(f) Pending Appointment of Trustee; Case No. BK-N-13-51237 (filed 07/01/2013)	Vol. 17, 2512–2516

<b><u>DOCUMENT DESCRIPTION</u></b>		<b><u>LOCATION</u></b>
59	State of California Secretary of State Limited Liability Company – Snowshoe Properties, LLC; File No. 201027310002 (filed 09/29/2010)	Vol. 17, 2517–2518
60	PROMISSORY NOTE [Snowshoe Petroleum (“Maker”) promises to pay P. Morabito (“Holder”) the principal sum of \$1,462,213.00] (dated 11/01/2010)	Vol. 17, 2519–2529
61	PROMISSORY NOTE [Superpumper, Inc. (“Maker”) promises to pay Compass Bank (the “Bank” and/or “Holder”) the principal sum of \$3,000,000.00] (dated 08/13/2010)	Vol. 17, 2530–2538
62	Excerpted Transcript of October 21, 2015 Deposition of Salvatore R. Morabito	Vol. 17, 2539–2541
63	Page intentionally left blank	Vol. 17, 2542–2543
64	Edward Bayuk’s Answers to Plaintiff’s First Set of Interrogatories (dated 09/14/2014)	Vol. 17, 2544–2557
65	October 12, 2012 email from Stan Bernstein to P. Morabito RE: 2011 return	Vol. 17, 2558–2559
66	Page intentionally left blank	Vol. 17, 2560–2561
67	Excerpted Transcript of October 20, 2015 Deposition of Dennis C. Vacco	Vol. 17, 2562–2564
68	Snowshoe Petroleum, Inc.’s letter of intent to set out the framework of the contemplated transaction between: Snowshoe Petroleum, Inc.; David Dwelle, LP; Eclipse Investments, LP; Speedy Investments; and TAD Limited Partnership (dated 04/21/2011)	Vol. 17, 2565–2572

<b><u>DOCUMENT DESCRIPTION</u></b>		<b><u>LOCATION</u></b>
69	Excerpted Transcript of July 10, 2017 Deposition of Dennis C. Vacco	Vol. 17, 2573–2579
70	April 15, 2011 email from P. Morabito to Christian Lovelace; Gregory Ivancic; Vacco RE: \$65 million loan offer from Cerberus	Vol. 17, 2580–2582
71	Email from Vacco to P. Morabito RE: \$2 million second mortgage on the Reno house	Vol. 17, 2583–2584
72	Email from Vacco to P. Morabito RE: Tim Haves	Vol. 17, 2585–2586
73	Settlement Agreement, Loan Agreement Modification & Release dated as of Sept. 7, 2012, entered into by Bank of America and P. Morabito	Vol. 17, 2587–2595
74	Page intentionally left blank	Vol. 17, 2596–2597
75	February 10, 2012 email from Vacco to Paul Wells and Timothy Haves RE: 1461 Glenneyre Street, Laguna Beach – Sale	Vol. 17, 2598–2602
76	May 8, 2012 email from P. Morabito to Vacco RE: Proceed with the corporate set-up with Ray, Edward and P. Morabito	Vol. 17, 2603–2604
77	September 4, 2012 email from Vacco to Edward Bayuk RE: Second Deed of Trust documents	Vol. 17, 2605–2606
78	September 18, 2012 email from P. Morabito to Edward Bayuk RE: Deed of Trust	Vol. 17, 2607–2611
79	October 3, 2012 email from Vacco to P. Morabito RE: Term Sheet on both real estate deal and option	Vol. 17, 2612–2614

<b><u>DOCUMENT DESCRIPTION</u></b>		<b><u>LOCATION</u></b>
80	March 14, 2013 email from P. Morabito to Vacco RE: BHI Hinckley	Vol. 17, 2615–2616
81	Page intentionally left blank	Vol. 17, 2617–2618
82	November 11, 2011 email from Vacco to P. Morabito RE: Trevor’s commitment to sign	Vol. 17, 2619–2620
83	November 28, 2011 email string RE: Wiring \$560,000 to Lippes Mathias	Vol. 17, 2621–2623
84	Page intentionally left blank	Vol. 17, 2624–2625
85	Page intentionally left blank	Vol. 17, 2626–2627
86	Order for Relief Under Chapter 7; Case No. BK-N-13-51236 (filed 12/22/2014)	Vol. 17, 2628–2634
87	Report of Undisputed Election (11 U.S.C § 702); Case No. BK-N-13-51237 (filed 01/23/2015)	Vol. 17, 2635–2637
88	Amended Stipulation and Order to Substitute a Party to NRCP 17(a) (filed 06/11/2015)	Vol. 17, 2638–2642
89	Membership Interest Purchase Agreement, entered into as of Oct. 6, 2010 between P. Morabito and Edward Bayuk	Vol. 17, 2643–2648
90	Complaint; Case No. BK-N-13-51237 (filed 10/15/2015)	Vol. 17, 2649–2686
91	Fifth Amendment and Restatement of the Trust Agreement for the Arcadia Living Trust (dated 09/30/2010)	Vol. 17, 2687–2726

<b><u>DOCUMENT DESCRIPTION</u></b>		<b><u>LOCATION</u></b>
Objection to Recommendation for Order filed August 17, 2017 (filed 08/28/2017)		Vol. 18, 2727–2734
<b>Exhibit to Objection to Recommendation for Order</b>		
<b>Exhibit</b>	<b>Document Description</b>	
1	Plaintiff’s counsel’s Jan. 24, 2017, email memorializing the discovery dispute agreement	Vol. 18, 2735–2736
Opposition to Objection to Recommendation for Order filed August 17, 2017 (filed 09/05/2017)		Vol. 18, 2737–2748
<b>Exhibit to Opposition to Objection to Recommendation for Order</b>		
<b>Exhibit</b>	<b>Document Description</b>	
A	Declaration of Teresa M. Pilatowicz, Esq., in Support of Opposition to Objection to Recommendation for Order (filed 09/05/2017)	Vol. 18, 2749–2752
Reply to Opposition to Objection to Recommendation for Order filed August 17, 2017 (dated 09/15/2017)		Vol. 18, 2753–2758
Defendants’ Opposition to Plaintiff’s Motion for Partial Summary Judgment (filed 09/22/2017)		Vol. 18, 2759–2774
Defendants’ Separate Statement of Disputed Facts in Support of Opposition to Plaintiff’s Motion for Partial Summary Judgment (filed 09/22/2017)		Vol. 18, 2775–2790

<b><u>DOCUMENT DESCRIPTION</u></b>		<b><u>LOCATION</u></b>
<b>Exhibits to Defendants' Separate Statement of Disputed Facts in Support of Opposition to Plaintiff's Motion for Partial Summary Judgment</b>		
<b>Exhibit</b>	<b>Document Description</b>	
1	Judgment in <i>Consolidated Nevada Corp., et al v. JH. et al.</i> ; Case No. CV07-02764 (filed 08/23/2011)	Vol. 18, 2791–2793
2	Excerpted Transcript of October 20, 2015 Deposition of Dennis C. Vacco	Vol. 18, 2794–2810
3	Order Denying Motion to Dismiss Involuntary Chapter 7 Petition and Suspending Proceedings Pursuant to 11 U.S.C §305(a)(1); Case No. BK-N-13-51237 (filed 12/17/2013)	Vol. 18, 2811–2814
4	Excerpted Transcript of March 21, 2016 Deposition of P. Morabito	Vol. 18, 2815–2826
5	Excerpted Transcript of September 28, 2015 Deposition of Edward William Bayuk	Vol. 18, 2827–2857
6	Appraisal	Vol. 18, 2858–2859
7	Budget Summary as of Jan. 7, 2016	Vol. 18, 2860–2862
8	Excerpted Transcript of March 24, 2016 Deposition of Dennis Banks	Vol. 18, 2863–2871
9	Excerpted Transcript of March 22, 2016 Deposition of Michael Sewitz	Vol. 18, 2872–2879
10	Excerpted Transcript of April 27, 2011 Deposition of Darryl Noble	Vol. 18, 2880–2883

<b><u>DOCUMENT DESCRIPTION</u></b>		<b><u>LOCATION</u></b>
11	Copies of cancelled checks from Edward Bayuk made payable to P. Morabito	Vol. 18, 2884–2892
12	CBRE Appraisal of 14th Street Card Lock Facility (dated 02/26/2010)	Vol. 18, 2893–2906
13	Bank of America wire transfer from P. Morabito to Salvatore Morabito in the amount of \$146,127.00; and a wire transfer from P. Morabito to Lippes for \$25.00 (date 10/01/2010)	Vol. 18, 2907–2908
14	Excerpted Transcript of October 21, 2015 Deposition of Christian Mark Lovelace	Vol. 18, 2909–2918
15	June 18, 2014 email from Sam Morabito to Michael Vanek RE: Analysis of the Superpumper transaction in 2010	Vol. 18, 2919–2920
16	Excerpted Transcript of October 21, 2015 Deposition of Salvatore R. Morabito	Vol. 18, 2921–2929
17	PROMISSORY NOTE [Snowshoe Petroleum (“Maker”) promises to pay P. Morabito (“Holder”) the principal sum of \$1,462,213.00] (dated 11/01/2010)	Vol. 18, 2930–2932
18	TERM NOTE [P. Morabito (“Borrower”) promises to pay Consolidated Western Corp. (“Lender”) the principal sum of \$939,000.00, plus interest] (dated 09/01/2010)	Vol. 18, 2933–2934
19	SUCCESSOR PROMISSORY NOTE [Snowshoe Petroleum (“Maker”) promises to pay P. Morabito (“Holder”) the principal sum of \$492,937.30, plus interest] (dated 02/01/2011)	Vol. 18, 2935–2937

<b><u>DOCUMENT DESCRIPTION</u></b>		<b><u>LOCATION</u></b>
20	Edward Bayuk's wire transfer to Lippes in the amount of \$517,547.20 (dated 09/29/2010)	Vol. 18, 2938–2940
21	Salvatore Morabito Bank of Montreal September 2011 Wire Transfer	Vol. 18, 2941–2942
22	Declaration of Salvatore Morabito (dated 09/21/2017)	Vol. 18, 2943–2944
23	Edward Bayuk bank wire transfer to Superpumper, Inc., in the amount of \$659,000.00 (dated 09/30/2010)	Vol. 18, 2945–2947
24	Edward Bayuk checking account statements between 2010 and 2011 funding the company with transfers totaling \$500,000	Vol. 18, 2948–2953
25	Salvatore Morabito's wire transfer statement between 2010 and 2011, funding the company with \$750,000	Vol. 18, 2954–2957
26	Payment Schedule of Edward Bayuk Note in Favor of P. Morabito	Vol. 18, 2958–2961
27	September 15, 2010 email from Vacco to Yalamanchili and P. Morabito RE: Follow Up Thoughts	Vol. 18, 2962–2964
Reply in Support of Motion for Partial Summary Judgment (dated 10/10/2017)		Vol. 19, 2965–2973
Order Regarding Discovery Commissioner's Recommendation for Order dated August 17, 2017 (filed 12/07/2017)		Vol. 19, 2974–2981



<b><u>DOCUMENT DESCRIPTION</u></b>		<b><u>LOCATION</u></b>
Order Denying Motion for Partial Summary Judgment (filed 12/11/2017)		Vol. 19, 2982–2997
Defendants’ Motions in Limine (filed 09/12/2018)		Vol. 19, 2998–3006
<b>Exhibits to Defendants’ Motions in Limine</b>		
<b>Exhibit</b>	<b>Document Description</b>	
1	Plaintiff’s Second Supplement to Amended Disclosures Pursuant to NRCP 16.1(A)(1) (dated 04/28/2016)	Vol. 19, 3007–3016
2	Excerpted Transcript of March 25, 2016 Deposition of William A. Leonard	Vol. 19, 3017–3023
3	Plaintiff, Jerry Herbst’s Responses to Defendant Snowshoe Petroleum, Inc.’s Set of Interrogatories (dated 02/11/2015); and Plaintiff, Jerry Herbst’s Responses to Defendant, Salvatore Morabito’s Set of Interrogatories (dated 02/12/2015)	Vol. 19, 3024–3044
Motion in Limine to Exclude Testimony of Jan Friederich (filed 09/20/2018)		Vol. 19, 3045–3056
<b>Exhibits to Motion in Limine to Exclude Testimony of Jan Friederich</b>		
<b>Exhibit</b>	<b>Document Description</b>	
1	Defendants’ Rebuttal Expert Witness Disclosure (dated 02/29/2016)	Vol. 19, 3057–3071
2	Condensed Transcript of March 29, 2016 Deposition of Jan Friederich	Vol. 19, 3072–3086

<b><u>DOCUMENT DESCRIPTION</u></b>		<b><u>LOCATION</u></b>
Opposition to Defendants' Motions in Limine (filed 09/28/2018)		Vol. 19, 3087–3102
<b>Exhibits to Opposition to Defendants' Motions in Limine</b>		
<b>Exhibit</b>	<b>Document Description</b>	
A	Declaration of Teresa M. Pilatowicz, Esq. in Support of Opposition to Defendants' Motions in Limine (filed 09/28/2018)	Vol. 19, 3103–3107
A-1	Plaintiff's February 19, 2016, Amended Disclosures Pursuant to NRCP 16.1(A)(1)	Vol. 19, 3108–3115
A-2	Plaintiff's January 26, 2016, Expert Witnesses Disclosures (without exhibits)	Vol. 19, 3116–3122
A-3	Defendants' January 26, 2016, and February 29, 2016, Expert Witness Disclosures (without exhibits)	Vol. 19, 3123–3131
A-4	Plaintiff's August 17, 2017, Motion for Partial Summary Judgment (without exhibits)	Vol. 19, 3132–3175
A-5	Plaintiff's August 17, 2017, Statement of Undisputed Facts in Support of his Motion for Partial Summary Judgment (without exhibits)	Vol. 19, 3176–3205
Defendants' Reply in Support of Motions in Limine (filed 10/08/2018)		Vol. 20, 3206–3217
<b>Exhibit to Defendants' Reply in Support of Motions in Limine</b>		
<b>Exhibit</b>	<b>Document Description</b>	

<b><u>DOCUMENT DESCRIPTION</u></b>		<b><u>LOCATION</u></b>
1	Chapter 7 Trustee, William A. Leonard's Responses to Defendants' First Set of Interrogatories (dated 05/28/2015)	Vol. 20, 3218–3236
Defendants' Opposition to Plaintiff's Motions in Limine to Exclude the Testimony of Jan Friederich (filed 10/08/2018)		Vol. 20, 3237–3250
<b>Exhibits to Defendants' Opposition to Plaintiff's Motions in Limine to Exclude the Testimony of Jan Friederich</b>		
<b>Exhibit</b>	<b>Document Description</b>	
1	Excerpt of Matrix Report (dated 10/13/2010)	Vol. 20, 3251–3255
2	Defendants' Rebuttal Expert Witness Disclosure (dated 02/29/2016)	Vol. 20, 3256–3270
3	November 9, 2009 email from P. Morabito to Daniel Fletcher; Jim Benbrook; Don Whitehead; Sam Morabito, etc. RE: Jan Friederich entered consulting agreement with Superpumper	Vol. 20, 3271–3272
4	Excerpted Transcript of March 29, 2016 Deposition of Jan Friederich	Vol. 20, 3273–3296
Defendants' Objections to Plaintiff's Pretrial Disclosures (filed 10/12/2018)		Vol. 20, 3297–3299
Objections to Defendants' Pretrial Disclosures (filed 10/12/2018)		Vol. 20, 3300–3303
Reply to Defendants' Opposition to Plaintiff's Motion in Limine to Exclude the Testimony of Jan Friederich (filed 10/12/2018)		Vol. 20, 3304–3311

<b><u>DOCUMENT DESCRIPTION</u></b>		<b><u>LOCATION</u></b>
Minutes of September 11, 2018, Pre-trial Conference (filed 10/19/2018)		Vol. 20, 3312
Stipulated Facts (filed 10/29/2018)		Vol. 20, 3313–3321
Defendants’ Points and Authorities RE: Objection to Admission of Documents in Conjunction with the Depositions of P. Morabito and Dennis Vacco (filed 10/30/2018)		Vol. 20, 3322–3325
Plaintiff’s Points and Authorities Regarding Authenticity and Hearsay Issues (filed 10/31/2018)		Vol. 20, 3326–3334
Clerk’s Trial Exhibit List (filed 02/28/2019)		Vol. 21, 3335–3413
<b>Exhibits to Clerk’s Trial Exhibit List</b>		
<b>Exhibit</b>	<b>Document Description</b>	
1	Certified copy of the Transcript of September 13, 2010 Judge’s Ruling; Case No. CV07-02764	Vol. 21, 3414–3438
2	Findings of Fact, Conclusions of Law, and Judgment; Case No. CV07-02764 (filed 10/12/2010)	Vol. 21, 3439–3454
3	Judgment; Case No. CV07-0767 (filed 08/23/2011)	Vol. 21, 3455–3456
4	Confession of Judgment; Case No. CV07-02764 (filed 06/18/2013)	Vol. 21, 3457–3481
5	November 30, 2011 Settlement Agreement and Mutual Release	Vol. 22, 3482–3613
6	March 1, 2013 Forbearance Agreement	Vol. 22, 3614–3622

<b><u>DOCUMENT DESCRIPTION</u></b>		<b><u>LOCATION</u></b>
8	Order Denying Motion to Dismiss Involuntary Chapter 7 Petition and Suspending Proceedings, Case 13-51237. ECF No. 94, (filed 12/17/2013)	Vol. 22, 3623–3625
19	Report of Undisputed Election– Appointment of Trustee, Case No. 13-51237, ECF No. 220	Vol. 22, 3626–3627
20	Stipulation and Order to Substitute a Party Pursuant to NRCF 17(a), Case No. CV13-02663, May 15, 2015	Vol. 22, 3628–3632
21	Non-Dischargeable Judgment Regarding Plaintiff’s First and Second Causes of Action, Case No. 15-05019-GWZ, ECF No. 123, April 30, 2018	Vol. 22, 3633–3634
22	Memorandum & Decision; Case No. 15-05019-GWZ, ECF No. 124, April 30, 2018	Vol. 22, 3635–3654
23	Amended Findings of Fact, Conclusions of Law in Support of Judgment Regarding Plaintiff’s First and Second Causes of Action; Case 15-05019-GWZ, ECF No. 122, April 30, 2018	Vol. 22, 3655–3679
25	September 15, 2010 email from Yalamanchili to Vacco and P. Morabito RE: Follow Up Thoughts	Vol. 22, 3680–3681
26	September 18, 2010 email from P. Morabito to Vacco	Vol. 22, 3682–3683
27	September 20, 2010 email from Vacco to P. Morabito RE: Spirit	Vol. 22, 3684–3684
28	September 20, 2010 email between Yalamanchili and Crotty RE: Morabito -Wire	Vol. 22, 3685–3687

<b><u>DOCUMENT DESCRIPTION</u></b>		<b><u>LOCATION</u></b>
29	September 20, 2010 email from Yalamanchili to Graber RE: Attorney Client Privileged Communication	Vol. 22, 3688–3689
30	September 21, 2010 email from P. Morabito to Vacco and Cross RE: Attorney Client Privileged Communication	Vol. 22, 3690–3692
31	September 23, 2010 email chain between Graber and P. Morabito RE: Change of Primary Residence from Reno to Laguna Beach	Vol. 22, 3693–3694
32	September 23, 2010 email from Yalamanchili to Graber RE: Change of Primary Residence from Reno to Laguna Beach	Vol. 22, 3695–3696
33	September 24, 2010 email from P. Morabito to Vacco RE: Superpumper, Inc.	Vol. 22, 3697–3697
34	September 26, 2010 email from Vacco to P. Morabito RE: Judgment for a fixed debt	Vol. 22, 3698–3698
35	September 27, 2010 email from P. Morabito to Vacco RE: First Amendment to Residential Lease executed 9/27/2010	Vol. 22, 3699–3701
36	November 7, 2012 emails between Vacco, P. Morabito, C. Lovelace RE: Attorney Client Privileged Communication	Vol. 22, 3702–3703
37	Morabito BMO Bank Statement – September 2010	Vol. 22, 3704–3710
38	Lippes Mathias Trust Ledger History	Vol. 23, 3711–3716

<b><u>DOCUMENT DESCRIPTION</u></b>		<b><u>LOCATION</u></b>
39	Fifth Amendment & Restatement of the Trust Agreement for the Arcadia Living Trust dated September 30, 2010	Vol. 23, 3717–3755
42	P. Morabito Statement of Assets & Liabilities as of May 5, 2009	Vol. 23, 3756–3756
43	March 10, 2010 email chain between Afshar and Takemoto RE: Current Personal Financial Statement	Vol. 23, 3757–3758
44	Salazar Net Worth Report (dated 03/15/2011)	Vol. 23, 3759–3772
45	Purchase and Sale Agreement	Vol. 23, 3773–3780
46	First Amendment to Purchase and Sale Agreement	Vol. 23, 3781–3782
47	Panorama – Estimated Settlement Statement	Vol. 23, 3783–3792
48	El Camino – Final Settlement Statement	Vol. 23, 3793–3793
49	Los Olivos – Final Settlement Statement	Vol. 23, 3794–3794
50	Deed for Transfer of Panorama Property	Vol. 23, 3795–3804
51	Deed for Transfer for Los Olivos	Vol. 23, 3805–3806
52	Deed for Transfer of El Camino	Vol. 23, 3807–3808
53	Kimmel Appraisal Report for Panorama and Clayton	Vol. 23, 3809–3886
54	Bill of Sale – Panorama	Vol. 23, 3887–3890
55	Bill of Sale – Mary Fleming	Vol. 23, 3891–3894
56	Bill of Sale – El Camino	Vol. 23, 3895–3898

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57	Bill of Sale – Los Olivos	Vol. 23, 3899–3902
58	Declaration of Value and Transfer Deed of 8355 Panorama (recorded 12/31/2012)	Vol. 23, 3903–3904
60	Baruk Properties Operating Agreement	Vol. 23, 3905–3914
61	Baruk Membership Transfer Agreement	Vol. 24, 3915–3921
62	Promissory Note for \$1,617,050 (dated 10/01/2010)	Vol. 24, 3922–3924
63	Baruk Properties/Snowshoe Properties, Certificate of Merger (filed 10/04/2010)	Vol. 24, 3925–3926
64	Baruk Properties/Snowshoe Properties, Articles of Merger	Vol. 24, 3927–3937
65	Grant Deed from Snowshoe to Bayuk Living Trust; Doc No. 2010-0531071 (recorded 11/04/2010)	Vol. 24, 3938–3939
66	Grant Deed – 1461 Glenneyre; Doc No. 2010000511045 (recorded 10/08/2010)	Vol. 24, 3940–3941
67	Grant Deed – 570 Glenneyre; Doc No. 2010000508587 (recorded 10/08/2010)	Vol. 24, 3942–3944
68	Attorney File re: Conveyance between Woodland Heights and Arcadia Living Trust	Vol. 24, 3945–3980
69	October 24, 2011 email from P. Morabito to Vacco RE: Attorney Client Privileged Communication	Vol. 24, 3981–3982



<b><u>DOCUMENT DESCRIPTION</u></b>		<b><u>LOCATION</u></b>
70	November 10, 2011 email chain between Vacco and P. Morabito RE: Baruk Properties, LLC/Paul Morabito/Bank of America, N.A.	Vol. 24, 3983–3985
71	Bayuk First Ledger	Vol. 24, 3986–3987
72	Amortization Schedule	Vol. 24, 3988–3990
73	Bayuk Second Ledger	Vol. 24, 3991–3993
74	Opposition to Motion for Summary Judgment and Declaration of Edward Bayuk; Case No. 13-51237, ECF No. 146 (filed 10/03/2014)	Vol. 24, 3994–4053
75	March 30, 2012 email from Vacco to Bayuk RE: Letter to BOA	Vol. 24, 4054–4055
76	March 10, 2010 email chain between P. Morabito and <a href="mailto:jon@aim13.com">jon@aim13.com</a> RE: Strictly Confidential	Vol. 24, 4056–4056
77	May 20, 2010 email chain between P. Morabito, Vacco and Michael Pace RE: Proceed with placing a Binding Bid on June 22nd with ExxonMobil	Vol. 24, 4057–4057
78	Morabito Personal Financial Statement May 2010	Vol. 24, 4058–4059
79	June 28, 2010 email from P. Morabito to George Garner RE: ExxonMobil Chicago Market Business Plan Review	Vol. 24, 4060–4066
80	Shareholder Interest Purchase Agreement	Vol. 24, 4067–4071
81	Plan of Merger of Consolidated Western Corporation with and Into Superpumper, Inc.	Vol. 24, 4072–4075

<b><u>DOCUMENT DESCRIPTION</u></b>		<b><u>LOCATION</u></b>
82	Articles of Merger of Consolidated Western Corporation with and Into Superpumper, Inc.	Vol. 24, 4076–4077
83	Unanimous Written Consent of the Board of Directors and Sole Shareholder of Superpumper, Inc.	Vol. 24, 4078–4080
84	Unanimous Written Consent of the Directors and Shareholders of Consolidated Western Corporation	Vol. 24, 4081–4083
85	Arizona Corporation Commission Letter dated October 21, 2010	Vol. 24, 4084–4091
86	Nevada Articles of Merger	Vol. 24, 4092–4098
87	New York Creation of Snowshoe	Vol. 24, 4099–4103
88	April 26, 2012 email from Vacco to Afshar RE: Ownership Structure of SPI	Vol. 24, 4104–4106
90	September 30, 2010 Matrix Retention Agreement	Vol. 24, 4107–4110
91	McGovern Expert Report	Vol. 25, 4111–4189
92	Appendix B to McGovern Report – Source 4 – Budgets	Vol. 25, 4190–4191
103	Superpumper Note in the amount of \$1,462,213.00 (dated 11/01/2010)	Vol. 25, 4192–4193
104	Superpumper Successor Note in the amount of \$492,937.30 (dated 02/01/2011)	Vol. 25, 4194–4195
105	Superpumper Successor Note in the amount of \$939,000 (dated 02/01/2011)	Vol. 25, 4196–4197

<b><u>DOCUMENT DESCRIPTION</u></b>		<b><u>LOCATION</u></b>
106	Superpumper Stock Power transfers to S. Morabito and Bayuk (dated 01/01/2011)	Vol. 25, 4198–4199
107	<i>Declaration of P. Morabito in Support of Opposition to Motion of JH, Inc., Jerry Herbst, and Berry- Hinckley Industries for Order Prohibiting Debtor from Using, Acquiring or Transferring Assets Pursuant to 11 U.S.C. §§ 105 and 303(f) Pending Appointment of Trustee, Case 13-51237, ECF No. 22 (filed 07/01/2013)</i>	Vol. 25, 4200–4203
108	October 12, 2012 email between P. Morabito and Bernstein RE: 2011 Return	Vol. 25, 4204–4204
109	Compass Term Loan (dated 12/21/2016)	Vol. 25, 4205–4213
110	P. Morabito – Term Note in the amount of \$939,000.000 (dated 09/01/2010)	Vol. 25, 4214–4214
111	Loan Agreement between Compass Bank and Superpumper (dated 12/21/2016)	Vol. 25, 4215–4244
112	Consent Agreement (dated 12/28/2010)	Vol. 25, 4245–4249
113	Superpumper Financial Statement (dated 12/31/2007)	Vol. 25, 4250–4263
114	Superpumper Financial Statement (dated 12/31/2009)	Vol. 25, 4264–4276
115	Notes Receivable Interest Income Calculation (dated 12/31/2009)	Vol. 25, 4277–4278
116	Superpumper Inc. Audit Conclusions Memo (dated 12/31/2010)	Vol. 25, 4279–4284

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117	Superpumper 2010 YTD Income Statement and Balance Sheets	Vol. 25, 4285–4299
118	March 12, 2010 Management Letter	Vol. 25, 4300–4302
119	Superpumper Unaudited August 2010 Balance Sheet	Vol. 25, 4303–4307
120	Superpumper Financial Statements (dated 12/31/2010)	Vol. 25, 4308–4322
121	Notes Receivable Balance as of September 30, 2010	Vol. 26, 4323
122	Salvatore Morabito Term Note \$2,563,542.00 as of December 31, 2010	Vol. 26, 4324–4325
123	Edward Bayuk Term Note \$2,580,500.00 as of December 31, 2010	Vol. 26, 4326–4327
125	April 21, 2011 Management letter	Vol. 26, 4328–4330
126	Bayuk and S. Morabito Statements of Assets & Liabilities as of February 1, 2011	Vol. 26, 4331–4332
127	January 6, 2012 email from Bayuk to Lovelace RE: Letter of Credit	Vol. 26, 4333–4335
128	January 6, 2012 email from Vacco to Bernstein	Vol. 26, 4336–4338
129	January 7, 2012 email from Bernstein to Lovelace	Vol. 26, 4339–4343
130	March 18, 2012 email from P. Morabito to Vacco	Vol. 26, 4344–4344
131	April 21, 2011 Proposed Acquisition of Nella Oil	Vol. 26, 4345–4351
132	April 15, 2011 email chain between P. Morabito and Vacco	Vol. 26, 4352

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133	April 5, 2011 email from P. Morabito to Vacco	Vol. 26, 4353
134	April 16, 2012 email from Vacco to Morabito	Vol. 26, 4354–4359
135	August 7, 2011 email exchange between Vacco and P. Morabito	Vol. 26, 4360
136	August 2011 Lovelace letter to Timothy Halves	Vol. 26, 4361–4365
137	August 24, 2011 email from Vacco to P. Morabito RE: Tim Haves	Vol. 26, 4366
138	November 11, 2011 email from Vacco to P. Morabito RE: Getting Trevor's commitment to sign	Vol. 26, 4367
139	November 16, 2011 email from P. Morabito to Vacco RE: Vacco's litigation letter	Vol. 26, 4368
140	November 28, 2011 email chain between Vacco, S. Morabito, and P. Morabito RE: \$560,000 wire to Lippes Mathias	Vol. 26, 4369–4370
141	December 7, 2011 email from Vacco to P. Morabito RE: Moreno	Vol. 26, 4371
142	February 10, 2012 email chain between P. Morabito Wells, and Vacco RE: 1461 Glenneyre Street - Sale	Vol. 26, 4372–4375
143	April 20, 2012 email from P. Morabito to Bayuk RE: BofA	Vol. 26, 4376
144	April 24, 2012 email from P. Morabito to Vacco RE: SPI Loan Detail	Vol. 26, 4377–4378

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145	September 4, 2012 email chain between Vacco and Bayuk RE: Second Deed of Trust documents	Vol. 26, 4379–4418
147	September 4, 2012 email from P. Morabito to Vacco RE: Wire	Vol. 26, 4419–4422
148	September 4, 2012 email from Bayuk to Vacco RE: Wire	Vol. 26, 4423–4426
149	December 6, 2012 email from Vacco to P. Morabito RE: BOA and the path of money	Vol. 26, 4427–4428
150	September 18, 2012 email chain between P. Morabito and Bayuk	Vol. 26, 4429–4432
151	October 3, 2012 email chain between Vacco and P. Morabito RE: Snowshoe Properties, LLC	Vol. 26, 4433–4434
152	September 3, 2012 email from P. Morabito to Vacco RE: Wire	Vol. 26, 4435
153	March 14, 2013 email chain between P. Morabito and Vacco RE: BHI Hinckley	Vol. 26, 4436
154	Paul Morabito 2009 Tax Return	Vol. 26, 4437–4463
155	Superpumper Form 8879-S tax year ended December 31, 2010	Vol. 26, 4464–4484
156	2010 U.S. S Corporation Tax Return for Consolidated Western Corporation	Vol. 27, 4485–4556
157	Snowshoe form 8879-S for year ended December 31, 2010	Vol. 27, 4557–4577
158	Snowshoe Form 1120S 2011 Amended Tax Return	Vol. 27, 4578–4655

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159	September 14, 2012 email from Vacco to P. Morabito	Vol. 27, 4656–4657
160	October 1, 2012 email from P. Morabito to Vacco RE: Monday work for Dennis and Christian	Vol. 27, 4658
161	December 18, 2012 email from Vacco to P. Morabito RE: Attorney Client Privileged Communication	Vol. 27, 4659
162	April 24, 2013 email from P. Morabito to Vacco RE: BHI Trust	Vol. 27, 4660
163	Membership Interest Purchases, Agreement – Watch My Block (dated 10/06/2010)	Vol. 27, 4661–4665
164	Watch My Block organizational documents	Vol. 27, 4666–4669
174	October 15, 2015 Certificate of Service of copy of Lippes Mathias Wexler Friedman’s Response to Subpoena	Vol. 27, 4670
175	Order Granting Motion to Compel Responses to Deposition Questions ECF No. 502; Case No. 13-51237-gwz (filed 02/03/2016)	Vol. 27, 4671–4675
179	Gursey Schneider LLP Subpoena	Vol. 28, 4676–4697
180	Summary Appraisal of 570 Glenneyre	Vol. 28, 4698–4728
181	Appraisal of 1461 Glenneyre Street	Vol. 28, 4729–4777
182	Appraisal of 370 Los Olivos	Vol. 28, 4778–4804
183	Appraisal of 371 El Camino Del Mar	Vol. 28, 4805–4830
184	Appraisal of 1254 Mary Fleming Circle	Vol. 28, 4831–4859

<b><u>DOCUMENT DESCRIPTION</u></b>		<b><u>LOCATION</u></b>
185	Mortgage – Panorama	Vol. 28, 4860–4860
186	Mortgage – El Camino	Vol. 28, 4861
187	Mortgage – Los Olivos	Vol. 28, 4862
188	Mortgage – Glenneyre	Vol. 28, 4863
189	Mortgage – Mary Fleming	Vol. 28, 4864
190	Settlement Statement – 371 El Camino Del Mar	Vol. 28, 4865
191	Settlement Statement – 370 Los Olivos	Vol. 28, 4866
192	2010 Declaration of Value of 8355 Panorama Dr	Vol. 28, 4867–4868
193	Mortgage – 8355 Panorama Drive	Vol. 28, 4869–4870
194	Compass – Certificate of Custodian of Records (dated 12/21/2016)	Vol. 28, 4871–4871
196	June 6, 2014 Declaration of Sam Morabito – Exhibit 1 to Snowshoe Reply in Support of Motion to Dismiss Complaint for Lack of Personal Jurisdiction – filed in Case No. CV13-02663	Vol. 28, 4872–4874
197	June 19, 2014 Declaration of Sam Morabito – Exhibit 1 to Superpumper Motion to Dismiss Complaint for Lack of Personal Jurisdiction – filed in Case No. CV13-02663	Vol. 28, 4875–4877
198	September 22, 2017 Declaration of Sam Morabito – Exhibit 22 to Defendants’ SSOF in Support of Opposition to Plaintiff’s MSJ – filed in Case No. CV13-02663	Vol. 28, 4878–4879



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222	Kimmel – January 21, 2016, Comment on Alves Appraisal	Vol. 28, 4880–4883
223	September 20, 2010 email from Yalamanchili to Morabito	Vol. 28, 4884
224	March 24, 2011 email from Naz Afshar RE: telephone call regarding CWC	Vol. 28, 4885–4886
225	Bank of America Records for Edward Bayuk (dated 09/05/2012)	Vol. 28, 4887–4897
226	June 11, 2007 Wholesale Marketer Agreement	Vol. 29, 4898–4921
227	May 25, 2006 Wholesale Marketer Facility Development Incentive Program Agreement	Vol. 29, 4922–4928
228	June 2007 Master Lease Agreement – Spirit SPE Portfolio and Superpumper, Inc.	Vol. 29, 4929–4983
229	Superpumper Inc 2008 Financial Statement (dated 12/31/2008)	Vol. 29, 4984–4996
230	November 9, 2009 email from P. Morabito to Bernstein, Yalaman RE: Jan Friederich – entered into Consulting Agreement	Vol. 29, 4997
231	September 30, 2010, Letter from Compass to Superpumper, Morabito, CWC RE: reducing face amount of the revolving note	Vol. 29, 4998–5001
232	October 15, 2010, letter from Quarles & Brady to Vacco RE: Revolving Loan Documents and Term Loan Documents between Superpumper and Compass Bank	Vol. 29, 5002–5006

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233	BMO Account Tracker Banking Report October 1 to October 31, 2010	Vol. 29, 5007–5013
235	August 31, 2010 Superpumper Inc., Valuation of 100 percent of the common equity in Superpumper, Inc on a controlling marketable basis	Vol. 29, 5014–5059
236	June 18, 2014 email from S. Morabito to Vanek (WF) RE: Analysis of Superpumper Acquisition in 2010	Vol. 29, 5060–5061
241	Superpumper March 2010 YTD Income Statement	Vol. 29, 5062–5076
244	Assignment Agreement for \$939,000 Morabito Note	Vol. 29, 5077–5079
247	July 1, 2011 Third Amendment to Forbearance Agreement Superpumper and Compass Bank	Vol. 29, 5080–5088
248	Superpumper Cash Contributions January 2010 thru September 2015 – Bayuk and S. Morabito	Vol. 29, 5089–5096
252	October 15, 2010 Letter from Quarles & Brady to Vacco RE: Revolving Loan documents and Term Loan documents between Superpumper Prop. and Compass Bank	Vol. 29, 5097–5099
254	Bank of America – S. Morabito SP Properties Sale, SP Purchase Balance	Vol. 29, 5100
255	Superpumper Prop. Final Closing Statement for 920 Mountain City Hwy, Elko, NV	Vol. 29, 5101
256	September 30, 2010 Raffles Insurance Limited Member Summary	Vol. 29, 5102

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257	Equalization Spreadsheet	Vol. 30, 5103
258	November 9, 2005 Grant, Bargain and Sale Deed; Doc #3306300 for Property Washoe County	Vol. 30, 5104–5105
260	January 7, 2016 Budget Summary – Panorama Drive	Vol. 30, 5106–5107
261	Mary 22, 2006 Compilation of Quotes and Invoices Quote of Valley Drapery	Vol. 30, 5108–5116
262	Photos of 8355 Panorama Home	Vol. 30, 5117–5151
263	Water Rights Deed (Document #4190152) between P. Morabito, E. Bayuk, Grantors, RCA Trust One Grantee (recorded 12/31/2012)	Vol. 30, 5152–5155
265	October 1, 2010 Bank of America Wire Transfer –Bayuk – Morabito \$60,117	Vol. 30, 5156
266	October 1, 2010 Check #2354 from Bayuk to P. Morabito for \$29,383 for 8355 Panorama funding	Vol. 30, 5157–5158
268	October 1, 2010 Check #2356 from Bayuk to P. Morabito for \$12,763 for 370 Los Olivos Funding	Vol. 30, 5159–5160
269	October 1, 2010 Check #2357 from Bayuk to P. Morabito for \$31,284 for 371 El Camino Del Mar Funding	Vol. 30, 5161–5162
270	Bayuk Payment Ledger Support Documents Checks and Bank Statements	Vol. 31, 5163–5352
271	Bayuk Superpumper Contributions	Vol. 31, 5353–5358

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272	May 14, 2012 email string between P. Morabito, Vacco, Bayuk, and S. Bernstein RE: Info for Laguna purchase	Vol. 31, 5359–5363
276	September 21, 2010 Appraisal of 8355 Panorama Drive Reno, NV by Alves Appraisal	Vol. 32, 5364–5400
277	Assessor's Map/Home Comparisons for 8355 Panorama Drive, Reno, NV	Vol. 32, 5401–5437
278	December 3, 2007 Case Docket for CV07-02764	Vol. 32, 5438–5564
280	May 25, 2011 Stipulation Regarding the Imposition of Punitive Damages; Case No. CV07-02764 (filed 05/25/2011)	Vol. 33, 5565–5570
281	Work File for September 24, 2010 Appraisal of 8355 Panorama Drive, Reno, NV	Vol. 33, 5571–5628
283	January 25, 2016 Expert Witness Report Leonard v. Superpumper Snowshoe	Vol. 33, 5629–5652
284	February 29, 2016 Defendants' Rebuttal Expert Witness Disclosure	Vol. 33, 5653–5666
294	October 5, 2010 Lippes, Mathias Wexler Friedman, LLP, Invoices to P. Morabito	Vol. 33, 5667–5680
295	P. Morabito 2010 Tax Return (dated 10/16/2011)	Vol. 33, 5681–5739
296	December 31, 2010 Superpumper Inc. Note to Financial Statements	Vol. 33, 5740–5743
297	December 31, 2010 Superpumper Consultations	Vol. 33, 5744

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300	September 20, 2010 email chain between Yalmanchili and Graber RE: Attorney Client Privileged Communication	Vol. 33, 5745–5748
301	September 15, 2010 email from Vacco to P. Morabito RE: Tomorrow	Vol. 33, 5749–5752
303	Bankruptcy Court District of Nevada Claims Register Case No. 13-51237	Vol. 33, 5753–5755
304	April 14, 2018 email from Allen to Krausz RE: Superpumper	Vol. 33, 5756–5757
305	Subpoena in a Case Under the Bankruptcy Code to Robison, Sharp, Sullivan & Brust issued in Case No. BK-N-13-51237-GWZ	Vol. 33, 5758–5768
306	August 30, 2018 letter to Mark Weisenmiller, Esq., from Frank Gilmore, Esq.,	Vol. 34, 5769
307	Order Granting Motion to Compel Compliance with the Subpoena to Robison, Sharp, Sullivan & Brust filed in Case No. BK-N-13-51237-GWZ	Vol. 34, 5770–5772
308	Response of Robison, Sharp, Sullivan & Brust's to Subpoena filed in Case No. BK-N-13-51237-GWZ	Vol. 34, 5773–5797
309	Declaration of Frank C. Gilmore in support of Robison, Sharp, Sullivan & Brust's Opposition to Motion for Order Holding Robison in Contempt filed in Case No. BK-N-13-51237-GWZ	Vol. 34, 5798–5801
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Transcript of October 30, 2018, Non-Jury Trial, Day 2	Vol. 36, 6284–6286
Minutes of October 31, 2018, Non-Jury Trial, Day 3 (filed 11/08/2018)	Vol. 37, 6287–6548
Transcript of October 31, 2018, Non-Jury Trial, Day 3	Vol. 37, 6549–6552
Minutes of November 1, 2018, Non-Jury Trial, Day 4 (filed 11/08/2018)	Vol. 38, 6553–6814
Transcript of November 1, 2018, Non-Jury Trial, Day 4	Vol. 38, 6815–6817
Minutes of November 2, 2018, Non-Jury Trial, Day 5 (filed 11/08/2018)	Vol. 39, 6818–7007
Transcript of November 2, 2018, Non-Jury Trial, Day 5	Vol. 39, 7008–7011
Minutes of November 5, 2018, Non-Jury Trial, Day 6 (filed 11/08/2018)	Vol. 40, 7012–7167
Transcript of November 5, 2018, Non-Jury Trial, Day 6	Vol. 40, 7168–7169
Minutes of November 6, 2018, Non-Jury Trial, Day 7 (filed 11/08/2018)	Vol. 41, 7170–7269
Transcript of November 6, 2018, Non-Jury Trial, Day 7	Vol. 41, 7270–7272 Vol. 42, 7273–7474
Minutes of November 7, 2018, Non-Jury Trial, Day 8 (filed 11/08/2018)	Vol. 43, 7475–7476
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Plaintiff’s Motion to Reopen Evidence (filed 01/30/2019)		Vol. 46, 7894–7908
<b>Exhibits to Plaintiff’s Motion to Reopen Evidence</b>		
<b>Exhibit</b>	<b>Document Description</b>	
1	Declaration of Gabrielle A. Hamm, Esq. in Support of Plaintiff’s Motion to Reopen	Vol. 46, 7909–7913
1-A	September 21, 2017 Declaration of Salvatore Morabito	Vol. 46, 7914–7916
1-B	Defendants’ Proposed Findings of Fact, Conclusions of Law, and Judgment (Nov. 26, 2018)	Vol. 46, 7917–7957
1-C	Judgment on the First and Second Causes of Action; Case No. 15-05019-GWZ (Bankr. D. Nev.), ECF No. 123 (April 30, 2018)	Vol. 46, 7958–7962
1-D	Amended Findings of Fact and Conclusions of Law in Support of Judgment Regarding Plaintiffs’ First and Second Causes of Action; Case No. 15-05019-GWZ (Bankr. D. Nev.), ECF No. 126 (April 30, 2018)	Vol. 46, 7963–7994
1-E	Motion to Compel Compliance with the Subpoena to Robison Sharp Sullivan Brust; Case No. 15-05019-GWZ (Bankr. D. Nev.), ECF No. 191 (Sept. 10, 2018)	Vol. 46, 7995–8035

<b><u>DOCUMENT DESCRIPTION</u></b>		<b><u>LOCATION</u></b>
1-F	Order Granting Motion to Compel Compliance with the Subpoena to Robison Sharp Sullivan Brust; Case No. 15-05019-GWZ (Bankr. D. Nev.), ECF No. 229 (Jan. 3, 2019)	Vol. 46, 8036–8039
1-G	Response of Robison, Sharp, Sullivan & Brust[] To Subpoena (including RSSB_000001 – RSSB_000031) (Jan. 18, 2019)	Vol. 46, 8040–8067
1-H	Excerpts of Deposition Transcript of Sam Morabito as PMK of Snowshoe Petroleum, Inc. (Oct. 1, 2015)	Vol. 46, 8068–8076
Errata to: Plaintiff's Motion to Reopen Evidence (filed 01/30/2019)		Vol. 47, 8077–8080
<b>Exhibit to Errata to: Plaintiff's Motion to Reopen Evidence</b>		
<b>Exhibit</b>	<b>Document Description</b>	
1	Plaintiff's Motion to Reopen Evidence	Vol. 47, 8081–8096
Ex Parte Motion for Order Shortening Time on Plaintiff's Motion to Reopen Evidence and for Expedited Hearing (filed 01/31/2019)		Vol. 47, 8097–8102
Order Shortening Time on Plaintiff's Motion to Reopen Evidence and for Expedited Hearing (filed 02/04/2019)		Vol. 47, 8103–8105
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<b><u>DOCUMENT DESCRIPTION</u></b>		<b><u>LOCATION</u></b>
<b>Exhibits to Supplement to Plaintiff's Motion to Reopen Evidence</b>		
<b>Exhibit</b>	<b>Document Description</b>	
1	Supplemental Declaration of Gabrielle A. Hamm, Esq. in Support of Plaintiff's Motion to Reopen Evidence (filed 02/04/2019)	Vol. 47, 8111–8113
1-I	Declaration of Frank C. Gilmore in Support of Robison, Sharp Sullivan & Brust's Opposition to Motion for Order Holding Robison in Contempt; Case No. 15-05019-GWZ (Bankr. D. Nev.), ECF No. 259 (Jan. 30, 2019)	Vol. 47, 8114–8128
Defendants' Response to Motion to Reopen Evidence (02/06/2019)		Vol. 47, 8129–8135
Plaintiff's Reply to Defendants' Response to Motion to Reopen Evidence (filed 02/07/2019)		Vol. 47, 8136–8143
Minutes of February 7, 2019 hearing on Motion to Reopen Evidence (filed 02/28/2019)		Vol. 47, 8144
Rough Draft Transcript of February 8, 2019 hearing on Motion to Reopen Evidence		Vol. 47, 8145–8158
[Plaintiff's Proposed] Findings of Fact, Conclusions of Law, and Judgment (filed 03/06/2019)		Vol. 47, 8159–8224
[Defendants' Proposed Amended] Findings of Fact, Conclusions of Law, and Judgment (filed 03/08/2019)		Vol. 47, 8225–8268
Minutes of February 26, 2019 hearing on Motion to Continue ongoing Non-Jury Trial (Telephonic) (filed 03/11/2019)		Vol. 47, 8269

<b><u>DOCUMENT DESCRIPTION</u></b>		<b><u>LOCATION</u></b>
Findings of Fact, Conclusions of Law, and Judgment (filed 03/29/2019)		Vol. 48, 8270–8333
Notice of Entry of Findings of Fact, Conclusions of Law, and Judgment (filed 03/29/2019)		Vol. 48, 8334–8340
Memorandum of Costs and Disbursements (filed 04/11/2019)		Vol. 48, 8341–8347
<b>Exhibit to Memorandum of Costs and Disbursements</b>		
<b>Exhibit</b>	<b>Document Description</b>	
1	Ledger of Costs	Vol. 48, 8348–8370
Application for Attorneys’ Fees and Costs Pursuant to NRCP 68 (filed 04/12/2019)		Vol. 48, 8371–8384
<b>Exhibits to Application for Attorneys’ Fees and Costs Pursuant to NRCP 68</b>		
<b>Exhibit</b>	<b>Document Description</b>	
1	Declaration of Teresa M. Pilatowicz In Support of Plaintiff’s Application for Attorney’s Fees and Costs Pursuant to NRCP 68 (filed 04/12/2019)	Vol. 48, 8385–8390
2	Plaintiff’s Offer of Judgment to Defendants (dated 05/31/2016)	Vol. 48, 8391–8397
3	Defendant’s Rejection of Offer of Judgment by Plaintiff (dated 06/15/2016)	Vol. 48, 8398–8399
4	Log of time entries from June 1, 2016 to March 28, 2019	Vol. 48, 8400–8456

<b><u>DOCUMENT DESCRIPTION</u></b>		<b><u>LOCATION</u></b>
5	Plaintiff's Memorandum of Costs and Disbursements (filed 04/11/2019)	Vol. 48, 8457–8487
Motion to Retax Costs (filed 04/15/2019)		Vol. 49, 8488–8495
Plaintiff's Opposition to Motion to Retax Costs (filed 04/17/2019)		Vol. 49, 8496–8507
<b>Exhibits to Plaintiff's Opposition to Motion to Retax Costs</b>		
<b>Exhibit</b>	<b>Document Description</b>	
1	Declaration of Teresa M. Pilatowicz In Support of Opposition to Motion to Retax Costs (filed 04/17/2019)	Vol. 49, 8508–8510
2	Summary of Photocopy Charges	Vol. 49, 8511–8523
3	James L. McGovern Curriculum Vitae	Vol. 49, 8524–8530
4	McGovern & Greene LLP Invoices	Vol. 49, 8531–8552
5	Buss-Shelger Associates Invoices	Vol. 49, 8553–8555
Reply in Support of Motion to Retax Costs (filed 04/22/2019)		Vol. 49, 8556–8562
Opposition to Application for Attorneys' Fees and Costs Pursuant to NRCP 68 (filed 04/25/2019)		Vol. 49, 8563–8578
<b>Exhibit to Opposition to Application for Attorneys' Fees and Costs Pursuant to NRCP 68</b>		
<b>Exhibit</b>	<b>Document Description</b>	
1	Plaintiff's Bill Dispute Ledger	Vol. 49, 8579–8637

<b><u>DOCUMENT DESCRIPTION</u></b>		<b><u>LOCATION</u></b>
Defendants, Salvatore Morabito, Snowshoe Petroleum, Inc., and Superpumper, Inc.'s Motion for New Trial and/or to Alter or Amend Judgment Pursuant to NRCP 52, 59, and 60 (filed 04/25/2019)		Vol. 49, 8638–8657
Defendant, Edward Bayuk's Motion for New Trial and/or to Alter or Amend Judgment Pursuant to NRCP 52, 59, and 60 (filed 04/26/2019)		Vol. 50, 8658–8676
<b>Exhibits to Edward Bayuk's Motion for New Trial and/or to Alter or Amend Judgment Pursuant to NRCP 52, 59, and 60</b>		
<b>Exhibit</b>	<b>Document Description</b>	
1	February 27, 2019 email with attachments	Vol. 50, 8677–8768
2	Declaration of Frank C. Gilmore in Support of Edward Bayuk's Motion for New Trial (filed 04/26/2019)	Vol. 50, 8769–8771
3	February 27, 2019 email from Marcy Trabert	Vol. 50, 8772–8775
4	February 27, 2019 email from Frank Gilmore to <a href="mailto:eturner@Gtg.legal">eturner@Gtg.legal</a> RE: Friday Trial	Vol. 50, 8776–8777
Plaintiff's Reply in Support of Application of Attorneys' Fees and Costs Pursuant to NRCP 68 (filed 04/30/2019)		Vol. 50, 8778–8790
<b>Exhibit to Plaintiff's Reply in Support of Application of Attorneys' Fees and Costs Pursuant to NRCP 68</b>		
<b>Exhibit</b>	<b>Document Description</b>	
1	Case No. BK-13-51237-GWZ, ECF Nos. 280, 282, and 321	Vol. 50, 8791–8835

<b><u>DOCUMENT DESCRIPTION</u></b>		<b><u>LOCATION</u></b>
Plaintiff's Opposition to Defendants' Motions for New Trial and/or to Alter or Amend Judgment (filed 05/07/2019)		Vol. 51, 8836–8858
Defendants, Salvatore Morabito, Snowshoe Petroleum, Inc., and Superpumper, Inc.'s Reply in Support of Motion for New Trial and/or to Alter or Amend Judgment Pursuant to NRCP 52, 59, and 60 (filed 05/14/2019)		Vol. 51, 8859–8864
Declaration of Edward Bayuk Claiming Exemption from Execution (filed 06/28/2019)		Vol. 51, 8865–8870
<b>Exhibits to Declaration of Edward Bayuk Claiming Exemption from Execution</b>		
<b>Exhibit</b>	<b>Document Description</b>	
1	Copy of June 22, 2019 Notice of Execution and two Write of Executions	Vol. 51, 8871–8896
2	Declaration of James Arthur Gibbons Regarding his Attestation, Witness and Certification on November 12, 2005 of the Spendthrift Trust Amendment to the Edward William Bayuk Living Trust (dated 06/25/2019)	Vol. 51, 8897–8942
Notice of Claim of Exemption from Execution (filed 06/28/2019)		Vol. 51, 8943–8949
Edward Bayuk's Declaration of Salvatore Morabito Claiming Exemption from Execution (filed 07/02/2019)		Vol. 51, 8950–8954
<b>Exhibits to Declaration of Salvatore Morabito Claiming Exemption from Execution</b>		
<b>Exhibit</b>	<b>Document Description</b>	
1	Las Vegas June 22, 2019 letter	Vol. 51, 8955–8956

<b><u>DOCUMENT DESCRIPTION</u></b>		<b><u>LOCATION</u></b>
2	Writs of execution and the notice of execution	Vol. 51, 8957–8970
Minutes of June 24, 2019 telephonic hearing on Decision on Submitted Motions (filed 07/02/2019)		Vol. 51, 8971–8972
Salvatore Morabito’s Notice of Claim of Exemption from Execution (filed 07/02/2019)		Vol. 51, 8973–8976
Edward Bayuk’s Third Party Claim to Property Levied Upon NRS 31.070 (filed 07/03/2019)		Vol. 51, 8977–8982
Order Granting Plaintiff’s Application for an Award of Attorneys’ Fees and Costs Pursuant to NRCP 68 (filed 07/10/2019)		Vol. 51, 8983–8985
Order Granting in part and Denying in part Motion to Retax Costs (filed 07/10/2019)		Vol. 51, 8986–8988
Plaintiff’s Objection to (1) Claim of Exemption from Execution and (2) Third Party Claim to Property Levied Upon, and Request for Hearing Pursuant to NRS 21.112 and 31.070(5) (filed 07/11/2019)		Vol. 52, 8989–9003
<b>Exhibits to Plaintiff’s Objection to (1) Claim of Exemption from Execution and (2) Third Party Claim to Property Levied Upon, and Request for Hearing Pursuant to NRS 21.112 and 31.070(5)</b>		
<b>Exhibit</b>	<b>Document Description</b>	
1	Declaration of Gabrielle A. Hamm, Esq.	Vol. 52, 9004–9007
2	11/30/2011 Tolling Agreement – Edward Bayuk	Vol. 52, 9008–9023
3	11/30/2011 Tolling Agreement – Edward William Bayuk Living Trust	Vol. 52, 9024–9035

<b><u>DOCUMENT DESCRIPTION</u></b>		<b><u>LOCATION</u></b>
4	Excerpts of 9/28/2015 Deposition of Edward Bayuk	Vol. 52, 9036–9041
5	Edward Bayuk, as Trustee of the Edward William Bayuk Living Trust’s Responses to Plaintiff’s First Set of Requests for Production, served 9/24/2015	Vol. 52, 9042–9051
6	8/26/2009 Grant Deed (Los Olivos)	Vol. 52, 9052–9056
7	8/17/2018 Grant Deed (El Camino)	Vol. 52, 9057–9062
8	Trial Ex. 4 (Confession of Judgment)	Vol. 52, 9063–9088
9	Trial Ex. 45 (Purchase and Sale Agreement, dated 9/28/2010)	Vol. 52, 9089–9097
10	Trial Ex. 46 (First Amendment to Purchase and Sale Agreement, dated 9/29/2010)	Vol. 52, 9098–9100
11	Trial Ex. 51 (Los Olivos Grant Deed recorded 10/8/2010)	Vol. 52, 9101–9103
12	Trial Ex. 52 (El Camino Grant Deed recorded 10/8/2010)	Vol. 52, 9104–9106
13	Trial Ex. 61 (Membership Interest Transfer Agreement, dated 10/1/2010)	Vol. 52, 9107–9114
14	Trial Ex. 62 (\$1,617,050.00 Promissory Note)	Vol. 52, 9115–9118
15	Trial Ex. 65 (Mary Fleming Grant Deed recorded 11/4/2010)	Vol. 52, 9119–9121
Notice of Entry of Order Denying Defendants’ Motions for New Trial and/or to Alter or Amend Judgment (filed 07/16/2019)		Vol. 52, 9122–9124

<b><u>DOCUMENT DESCRIPTION</u></b>		<b><u>LOCATION</u></b>
<b>Exhibit to Notice of Entry of Order Denying Defendants' Motions for New Trial and/or to Alter or Amend Judgment</b>		
<b>Exhibit</b>	<b>Document Description</b>	
1	Order Denying Defendants' Motions for New Trial and/or to Alter or Amend Judgment (filed 07/10/2019)	Vol. 52, 9125–9127
Notice of Entry of Order Granting Plaintiff's Application for an Award of Attorneys' Fees and Costs Pursuant to NRCP 68 (filed 07/16/2019)		Vol. 52, 9128–9130
<b>Exhibit to Notice of Entry of Order Granting Plaintiff's Application for an Award of Attorneys' Fees and Costs Pursuant to NRCP 68</b>		
<b>Exhibit</b>	<b>Document Description</b>	
1	Order Granting Plaintiff's Application for an Award of Attorneys' Fees and Costs Pursuant to NRCP 68 (filed 07/10/2019)	Vol. 52, 9131–9134
Notice of Entry of Order Granting in Part and Denying in Part Motion to Retax Costs (filed 07/16/2019)		Vol. 52, 9135–9137
<b>Exhibit to Notice of Entry of Order Granting in Part and Denying in Part Motion to Retax Costs</b>		
<b>Exhibit</b>	<b>Document Description</b>	
1	Order Granting in Part and Denying in Part Motion to Retax Costs (filed 07/10/2019)	Vol. 52, 9138–9141



<b><u>DOCUMENT DESCRIPTION</u></b>		<b><u>LOCATION</u></b>
Plaintiff's Objection to Notice of Claim of Exemption from Execution Filed by Salvatore Morabito and Request for Hearing (filed 07/16/2019)		Vol. 52, 9142–9146
Reply to Objection to Claim of Exemption and Third Party Claim to Property Levied Upon (filed 07/17/2019)		Vol. 52, 9147–9162
<b>Exhibits to Reply to Objection to Claim of Exemption and Third Party Claim to Property Levied Upon</b>		
<b>Exhibit</b>	<b>Document Description</b>	
1	March 3, 2011 Deposition Transcript of P. Morabito	Vol. 52, 9163–9174
2	Mr. Bayuk's September 23, 2014 responses to Plaintiff's first set of requests for production	Vol. 52, 9175–9180
3	September 28, 2015 Deposition Transcript of Edward Bayuk	Vol. 52, 9181–9190
Reply to Plaintiff's Objection to Notice of Claim of Exemption from Execution (filed 07/18/2019)		Vol. 52, 9191–9194
Declaration of Service of Till Tap, Notice of Attachment and Levy Upon Property (filed 07/29/2019)		Vol. 52, 9195
Notice of Submission of Disputed Order Denying Claim of Exemption and Third Party Claim (filed 08/01/2019)		Vol. 52, 9196–9199
<b>Exhibits to Notice of Submission of Disputed Order Denying Claim of Exemption and Third Party Claim</b>		
<b>Exhibit</b>	<b>Document Description</b>	
1	Plaintiff's Proposed Order Denying Claim of Exemption and Third-Party Claim	Vol. 52, 9200–9204

<b><u>DOCUMENT DESCRIPTION</u></b>		<b><u>LOCATION</u></b>
2	Bayuk and the Bayuk Trust's proposed Order Denying Claim of Exemption and Third-Party Claim	Vol. 52, 9205–9210
3	July 30, 2019 email evidencing Bayuk, through counsel Jeffrey Hartman, Esq., requesting until noon on July 31, 2019 to provide comments.	Vol. 52, 9211–9212
4	July 31, 2019 email from Teresa M. Pilatowicz, Esq. Bayuk failed to provide comments at noon on July 31, 2019, instead waiting until 1:43 p.m. to send a redline version with proposed changes after multiple follow ups from Plaintiff's counsel on July 31, 2019	Vol. 52, 9213–9219
5	A true and correct copy of the original Order and Bayuk Changes	Vol. 52, 9220–9224
6	A true and correct copy of the redline run by Plaintiff accurately reflecting Bayuk's proposed changes	Vol. 52, 9225–9229
7	Email evidencing that after review of the proposed revisions, Plaintiff advised Bayuk, through counsel, that Plaintiff agree to certain proposed revisions, but the majority of the changes were unacceptable as they did not reflect the Court's findings or evidence before the Court.	Vol. 52, 9230–9236
Objection to Plaintiff's Proposed Order Denying Claim of Exemption and Third Party Claim (filed 08/01/2019)		Vol. 53, 9237–9240

<b><u>DOCUMENT DESCRIPTION</u></b>		<b><u>LOCATION</u></b>
<b>Exhibits to Objection to Plaintiff's Proposed Order Denying Claim of Exemption and Third-Party Claim</b>		
<b>Exhibit</b>	<b>Document Description</b>	
1	Plaintiff's Proposed Order Denying Claim of Exemption and Third-Party Claim	Vol. 53, 9241–9245
2	Defendant's comments on Findings of Fact	Vol. 53, 9246–9247
3	Defendant's Proposed Order Denying Claim of Exemption and Third-Party Claim	Vol. 53, 9248–9252
Minutes of July 22, 2019 hearing on Objection to Claim for Exemption (filed 08/02/2019)		Vol. 53, 9253
Order Denying Claim of Exemption (filed 08/02/2019)		Vol. 53, 9254–9255
Bayuk's Case Appeal Statement (filed 08/05/2019)		Vol. 53, 9256–9260
Bayuk's Notice of Appeal (filed 08/05/2019)		Vol. 53, 9261–9263
Defendants, Superpumper, Inc., Edward Bayuk, Salvatore Morabito; and Snowshoe Petroleum, Inc.'s, Case Appeal Statement (filed 08/05/2019)		Vol. 53, 9264–9269
Defendants, Superpumper, Inc., Edward Bayuk, Salvatore Morabito; and Snowshoe Petroleum, Inc.'s, Notice of Appeal (filed 08/05/2019)		Vol. 53, 9270–9273

<b><u>DOCUMENT DESCRIPTION</u></b>		<b><u>LOCATION</u></b>
<b>Exhibits to Defendants, Superpumper, Inc., Edward Bayuk, Salvatore Morabito; and Snowshoe Petroleum, Inc.'s, Notice of Appeal</b>		
<b>Exhibit</b>	<b>Document Description</b>	
1	Findings of Fact, Conclusions of Law, and Judgment (filed 03/29/2019)	Vol. 53, 9274–9338
2	Order Denying Defendants' Motions for New Trial and/or to Alter or Amend Judgment (filed 07/10/2019)	Vol. 53, 9339–9341
3	Order Granting in Part and Denying in Part Motion to Retax Costs (filed 07/10/2019)	Vol. 53, 9342–9345
4	Order Granting Plaintiff's Application for an Award of Attorneys' Fees and Costs Pursuant to NRCP 68 (filed 07/10/2019)	Vol. 53, 9346–9349
Plaintiff's Reply to Defendants' Objection to Plaintiff's Proposed Order Denying Claim of Exemption and Third-Party Claim		Vol. 53, 9350–9356
Order Denying Claim of Exemption and Third-Party Claim (08/09/2019)		Vol. 53, 9357–9360
Notice of Entry of Order Denying Claim of Exemption and Third-Party Claim (filed 08/09/2019)		Vol. 53, 9361–9364
<b>Exhibit to Notice of Entry of Order Denying Claim of Exemption and Third-Party Claim</b>		
<b>Exhibit</b>	<b>Document Description</b>	
1	Order Denying Claim of Exemption and Third-Party Claim (08/09/2019)	Vol. 53, 9365–9369

<b><u>DOCUMENT DESCRIPTION</u></b>		<b><u>LOCATION</u></b>
Notice of Entry of Order Denying Claim of Exemption (filed 08/12/2019)		Vol. 53, 9370–9373
<b>Exhibit to Notice of Entry of Order Denying Claim of Exemption</b>		
<b>Exhibit</b>	<b>Document Description</b>	
1	Order Denying Claim of Exemption (08/02/2019)	Vol. 53, 9374–9376
Motion to Make Amended or Additional Findings Under NRCP 52(b), or, in the Alternative, Motion for Reconsideration (filed 08/19/2019)		Vol. 54, 9377–9401
<b>Exhibits to Motion to Make Amended or Additional Findings Under NRCP 52(b), or, in the Alternative, Motion for Reconsideration</b>		
<b>Exhibit</b>	<b>Document Description</b>	
1	Order Denying Claim of Exemption and Third Party Claim (filed 08/09/19)	Vol. 54, 9402–9406
2	Spendthrift Trust Amendment to the Edward William Bayuk Living Trust (dated 11/12/05)	Vol. 54, 9407–9447
3	Spendthrift Trust Agreement for the Arcadia Living Trust (dated 10/14/05)	Vol. 54, 9448–9484
4	Fifth Amendment and Restatement of the Trust Agreement for the Arcadia Living Trust (dated 09/30/10)	Vol. 54, 9485–9524
5	P. Morabito's Supplement to NRCP 16.1 Disclosures (dated 03/01/11)	Vol. 54, 9525–9529

<b><u>DOCUMENT DESCRIPTION</u></b>		<b><u>LOCATION</u></b>
6	Transcript of March 3, 2011 Deposition of P. Morabito	Vol. 55, 9530–9765
7	Documents Conveying Real Property	Vol. 56, 9766–9774
8	Transcript of July 22, 2019 Hearing	Vol. 56, 9775–9835
9	Tolling Agreement JH and P. Morabito (partially executed 11/30/11)	Vol. 56, 9836–9840
10	Tolling Agreement JH and Arcadia Living Trust (partially executed 11/30/11)	Vol. 56, 9841–9845
11	Excerpted Pages 8–9 of Superpumper Judgment (filed 03/29/19)	Vol. 56, 9846–9848
12	Petitioners' First Set of Interrogatories to Debtor (dated 08/13/13)	Vol. 56, 9849–9853
13	Tolling Agreement JH and Edward Bayuk (partially executed 11/30/11)	Vol. 56, 9854–9858
14	Tolling Agreement JH and Bayuk Trust (partially executed 11/30/11)	Vol. 56, 9859–9863
15	Declaration of Mark E. Lehman, Esq. (dated 03/21/11)	Vol. 56, 9864–9867
16	Excerpted Transcript of October 20, 2015 Deposition of Dennis C. Vacco	Vol. 56, 9868–9871
17	Assignment and Assumption Agreement (dated 07/03/07)	Vol. 56, 9872–9887
18	Order Denying Morabito's Claim of Exemption (filed 08/02/19)	Vol. 56, 9888–9890

<b><u>DOCUMENT DESCRIPTION</u></b>		<b><u>LOCATION</u></b>
Errata to Motion to Make Amended or Additional Findings Under NRCP 52(b), or, in the Alternative, Motion for Reconsideration (filed 08/20/2019)		Vol. 57, 9891–9893
Plaintiff's Opposition to Motion to Make Amended or Additional Findings Under NRCP 52(b), or, In the Alternative, Motion for Reconsideration, and Countermotion for Fees and Costs Pursuant to NRS 7.085 (filed 08/30/2019)		Vol. 57, 9894–9910
Errata to Plaintiff's Opposition to Motion to Make Amended or Additional Findings Under NRCP 52(b), or, In the Alternative, Motion for Reconsideration, and Countermotion for Fees and Costs Pursuant to NRS 7.085 (filed 08/30/2019)		Vol. 57, 9911–9914
<b>Exhibits to Errata to Plaintiff's Opposition to Motion to Make Amended or Additional Findings Under NRCP 52(b), or, In the Alternative, Motion for Reconsideration, and Countermotion for Fees and Costs Pursuant to NRS 7.085</b>		
<b>Exhibit</b>	<b>Document Description</b>	
1	Declaration of Gabrielle A. Hamm, Esq.	Vol. 57, 9915–9918
2	Plaintiff's Amended NRCP 16.1 Disclosures (February 19, 2016)	Vol. 57, 9919–9926
3	Plaintiff's Fourth Supplemental NRCP 16.1 Disclosures (November 15, 2016)	Vol. 57, 9927–9930
4	Plaintiff's Fifth Supplemental NRCP 16.1 Disclosures (December 21, 2016)	Vol. 57, 9931–9934
5	Plaintiff's Sixth Supplemental NRCP 16.1 Disclosures (March 20, 2017)	Vol. 57, 9935–9938

<b><u>DOCUMENT DESCRIPTION</u></b>		<b><u>LOCATION</u></b>
Reply in Support of Motion to Make Amended or Additional Findings Under NRCP 52(b), or, In the Alternative, Motion for Reconsideration, and Countermotion for Fees and Costs (filed 09/04/2019)		Vol. 57, 9939–9951
<b>Exhibits to Reply in Support of Motion to Make Amended or Additional Findings Under NRCP 52(b), or, In the Alternative, Motion for Reconsideration, and Countermotion for Fees and Costs</b>		
<b>Exhibit</b>	<b>Document Description</b>	
19	Notice of Submission of Disputed Order Denying Claim of Exemption and Third Party Claim (filed 08/01/19)	Vol. 57, 9952–9993
20	Notice of Submission of Disputed Order Denying Claim of Exemption and Third Party Claim (filed 08/01/19)	Vol. 57, 9994–10010
Order Denying Defendants’ Motion to Make Amended or Additional Findings Under NRCP 52(b), or, in the Alternative, Motion for Reconsideration and Denying Plaintiff’s Countermotion for Fees and Costs Pursuant to NRS 7.085 (filed 11/08/2019)		Vol. 57, 10011–10019
Bayuk’s Case Appeal Statement (filed 12/06/2019)		Vol. 57, 10020–10026
Bayuk’s Notice of Appeal (filed 12/06/2019)		Vol. 57, 10027–10030



<b><u>DOCUMENT DESCRIPTION</u></b>		<b><u>LOCATION</u></b>
<b>Exhibits to Bayuk's Notice of Appeal</b>		
<b>Exhibit</b>	<b>Document Description</b>	
1	Order Denying [Morabito's] Claim of Exemption (filed 08/02/19)	Vol. 57, 10031–10033
2	Order Denying [Bayuk's] Claim of Exemption and Third Party Claim (filed 08/09/19)	Vol. 57, 10034–10038
3	Order Denying Defendants' Motion to Make Amended or Additional Findings Under NRCP 52(b), or, in the Alternative, Motion for Reconsideration and Denying Plaintiff's Countermotion for Fees and Costs Pursuant to NRS 7.085 (filed 11/08/19)	Vol. 57, 10039–10048
Notice of Entry of Order Denying Defendants' Motion to Make Amended or Additional Findings Under NRCP 52(b), or, in the Alternative, Motion for Reconsideration and Denying Plaintiff's Countermotion for Fees and Costs Pursuant to NRS 7.085 (filed 12/23/2019)		Vol. 57, 10049–10052
<b>Exhibit to Notice of Entry of Order</b>		
<b>Exhibit</b>	<b>Document Description</b>	
A	Order Denying Defendants' Motion to Make Amended or Additional Findings Under NRCP 52(b), or, in the Alternative, Motion for Reconsideration and Denying Plaintiff's Countermotion for Fees and Costs Pursuant to NRS 7.085 (filed 11/08/19)	Vol. 57, 10053–10062
Docket Case No. CV13-02663		Vol. 57, 10063–10111

CASE NO. CV13-02663

**TITLE: WILLIAM A. LEONARD, Trustee for the Bankruptcy  
Estate of Paul Anthony Morabito VS. SUPERPUMPER, INC.,  
EDWARD BAYUK, EDWARD WILLIAM BAYUK LIVING TRUST,  
SALVATORE MORABITO and SNOWSHOE PETROLEUM, INC.**

**DATE, JUDGE  
OFFICERS OF  
COURT PRESENT**

**PAGE ONE**

**APPEARANCES-HEARING**

**CONT'D TO**

10/30/18

**NON-JURY TRIAL – DAY TWO**

HONORABLE

CONNIE

STEINHEIMER

DEPT. NO.4

M. Stone

(Clerk)

J. Schonlau

(Reporter)

Plaintiff William A. Leonard, Trustee for the Bankruptcy Estate of Paul Anthony Morabito, present with counsel, Teresa Pilatowicz, Esq., Erika Turner, Esq., and Gabrielle Hamm, Esq. Defendant Edward Bayuk present, individually and as representative for Edward William Bayuk Living Trust, Superpumper, Inc., and Snowshoe Petroleum, Inc., and Defendant Salvatore Morabito present, individually and as representative for Superpumper, Inc., and Snowshoe Petroleum, Inc., with counsel, Frank Gilmore, Esq. Chris Kemper, Esq., counsel for the Herbst Family also present in the gallery 9:51 a.m. Court convened.

Witness Bayuk, heretofore sworn, resumed stand and was further examined by counsel Turner.

**EXHIBIT 129** offered by counsel Turner; objection by counsel Gilmore; objection overruled with leave to exclude upon the Court's further review of the document.

Witness Bayuk further examined by counsel Turner.

\*\*\*Deposition of Edward Bayuk taken September 28, 2015 opened and published.

Witness Bayuk further examined by counsel Turner.

**EXHIBITS 151** offered by counsel Turner; no objection by counsel Gilmore; ordered admitted into evidence.

Witness Bayuk further examined by counsel Turner.

**EXHIBITS 143** offered by counsel Turner; no objection by counsel Gilmore; ordered admitted into evidence.

Witness Bayuk further examined by counsel Turner.

**EXHIBIT 145** offered by counsel Turner; objection by counsel Gilmore; objection overruled and ordered admitted into evidence.

Witness Bayuk further examined by counsel Turner.

**DATE, JUDGE  
OFFICERS OF  
COURT PRESENT**

**PAGE TWO**

**APPEARANCES-HEARING**

**CONT'D TO**

10/30/18

**NON-JURY TRIAL – DAY TWO**

J. Schonlau  
(Reporter)

**EXHIBIT 147** offered by counsel Turner; objection by counsel Gilmore.

Counsel Gilmore provided the Court and counsel Turner Defendants' Points and Authorities regarding the admission of documents in conjunction with the depositions of Paul Morabito and Dennis Vacco.

Court directed the Clerk to file the document into the record during the next recess. Court further directed the Plaintiff to file a response by morning of October 31, 2018

**COURT ORDERED EXHIBIT 147** admitted into evidence provisionally pending briefing and argument.

Witness Bayuk further examined by counsel Turner.

**EXHIBIT 148** offered by counsel Turner; objection by counsel Gilmore; objection sustained.

Witness Bayuk further examined by counsel Turner.

11:42 a.m. Witness excused for respective counsel to present arguments regarding the current line of questions.

Additional, discussion ensued regarding the schedule of witness.

11:50 a.m. Court recessed until 1:00 p.m.

1:03 p.m. Court reconvened with respective counsel, except counsel Hamm, and parties present.

**EXHIBIT 75** modified, stipulated and ordered into evidence.

Witness Bayuk, heretofore sworn, resumed stand and was examined by counsel Turner; examined by counsel Gilmore.

2:34 p.m. Court recessed.

2:56 p.m. Court reconvened with respective counsel, except counsel Hamm, and parties present.

Witness Bayuk, heretofore sworn, resumed stand and was further examined by

**DATE, JUDGE  
OFFICERS OF  
COURT PRESENT**

**PAGE THREE**

**APPEARANCES-HEARING**

**CONT'D TO**

10/30/18

J. Schonlau  
(Reporter)

**NON-JURY TRIAL – DAY TWO**

counsel Gilmore.

\*\*\*Respective counsel stipulated that the appraisals took place in October of 2010.

Witness Bayuk further examined by counsel Gilmore.

**EXHIBIT 265** offered by counsel Gilmore; no objection by counsel Turner; ordered admitted into evidence.

Witness Bayuk further examined by counsel Gilmore.

**EXHIBIT 266** offered by counsel Gilmore; no objection by counsel Turner; ordered admitted into evidence.

Witness Bayuk further examined by counsel Gilmore.

**EXHIBIT 268** offered by counsel Gilmore; no objection by counsel Turner; ordered admitted into evidence.

Witness Bayuk further examined by counsel Gilmore.

**EXHIBIT 269** offered by counsel Gilmore; no objection by counsel Turner; ordered admitted into evidence.

Witness Bayuk further examined by counsel Gilmore.

4:49 p.m. Court recessed.

5:01 p.m. Court reconvened with respective counsel, except counsel Hamm, and parties present.

Witness Bayuk further cross-examined.

**EXHIBIT 74** offered by counsel Turner; no objection by counsel Gilmore; ordered admitted into evidence.

Witness Bayuk further examined by counsel Gilmore.

5:49 p.m. Court recessed until 8:00 a.m. on October 31, 2018.

10/31/18

8:00 a.m.

**Ongoing  
Non-Jury  
Trial - Day  
Three**

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JUDITH ANN SCHONLAU  
  
CCR #18  
  
75 COURT STREET  
  
RENO, NEVADA

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
  
IN AND FOR THE COUNTY OF WASHOE  
  
BEFORE THE HONORABLE CONNIE J. STEINHEIMER, DISTRICT JUDGE

-o0o-

WILLIAM LEONARD, JR., TRUSTEE	)	
OF THE ESTATE OF PAUL A.	)	
MORABITO	)	
	)	
Plaintiff,	)	CASE NO. CV13-02663
	)	DEPARTMENT NO. 4
vs.	)	
	)	
SUPERPUMPER, INC. ET AL,	)	
	)	
Defendant.	)	

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TRANSCRIPT OF PROCEEDINGS  
  
TRIAL

TUESDAY, OCTOBER 30, 2018, 9:45 A.M.  
  
Reno, Nevada

Reported By: JUDITH ANN SCHONLAU, CCR #18  
NEVADA-CALIFORNIA CERTIFIED; REGISTERED PROFESSIONAL REPORTER  
Computer-aided Transcription

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A P P E A R A N C E S

FOR THE PLAINTIFF:            GARMAN TURNER GORDON  
  
                                 BY:   ERIKA PIKE TURNER, ESQ.  
  
                                 TERESA PILATOWICZ, ESQ.  
  
                                 GABRIELLE HAMM, ESQ.  
  
                                 LAS VEGAS, NEVADA 89119

FOR THE DEFENDANT:           ROBISON SHARP SULLIVAN & BRUST  
  
                                 BY:   FRANK C. GILMORE, ESQ.  
  
                                 71 WASHINGTON STREET  
  
                                 RENO, NEVADA 89503

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I N D E X

<u>WITNESSES:</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
EDWARD BAYUK	5	101		

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EXHIBITS:

MARKED FOR  
IDENTIFICATION

ADMITTED  
INTO  
EVIDENCE

74	230
75	78
129	10
34	191
143	40
145	47
147	60
148	62
151	38
265	168
266	170
268	171
269	172



1           RENO, NEVADA; TUESDAY, OCTOBER 30, 2018; 9:45 A.M.

2                               -oOo-

3

4           THE COURT: Good morning, Mr. Bayuk, please take the  
5 stand, sir. You're still under oath.

6           THE WITNESS: Okay.

7           MS. TURNER: As a first order of business,  
8 Mr. Gilmore e-mailed me last night to say the record wasn't  
9 clear regarding his firm's involvement in the 2010 time period  
10 these transactions took place, and his firm's role with  
11 respect to those parties. So I am going to clear that up with  
12 Mr. Bayuk in response to the e-mails or to the e-male.

13

14                               DIRECT EXAMINATION CONTINUED

15 BY MS. TURNER:

16           Q     To be clear, Mr. Bayuk, Frank Gilmore's firm, while  
17 he represented you, Paul and Sam in this particular case, it  
18 was actually Leif Reid who represented the three of you in the  
19 underlying case against the Herbts, correct?

20           A     Yes.

21           Q     And that was a concurrent representation. Leif Reid  
22 represented you, Mr. Sam Morabito and Paul Morabito in that  
23 underlying case?

24           A     Yes, and Trevor Lloyd.

1           Q     As well as Trevor Lloyd. Okay. Then this case you  
2     have representation from Frank Gilmore of you and Sam  
3     Morabito, at the same time there is concurrent representation  
4     by Frank Gilmore in Paul Morabito's bankruptcy of Paul  
5     Morabito?

6           A     Yes.

7           Q     So we still have concurrent representation today?

8           A     Yes.

9           Q     Thank you. And to be clear, Frank Gilmore's firm did  
10    not provide advice to you or to your affiliated entities  
11    regarding these transactions in September of 2010?

12          A     No.

13               MR. GILMORE: Thank you very much. I appreciate  
14    that.

15               MS. TURNER: Sure.

16    BY MS. TURNER:

17          Q     Now if we could go to the books. We are going to go  
18    back to Superpumper, Exhibit 129.

19          A     It is open.

20          Q     Now, Mr. Bayuk, if you look at Exhibit 129 at the  
21    top of the page do you see an e-mail from Stan Bernstein, your  
22    personal CPA, correct?

23          A     Yes.

24          Q     And you are cc'd to this e-mail dated January 7,

1       2012, correct?

2           A       Yes.

3           Q       Now if you continue on in this Exhibit 129, you can  
4       see it is a continuation on your original e-mail to Catherine  
5       regarding the certification of the Raffles asset. Do you see  
6       that?

7           A       At the last page?

8           Q       Yes?

9           A       Yes.

10          Q       Now if we could go back to the first page below the  
11       e-mail from Stan Bernstein is an e-mail from Christian  
12       Lovelace to Stan Bernstein with you as a cc, do you see that?

13          A       Yes.

14          Q       And Paul Morabito and Sam Morabito are cc'd right?

15          A       Yes.

16          Q       As well as Dennis Vacco, your counsel, right?

17          A       Yes.

18          Q       And David Darata. You testified yesterday that was  
19       the accountant for the company?

20          A       Right, Snowshoe.

21               MS. TURNER: Your Honor, I move for the admission of  
22       Exhibit 129 before I get into the detail.

23               MR. GILMORE: My objection is to hearsay and  
24       foundation.

1 THE COURT: Counsel.

2 MS. TURNER: Your Honor, the witness just testified  
3 it was his agent, Stan Bernstein, sending e-mails or an  
4 e-mail, and then Christian Lovelace who is from Lippes. I  
5 will ask one follow-up question to lay the foundation here.  
6 BY MS. TURNER:

7 Q Mr. Bayuk, Christian Lovelace was Dennis Vacco's  
8 partner?

9 A He was a lawyer in the firm.

10 Q That worked with Dennis Vacco?

11 A In the same --

12 Q Same firm, the Lippes firm?

13 A Correct.

14 MS. TURNER: So, Your Honor, this is a statement of  
15 his agent and would be an exception to hearsay, and it is a  
16 continuation of the e-mail already in evidence, so I would  
17 move for admission on that basis.

18 MR. GILMORE: My response would be it is clearly  
19 offering these to prove the truth of what they are alleging or  
20 these people are stating. None of these people are available.  
21 None of these people have testified to this particular e-mail.  
22 There is no foundation as to what these people are talking  
23 about. So because I can't cross-examine these people, I can't  
24 ask Christian what he meant by this and Mr. Bayuk is not the

1       declarant. Yes, he is copied. I still think it lacks  
2       foundation for the admission.

3               THE COURT: I will overrule the objection, but I  
4       haven't read it. If it appears to me that it is questionable  
5       in terms of the foundational basis to allow it in, I will  
6       exclude it. So I need to look at it.

7               MS. TURNER: Sure. Understood, Your Honor. I  
8       didn't want to get into the detail without getting it into  
9       evidence.

10              THE COURT: Correct. You got it now.

11              MS. TURNER: Sure.

12              THE COURT: You believe it is a continuation of  
13       Exhibit 128 you said?

14              MS. TURNER: That's right, Your Honor.

15              MR. GILMORE: May I raise one issue to help you with  
16       your examination, Judge?

17              THE COURT: Certainly.

18              MR. GILMORE: On the first line, Stan Bernstein first  
19       says: "Since I do not do either the Superpumper or Snowshoe  
20       returns." So to the extent this is being offered as  
21       Stan Bernstein as an agent of one of the defendants, he's  
22       disclaimed that in the first sentence.

23              MS. TURNER: Your Honor the witness testified he was  
24       his personal CPA.

1           THE COURT: I know. It does appear these e-mails  
2           were generated after a question from the witness to the person  
3           who is generating the answer, therefore, I am going to admit  
4           129.

5                     (Exhibit 129 admitted in evidence.)

6           MS. TURNER: Thank you. Your Honor.

7           BY MS. TURNER:

8           Q     Mr. Bayuk, can you go to the Christian Lovelace  
9           e-mail at the bottom of page one. Is it Ms. Or Mr.?

10          A     It is Christian. It is a guy.

11          Q     Mr. Lovelace's e-mail to Stan Bernstein with you  
12          cc'd. At the bottom of the first paragraph it says: "This  
13          may be the only way to do this if we want it in Snowshoe  
14          because the asset wasn't in SPI when we did the valuation for  
15          the sale from Paul to Ed and Sam." Do you see that sentence?

16          A     Yes. Can I help you? So this e-mail is complicated,  
17          and Raffles is very complicated. Most people would not  
18          understand it. It would be helpful to just do a brief diagram  
19          so you understand Raffles and why it had to be parked there.  
20          Because I understand what is going on here. It would just be  
21          helpful to you. I can tell from your, some of your past  
22          questions yesterday there is a lot of history stuff you are  
23          not following.

24          Q     Mr. Bayuk the question is: Do you see that

1 sentence?

2 A Yes.

3 Q If you could go to the second page of the document  
4 Exhibit 129. Your attorney says: "The Raffles asset was  
5 never factored into the SPI valuation and in 2010 was a  
6 considerable asset." Do you see that?

7 A You are talking --

8 Q From Christian Lovelace in January of 2012?

9 A Yes.

10 Q Now I understand your position is that the asset was  
11 parked at CWC, Consolidated Western Corporation. It was in  
12 fact certificated in that name CWC or Consolidated Western  
13 Corporation, correct?

14 A Yes.

15 Q It was not included in the valuation of Superpumper  
16 when you determined to buy Paul's interest in the entity,  
17 correct?

18 A That is what Christian is saying.

19 Q And that is correct?

20 A I assume so if he's stating that. I don't want to  
21 guess, so you would have to ask him and look at the paperwork.  
22 That is why I offered to do the chart for you to help you.

23 Q In fact, Raffles had been sold to Paul prior to you  
24 buying Paul's interest in Superpumper?

1           A     Ask that question again.

2           Q     The asset, Raffles asset, had been sold to Paul  
3 prior to you buying Paul's interest in Superpumper?

4           A     That's correct. I had to park it somewhere in a  
5 petroleum company.

6           Q     You sold the interest in Raffles to Paul Morabito on  
7 September 21st, correct?

8           A     That's right.

9           Q     And then September 30th you purchased Paul's  
10 interest in Superpumper or Consolidated Western Corporation  
11 from Paul?

12          A     Yes.

13          Q     Okay. That was 2010?

14          A     Yes.

15          Q     Now at the end of the day, we talked yesterday about  
16 putting a valuation of \$4,513,000 on your fifty percent  
17 interest in Snowshoe Petroleum as of February 2011. If you  
18 could go to April of 2011, so we are still approximately six,  
19 seven months from the transaction. You put a value of the  
20 company at ten million dollars. Do you recall that?

21          A     No. If you could show me a document so I can explain  
22 or confirm.

23          Q     Sure. If you could go to Exhibit 131. This is in  
24 evidence. 131. If you go to the second page of Exhibit 131,



1       this is an April 21st 2011 Letter of Intent. Actually, before  
2       we go to page 2, if you want to confirm on the second to last  
3       page that Exhibit 131 was electronically signed by you?

4           A       It is an electronic signature so, I am aware of the  
5       discussions with Walt Dwelle.

6           Q       Walt Dwelle was with Nella Oil Company and  
7       affiliates?

8           A       Correct.

9           Q       Exhibit 131 represents a Letter of Intent that went  
10      to Mr. Dwelle for his consideration, correct?

11          A       Yes.

12          Q       Okay. If we go back to the second page of Exhibit  
13      131, in the middle of the page we have the purchase price. Do  
14      you see that?

15          A       Yes.

16          Q       And you represented that: "If Nella was to acquire  
17      thirty percent equity interest in the limited liability  
18      corporation to be set up to acquire seller and SPI's  
19      subsidiary Superpumper, Inc., valued at ten million dollars."  
20      Do you see that?

21          A       It is a Letter of Intent, so conversation is going  
22      on, so the numbers are not set by either side. It is just a  
23      Letter of Intent.

24          Q       You represented to a third party, Nella Oil Company

1 and Affiliates -- that is a third party right?

2 A Correct.

3 Q -- that Superpumper, Inc., was valued at ten million  
4 dollars as of April 21st 2011?

5 A You know, I don't remember this document completely.  
6 I just remember making an offer to Walt Dwelle for one hundred  
7 sixty million dollars

8 Q My question to you is --

9 A Right. No, I understand. The document speaks for  
10 itself.

11 Q And you understand when you communicate to a third  
12 party a fact --

13 A It is a Letter of Intent, so all the numbers change  
14 on both sides during conversation. I am sure there is  
15 documents after this document that I am sure you are privy to.  
16 There probably were more documents like this.

17 Q So nobody had-- The recipient of the Letter of  
18 Intent would have been--

19 A This also could have been a draft, too, by the way.  
20 There may have been an e-mail attached to this letter, too, so  
21 this may be a draft.

22 Q Sir, it is not marked draft. It has your e-  
23 signature?

24 A That doesn't mean it is not a draft.

1           Q     When you provide a Letter of Intent, so I understand  
2     your testimony, to Nella indicating the value was ten million  
3     dollars, you did not intend for that third party to rely on  
4     that representation?

5           A     Like I said, there is probably an e-mail attached to  
6     this letter. And a Letter of Intent, all the numbers change  
7     after. And this also could be a draft. And since you have  
8     all of Mr. Morabito's documents and Dennis' documents, you may  
9     have other copies of this or e-mails that relate to this  
10    letter. I am saying this is probably a draft, because what I  
11    remember from conversation with Dwelle is that most of it was  
12    all conversations and him talking to his brothers trying to  
13    decide if they wanted to sell. So I believe this is a draft.

14          Q     If it were in fact a draft, I am sure your counsel  
15    would bring that as additional documents. It would be brought  
16    forward --

17               MR. GILMORE: Objection. Argumentative.

18               MS. TURNER: -- with a different number.

19               THE WITNESS: My understanding, everyone has all the  
20    documents, so I am sure there is documents in Leonard's files.

21    BY MS. TURNER:

22          Q     Who negotiated the Nella proposal with Nella? Who  
23    is the primary person to negotiate that?

24          A     I don't remember all the different parties involved,

1 but I was in conversations with them. Paul was talking to  
2 them as well, because he knows them as well as I do. I met  
3 with Walt probably more.

4 Q If you go to Exhibit 132. I believe it is the next  
5 one, 132?

6 A Got it.

7 Q This is an e-mail prepared by your counsel,  
8 Christian Lovelace, from Paul Morabito to Christian and Dennis  
9 Vacco. You have Mr. Lippes and Mr. Ivancic. You know  
10 Mr. Lippes, Dennis Vacco's partner, right?

11 A Yes. I don't know that for sure. I am assuming that  
12 is who it is. I have never met him.

13 Q You are not a cc to this correspondence but Paul  
14 Morabito is acting on behalf of the company?

15 MR. GILMORE: Objection. That states facts not in  
16 evidence.

17 MS. TURNER: Correct.

18 THE WITNESS: I will do the best to --

19 MR. GILMORE: Excuse me. The question suggests facts  
20 not in evidence.

21 BY MS. TURNER:

22 Q Well, if you go ahead and review it?

23 A You want me to read it?

24 THE COURT: She's rephrasing the question, correct?

1 MS. TURNER: Yes. Thank you.

2 BY MS. TURNER:

3 Q If you go to the first sentence here, you see how it  
4 references CWC and Snowshoe Petroleum, Inc?

5 A I don't know about this e-mail. I have never seen  
6 the e-mail other than through the Court documents here.

7 Q Did Paul Morabito, is he the one that suggested that  
8 Letter of Intent go on Snowshoe Petroleum letterhead in April  
9 2011?

10 A Probably. He was always looking for opportunities,  
11 and I didn't discourage it.

12 Q On behalf of you and --

13 A Himself. He would do things for himself. Sometimes  
14 he would talk to me about it.

15 Q He also --

16 A And because I knew Walt Dwelle, he spoke to me about  
17 it.

18 Q This was an opportunity for Snowshoe Petroleum,  
19 Inc., an entity in which he never had an interest?

20 A That's right.

21 Q Now ultimately Snowshoe Petroleum paid Paul Morabito  
22 \$542,000 on the amounts set forward in the Successor Notes and  
23 the rest was written off or cancelled, correct?

24 A Could you ask that question again?

1           Q     Sure. We looked yesterday at the Successor Notes.  
2     Do you recall that the February 2011 Successor Notes where you  
3     had \$939,000 as an obligation from Snowshoe Petroleum to  
4     Superpumper?

5           A     Right.

6           Q     That was cancelled?

7           A     Yeah. I remember telling you you should ask  
8     questions to Sam, because I didn't get involved too much with  
9     the finances.

10          Q     All right. I will go back to Sam on that. Now we are  
11     going to change here to Baruk Properties LLC. We are moving  
12     from Superpumper and Snowshoe Petroleum. Now Baruk Properties,  
13     LLC, was a holding company that held commercial real estate?

14          A     Correct.

15          Q     That was the purpose of the company when you set it  
16     up, right?

17          A     Correct.

18          Q     And it was set up by Paul Morabito and you?

19          A     Correct.

20          Q     And if you go to Exhibit 60. 60. That's the  
21     operating agreement establishing the formation of Baruk  
22     Properties?

23          A     Yes.

24          Q     And Baruk properties was established by you and Paul

1 as a Nevada LLC., correct?

2 A Yes.

3 Q And you and Paul were co-managers of Baruk  
4 Properties LLC., a Nevada LLC.?

5 A Yes.

6 Q And the ownership of Baruk Propertries, LLC., when  
7 it was established was fifty/fifty ownership by you or your  
8 affiliated Trust and Paul Morabito or his other affiliated  
9 Trust, right?

10 A Yes.

11 Q If you go to this Exhibit 60, Schedule A, I believe  
12 it establishes the ownership is fifty percent the Arcadia  
13 Trust and fifty percent the William Edward Bayuk Living Trust?

14 A What page?

15 MR. GILMORE: These are all stipulated facts,  
16 counsel.

17 MS. TURNER: Okay.

18 BY MS. TURNER:

19 Q I want to make sure that when we talk about Arcadia  
20 that we're on the same page. You understand the Arcadia Trust  
21 is Paul Morabito's Trust. We talked about it yesterday?

22 A Yeah. And I told you that there has been multiple  
23 drafts, so I am not privy to everything that is in all the  
24 drafts.

1           Q     You said you weren't familiar with the document?

2           A     Right.

3           Q     That is why I am showing you this. You understood

4 Paul Morabito had fifty percent ownership in Baruk Properties

5 in the name of Arcadia?

6           A     If you say so. I said what page?

7                 MR. GILMORE: Your Honor this is a stipulated fact.

8 I'll get you the paragraph if we need to do that.

9                 MS. TURNER: I will make sure we are on the same

10 page with the witness. It is the last page.

11                THE WITNESS: Okay. Last page. Sorry. I wasn't

12 going to the last page.

13 BY MS. TURNER:

14           Q     So it was fifty percent ownership the Arcadia Trust,

15 fifty percent ownership your Trust?

16           A     Yes.

17           Q     But as a practical matter, it was you and Paul

18 managing the company?

19           A     Yes.

20           Q     Now originally Baruk Properties was set up for you

21 and Paul to have co-ownership in Jiffy Lubes here in Reno,

22 right?

23           A     No.

24           Q     That is not the case?



1           A     No. Baruk Properties was set up to hold, unless you  
2     have some e-mails that help me, my memory, if my memory serves  
3     me, it was a holding company for real estate.

4           Q     It was a holding company to hold that --

5           A     Real estate. So the purpose of it was a holding  
6     company to hold real estate. So it could have been used to  
7     hold any type of real estate.

8           Q     If you could go to your deposition. We'll publish  
9     it --

10          A     Yeah, that is fine.

11          Q     -- to refresh your recollection?

12          A     I might have said it was something else also, but --

13                THE COURT: Why don't you wait until you have a  
14     question. She will open and publish the deposition. If there  
15     is a question, you can answer.

16                MS. TURNER: Your Honor, if I can approach, you can  
17     follow along. We have extra copies of the deposition. Do you  
18     have it?

19                MR. GILMORE: Yeah.

20                MS. TURNER: Thank you. Can we have a copy for the  
21     witness? I guess he gets the original.

22                THE CLERK: Deposition of Edward William Bayuk a  
23     defendant, noticed by Garman Turner and Gordon at 10:02 a.m.  
24     Monday, September 23, 2015 opened and published.

1 THE COURT: Is that September 23rd or 28th.  
2 THE CLERK: I am sorry, 28th.  
3 THE COURT: I just want to make sure.  
4 MS. TURNER: May I approach?  
5 THE COURT: You may.  
6 BY MS. TURNER:  
7 Q Sir, if you could turn to page 78. Page 78?  
8 A Hold on. Hold on. I was in the pack part of book.  
9 Okay.  
10 Q Do you see line 8? "Was there a capital  
11 contribution that was required, or how did you determine  
12 that?" Do you see that?  
13 A Yes.  
14 Q That was a follow-up to the question: "Who holds  
15 membership interest?" "A: Baruk Properties, when it was  
16 formed, said Paul and I fifty/fifty."  
17 A Right.  
18 Q And then your answer to my question at lines 8 to 9:  
19 "Was it a capital contribution that was required or how did  
20 you determine that?" You said: "I think we funded it with  
21 dollars. You know, we were buying-- we were buying --getting  
22 stores from Penzoil. Part was real estate we got from  
23 Penzoil. We took the real estate in Baruk Properties." Do  
24 you see that?

1           A     Right.

2           Q     Those Penzoil Properties were the Jiffy Lubes that  
3 you had here in Reno?

4           A     That's right.

5           Q     Okay. And then ultimately you and Paul sold the  
6 Jiffy Lube stores and 1031'd the proceeds into other  
7 commercial real estate, correct?

8           A     That's right.

9           Q     And when I say 1031'd, instead of selling for cash  
10 in your pocket, you converted the cash into other property to  
11 defer taxes. By doing that, there is a tax benefit, correct?

12          A     Yeah. That is what a 1031 is.

13          Q     And inclusive of the properties that were purchased  
14 as part of this 1031 exchange were two office buildings in  
15 Laguna Beach, right?

16          A     Right.

17          Q     And that is 570 Glenneyre and 1461 Glenneyre in  
18 Laguna Beach, California?

19          A     Glenneyre, yes

20          Q     Glenneyre is a fairly major roadway in Laguna Beach  
21 that is parallel to the Pacific Coast highway?

22          A     Yes.

23          Q     And then also as part of that 1031 exchange you  
24 purchased the home in Palm Springs at 1254 Mary Fleming,

1 right?

2 A I believe so.

3 Q And I believe you testified yesterday, that although  
4 the 1254 Mary Fleming was a residence, you used it to hold  
5 meetings and to work?

6 A Correct, because we were developing that market.

7 Q At the time from the creation of Baruk Properties  
8 LLC., a Nevada LLC., until September 2010, you and Paul,  
9 through your Trusts, were the fifty/fifty ownership of Baruk  
10 Properties?

11 A Yes.

12 Q Now 1461 Glenneyre, that has multiple suites that  
13 are leased out, right?

14 A No. They are not all leased.

15 Q Multiple suites that are leased or could be leased?

16 A Correct.

17 Q And they have built-in desks, chairs, things like  
18 that?

19 A Visit my website. I have a website on the building.

20 Q That is accurate, correct?

21 A Yes.

22 Q And --

23 A It is a pretty cool building.

24 Q And Paul Morabito's affiliated entities have been

1 regular tenants at that building?

2 A Yes.

3 Q Snowshoe Capital?

4 A No. That is Paul's company.

5 Q If I didn't say Paul, Paul Morabito, these  
6 affiliated companies have been tenants. That includes  
7 Snowshoe Capital, right?

8 A Paul when he -- Again, I would have to pull  
9 documents. I was just trying to be helpful. Snowshoe Capital  
10 was Paul's company, and he was living in L.A., so he was  
11 working from his house.

12 Q Snowshoe Capital had a lease with 1467 Glenneyre?

13 A No, I don't believe so. You have a document. You  
14 are referring to probably an e-mail, and I am going to guess  
15 some e-mail where he was trying to use Snowshoe Capital as a  
16 lease. It is a little confusing. So he didn't lease space at  
17 the building. It never happened I think the answer is.

18 Q Go to Exhibit 142. First, before we get to this, let  
19 me lay a foundation. At the end of September 2010 at the same  
20 time that you were buying Paul's interest from Superpumper,  
21 you bought Paul's interest in Baruk Properties LLC., correct?

22 A Yes.

23 Q Paul transferred his fifty percent interest to you?

24 A Yes.

1           Q     And a new company was created by or at your  
2     direction?

3           A     Correct.

4           Q     Snowshoe Properties, LLC.?

5           A     Correct.

6           Q     A California LLC., at the time?

7           A     Yes.

8           Q     Has that subsequently been changed?

9           A     Yes.

10          Q     What is it now?

11          A     Snowshoe Properties LLC., I put it in Delaware.

12          Q     So while this litigation has been pending, that has  
13     been changed from a California LLC., to a Delaware LLC.?

14          A     Yeah. I am doing business.

15          Q     And so Paul Morabito sold his Trust's fifty percent  
16     interest in Baruk Properties to you?

17          A     Yes.

18          Q     And you put that interest in Snowshoe Petroleum  
19     LLC., a California LLC., and when you put that ownership in  
20     Snowshoe Petroleum LLC., your affiliated Trust, the Edward  
21     Bayuk Trust, that was the one hundred percent owner in  
22     Snowshoe Properties LLC., a California LLC.?

23          A     Yes.

24               MR. GILMORE: Objection. That misstates the

1 stipulated facts.

2 THE COURT: Your client just said yes.

3 MR. GILMORE: I know, right?

4 MS. TURNER: Oh, I said Petroleum.

5 MR. GILMORE: Yes, you did. I am trying not to be  
6 rude.

7 THE WITNESS: I am sorry. I wasn't listening. I am  
8 sorry.

9 BY MS. TURNER:

10 Q Let me make sure the record is clear.

11 A Sorry. Sorry.

12 Q Snowshoe Properties LLC., is a California limited  
13 liability company that was owned 100 percent by the Edward  
14 Bayuk Trust, right?

15 A Yes.

16 Q Now while we have been in litigation, you have  
17 converted that to a Delaware LLC. Is it still 100 percent  
18 owned by the Edward William Bayuk Living Trust?

19 A Yes.

20 Q And your acquisition of Paul's interest in Bayuk  
21 Properties LLC., prior to putting the interest in Snowshoe  
22 Properties LLC., a California LLC., that was September 2010?

23 A Yes.

24 Q Okay. Now if we could go to Exhibit 142. We have an

1 e-mail. I think this is what you are referring to. We don't  
2 know. Page 2, we have Timothy Haves from Grubb and Ellis. We  
3 talked about Timothy Haves' of Grubb and Ellis yesterday  
4 e-mail to your counsel, Dennis Vacco, with cc to Christian  
5 Lovelace as well as Paul Morabito. The subject is 1461  
6 Glenneyre. Do you see that?

7 A I am not copied on this like I said yesterday, but,  
8 yes, that is what it says.

9 Q February 10, 2012, that was after Paul had already  
10 sold his interest in the 1461 Glenneyre property to you,  
11 right?

12 A Correct.

13 Q Now in this e-mail, it says: "Could you please  
14 prepare a draft or master lease for Snowshoe Capital to be  
15 given to a new buyer?" Do you see that?

16 A I am listening.

17 MR. GILMORE: Objection. Hearsay. She's reading a  
18 hearsay statement onto the record.

19 THE COURT: Let's see where we are going. You're  
20 trying to establish foundation.

21 MS. TURNER: Yes. He just testified there was no  
22 lease with Snowshoe Capital, Paul Morabito's company.

23 THE WITNESS: I think this is just Paul talking to a  
24 broker. I'm not privy to everything. And whatever the



1 document says it says. And I can say this: There was never a  
2 lease signed with Snowshoe Capital, LLC. It is just something  
3 that never happened. And you're probably wasting a lot of  
4 time, but I understand you have to establish whatever you want  
5 to establish. But nothing ever happened with Snowshoe Capital  
6 LLC., that I know of.

7 Q So have you seen this e-mail?

8 A In the production stuff today and the other day.

9 Q Did you follow up with Paul Morabito, Tim Haves or  
10 your counsel and say Paul Morabito doesn't own any interest in  
11 Snowshoe Properties, LLC.?

12 A Oh, Tim Haves knows I own Snowshoe Properties LLC.  
13 He knows I own the building. He was probably trying to do a  
14 deal with Tim. I don't know anything. You are asking someone  
15 questions, I don't know what Paul was doing with Tim at the  
16 time. It is probably something he was trying to do. I am  
17 saying you are asking me a question, was there a lease with 14  
18 and there was no lease with Snowshoe Properties LLC.

19 Q Has Snowshoe Properties LLC., whether California or  
20 Delaware, sold any interest in the 1461 Glenneyre building?

21 A Never sold any interest, no.

22 Q Were there discussions about selling the building  
23 with a buy-back revision after ten years?

24 A Like I said, you would have to talk to the people on

1     this e-mail, and it was probably something that Paul was  
2     working on like I explained yesterday numerous times. On the  
3     Chicago market, Florida market, it didn't happen. It is just  
4     one of Paul's trying to work. And I encouraged him to try to  
5     make money so he can pay his debts back.

6           Q     Including working on behalf of Snowshoe Properties?

7           A     If he brought something to my attention I thought  
8     was worth investing in, I would invest in it.

9           Q     Now to be clear for the record, Paul Morabito has  
10    never had an ownership interest in Snowshoe Properties, LLC.?

11          A     That is correct.

12          Q     Whether California or Delaware?

13          A     That's correct.

14          Q     Okay. So Paul Morabito's input regarding Snowshoe  
15    Properties is because of your ongoing relationship with him as  
16    a trusted friend?

17               MR. GILMORE: Objection. Vague.

18               THE COURT: Overruled.

19               THE WITNESS: I trust a lot of people. I work with  
20    a lot of people, and Paul's just one person I work with. So  
21    do I trust him? Yeah. And I trust a lot of people. I told  
22    you yesterday he would bring business opportunities to my  
23    attention. Either I would approve them or say, okay, I am  
24    interested and listen more, so I would listen. Sometimes I

1 would even go to meetings.

2 Q Paul Morabito was authorized to act in your behalf  
3 to look for opportunities on behalf of Snowshoe Properties?

4 A No. No. He would bring it to my attention. It was  
5 my decision. It was my company and my money. We broke  
6 everything up I felt fairly, and he was looking for other  
7 kinds of opportunities. That company, Snowshoe Properties,  
8 didn't make money. It was cash flow negative. The building  
9 you didn't get to was empty. It didn't become occupied until  
10 2012. So when I bought the property, the company didn't make  
11 any money. Baruk didn't make any money.

12 Q 1461 Glenneyre was free and clear at the time that  
13 you bought Paul's interest in Baruk Properties?

14 A That's right.

15 Q In September 2010, it was free and clear. No Deed  
16 of Trust?

17 A Correct.

18 Q And then Paul took a mortgage out secured by the  
19 1461 Glenneyre property, correct?

20 A What mortgage are you referring to?

21 Q If you go to your deposition page 97, at some point  
22 subsequent to you buying out Paul's interest in Baruk  
23 Properties, you had discussions with Paul, and Paul put a  
24 mortgage on one or more of the Properties, correct?

1           A     There was a mortgage from Bank of America on 570.

2           Q     That was put on the property subsequent?

3           A     There was mortgage from Bank of America on 570 for a  
4 long time.

5           Q     Did you put a mortgage on any property for the  
6 benefit of the Paul Morabito subsequent to your purchase of  
7 his interest?

8           A     So I purchased, as you know, I purchased from Paul  
9 Baruk Properties, fifty percent interest in Baruk Properties  
10 on the date you stated, and then I changed the company name to  
11 Snowshoe Properties LLC. And at the time of the transfer,  
12 there was a Bank of America loan on 570 Glenneyre.

13          Q     Is your testimony there is no obligation on 1461  
14 Glenneyre?

15          A     No, there is. I was just explaining it. So after I  
16 purchased it, some months later, I put a loan on the building.

17          Q     So Snowshoe Properties LLC., put a loan on the  
18 building? And that loan on the building --

19          A     Not Baruk Properties. It was months later.

20          Q     Snowshoe Properties. It is very confusing with all  
21 the names?

22          A     No, that is okay. I am surprised you haven't asked  
23 me where the name came from.

24          Q     I looked it up on Urban Dictionary. I won't be that

1 crass?

2 A It is pretty cool.

3 Q Snowshoe --

4 A It was a breed of cat I had.

5 Q Snowshoe Properties, you put a loan on the property.  
6 The proceeds of that loan went to Paul Morabito?

7 A No. I bought the property from Paul. I bought his  
8 fifty percent interest in Baruk Properties in September, then  
9 the company became Snowshoe Properties LLC., and months  
10 later, months later I went to someone and took a loan on the  
11 property that I pay. I pay. I received that money and I pay  
12 the mortgage payments on that property. I mean on that  
13 mortgage. That is what you are speaking of.

14 THE COURT: What property?

15 THE WITNESS: Oh, so --

16 THE COURT: Just address that.

17 THE WITNESS: Yeah, yeah. So the 570 Glenneyre had  
18 a mortgage from Bank of America. I bought -- I am now  
19 Snowshoe Properties. Months later, months and months later I  
20 took a second mortgage and put a mortgage on 1461 and 570.

21 THE COURT: So it wasn't a second mortgage on 1461?

22 THE WITNESS: 1461 was a first mortgage. 570 was a  
23 second mortgage, and I pay that mortgage. Snowshoe Properties  
24 pays that mortgage, and the monies--

1 THE COURT: What about Mary Fleming?

2 THE WITNESS: That I took a mortgage with Wells  
3 Fargo.

4 THE COURT: Different bank.

5 THE WITNESS: Different bank. It is a personal loan  
6 with Wells Fargo.

7 THE COURT: Is it secured by Mary Fleming?

8 THE WITNESS: Yes.

9 BY MS. TURNER:

10 Q All right. Let's walk through these different loans  
11 that were put on the property subsequent to litigation  
12 commencing, correct?

13 A Well, wait a minute. No. I bought Paul's fifty  
14 percent interest in 2010. I formed the company called Snowshoe  
15 Properties LLC.. so that held 570 Glenneyre, 1461, and 1254  
16 Mary Fleming. 1254 Mary Fleming had a Wells Fargo loan. That  
17 was mine. 570 had a Bank of America loan for about a million  
18 two something, whatever. And I went and got a second mortgage  
19 and put a second mortgage on 570 and a first mortgage on 1461,  
20 and that money came to me, and then I paid that mortgage. So  
21 I pay B of A a mortgage. I pay the second mortgage, and I pay  
22 the Wells Fargo mortgage. So I think that is clear, I  
23 believe.

24 Q If we could go to Exhibit 151. It wasn't as clear as

1 I recall?

2 A In the deposition?

3 Q Just Exhibit 151.

4 A Hold on. Okay, I have it.

5 Q Go to the last page of Exhibit 151. There is an  
6 e-mail from counsel, Dennis Vacco?

7 A Right.

8 Q With with cc to you and Paul Morabito dated October  
9 1, 2012 subject line Snowshoe Properties LLC. Do you see that?

10 A Yes.

11 Q Now it says: "Allen, I represent Snowshoe  
12 Properties LLC., and its sole member, Edward Bayuk. Edward  
13 and Paul have asked me to reach out to you to open a line of  
14 discussion concerning a First Deed of Trust for 1461 Glenneyre  
15 and a Second Deed of Trust for 570 Glenneyre, both properties  
16 located in Laguna Beach, California." Did I read that  
17 correctly?

18 A Yes.

19 Q Now prior to you buying out Paul's interest, there  
20 was no Deed of Trust on 1461 Glenneyre, and there was no  
21 Second Deed of Trust on 570 Glenneyre?

22 A That's right.

23 Q Now Dennis Vacco's talking to someone?

24 A This is 2012 now.

1           Q     In 2012 on behalf --

2           A     So you are two years later.

3           Q     On behalf of you and Paul?

4           A     Yeah. And I know Allen. So I am good friends with

5 Allen.

6           Q     And Allen is who?

7           A     A lawyer.

8           Q     On behalf of who?

9           A     Bert and Jane Bachman, who I am friends with Bert

10 and Jane Bachman.

11          Q     Now you recall this e-mail chain or the e-mail of

12 October 1, 2012?

13          A     Well, I'm not on the chain of e-mails, but -- or am

14 I?

15          Q     On October 1, 2012 from Dennis Vacco you were cc'd

16 where it indicates he represents Snowshoe Properties LLC., and

17 its sole member?

18          A     I know about this, yeah. And I am only aware of

19 what I did. Like I said, I know Allen and I know Bert and

20 Jane.

21          Q     Snowshoe Properties LLC., the instructions were

22 that it would borrow five million dollars; is that right?

23          A     I asked Bert and Jane for five million dollars,

24 that's correct.



1           Q     You asked or did Paul ask?

2           A     No, it was me. Paul was with me when I had  
3     conversations with them.

4           Q     Do you know why in the e-mail Exhibit 151, why Paul  
5     followed up with your counsel, Dennis Vacco, and Christian  
6     Lovelace and said five million?

7           A     I was borrowing money, and Bert and Jane lent me the  
8     money and took the building as, what do you call it, put Deeds  
9     on the building and gave me the money. Yeah. So I pay the  
10    mortgage. I have been paying the mortgage since I took the  
11    loan. Were the buildings worth it? No. Bert and Jane have  
12    been friends with me for 20 years.

13          Q     Did you ask Paul to speak on your behalf to Dennis  
14    and Christian about the terms of the loan?

15          A     Well, I think, yeah, I was involved. There was some  
16    conversations with Dennis and Christian, because it was my  
17    money. It was my building and my loan and Bert and Jane I  
18    have known for 20 years and they are like my parents.

19          Q     Do you see on the first page of Exhibit 151 Paul is  
20    communicating to Dennis Vacco and Christian Lovelace, five  
21    million dollars 1461 G and a second on 570 G. Do you see  
22    that?

23          A     Yeah.

24          Q     You were aware of that?

1           A     I was a aware of borrowing five million dollars from  
2 Bert and Jane, and I have known them for 20 years.

3           Q     You were communicating with Paul?

4           A     I was a aware of all this. This is my company, my  
5 business. Paul was just advising me and helping me like I  
6 said earlier in yesterday's testimony and today.

7           Q     Paul was helping you and advising you on the  
8 Snowshoe Properties LLC., transaction October 3rd 2012  
9 resulting in five million dollars?

10          A     Yeah. And they lent me five million dollars, and I  
11 have been friends with them for 20 years. They know I would  
12 pay them back, and I have been paying the mortgage. I have  
13 been late sometimes, but --

14          Q     Sir, my question is: Paul was helping you and  
15 advising you?

16          A     Advising me.

17               MS. TURNER: Move for Exhibit 151.

18               THE COURT: Any objection?

19               MR. GILMORE: No.

20               THE COURT: Exhibit 151 is admitted.

21                       (Exhibit 151 admitted in evidence.)

22 BY MS. TURNER:

23          Q     Now we have referred to the 570 Glenneyre property.  
24 That is a smaller one-tenant building, correct?

1           A     In 2000 -- I purchased the building with Paul I  
2     believe in 2004 and renovated it or whatever. It is a, today  
3     it is a single tenant building. But I did a major renovation  
4     myself as the general contractor for a tenant I found, and I  
5     spent from August 2011 till December 2011. I had to have the  
6     building ready for the tenant on January 1, New Years day.  
7     And I had to ask a lot of favors from a lot of people. When I  
8     got done, it is amazing. I did a good job. But it was tough  
9     and I got a good tenant.

10          Q     Go to Exhibit 143?

11          A     Got it.

12          Q     This is an e-mail from you to Dennis Vacco, Paul's  
13     response to you with a cc to Dennis Vacco, correct?

14          A     Yes.

15          Q     April 20, 2012?

16          A     Yes.

17                MS. TURNER: I assume there is no objection on this  
18     one.

19                MR. GILMORE: No. Lay some foundation then I will  
20     not object.

21                MS. TURNER: Okay.

22     BY MS. TURNER:

23          Q     All right. So in April of 2012, you told Dennis,  
24     your counsel, that you are reluctant to give Bank of America

1 information regarding the lease or tenant improvement  
2 expenses. It says, you wrote: "I know this is a process with  
3 B of A, but would like to know from you if I should pay off B  
4 of A's existing mortgage. It is set up for Wells Fargo, and I  
5 could do it for the month of May." And Paul said: "No, no,  
6 no, no," correct?

7 A Yeah. I'm not sure, I'm not sure what is going on  
8 here exactly. But all I know it was a problem with B of A.

9 Q Paul directed you not once but more times in  
10 capitals?

11 A Yeah. He has a lawsuit going on with B of A. I am  
12 not party, I don't believe I am a party to that lawsuit. So I  
13 think Paul was, I guess, maybe telling me not to get involved  
14 in his lawsuit stuff.

15 THE COURT: Are you moving for the exhibit?

16 MS. TURNER: I am, Your Honor. I was waiting for him  
17 to finish.

18 THE COURT: 143 is admitted.

19 (Exhibit 143 admitted in evidence.)

20 BY MS. TURNER:

21 Q Now the B of A issue was ultimately resolved by  
22 Paul, right?

23 A Correct.

24 Q And it was with your assistance?

1           A     Correct.

2           Q     If we go to Exhibit 146, we have reference to a B of  
3     A loan with Morabito where Morabito had a two million dollar  
4     line of credit. Do you see that?

5           A     And I did not know about his two million line of  
6     credit.

7           Q     You didn't know about it, didn't receive the benefit  
8     of it?

9           A     Until he got the lawsuit.

10          Q     You did not receive the benefit of that Letter of  
11     Credit, the two million dollar Letter of Credit in Paul's name  
12     with Bank of America?

13          A     I did not know about Paul borrowing two million  
14     dollars.

15          Q     Paul borrowed the two million dollars. It was not  
16     paid to you? The two million dollars did not go to you?

17          A     Yeah. It was Paul's line of credit.

18          Q     In addition, Bank of America extended a Letter of  
19     Credit for Consolidated Nevada corporation in an original  
20     amount of 1.1 million dollars, correct?

21          A     If it states that.

22          Q     And then this Settlement Agreement set forth in  
23     Exhibit 150, it resolved those two loans, correct?

24               MR. GILMORE: Objection, foundation.

1           THE WITNESS: I wasn't -- I wasn't privy to all the  
2 details and lawyer stuff with Paul's lawsuit with B of A. All  
3 I know is three things: One, he had a lawsuit with B of A. He  
4 owed them two million dollars, and that's what I know. He  
5 paid some of the two million and then I paid the rest. Those  
6 three things I can help you with. The rest of the questions  
7 you should probably ask his lawyers or ask Paul.

8 BY MS. TURNER:

9           Q     Let's go to page 2 and we'll refresh your  
10 recollection regarding your involvement. If you go to section  
11 (1b). See where it says: "Morabito will provide B of A  
12 collateral to secure the settlement amount?"

13          A     Like I said, I wasn't privy. I can read this, but I  
14 wasn't privy to all this.

15          Q     It says here "Morabito will call" --

16               MR. GILMORE: Objection. Foundation. This witness  
17 testified he doesn't know this document. We keep getting  
18 questions about documents Mr. Bayuk doesn't know anything  
19 about.

20 BY MS. TURNER:

21          Q     Let me try to refresh your recollection. You didn't  
22 go, as far as where there is a reference to 570 Glenneyre, do  
23 you see where it says: "Morabito will cause a third party to  
24 provide a guarantee secured by a Second Deed of Trust on 570

1 Glenneyre." Do you see that?

2 A Yes.

3 Q You agreed on behalf of Snowshoe Properties LLC., to  
4 put a Second Deed of Trust on the property?

5 A Yeah, but you have to understand something. So at  
6 this point in time, I have owned the property for two plus  
7 years, paying the B of A mortgage or whatever mortgage, the  
8 first mortgage. I now found a tenant, and I spent \$400,000 of  
9 my money on the building, and the building is amazing. It  
10 houses the largest land architecture firm in the world. They  
11 do stuff all over the world. I have an amazing relationship  
12 with them. They have been in the building now I think it is  
13 going on -- so you want me to stand by and lose a building I  
14 just spent and I worked like a maniac to get for the tenant,  
15 and so you want me to stand by and lose the building? I think  
16 that is where you are going with this. I mean --

17 THE COURT: I am going to stop you. We have been  
18 going since 8:00 now this morning, for quite some time. You  
19 are not answering her question. There is a lot of things I  
20 know you want to tell me. Your attorney is going to work on  
21 that with you.

22 THE WITNESS: Okay. Sorry.

23 THE COURT: Answer her questions, then we can get  
24 through. Stop anticipating what she wants to argue later.

1 Just answer the question. If there is more to it, your lawyer  
2 will get to that.

3 THE WITNESS: Okay. I am not use to this. I am  
4 just trying to be helpful, because there is a lot to tell.

5 THE COURT: You keep telling me that you're just  
6 trying to be helpful. By doing that, you are delaying  
7 everything and you are not coming across as truthful.

8 THE WITNESS: Okay.

9 THE COURT: So just answer the questions. And your  
10 lawyer can follow up.

11 BY MS. TURNER:

12 Q You testified earlier that you took a loan with a  
13 Second Deed of Trust on 570 Glenneyre. You didn't take any  
14 loan that resulted in the Second Deed of Trust on Glenneyre,  
15 correct? You actually just provided a Deed of Trust for the  
16 benefit of Paul Morabito?

17 A I took a loan. I borrowed money on the buildings  
18 plural for five million.

19 Q Sir, the Second Deed of Trust provided to Bank of  
20 America was security for Paul Morabito's Settlement Agreement  
21 with Bank of America, correct?

22 MR. GILMORE: Calls for speculation.

23 THE COURT: Overruled.

24 THE WITNESS: At the time, Bank of America had the



1 first mortgage on it.

2 BY MS. TURNER:

3 Q That is not my question, sir. The Second Deed of  
4 Trust was provided at the request of Paul Morabito as a  
5 condition of his Settlement Agreement with Bank Of America?

6 A If I didn't do that, I would have lost the building.

7 Q That is not the question.

8 A I was owning the building at the time.

9 Q You put the Second Deed of Trust on the building?

10 A Correct.

11 Q Not because you received cash from Bank of America  
12 or anybody else, but to help Paul Morabito resolve a condition  
13 of his Settlement Agreement?

14 A He had a lawsuit, yes.

15 Q And you knew that was the purpose of the Second Deed  
16 of Trust?

17 A I would have lost the building had I not put a  
18 Second Deed of Trust on the building. I would have lost the  
19 whole building.

20 Q You knew --

21 A I knew I was getting rid of Paul's problem. And  
22 although it was the right business decision for myself, so I  
23 was being selfish.

24 Q And Paul Morabito had a payment obligation to Bank

1 of America and you paid that?

2 A Yes.

3 Q You have seen Exhibit 146 before?

4 A In this litigation. Prior to this litigation, no.

5 Q Exhibit 147 -- actually, if we go back to Exhibit  
6 145. I can lay foundation for that. Exhibit 145 is an e-mail  
7 from your counsel, Dennis Vacco, cc'd Paul Morabito December  
8 14, 2012. Do you see that?

9 A Yes.

10 Q It says: :attached please find various documents?"

11 MR. GILMORE: Objection. That is a hearsay  
12 statement she's reading onto the record.

13 MS. TURNER: I will move for its admission.

14 THE COURT: 145?

15 MS. TURNER: 145.

16 MR. GILMORE: It is a hearsay statement. There is  
17 no foundation. Mr. Vacco could have testified to this and did  
18 not.

19 MS. TURNER: It is not a hearsay statement if it is a  
20 statement against his interest from his counsel to him. That  
21 is what it is, an exception to hearsay.

22 MR. GILMORE: Where is the foundation this is  
23 against his interest? This is not something he's been charged  
24 with a crime. This is his lawyer conceding to it. This is

1 his lawyer sending something to him with attachments, his  
2 lawyer's Declaration. There is no evidence he has made --

3 THE COURT: The statement against interest, I don't  
4 know what it is. I haven't looked at the exhibit. It doesn't  
5 have to just be a crime. So I am going to ask the other side  
6 what the statement is against interest, then I will let you  
7 respond.

8 MS. TURNER: Your Honor, I will proffer that this is  
9 an e-mail attaching the documents to be executed by Ed Bayuk  
10 to guarantee and provide collateral to the benefit of  
11 Paul Morabito as part of Paul Morabito's settlement with Bank  
12 of America.

13 MR. GILMORE: How does this counsel know that?  
14 Mr. Vacco didn't talk to it. Ms. Canastro didn't talk to it.  
15 There has been no discussion about this document. It is what  
16 it purports to be. The only thing we know is it came from a  
17 file. How can counsel testify?

18 THE COURT: Wait, wait, wait. Is it your position  
19 that documents have to have a human testify to all of them or  
20 they are not admissible?

21 MR. GILMORE: Yes. That is called foundation.

22 THE COURT: Objection is overruled. It is admitted.

23 MS. TURNER: Thank you.

24 (Exhibit 145 admitted in evidence.)

1           MR. GILMORE: Might I have a ruling on the hearsay  
2       objection?

3           THE COURT: Overruled.

4           MR. GILMORE: Okay. It is a statement made by a  
5       party opponent that is adverse to the position they are taking  
6       in this case. I am confused at the ruling. This is a  
7       statement by Mr. Vacco who is not a party.

8           MS. TURNER: He's an agent.

9           THE COURT: He's an agent.

10          MR. GILMORE: He's not speaking to a third party.  
11       He's speaking to Mr. Bayuk.

12          THE COURT: Doesn't that make it even more important  
13       for Mr. Bayuk to say hold on in a return e-mail perhaps, that  
14       you probably might have where he told Mr. Vacco no, this is  
15       wrong?

16          MR. GILMORE: All I am arguing is the APO objection.

17          THE COURT: I ruled on it. You're wrong. It is  
18       admitted.

19          MR. GILMORE: Okay.

20          THE COURT: Sorry.

21       BY MS. TURNER:

22           Q     Mr. Bayuk?

23           A     Yes.

24           Q     When Dennis Vacco provided you the documents to be

1       executed to assist Paul to resolve his issue with Bank of  
2       America, you executed the documents as needed, correct?

3           A       Yes.

4           Q       If we go to the third page of Exhibit 145, pardon  
5       me, the fourth page of Exhibit 145, Bate LMWF Supp. 100014?

6           A       Yeah.

7           Q       In addition to providing a second Deed of Trust on  
8       the 570 Glenneyre property and paying the payment obligation,  
9       Snowshoe Properties LLC., guaranteed the full payment  
10      obligation for the benefit of borrower Paul Morabito, correct?

11          A       Yes.

12                THE COURT: Counsel before you move on to another  
13      area, I have a question.

14                MS. TURNER: Yes.

15                THE COURT: Is this the time?

16                MS. TURNER: That is fine.

17                THE COURT: Sir, a couple of times you testified  
18      that if you didn't execute this Second you were going to lose  
19      your property.

20                THE WITNESS: Yes.

21                THE COURT: Why is that?

22                THE WITNESS: Because the building had a first  
23      mortgage from B of A.

24                THE COURT: Yes, you told me you put the first

1 mortgage on.

2 THE WITNESS: No, no, no. That was in place, the  
3 mortgage was in place for a long, long time. I was on the  
4 mortgage, and I had been paying the mortgage the company. I  
5 am sorry.

6 THE COURT: Snowshoe Properties?

7 THE WITNESS: It was Baruk Properties then Snowshoe  
8 Properties. I was paying the mortgage. So this problem came  
9 along. I didn't know about Mr. Morabito's two million line of  
10 credit. I guess everything was, unbeknownst to me, I didn't  
11 understand his loans were cross collateralized through  
12 everything he owned or anything.

13 THE COURT: So you were told, correct or not, that  
14 the two million dollar line of credit was secured by all the  
15 property that he had transferred to you?

16 THE WITNESS: Yes.

17 THE COURT: Okay. Thank you. You may go on. I  
18 just wanted to clear that up.

19 MS. TURNER: You are the most important.

20 THE WITNESS: That was a good question.

21 BY MS. TURNER:

22 Q Now when -- Do you recall the amount that you paid  
23 on behalf of Paul Morabito as a condition of this Settlement  
24 Agreement in the Fall of 2012?

1           A     Fall of 2012?

2           Q     Yes, where you paid Bank of America on behalf of  
3 Paul Morabito?

4           A     Yeah, I paid probably 700 some thousand.

5           Q     And you recall making the payment through Dennis  
6 Vacco's Lippes law firm in order to avoid detection that you  
7 were involved with the settlement?

8           A     No. No. B of A at this point in time -- No. There  
9 was a balance owed, and I paid the difference so I wouldn't  
10 lose the building. There was no defection or anything like  
11 that.

12          Q     You made the payment through the Dennis Vacco Lippes  
13 law firm, correct?

14          A     No.

15          Q     If you go to Exhibit 147.

16          A     Got it.

17          Q     Now in the middle of the page September 34, 2012  
18 there is an e-mail from your counsel, Dennis Vacco, to Edward,  
19 then there is a follow up at the top of the page with Paul  
20 Morabito to Dennis Vacco with cc to Edward Bayuk. Do you see  
21 that?

22          A     Yes.

23          Q     Now Paul Morabito directs: "Wire DVC as  
24 instructed." DVC is Dennis Vacco, correct?

1           A     Yes.

2           Q     And the direction from Dennis Vacco was: "Edward,  
3 as a follow-up to my earlier e-mail, please see more  
4 specifically."

5           MR. GILMORE: I'm sorry, could we get some  
6 foundation before we read a hearsay statement on the record?

7           MS. TURNER: That's a fair comment from counsel. I  
8 will move to admit Exhibit 147.

9           MR. GILMORE: My objection would be the same as the  
10 rest of these e-mails, hearsay and foundation.

11          THE COURT: Okay. This is an e-mail from Paul to  
12 Mr. Vacco?

13          MS. TURNER: Yes.

14          THE COURT: Okay.

15          MS. TURNER: Following an e-mail from Dennis Vacco to  
16 Mr. Bayuk.

17          THE COURT: How do you know it is from Paul? I am  
18 not looking.

19          MS. TURNER: Yes, it is.

20          THE COURT: I am trying not to look at the ones that  
21 aren't admitted.

22          MS. TURNER: Fair.

23          MR. GILMORE: I suppose the record should reflect it  
24 first has an e-mail from Steve Peek, counsel for Bank of



1     America who is a non-testifying Declarant. Then Marcus  
2     Bagley. I don't know who that is. And then there is David  
3     Morella, so there are four Declarants she's offering to admit.  
4     I want the record to reflect my objection is hearsay.

5             THE COURT: Why is it not hearsay?

6             MS. TURNER: Because it is -- So we have an e-mail  
7     chain with Bank of America's counsel, Steve Peek, which I do  
8     want to take a picture and send to him saying now we know  
9     you're capable of settling. That is a separate aside if you  
10    have dealt with Steve Peek.

11            MR. GILMORE: Sorry, counsel, you could say that  
12    about me, too.

13            MS. TURNER: So we have an e-mail chain with Bank of  
14    America counsel to follow up on how Bank of America is to be  
15    paid is from Dennis Vacco, counsel for this witness to him  
16    with Paul, then a co-client of Dennis Vacco responding. It is  
17    not hearsay because it's an agent of Mr. Bayuk providing  
18    direction to Edward on how the payment should be made. It's  
19    an admission of a party opponent.

20            THE COURT: I'm not sure how we get in all the stuff  
21    from Steve Peek and these other Declarants, why that becomes  
22    relevant. I mean I understand that you want to put in the  
23    part where Vacco's being directed by Paul about Edward's  
24    business entities. I understand that part, and I do believe

1       that what Mr. Vacco is doing as the agent for Edward is not  
2       hearsay. But all the rest of it that has been identified  
3       sounds to me like it is hearsay and really not necessary to  
4       establish the content, make the content make sense.

5               MS. TURNER: So, Your Honor, this is one of the  
6       Lippes produced documents that Mr. Leonard will be discussing  
7       as the file that was produced to him and that he owns, and so  
8       I think we will get it in as a business record or, pardon me,  
9       a regularly conducted activity through Mr. Leonard for that  
10      purpose. With this witness, it is a separate purpose which is  
11      to discuss the top two e-mails that involve Dennis Vacco and  
12      Edward Bayuk. So what I would request is that the entire  
13      document be admitted conditional on Mr. Leonard resolving the  
14      exception to the hearsay from his standpoint for the entire  
15      document, and then I would be permitted to discuss the top two  
16      e-mails only with this particular witness where it is a  
17      statement against Mr. Bayuk's interest in this case.

18             MR. GILMORE: Can I get an understanding as to the  
19      statement against interest? So it's a statement against  
20      interest because she thinks it does something that is not good  
21      for him in this case? Is that the argument I am hearing?

22             THE COURT: Yes. Somehow you don't think that is an  
23      evidentiary basis?

24             MR. GILMORE: Every document in the world could be

1       offered, admitted under that basis. Every document. Well,  
2       this is something I don't like, so I am going to admit it on  
3       the basis it is against interest.

4               THE COURT: I don't think it is you don't like it. I  
5       think it is a statement that goes against your theory that you  
6       are telling the Court.

7               MR. GILMORE: Is it your position that overcomes  
8       hearsay, foundation, authenticity and all that? I don't want  
9       to argue with the Court.

10              THE COURT: You are arguing with the Court. Apart  
11       from that, it doesn't really matter, but it might be helpful  
12       for you to look up the statute and read it and read the case  
13       law that is attached to it. It is all in the digests. It  
14       might give you a better understanding of what this particular  
15       issue is. It is overruled.

16              MR. GILMORE: Will the Court permit me to submit  
17       Points and Authorities I prepared last week in anticipation of  
18       this issue that speaks to foundation and authentication of  
19       people who are testifying who are not here?

20              THE COURT: Yes.

21              MR. GILMORE: I have a copy. I would like to file  
22       this.

23              THE COURT: Absolutely.

24              MR. GILMORE: Which I can do it electronically or

1 through the clerk.

2 THE COURT: I think you have to do it electronically  
3 now.

4 MR. GILMORE: I gave you the wrong one. Excuse me.  
5 I gave you the wrong one, counsel. I have this one here.

6 MS. TURNER: We are happy to respond, Your Honor.

7 MR. GILMORE: Could I have that other one back? I  
8 will trade you for this. That one has to do with the  
9 admissibility. They are two different things.

10 MS. TURNER: Can we have this one, too?

11 MR. GILMORE: If the need arises. The one I am  
12 offering today is the one with respect to these e-mails.

13 THE COURT: If you have got some memorandum you  
14 anticipate using, it would be very helpful if you give them to  
15 me now. I don't know if you noticed, there is a blank chair  
16 where the law clerk normally sits. I do not have a law clerk.  
17 I do not have any law clerk right now. So anything that you  
18 can give me in advance would be helpful. So if you have some  
19 things you want to file, let's get them filed and we can get a  
20 response, then I have more time to work on it. Otherwise, we  
21 are going to cut into the litigation time.

22 MR. GILMORE: I understand. I am not trying to be  
23 coy. There is another issue based on what I saw on the  
24 exhibits that were anticipated to be offered. I prepared two

1 memorandums. One has to do with the 341 meeting of creditors  
2 transcript they may or may not offer.

3 THE COURT: I don't need that.

4 MR. GILMORE: If I need to offer them, I promise the  
5 Court I am not being coy, I will submit this. I didn't want  
6 to raise a stink about the foundation and authentication  
7 issue, but Michler and other Federal authorities interpreting  
8 803 speak to this foundation issue particularly out of state  
9 witnesses.

10 THE COURT: So the clerk says she'll take it for  
11 you.

12 THE CLERK: Mr. Gilmore, I will file it in at lunch.

13 MR. GILMORE: I appreciate that. I don't know if the  
14 date is right. It might have a date from last week.

15 MS. TURNER: Your Honor, very briefly, so we have a  
16 clean record that I think is for the benefit of the Court as  
17 well as the integrity of the proceedings in general, there has  
18 been a conflation of authenticity versus hearsay. Two straight  
19 issues, foundation and hearsay. We are requesting Exhibit 147  
20 be admitted for two separate reasons: One, it is not ripe yet  
21 because Mr. Leonard is not testifying, and that it is the  
22 record of regularly conducted activity to be submitted by a  
23 qualified person. We are proffering that he will meet that  
24 evidentiary obligation.

1           Separate and apart from that, with this particular  
2       witness, an exception to hearsay is a prior inconsistent  
3       statement of the Declarant's testimony. That is not what we  
4       have here. What we have is a statement offered against a party  
5       that is a statement by the party's agent concerning a matter  
6       within the scope of the party's agency or employment made  
7       before the termination of relationship. That is a specified  
8       hearsay exception, and that is what we are offering that  
9       statement of Dennis Vacco for here today. Now that is a  
10      separate issue than authentication. Authentication, there is  
11      a requirement that the witness have knowledge that the matter  
12      is what it was claimed to be. And here, the witness is  
13      actually a recipient of the e-mail. And if that isn't enough,  
14      Mr. Leonard can again testify and lay the foundation that this  
15      was a document produced in response to a subpoena. It is Bate  
16      LMWF Supp. Counsel can confirm those were the documents that  
17      were produced by the Lippes firm, Dennis Vacco's law firm as a  
18      result of the subpoena of the Trustee. So with that, that is  
19      the basis for having it.

20           THE COURT: They were all disclosed during 16.1?

21           MS. TURNER: Absolutely.

22           THE COURT: And there was no objection raised to  
23      authenticity?

24           MS. TURNER: No.

1           MR. GILMORE: I am not objecting on authenticity. I  
2     don't conflate anything. I know these rules inside and out.  
3     And when an agent is making a statement being offered against  
4     this witness, it has to be made to a third party, not to him.  
5     If the agent and principal are communicating, that is not an  
6     admission of a party opponent. It has to be a statement to a  
7     third party. That is what the rule requires. I will get a  
8     memorandum on that. If the lawyer and client are talking and  
9     you offer the lawyer's statement and it is not made to someone  
10    other than the principal or agent, it is not qualified under  
11    that ruling. There is legend of cases on 803 that talks about  
12    these issues. So I'm not mistaken on this. Quite honestly, I  
13    think I know what I am doing here.

14           MS. TURNER: Your Honor, I was reading from the NRS.  
15    It is black and white. The statute 51.035 and 045 set forth  
16    the exceptions. If there is any case law that abrogates the  
17    statute, I don't know how it can. It is black and white. It  
18    doesn't say a statement to a third party. It says a statement  
19    offered against a party that is a statement by the party's  
20    agent. It didn't limit it beyond that.

21           THE COURT: What we are going to do now, we have  
22    this Defendants' Points and Authorities and objection to the  
23    admission. We are lucky we have a bench trial, certainly, if  
24    I change my mind I can exclude testimony and not consider it.

1 I am not considering any of the exhibits have been marked  
2 until they are offered, and I am way behind you all. So I  
3 probably won't get to it for a couple of days before I can  
4 actually read it in content. So what I am going to do is allow  
5 you an opportunity to respond. You can respond to the  
6 Defendants' Points and Authorities, then we can argue about  
7 it. But in the interim, I would like to keep going with the  
8 testimony. So I am provisionally admitting it subject to the  
9 Defendants' argument and you answering the Defendants'  
10 argument and the Points and Authorities. I need the response  
11 by tomorrow morning.

12 MS. TURNER: That is fine.

13 (Exhibit 147 admitted in evidence.)

14 BY MS. TURNER:

15 Q Mr. Bayuk, if you would go to Exhibit 147?

16 A Yes.

17 Q The e-mail from Dennis Vacco to you, Edward, it  
18 says: "The total due on September 7th is \$351,626.82" do you  
19 see that?

20 A Yes.

21 Q And if we go to the second paragraph for Mr. Vacco  
22 it says: "I recommend that in order to not make your  
23 involvement in this settlement that you first send the  
24 proceeds to LMWF and we will then initiate the payment wire



1 from here." Do you see that?

2 A Yes.

3 Q LMWF is Dennis Vacco's law firm, correct?

4 A Yes.

5 Q And then it says: "Please initiate your wire to LMWF

6 if you agree with him on that," right?

7 A He told me to wire money and I probably wired money.

8 Q Okay. Paul Morabito responded to Dennis Vacco to you

9 and said, "Wire as instructed right?"

10 A Yeah.

11 Q And you did, correct?

12 A Yes, I believe so. I'd have to check my records.

13 Q If you go to Exhibit 148. Does that refresh your

14 recollection?

15 A Yeah.

16 Q You wired the money to the LMWF account?

17 A Yeah.

18 MS. TURNER: Your Honor, I move to admit Exhibit 148.

19 MR. GILMORE: Your Honor, same issues 147 had with

20 the exception of the last line by Mr. Bayuk which is obviously

21 not hearsay.

22 MS. TURNER: It is the same issues.

23 THE COURT: 148 though he already said he did

24 whatever the purpose was.

1 MS. TURNER: He did.

2 THE COURT: It is admitted. The objection is  
3 overruled.

4 (Exhibit 148 admitted in evidence.)

5 BY MS. TURNER:

6 Q Okay. Let's go on to 1254 Mary Fleming Circle. Now  
7 Mary Fleming Circle was originally in the name of Snowshoe  
8 Properties LLC., and then you put it in your personal Trust,  
9 correct?

10 A Originally it was in Baruk Properties, then it got  
11 changed to, I think when I took it out of Baruk Properties it  
12 went into my Trust, so it did not go into Snowshoe Properties.

13 Q Snowshoe-- So when you purchased Paul Morabito's  
14 interest in Baruk Properties, you transferred Mary Fleming out  
15 of the Baruk Properties?

16 A Right.

17 Q And into your personal Trust?

18 A Correct.

19 Q And then the remaining properties were transferred  
20 to Snowshoe Properties?

21 A Correct.

22 Q And there were four Properties?

23 A Except Clayton Way. I forgot about Clayton Way.

24 Q There were four properties owned by Baruk Properties

1       when you bought Paul's interest?

2           A       Correct.

3           Q       The two Glenneyre properties we already discussed?

4           A       Correct.

5           Q       Mary Fleming Circle in Palm Springs?

6           A       Correct.

7           Q       And then Clayton Avenue there was a property. That

8       is in Sparks, Nevada?

9           A       Correct.

10          Q       Now Mary Fleming you agreed to pay Paul for the

11       furnishings, the personal furnishings in the home when you

12       acquired his interest, correct?

13          A       Yes.

14          Q       Now did you do that by walking through the home and

15       eyeballing the personal property and affixing a number to it?

16          A       Yes.

17          Q       You did not have that personal property appraised?

18          A       No.

19          Q       And if we go to Exhibit 54 already in evidence, you

20       agreed to pay \$44,746-- pardon me, 756 dollars for all the

21       furniture and other personal property located in the home?

22          A       What was the exhibit?

23          Q       55. I believe this is a stipulated fact, stipulated

24       document for certain.

1 MR. GILMORE: 55?

2 MS. TURNER: 55 is the Bill of Sale.

3 MR. GILMORE: Yes. Yes.

4 BY MS. TURNER:

5 Q And you did not have that personal property  
6 subsequently appraised, correct?

7 A No.

8 Q Now the property at Mary Fleming you don't lease it  
9 currently?

10 A No.

11 Q You use it from time to time?

12 A Correct.

13 Q As does Paul?

14 A No, he does not use it at the present time. In the  
15 past he's used it. You asked that yesterday.

16 Q Yes, since 2010?

17 A Yeah. He used it for a period of time, small period  
18 of time.

19 Q Now the fourth property, 49 Clayton Place, that  
20 was -- you took Paul's fifty percent interest in that company  
21 when you bought out his interest -- or that property when you  
22 bought out his interest in Baruk Properties, right?

23 A It was not included in any calculations because I  
24 forgot about the property. It was brought to my attention

1       years later.

2           Q       So in September 2010 when you agreed to buy Paul  
3 Morabito's interest in Baruk Properties, Baruk Properties  
4 owned Clayton Place. Was it Clayton Place?

5           A       It is Clayton Way.

6           Q       In Sparks?

7           A       Correct.

8           Q       But your testimony is you did not include that in  
9 your thought process when you bought Paul's interest?

10          A       Correct.

11          Q       Just in the haste of --

12          A       No. It was an empty piece of property that doesn't  
13 do anything. It was forgotten about.

14          Q       Whether you valued it or not, as a result of the  
15 acquisition of Paul's fifty percent interest in Baruk  
16 Properties LLC., you ended up owning 100 percent of Clayton  
17 Place?

18          A       I believe it was valued later on.

19          Q       Clayton Way?

20          A       It was valued later.

21          Q       When you say it was valued later on, there was no  
22 appraisal?

23          A       No, there was no appraisal, because it is an empty  
24 piece of property, kind of useless to anyone.

1           Q     Well, it was useful because it was used to settle a  
2     claim against Paul Morabito?

3           A     That's correct, a lawsuit.

4           Q     It was a lawsuit against Paul Morabito by  
5     Desi Moreno; is that the right name?

6           A     Correct.

7           Q     That property was used to satisfy --

8           A     That is when it was brought to my attention.

9           Q     Now Paul didn't pay you for the use of the Clayton  
10    property to satisfy his debt to Desi Moreno?

11          A     I think we -- At the time, whoever came up with it  
12    was like \$100,000, so I got credit for fifty thousand.

13          Q     Okay. So somebody came up with a number \$100,000?

14          A     Right.

15          Q     Who did?

16          A     I'm sure the lawyers, because the property was  
17    dormant, adjacent. It was a half of a donut surrounding  
18    Desi Moreno's property. It wasn't really worth any money to  
19    anyone except Desi Moreno, so.

20          Q     Do you recall testifying at your deposition when  
21    asked what the value was you said it could be worth a million  
22    dollars today?

23          A     No, I don't remember. Anything can change in value.  
24    If Desi Moreno got the property and he combined it with his

1 property, it probably increased his property value, so his  
2 total property value got increased. I think that is what I  
3 was trying to explain at my deposition when you asked or when  
4 Teresa asked the question.

5 Q So when you said it could be worth a million  
6 dollars, that was to somebody else?

7 A Not to me.

8 Q With respect to the \$100,000 value that you affixed  
9 or somebody did, you don't know what went into the thought  
10 process of that number versus another one?

11 A No. Just Desi Moreno wanted the property.

12 Q And you said there was a fifty thousand dollar  
13 credit. When you say fifty thousand dollar credit, you  
14 provided-- you gave yourself a fifty thousand dollar credit to  
15 the amount that you owed Paul?

16 A Correct.

17 Q That you owed Paul for what?

18 A Well, he owned it fifty/fifty with me. As to the  
19 value was \$100,000. Fifty percent of a hundred is fifty  
20 thousand.

21 Q Now the transfer from Paul Morabito to you of his  
22 fifty percent interest, Arcadia's fifty percent interest in  
23 Baruk Properties, that was in exchange for a promise to pay  
24 Paul Morabito, correct?

1           A     Correct.

2           Q     If we go to Exhibits 61 and 62. Exhibit 61 is  
3 already in evidence. That is the Membership Interest Transfer  
4 Agreement?

5           A     Yes.

6           Q     And the date of the Agreement is October 1, 2010  
7 right?

8           A     Yes.

9           Q     Now you didn't talk to Paul about taking his  
10 interest in Bayuk Properties LLC., until at least September  
11 13th, 2010, correct?

12          A     I believe so.

13          Q     So there wasn't sufficient time to fix the value of  
14 the properties. You didn't have time to go get appraisals  
15 before October 1, 2010, correct?

16          A     I think I engaged a bunch of-- an attorney and  
17 engaged a bunch of MAI appraisers to appraise the properties.  
18 So it was probably in the Summer, that Summer. I am sure there  
19 is a bill or a contract that says when they were engaged.

20          Q     The Properties were valued as of October 1, 2010  
21 right?

22          A     I don't remember. I mean they were appraised by  
23 appraisers. There was, later I think there were some  
24 adjustments.



1 MR. GILMORE: Your Honor, the valuation of Baruk  
2 Properties have been stipulated to.

3 THE COURT: As to what date?

4 MR. GILMORE: As to the date of the transfer,  
5 correct?

6 MS. TURNER: That is true. I am asking about when he  
7 obtained these appraisals. So I want just to understand the  
8 timing.

9 THE WITNESS: Yeah.

10 MS. TURNER: If that wasn't clear.

11 THE WITNESS: I think I had to pay them and sign  
12 something for them to do the work. So at some point there  
13 were appraisals done, but I think I started talking to  
14 appraisers in the Summer, but I am not sure. But I am sure  
15 there is documents somewhere.

16 BY MS. TURNER:

17 Q The appraisals, you didn't have appraisals done save  
18 and except the ones that were directed to appraise value as of  
19 October 1, 2010. That is what I want to know?

20 A I don't -- I don't know. I forget when the  
21 appraisals were done. If you show me a document. I am sorry,  
22 I don't remember.

23 THE COURT: We are going to stop there. Your  
24 attorney on your behalf has stipulated the appraisals were as

1 of October 2010.

2 THE WITNESS: Okay.

3 THE COURT: She's now asking you whether or not you  
4 asked someone in July to appraise the property as of October  
5 2010.

6 THE WITNESS: Okay.

7 MS. TURNER: The Court is asking it a lot better.

8 THE WITNESS: So if you're stipulating, it has  
9 already been answered. I am sorry. I guess yes is the answer.

10 THE COURT: Because you said you asked someone to  
11 appraise it in July. Why did you ask someone to appraise it in  
12 July if you didn't want it appraised until October?

13 THE WITNESS: I'm sorry.

14 THE COURT: That's why she's asking the question.  
15 Which one is it?

16 THE WITNESS: I guess it is October 1st.

17 MR. GILMORE: The appraisals are in evidence. I  
18 don't know why we are getting this kind of cat and mouse.

19 THE COURT: What exhibits are those?

20 MR. GILMORE: Well, all the settlement statements  
21 are in.

22 MS. TURNER: Your Honor, the values are absolutely  
23 stipulated for these Baruk Properties as of October 1, 2010.  
24 You hit the nail on the head. When the witness testified he

1 had talked to people in the Summer that was inconsistent with  
2 what we agreed on.

3 THE WITNESS: In other words, you're just trying to  
4 confuse me with dates. I really don't remember everything.

5 THE COURT: Sir, this is very confusing. But to the  
6 Court's mind, the attorney is impeaching you with something  
7 your attorney has already stipulated to.

8 THE WITNESS: Right.

9 THE COURT: So it doesn't make sense that you asked  
10 someone in the summertime to appraise property and put a value  
11 on it. In other words, it is, hi appraiser, it is July 1st I  
12 want you to appraise my property but put the date of October  
13 1st on it. See how that doesn't make sense?

14 THE WITNESS: Yeah, it doesn't make sense.

15 THE COURT: So when you say that it doesn't make  
16 sense, she's trying to show me you are not being completely  
17 truthful when you add stuff in. That is why your attorney is  
18 pretty frustrated, because you shouldn't be adding stuff.  
19 Tell me what really happened that you remember happened.

20 THE WITNESS: Right.

21 BY MS. TURNER:

22 Q If you don't remember it is okay to say I don't  
23 know. So in fact you did not hire an appraiser before --

24 A No.

1           Q     -- September 2010 certainly?

2           A     No.

3           Q     Now if we go to Exhibit 62. You testified --

4                 MR. GILMORE: I am sorry, Your Honor. I found them.

5           They are in evidence. The appraisals are 180, 181, 182, 183,

6           184 all offered by the Plaintiff who is now impeaching with

7           facts that have been admitted that she knows not to be true.

8           The dates of these documents are admitted.

9                 THE COURT: Does it say what date?

10           MR. GILMORE: Absolutely they do.

11           THE COURT: What date was the appraiser engaged?

12           MR. GILMORE: Absolutely they do. These are their

13           exhibits.

14           MS. TURNER: Your Honor --

15           MR. GILMORE: The reason I am frustrated, Your

16           Honor, is because she knows the witness is getting confused by

17           these questions of fact that are not in dispute.

18           THE COURT: Counsel, I am going so ask the witness

19           to step outside because we have the rule of exclusion and we

20           are having a lot of argument.

21           MR. GILMORE: I have no problem with that. I agree

22           with that.

23           THE COURT: Would you step outside a few minutes?

24           THE WITNESS: Can I do a bathroom break?

1 THE COURT: Yes, you can.

2 THE WITNESS: Okay.

3 THE COURT: Go ahead.

4 MR. GILMORE: I am really frustrated by the fact  
5 that when she knows a fact to be true which is a stipulated  
6 fact based on an admitted document, based on a deposition that  
7 they took of my appraiser, and now she's essentially, in my  
8 opinion, confusing him into admitting something he has no idea  
9 what she's asking and no idea what he's admitting to.

10 THE COURT: Well, wait a second. Your client  
11 volunteered. It had nothing to do with her question. It was  
12 not responsive to her question.

13 MR. GILMORE: I agree.

14 THE COURT: He volunteered, "I had the lawyer get an  
15 appraiser in the Summer before September of 2010." So that is  
16 what he offered. I think that is what she was trying to get  
17 at.

18 MR. GILMORE: He was talking about Clayton Way and  
19 not about these.

20 THE COURT: Well, he didn't say that.

21 MR. GILMORE: I know he didn't, because he was  
22 confused. He got shifted gears on. The Exhibits are 180, they  
23 start 180, 181, and so on. These are the appraisals of these  
24 Properties which are in evidence. The dates of the appraisals

1 are in there. This Mr. Justmann was deposed at length by both  
2 parties. There is no genuine dispute when Mr. Justmann was  
3 retained or when he appraised these properties. There is just  
4 no dispute to that.

5 THE COURT: Then why did your client --

6 MS. TURNER: Exactly.

7 THE COURT: -- say what he said?

8 MR. GILMORE: My personal belief is he was referring  
9 to after the fact he asked about the Clayton Way appraisal,  
10 because they had never appraised it. He admitted that.

11 THE COURT: That wouldn't be the Summer of 2010.  
12 See, what it appears to me, he keeps telling us I am just  
13 trying to help. He's trying to help. Instead, he's  
14 contradicting the stipulation you have given.

15 MR. GILMORE: Let me offer this: That testimony  
16 doesn't help their case, because we already stipulated these  
17 appraisals were done pursuant to the judgment. Right.

18 THE COURT: The facts don't help her case?

19 MR. GILMORE: No, no. I am saying even if he is  
20 inconsistently testifying on that point, it is totally  
21 immaterial. More so, it doesn't even help their case. Their  
22 case is the Judgment in 2010, right, is what caused all this  
23 to occur. We don't deny that. That is obvious.

24 THE COURT: The only problem is his credibility is

1 at issue here completely and totally. It is not really  
2 whether or not they are refuting a fact you already stipulated  
3 to. It is whether or not what he says I am going to believe  
4 him. It does go to his believability.

5 MR. GILMORE: I totally agree with that. I do  
6 totally agree with that. So asking questions related to facts  
7 which are already stipulated is unfair.

8 THE COURT: Well, I don't think she asked the  
9 question. Your client volunteered it.

10 MR. GILMORE: That may be true.

11 THE COURT: If she was asking questions trying to  
12 trip him up, I agree that would be unfair and I would see  
13 through that. But it is your client who is trying to help  
14 you.

15 MR. GILMORE: I am not exactly sure. What is the  
16 tripped up objection I should make on that?

17 MS. TURNER: Your Honor --

18 MR. GILMORE: I am asking for like --

19 MS. TURNER: No, no, no, you don't get to say that I  
20 am intentionally tripping up the witness.

21 MR. GILMORE: I am not talking about you, counsel.  
22 I am saying generally speaking, if somebody does it, I don't  
23 even know what the objection is. Counsel, look at me. I am  
24 telling you I am not suggesting you did that. This was

1       probably brought upon by this witness, okay? I am not  
2       suggesting that at all. Don't hear me say that.

3               THE COURT: Okay.

4               MR. GILMORE: But in a situation where there is a  
5       stipulated fact, I think we should be fair, that asking a  
6       witness about facts which we know are stipulated in part of  
7       the record, I don't think is appropriate. In this case,  
8       Mr. Bayuk brought it on himself. I think the issue is  
9       resolved.

10              THE COURT: Okay. So it is a quarter to 12:00. We  
11       didn't start quite at quarter to 9:00. I think we can use a  
12       few minutes since we kind of already broke the situation here  
13       a little bit. How much more do you have on him?

14              MS. TURNER: So I am finishing up Baruk Properties  
15       probably with another ten minutes, and then we go into the  
16       residences and payment. It should not have been so long as it  
17       has been today from my standpoint, but he's a talkative  
18       witness. Perhaps if Your Honor can tell him. I don't want to  
19       engage with the witness and say stop talking, but I am trying  
20       to move this along. I would think if we are back at 1:00, I  
21       should be done by no later than 3:00, hopefully 2:00.

22              THE COURT: We'll see what we can do. We are  
23       definitely behind from the schedule that you all had  
24       anticipated because Mr. Morabito hasn't gotten on today and



1       may not get on today.

2               MR. GILMORE: I don't think we are that far behind,  
3       maybe a couple hours. The expectation was Mr. Bayuk would  
4       finish noontime or this afternoon. We are about a half a day,  
5       behind.

6               MS. TURNER: But you are going to have your  
7       examination if there is anything.

8               THE COURT: It would be fine if we could just move  
9       right on.

10              MR. GILMORE: I think we are two or three hours  
11       behind.

12              MS. TURNER: I made a concerted effort last night to  
13       shorten what I discussed with Mr. Sam Morabito so we don't  
14       have cumulative evidence. Those things that Mr. Bayuk pushed  
15       off we are going to have to cover that, but I may have  
16       shortened that.

17              THE COURT: Okay. We'll just see how it is going.  
18       I am just trying to kind of follow the schedule a little bit.  
19       We'll go ahead and take our noon recess now. We'll be in  
20       recess until 1:00, and you can tell Mr. Bayuk that he is not  
21       excluded anymore, he gets to come back in.

22              MR. GILMORE: Thank you. I agree he shouldn't be  
23       participating in any of that conversation.

24              THE COURT: It makes it more difficult for him.

1           MR. GILMORE: It is making it worse for him, I  
2     guarantee that.

3           THE COURT: Court's in recess.

4           (Whereupon the Court adjourned for the noon recess.)

5           THE COURT: Sir, you are still under oath. You may  
6     continue.

7           MS. TURNER: A housekeeping matter. Yesterday during  
8     Mr. Bayuk's examination we looked at Exhibit 75 and the  
9     official copy did not include the attachment. The attachment  
10    has been now provided to the clerk, and we have a stipulation  
11    for the admission of the new Exhibit 75 with attachment.

12          MR. GILMORE: Two attachments. It is stipulated.

13          THE COURT: What are they? How many pages is the  
14    document now?

15          MS. TURNER: That's three.

16          THE COURT: Three pages. Okay. It is stipulated to.  
17    You substituted it in and admitted it.

18          MR. GILMORE: Correct.

19          MS. TURNER: Yes.

20          THE COURT: 75 is admitted.

21                 (Exhibit 75 admitted in evidence.)

22    BY MS. TURNER:

23           Q     All right. Before our break, we were looking at  
24    Exhibit 62 I believe which is the Promissory Note, and Exhibit

1       62 is in?

2                   MR. GILMORE: I believe so.

3       BY MS. TURNER:

4           Q       Yeah. The Promissory Note was dated October 1, 2010  
5       and signed by you on behalf of the Edward William Bayuk Living  
6       Trust, correct?

7           A       Yes.

8           Q       This proposal, sorry, note is to reflect the amount  
9       that you agreed to pay Paul Morabito for his fifty percent  
10      interest in Bayuk Properties, LLC.?

11          A       Yes.

12          Q       And that note was assigned to Woodland Heights,  
13      Ltd., correct?

14          A       I don't know. Is there a document?

15          Q       Paul Morabito assigned his interest in payment to  
16      Woodland Heights, a Canadian company, correct?

17          A       Can I see a document that shows me that?

18          Q       Okay. Now if we could go to Exhibit 44 in evidence.  
19      It was stipulated as an exhibit. If we could go to Exhibit 44  
20      and if you could go to page 9?

21          A       44?

22          Q       Yes?

23          A       It is an expert witness report?

24          Q       Yes?

1           A     Okay. I got it.

2           Q     Okay. Now page 9 footnote 2, let me see if this  
3 refreshes your recollection. Got it?

4           A     I am on page 9.

5           Q     Okay. Now at page 9 footnote 2 do you see the  
6 reference to the sale of Paul Morabito's fifty percent  
7 interest in Baruk Properties at footnote 2?

8           A     Yes.

9           Q     About the middle of that footnote it says:  
10 "Resulting from these transactions was a Promissory Note  
11 totaling \$1,617,050." Do you see that?

12          A     Yes.

13          Q     That is a reference to the Promissory Note we just  
14 looked at for fifty percent of the Baruk Properties LLC.,  
15 correct?

16          A     I don't know much about Woodland Heights other than  
17 this litigation. Is this valuation from Paul's bankruptcy?

18          Q     This report was stipulated by your counsel as an  
19 exhibit in this case?

20          A     Okay.

21          Q     Is there another Promissory Note other than the one  
22 referenced here for \$1,617,050?

23          A     The exhibit we started with is the money I owe Paul  
24 Morabito.

1           Q     Arcadia Living Trust assigned this note to the  
2     principals of an entity known as Woodland Heights, Ltd. Do you  
3     have any reason to believe that is a false statement?

4           A     I don't believe that was done.

5           Q     You don't believe it was assigned to Woodland  
6     Heights?

7           A     I don't know much about Woodland Heights. Very  
8     little.

9           Q     All right. Let's go to Exhibit 68. Exhibit 68 is  
10    entitled General Conveyance dated October 31, 2010. If you  
11    could go to --

12               MR. GILMORE: I am sorry, what exhibit?

13               MS. TURNER: Exhibit 68.

14    BY MS. TURNER:

15           Q     If we could go to page 3 of the exhibit.

16           A     Page 3?

17           Q     Page 3, sir. It is Bate Lippes Pam 001416?

18               MR. GILMORE: Objection before there is a question  
19    asked. Foundation.

20               THE WITNESS: I have never seen this document till  
21    just now so I am at the page you want me to be.

22    BY MS. TURNER:

23           Q     You have never seen this Conveyance Agreement?

24           A     No.

1           Q     If you go to that third page bottom of the page,  
2     just read it to yourself, not into the record. Tell me  
3     whether or not that refreshes your recollection?

4           A     1415?

5           Q     1416 bottom of the page section 4(a)(1).

6           A     I read it.

7           Q     That does not refresh your recollection regarding  
8     Woodland Heights?

9           A     No. No. No. I don't think it was ever done. I  
10    think that is probably why.

11          Q     So you understood there was a discussion about  
12    assigning the note to Woodland Heights?

13          A     No. I know nothing about the assignment of a note to  
14    Woodland Heights.

15          Q     If Michelle Salazar, an expert designated by your  
16    counsel to appear in this case and testify were to say that  
17    she was advised --

18          A     Right.

19          Q     -- that the note had been assigned as reflected in  
20    her report --

21          A     Right.

22          Q     -- that would be false?

23                MR. GILMORE: Objection. That misstates the  
24    testimony.

1           THE COURT: Overruled. The question is  
2     hypothetical. If it is wrong, then the value of the answer  
3     has no value.

4           THE WITNESS: But I didn't instruct Michelle  
5     Salazar.

6     BY MS. TURNER:

7           Q     But it would be false in your opinion?

8           A     Probably, yeah, I would say so.

9           Q     All right. Let's move on from Bayuk Properties or  
10    Baruk Properties. So at the same time that we had the Paul  
11    Morabito transfer of his interest in Baruk Properties as well  
12    as his interest in Superpumper, he also conveyed his ownership  
13    interest in those residences that you owned together with Paul  
14    in Laguna Beach, correct?

15          A     Yes, in 2010.

16          Q     September 2010 or October 1st I believe?

17          A     Right.

18          Q     2010, correct?

19          A     I believe so.

20          Q     And prior to October 1, 2010, you held a twenty-five  
21    percent interest and Paul held a seventy-five percent interest  
22    in the home with the address 371 El Camino Del Mar?

23          A     Yes. Tenants in common.

24          Q     That was owned individually by you and Paul Morabito

1 correct?

2 A It was owned in Trust. My Trust. No. We can look  
3 at the document if you want or the mortgage statement.

4 Q If we go to Exhibit 165. 165. I believe it is  
5 Interrogatory responses.

6 A Did you say Exhibit 165?

7 Q 165.

8 A Got it.

9 Q Do you recall receiving Interrogatories in this case  
10 where you had to provide answers under oath?

11 A Yes.

12 Q And if we go to the page-11 of Exhibit 165, you  
13 verified the answers to those Interrogatories as true and  
14 correct, right?

15 A Yes.

16 Q If you go to page 7?

17 A Yes.

18 Q The Interrogatory 11 asks for you to identify your  
19 ownership and the history. Do you see that? Identify your  
20 ownership interest in 371 El Camino Del Mar?

21 A Yes.

22 Q Then the answer to the Interrogator is: "When the  
23 property was originally purchased, Bayuk held twenty-five  
24 percent, Morabito held seventy-five percent." It says Bayuk



1       then transferred his interest to his Trust. Does that refresh  
2       your recollection?

3             A       Yeah.

4             Q       That you originally purchased the property in your  
5       individual name?

6             A       That is helpful, yeah. Thank you.

7             Q       And then October 1st you received Paul's  
8       seventy-five percent, so your Trust then owned 100 percent of  
9       the property at 371 El Camino Del Mar?

10            A       Yes.

11            Q       And it was valued at 1.9 million in 2010?

12            A       Yes.

13            Q       It had something like a \$900,000 mortgage?

14            A       Approximately.

15            Q       You valued that home at El Camino Del Mar as well as  
16       the adjoining Los Olivos property, and that is what determined  
17       the 1.6?

18            A       No. Los Olivos had a separate appraisal.

19            Q       Okay?

20            A       It was valued at one million nine hundred something.  
21       It is in the documents somewhere.

22            Q       You had a contract sales price for the El Camino Del  
23       Mar property, seventy-five percent interest for \$1,462,500,  
24       right?

1           A     I think there is a summary sheet in the exhibits  
2     that explains everything.

3           Q     If we could go to Exhibit 48. This is a stipulated  
4     exhibit. Do you see the purchase price indicated on Exhibit  
5     48, this final settlement statement dated October 1, 2010,  
6     \$1,462,500 for the property at 371 El Camino Del Mar?

7           A     Yes, I see that.

8           Q     If we go to Exhibit 56, also stipulated, we have a  
9     Bill of Sale of personal property contained within that  
10    residence?

11          A     Yes.

12          Q     Where you agree to pay Paul \$32,284 for that  
13    personal property, correct?

14          A     It says thirty-one two eighty-four.

15          Q     I am sorry. \$31,284?

16          A     Yes.

17          Q     Now that pricing for the personal property, that was  
18    based again on you walking through the residence and ascribing  
19    some dollar value to what you saw with your eyes?

20          A     Yes.

21          Q     There was no valuation of the personal property  
22    other than your ascribing a dollar amount?

23          A     Correct.

24          Q     This was not a cost basis on how much you originally

1       paid for the items. It was just you eyeballing and assigning  
2       it a number?

3           A       Right.

4           Q       Okay. And now if we go to the Los Olivos property,  
5       it was purchased by you and Paul in 2005, correct?

6           A       '5, '6. I don't remember the exact year.

7           Q       Now that property was held in your respective Trusts  
8       as tenants in common, right?

9           A       Yes.

10          Q       That was a fifty/fifty ownership?

11          A       Yes.

12          Q       And you ascribed as a fair market value 1.9 million  
13       to that property?

14          A       I believe so.

15          Q       And that was before you had an appraiser come in and  
16       look at it, right?

17          A       Yes. There is a summary sheet somewhere.

18          Q       And so the contract sales price was for that amount.  
19       You agreed to pay Paul \$950,000 for that fifty percent  
20       interest in the property?

21          A       Yeah. You have to subtract all the mortgages, but,  
22       yeah, because they all had mortgages.

23          Q       And that personal property located in the house you  
24       valued at \$12,763?

1           A     That's right.

2           Q     Same way of attributing the value, you walked in,  
3 inspected the personal property and ascribed dollar amounts?

4           A     Correct.

5           Q     It was not a cost basis?

6           A     No.

7           Q     And you did not have it appraised?

8           A     No.

9           Q     Now if we go to Exhibit 45 in the book. Forty-five.

10          A     Okay. I am there.

11          Q     Now at the time Grant Deeds were dated as of October  
12 1st, but you agreed to sell your interest or, pardon me, you  
13 agreed to purchase Paul's interest on September 27, 2010,  
14 right?

15          A     Correct.

16          Q     And this Purchase and Sale Agreement set forth in  
17 Exhibit 45, that outlines your agreement with respect to the  
18 purchase of Paul's interest or his Trust interest in those  
19 Properties?

20          A     Yes.

21          Q     Now at the same time that you acquired Paul's  
22 interest in the California properties, you provided Paul your  
23 interest in the Reno property that you owned as tenants in  
24 common with him, correct?

1           A     Yes.

2           Q     And you held a thirty percent interest with Paul  
3     having a seventy percent interest in that Reno property?

4           A     Yes.

5           Q     And the Reno property had an address of 8355  
6     Panorama Drive?

7           A     Correct.

8           Q     And also set forth in Exhibit 45 is the details on  
9     the value that you agreed would apply to your interest in that  
10    Panorama property?

11          A     45?

12          Q     Exhibit 45. If you go to page 2.

13          A     Exhibit 45?

14          Q     Yes, sir, the Purchase and Sale Agreement?

15          A     Oh, yes. Got it.

16          Q     Now the value that was ascribed to the Panorama  
17    property as of September 27, 2010, as well as the California  
18    properties, those were agreed upon by you and Paul, but they  
19    had not been appraised yet, correct?

20          A     I believe so.

21          Q     Now the Purchase and Sale Agreement, it was prepared  
22    by one lawyer on behalf of both you and Paul, correct?

23          A     Yes.

24          Q     And if we go to Exhibit 46 which is also in

1 evidence, we have a First Amendment to the Purchase and Sale  
2 Agreement dated the next day, September 28, 2010, correct?

3 A Yes.

4 Q And this was the final agreement. This represented  
5 the final agreement that you had with Paul with respect to the  
6 exchange of the interest in the two California homes with the  
7 Reno home, right?

8 A Yes.

9 Q And you agreed that you would take his interest in  
10 the California property, he would take your interest in the  
11 Reno property and you would write him a check or make other  
12 payment to him for \$60,117 right?

13 A Yes.

14 Q And that arrangement was prior to you having  
15 appraisals for the three properties?

16 A I believe so.

17 Q All right. And you say you paid that \$60,000?

18 A Yes.

19 Q Okay. And I believe it is going to be your testimony  
20 that you paid the \$1,617,000 for Paul's interest in Baruk  
21 Properties?

22 A Yes.

23 Q And you have paid him additional amounts?

24 A Yes.

1           Q     And you were asked by counsel to keep a ledger of  
2     your payments to Paul?

3           A     In a different lawsuit. In a different lawsuit. It  
4     was his bankruptcy lawsuit where they wanted me to keep a  
5     ledger. He got paid out of one of my companies, and so that  
6     company issued him a 1099 every year. So that is what the  
7     bankruptcy lawyer wants, I believe. But I keep a ledger of  
8     money that I lend him and stuff that I have paid for.

9           Q     Now if we go to Exhibit 71?

10          A     Yes.

11          Q     Exhibit 71 represents amounts that you have paid  
12     Paul Morabito?

13          A     I think this was done by someone that was helping  
14     Paul for his bankruptcy. It is a bankruptcy document. And I  
15     didn't produce this. So this was produced for the Bankruptcy  
16     Court, and I think Paul was working with John Hockett.

17          Q     That is not Frank Gilmore's handwriting?

18          A     No, and it is not my handwriting.

19          Q     If you could go to page 68 of your deposition. I am  
20     sorry, page 68?

21          A     Of my deposition?

22          Q     Yes, sir. Page 68 line 23. Are you there?

23          A     Yes.

24          Q     Do you see where it says: "Is this your handwriting

1 on top of ledger of Edward Bayuk to Paul Morabito?"

2 A Yeah. I was guessing.

3 Q And you responded: "That's Frank Gilmore's  
4 writing," correct?

5 A And I asked Frank if it was his writing after or  
6 whenever, and it is not his writing. So I was guessing. I  
7 shouldn't be guessing.

8 Q Your testimony from the time you were deposed to  
9 today has changed?

10 A Yes. I don't know whose handwriting it is.

11 Q Do you dispute this is a ledger of payments made  
12 from you to Paul Morabito?

13 A It is a ledger that was made by someone, and whose  
14 ever writing at the top, they are probably the author. I did  
15 make payments to Mr. Morabito, but this isn't my work.

16 Q Let's go to Exhibit 73. I am sorry. Before we do  
17 that, Exhibit 71?

18 A Yes.

19 Q If you go to page 65 of your deposition?

20 A 65. Got it.

21 Q At line 16 I asked you to look at Exhibit 5. Do you  
22 see that?

23 A Sure.

24 Q If we go back and we look at the front of your



1 deposition, it will identify Exhibit 5 as the ledger of Edward  
2 Bayuk to Paul Morabito set forth at Exhibit 71. You see the  
3 question: "When did you create this document?"

4 A I said: "I don't remember to be honest."

5 Q "What caused you to create it?"

6 A Oh, I was keeping crummy bookkeeping records. I was  
7 personally because I was loaning money to Mr. Morabito. He  
8 called me one day and said how much money have you lent me in  
9 such and such a year, and I was somewhere, I think it was New  
10 York or Washington, D.C. I said I don't remember. I think  
11 maybe \$600,000. He goes well I need to know and I need to know  
12 now. Well okay, a rough good estimate is 600 you owe me.  
13 Well, is it accurate? I believe so. He goes well, I need you  
14 to sign something. And I said okay, and I signed it. You  
15 know. And that's when I said I better start because I am  
16 going to have to file a gift report. I am going to have to  
17 make sure I charge interest and find out what the interest  
18 rates should be."

19 Do you see that?

20 A Yeah, I remember what I said.

21 Q And you are saying that this ledger that was Exhibit  
22 5 to your deposition and you testified about, that that was  
23 not prepared by you?

24 A No. The first time I saw the ledger, and I apologize

1 to Teresa Pilatowicz, it is probably in my deposition, that I  
2 owed her information regarding -- I had to go back and make  
3 sure I understand how much I paid and what I paid and all to  
4 Mr. Morabito, and I did give that to her. It did get sent to  
5 her later.

6 Q Now let's go to 73.

7 A Yes.

8 Q Exhibit 73?

9 A Yes.

10 Q Is that a document you prepared?

11 A Yes.

12 Q So this is a ledger that you did prepare?

13 A Yes.

14 Q Now it includes, let's see, the total \$1,796,054.63.  
15 It ends June 17, 2013. Is it your position that you paid or  
16 provided value to Paul Morabito in the amount of \$1,796,054.63  
17 as of June 17, 2013?

18 A Credited the loan that I owed him, and this is a  
19 tally I got which I promised Teresa Pilatowicz. I had to get  
20 bank records from one of my banks I didn't have I realized.  
21 And I asked for it three times.

22 Q This payment schedule represents money actually paid  
23 to Paul Morabito right?

24 A Not money -- Well things I was paying for and

1 credits that was owed to me. Like some of these are medical  
2 insurance. I was paying his medical insurance.

3 Q You paid Paul Morabito's bills, paid third parties'  
4 bills --

5 A Correct.

6 Q -- for his bills?

7 A Correct.

8 Q You also paid Paul Morabito directly?

9 A Correct.

10 Q And you paid, and you provided credits to Paul  
11 Morabito?

12 A It was owed on Clayton Way. I owed, you know,  
13 credits.

14 Q So we can go to this list and we can see a \$50,000  
15 credit?

16 A Right.

17 Q For the value you attributed to his fifty percent  
18 interest in Clayton?

19 A Correct.

20 Q And then there is a \$341,952.69 payment. It says  
21 Mary Fleming mortgage balance.

22 Q I inherited the mortgage on the house.

23 Q And you paid that off?

24 A Correct. I refinanced it.

1           Q     And so there was an amount that you put in your  
2     payment schedule that Paul Morabito benefited from your  
3     payment of that mortgage?

4           A     The mortgage was in Paul's name, so he put a  
5     mortgage on the building, that house years previously. So he  
6     got the money from that mortgage. He wanted the money for  
7     something. And so he got the money. So it was his mortgage,  
8     and I asked him to get mortgage information from the bank  
9     which I got, and that was the balance when I purchased his  
10    portion of the house.

11          Q     Nowhere on this payment schedule is the amount paid  
12    to Bank of America through the Vacco firm we talked about this  
13    morning?

14          A     What day was that, do you know? Was it in 2012?

15          Q     Yes?

16          A     Oh, yes, there it is, December 34, 2012, 700 some  
17    thousand.

18          Q     And if you go up above there is September 5, 2012  
19    where there is payment of \$351,000 to Lippes Mathias Wexler,  
20    correct?

21          A     Yeah. That had to do with legals.

22          Q     Now since June of 2013 you paid additional  
23    amounts --

24          A     Correct.

1           Q     -- to Paul. We don't know what that number is?

2           A     I keep a log, a monthly log, and I could tell you if  
3 you want to know.

4           Q     So your only obligation to pay Paul was the  
5 \$1,617,000 note, right?

6           A     Yes.

7           Q     And the \$60,000?

8           A     Yes.

9           Q     As a result of the swap. So why do you continue to  
10 pay Paul Morabito in addition to those amounts outlined in the  
11 Promissory Note of \$1,617,000 as well as the \$60,000 that you  
12 agreed to pay?

13          A     Well, I am keeping records, and I'm lending him  
14 money so he can get his act together and start making money on  
15 his own and get on his feet, so that is why I was doing that.

16          Q     When you say you're loaning money?

17          A     Yes.

18          Q     That implies an expectation of repayment?

19          A     Correct.

20          Q     So you have an expectation of repayment from Paul  
21 Morabito despite there is a valid lien or a judgment lien?

22          A     Yes.

23          Q     In favor of the Herbsts?

24          A     Yes.

1           Q     And has Paul promised you that he would pay you  
2 ahead of the Herbsts?

3           A     No.

4           Q     Do you have a reasonable expectation in your mind  
5 that he can satisfy the seventy-seven remaining to the Herbsts  
6 and then pay you?

7           A     Yes.

8           Q     And why is that?

9           A     I probably just -- I guess when you know all the  
10 truth about everything and you believe in someone you know,  
11 too, I guess. And so, you know, I believe in him, and I know  
12 the truth of everything.

13          Q     Paul Morabito stepped out on you?

14          A     Yes.

15          Q     When you were in a relationship?

16          A     Yes.

17          Q     And he continues to tell you what to do?

18          A     Advise me.

19          Q     He tells you what to pay and you pay it?

20          A     He borrows money from me. He pays his lawyers and  
21 all.

22          Q     Paul Morabito gets a bill and he says I need money  
23 to pay a legal bill?

24          A     Yes.

1 Q And you pay it?

2 A I either pay it or lend him the money to pay it.

3 Q And we can go through that ledger and see lump sums,  
4 fifty thousand, seventy thousand?

5 A Yes.

6 Q And you do it?

7 A And I continue to do it.

8 Q And in fact you testified to the Bankruptcy Court  
9 you have no expectation of repayment?

10 A I will either get paid back or I will write it off  
11 as a gift. But I believe he will be able to pay me back.

12 Q Exhibit 74. Let's go to Exhibit 74. It is a horrible  
13 copy. But at Exhibit 34 to Exhibit 74 there is your  
14 Declaration, sir, that was submitted to the Bankruptcy Court.  
15 Do you recall providing that to the Bankruptcy Court?

16 A That was an approximate figure which probably  
17 \$376,000 I am guessing, but I'm not sure. But that was done  
18 in haste.

19 Q So in October 2014 do you recall making this  
20 Affidavit?

21 A Yes.

22 Q Or Declaration to the Bankruptcy Court?

23 A Yes.

24 Q And you understood it was a statement under penalty

1 of perjury?

2 A I had no idea why it was needed, so I was a little  
3 confused by that. But, you know, I couldn't understand why  
4 someone needed to know a number so fast.

5 Q Sir, do you recall providing a Declaration?

6 A Yes.

7 Q And you understood it was provided under penalty of  
8 perjury to the Bankruptcy Court?

9 A I guess, yes.

10 Q And if you go to the first page of your Declaration,  
11 it says right on the face of it United States Bankruptcy  
12 Court, correct?

13 A Right.

14 Q And you said: "In consideration of the past  
15 friendship, loyalty and successful past business ventures  
16 Mr. Morabito and I have shared, I made a gift to Mr. Morabito  
17 in the amount of debt to me, and I have destroyed the  
18 Promissory Note. I intend to continue gifting Mr. Morabito  
19 money in the future and when he desires it in order for him to  
20 meet his monthly obligations."

21 Do you recall representing that under penalty of  
22 perjury to the Bankruptcy Court on October 3, 2014?

23 A Yes.

24 Q In fact, you have no proof of claim in the



1 bankruptcy. Even to date you have not filed a personal claim?

2 A No, I haven't filed anything.

3 Q And you have no intention of filing any proof of  
4 claim?

5 A No.

6 MS. TURNER: I will pass the witness.

7 THE COURT: Okay. Cross-examination.

8

9 CROSS-EXAMINATION

10 BY MR. GILMORE:

11 Q You okay?

12 A Yeah. I am a little upset.

13 THE COURT: Do you need a break?

14 THE WITNESS: No. One second. I will be okay.

15 THE COURT: Are you sure you are ready to go?

16 THE WITNESS: Yeah, I am ready.

17 THE COURT: Okay. We can take a break.

18 THE WITNESS: No, no. I am good. Good to go.

19 MR. GILMORE: I am sorry. I was just inquiring of  
20 counsel.

21 BY MR. GILMORE:

22 Q Mrs. Pike Turner had a chance to ask her questions  
23 of you on behalf of the Plaintiff. You understand now I have  
24 the opportunity to ask you questions on your own behalf. Do

1       you understand that?

2           A       Yes.

3           Q       So we'll address some new things, and we'll address  
4       some things she asked about, okay?

5           A       Okay.

6           Q       First, let's go back and have you explain to the  
7       Court your background. Talk about where you came from?

8           A       Yeah. I graduated from Clarkson University in New  
9       York State with a BS degree. At the time, after graduating, I  
10      took a lot of job interviews. I received eight or nine job  
11      offers. During that period of time, I went down to Washington  
12      D.C., interviewed with the CIA. At the time it was the  
13      Department of Defense because it was so classified. I went  
14      there a few times. I took a job with General Electric  
15      company. I accepted a job with them. I went through their  
16      executive marketing program which was two years. I was with  
17      that company about seven years.

18          Q       Let me stop you. Anything you have already talked  
19      about with Ms. Pike Turner's questions you don't need to talk  
20      about it again. Just add stuff we have not already talked  
21      about. We will save some time. Is that okay?

22          A       Okay.

23          Q       Anything else you wanted to add about your  
24      background that we haven't already discussed?

1           A     No, I don't think so.

2           Q     Let's talk about your separate business ventures  
3 with Paul Morabito and Sam Morabito?

4           A     Okay.

5           Q     When was the first time you and Paul Morabito  
6 started doing business together?

7           A     I did some projects for him in 1998, and then  
8 became a shareholder in one of the companies in 1999.

9           Q     In 1998, what was the business venture you engaged  
10 in?

11          A     I was doing some work for him. I forget. I think  
12 it was lube stores in Colorado Springs. It had to do with the  
13 Jiffy Lube, but they were Q Lubes at the time.

14          Q     When you first started working for Paul, what were  
15 your general job descriptions? What did you do?

16          A     I just was handling state paperwork, licenses, human  
17 resource issues.

18          Q     When you started working with Paul how many  
19 franchise locations did Paul's business own?

20          A     Six.

21          Q     How much -- ultimately did that -- How many  
22 franchise locations ultimately were acquired in the entirety  
23 of that project?

24          A     We built the business to 90 stores. We were the

1 third largest franchisee for Jiffy Lube Shell.

2 Q How long did it take to do that?

3 A '99, probably seven years.

4 Q Did you start from scratch?

5 A Paul at the time owned six or seven stores in  
6 Colorado Springs.

7 Q In the acquisition of those Properties were you  
8 involved in the sales?

9 A Yeah.

10 Q Sorry. Were you involved in the sales aspect of  
11 trying to acquire additional stores?

12 A No. I just, I went to visit when we were purchasing  
13 a store doing due diligence. I would be involved with visiting  
14 the stores and trying to understand the markets, because there  
15 was a couple of markets we didn't buy.

16 Q What was Paul's job in that venture?

17 A He was involved with the finance aspect of it and  
18 with dealing with the owner of the companies.

19 Q What do you mean?

20 A He would meet with the owners and make the offers  
21 and work with the business brokers and what have you.

22 Q Growing the business, was that a matter of acquiring  
23 new locations or something else?

24 A In some cases it was acquiring property and building

1 new stores. In other situations it was acquiring a chain of  
2 independent lube shops and buying them and converting them to  
3 Jiffy Lubes, and in other cases -- so it was basically that.  
4 He would purchase independent lube stores and convert them to  
5 Jiffy Lubes.

6 Q At what point of time was Sam Morabito involved in  
7 that venture?

8 A Sam was always involved with working with his  
9 brother. Sam was involved. I think it was Sam's idea to go  
10 purchase the Colorado Springs stores.

11 Q And what --

12 A That is before my time.

13 Q What was Sam's role after you joined the venture as  
14 an employee or whatever work you were doing? What was Sam's  
15 role?

16 A Sam spent his whole time on the road.

17 Q What does that mean?

18 A Well, we operated in five states, and so Sam spent  
19 probably 75 percent of his time on the road.

20 Q Did Paul spend time on the road visiting the stores?

21 A Sometimes but not as much as Sam.

22 Q And then after-- When was the Jiffy Lube business  
23 sold?

24 A All of the stores?

1 Q Right?

2 A I think they were sold in three pieces because of

3 five states. The last piece was I think December 2007.

4 Q Did you make any money from that?

5 A No.

6 Q You didn't make any money from the sale of the Jiffy

7 Lubes?

8 A I'm not on the last sale, I don't think.

9 Q How about from any of the sales?

10 A I think basically sales occurred and paid off debt.

11 Q And then at some point after that you got involved

12 in the Berry-Hinckley acquisition?

13 A Yes.

14 Q Were you involved in that project before it was

15 purchased from Berry-Hinckley?

16 A No, I was just -- I went to a few of the meetings,

17 not all of the meetings, maybe two meetings.

18 Q Who was the driver behind the acquisition of the

19 Berry-Hinckley assets?

20 A Paul was.

21 Q Who did Paul's company buy the Berry-Hinckley assets

22 from?

23 A From Art Hinckley. The Hinckley family and the

24 Berrys.

1 Q Do you know the Berrys and Hinckleys?

2 A No, I never met the Berrys. I went on a couple of  
3 vacations with Art and Cindy. I also went to Ward's house to  
4 dinner a couple of times. I knew Ward and his wife, Crystal.

5 Q Do you know the name of the company that purchased  
6 the assets from Berry-Hinckley? I don't want to use their  
7 names, so I will just call it Berry-Hinckley. Do you know the  
8 name of the company Paul used to buy those assets?

9 A Spirit.

10 Q What is Spirit?

11 A It is a publically traded RET on the New York stock  
12 exchange.

13 Q Did Spirit provide the financing?

14 A Correct.

15 Q Do you know the name of Paul's company that  
16 purchased the assets?

17 A PAMCO.

18 Q And were you a member of PAMCO at the time the  
19 Berry-Hinckley assets were acquired?

20 A Yes.

21 Q What percentage did you own?

22 A Twenty-five percent.

23 Q Was there a time PAMCO changed its name after the  
24 fact?

1           A     Yes.

2           Q     What was that?

3           A     Changed to CNC.

4           Q     Consolidated Nevada Corp.?

5           A     Yes.

6           Q     What type of entity was CNC, do you know?

7           A     Nevada LLC.

8           Q     Okay. And who were the members of CNC at the time

9     Berry-Hinckley assets were purchased?

10          A     Paul, myself, Sam Morabito and Trevor Lloyd.

11          Q     And when did that sale occur, the sale occur, the

12     purchase of Berry HInckley's assets?

13          A     In 2005.

14          Q     And then a short time thereafter there was a few

15     sales transactions of those assets to other parties?

16          A     Yes.

17          Q     And what occurred -- Let me ask you a more specific

18     question: Were any portion of the BHI assets sold to

19     somebody?

20          A     Eventually they were.

21          Q     CNC sold some of the BHI assets?

22          A     Correct.

23          Q     Tell me about the first sale?

24          A     The first sale happened in January 2007 to Western



1 Energetics.

2 Q What was sold, generally speaking?

3 A That was the wholesale division, Card Lock division  
4 of Berry-Hinckley.

5 Q And did CNC make any money from that sale?

6 A Yes, we did.

7 Q Did you make any money from that sale?

8 A Yes. We paid off a lot of bank debt, Bank of  
9 America debt.

10 Q Did you sell it for more than CNC paid for it?

11 A No. When you say did you sell it, for what?

12 Q Did CNC sell the wholesale division to Western  
13 Energetics for more than it paid?

14 A No.

15 Q Was there a subsequent sale, a sale that occurred  
16 later?

17 A A second sale occurred July 2nd, 2007 to the Herbsts  
18 family.

19 Q At the time that sale occurred, what was your role  
20 at CNC?

21 A I had a title. I basically just visited stores. I  
22 was involved in TI work or human resources. I changed the  
23 employee manual and required sensitivity training for all the  
24 employees.

1           Q     Were you involved at all in the financing of that  
2 company?

3           A     No.

4           Q     Were you involved in any of the controller aspects  
5 of the company?

6           A     No.

7           Q     Did you provide operational support on behalf that  
8 company?

9           A     No. Only human resource stuff. And I recommended  
10 we started rolling out a POS system. It was just  
11 recommendations.

12          Q     Then it has been stipulated that after the sale of  
13 the BHI assets to Jerry Herbst's company, there was a lawsuit  
14 right?

15          A     Correct.

16          Q     Were you an original Plaintiff to that lawsuit?

17          A     No.

18          Q     How did you get involved?

19          A     I think the Herbst family sued, countersued, then I  
20 got hit.

21          Q     Do you know what they sued you for?

22          A     No.

23          Q     You didn't know why you were involved?

24          A     I didn't know why I was sued, but --

1 Q You didn't ever countersue, did you?

2 A No.

3 Q Even sitting here today you don't know what the  
4 Herbsts sued you for?

5 A Well today, yeah. It was all kinds of stuff, but --

6 Q What is your understanding as to what the Herbsts  
7 sued you for?

8 A Something that -- whatever they disagreed with over  
9 working capital, over a three million dollar working capital  
10 budget. It settled at the end.

11 Q You were present on September 13th when Judge Adams  
12 rendered his ruling?

13 A Yes.

14 Q You heard it come out of his mouth?

15 A Yes.

16 Q What were your thoughts when you heard it?

17 A Disbelief. Kind of, whoa, three million dollars. I  
18 just didn't understand it. So the lawyers tried to explain it  
19 to me.

20 Q At the same time you heard a verdict also rendered  
21 against Paul, was there a decision about your liability?

22 A Yes.

23 Q What did you hear?

24 A I was released from liability.

1           Q     How did that impact you?

2           A     I was still upset for Paul.

3           THE COURT: I am going to stop you there. Was your  
4 disbelief that Paul had lost the lawsuit or the value of the  
5 loss?

6           THE WITNESS: Both.

7           THE COURT: Okay. Thank you.

8           THE WITNESS: Because they were fighting over three  
9 million or six million dollars working capital. So when you  
10 sell a company, you are supposed to have a true-up. There was  
11 a disagreement over six million dollars. I am not sure of the  
12 exact number. So that number, the magnitude from that number  
13 to 141 million, I couldn't extrapolate how the Judge got to  
14 that number or understand it.

15 BY MR. GILMORE:

16          Q     That was going to be my follow-up question. Did you  
17 understand what the amount in controversy of the case you were  
18 involved was? That is a legal term. How much were they  
19 fighting about?

20          A     Like I was explaining to the Judge just now, they  
21 were arguing over working capital of six million dollars of  
22 some sort. And it was just, I thought when the case ended  
23 that someone was going to owe someone, one or the other side  
24 six million dollars. So someone was going to get awarded six

1 million dollars. That is what I thought the lawsuit was about.  
2 When the verdict came out, I was just shell shocked. And I  
3 just, you have got, you know, with that shell shock, you know  
4 I just finished in 2009 spending, July through December in two  
5 hospitals pretty much. I had lost 20 pounds, because I  
6 stopped going to the gym, and taking care of Paul and thirty  
7 different doctors. So I would go through a very traumatic  
8 experience that period of time. So fast forward from that and  
9 then 2010 started and the lawsuit. So I was just kind of like  
10 one typhoon then another typhoon. That is why I get emotional.

11 Q When Judge Adams delivered his what I call the oral  
12 Judgment, if I use that word do you understand what I mean?

13 A Yes.

14 Q I am talking about the oral Judgment from the bench  
15 as oppose to his written Judgment?

16 A Yes.

17 Q When you hear the oral Judgment and left the  
18 courthouse that day, what did you do?

19 A I spoke to Paul, like how did they get to this?  
20 That's where the lawyers tried to explain. And Leif Reid said  
21 you are going to have to put up a big bond to appeal it. And I  
22 didn't understand all the legal mumble jumble stuff.

23 Q So did you hire a lawyer to help you understand the  
24 legal mumble jumble stuff?

1           A     No.

2           Q     Immediately you didn't?

3           A     I didn't. Paul did. Paul hired attorneys.

4           Q     At the time of the Judgment?

5           A     Right.

6           Q     The oral Judgment, who represented you with respect  
7 to this case, the Herbst lawsuit?

8           A     At the time of Judgment, Leif Reid.

9           Q     At that point in time, did Dennis Vacco represent  
10 you in the Herbst Judgment?

11          A     No.

12          Q     Sometime after the Herbst judgment, did you hire  
13 Dennis Vacco?

14          A     Yes, we did.

15          Q     Who is Dennis Vacco?

16          A     He's an attorney in New York.

17          Q     How is it you came to know him?

18          A     He was referred to us by an attorney that worked for  
19 the U.S. Justice Department in northern California.

20          Q     And prior to the oral Judgment, had you ever met  
21 with Dennis Vacco?

22          A     No.

23          Q     And after the oral Judgment, did you meet with  
24 Dennis Vacco?

1           A     Yes.

2           Q     Who met with him?

3           A     I think Paul communicated with him mostly, and I met  
4 him at dinners.

5           Q     After the oral Judgment, did you and Sam ever visit  
6 with Mr. Vacco together?

7           A     Yes.

8           Q     Was Paul present in all of those occasions?

9           A     Not in all occasions.

10          Q     Did you -- Let's not talk about the substance of  
11 conversation you had with Mr. Vacco. Did you and Mr. Vacco  
12 talk about the ramifications to you, personally, with respect  
13 to the Judgment?

14          A     Yes.

15          Q     Did you understand after your meetings with Dennis  
16 Vacco that you had some options on what to do as a result of  
17 the Judgment?

18               MS. TURNER: Objection, Your Honor. I hate to  
19 object when we are in a bench trial, but counsel refers to  
20 Judgment, an oral Judgment, so it is vague as to time.  
21 Because a Judgment would not be the same as an oral ruling, to  
22 clean up the record.

23               THE COURT: Can you make sure it is clear what you  
24 are asking? Are you asking about the written Judgment or

1 oral?

2 MR. GILMORE: When I said to him the oral ruling, I  
3 just call it the oral Judgment, but I can call oral ruling.

4 MS. TURNER: Well, it has gone to Judgment now, so  
5 now your question is just Judgment.

6 THE COURT: We just need to make sure.

7 THE WITNESS: We can go backwards if you want. I  
8 understand the oral part of it, and I know what the oral was  
9 in the courtroom.

10 BY MR. GILMORE:

11 Q I am only talking about the oral Judgment so far.  
12 If I leave the oral part off, that is in my question, okay?

13 A Right.

14 Q So after the oral Judgment, you met with Dennis  
15 Vacco. You and Sam Morabito met with Dennis Vacco?

16 A Yes.

17 Q Did you discuss with Dennis Vacco how the oral  
18 Judgment might have impacted you?

19 A Yes.

20 Q And after those conversations, what did you  
21 understand were the options that were available to you in  
22 response to this Judgment, oral Judgment?

23 A I just told Dennis I wanted to kind of --

24 Q Let me stop you. I am not asking you what you said



1 to Dennis. What I am asking you is what did you understand  
2 your options were in response to the oral Judgment?

3 A Just do nothing or to do something.

4 Q Okay. What do you mean do nothing?

5 A I could have just done nothing and went home and  
6 just let the lawyers do their thing and just go on with my  
7 life the way it was.

8 Q So now you had been dismissed from the case by Judge  
9 Adams, correct?

10 A Correct.

11 Q So you didn't owe the Herbsts anything, right?

12 A Correct.

13 Q So when you say do nothing, let's talk about the  
14 assets that you co-owned with Paul and Sam at the time of the  
15 oral Judgment. Can we talk through those?

16 A Sure.

17 Q Identify all of them that you can remember for me?

18 A So I owned -- I lived with Paul in a number of  
19 houses in Reno. I was living on Panorama, 8355 Panorama. Then  
20 I was using the house in Laguna Beach.

21 Q Los Olivos, El Camino?

22 A Correct. I would fly down and spend time in the  
23 Palm Springs house. And, you know, I was collecting a paycheck  
24 from Superpumper. And I had commercial buildings I owned

1       fifty/fifty with Paul. So I owned 570 and 1461 Glenneyre.

2           Q       That is Baruk right?

3           A       Yes, Baruk Properties.

4           Q       What else?

5           A       I owned part of Raffles. That was part of

6       Berry-Hinckley that was given to us.

7           Q       Let's not talk about it now. Just list them for me?

8           A       Raffles. I owned Card Locks in Superpumper

9       Properties LLC., which were Car Lock sites in Nevada.

10          Q       What is a car lock?

11          A       An unmanned gas station.

12          Q       For truckers and fleets and stuff?

13          A       Right. We had Fernley. We were developing Fernley,

14       so a truck stop in Fernley. We had --

15          Q       What do you call that?

16          A       That is a truck stop-casino.

17          Q       Does it have a name?

18          A       Big Wheel. We were building it and developing it.

19       And I owned Clayton Way which I totally forgot about.

20          Q       All of these assets were co-owned with Paul

21       Morabito, true?

22          A       Yes.

23          Q       And some of those assets were co-owned with Sam

24       Morabito, right?

1           A     Yes.

2           Q     So after the oral Judgment, your testimony was you  
3 understood you had an option to do nothing?

4           A     Right.

5           Q     What did you believe would be the result to you  
6 personally if you did nothing?

7           A     I guess the way the lawyers explained it to me.  
8 "You know, Paul is going to have to pay the Herbsts back.  
9 They are going to become owners in your property and probably  
10 become roommates with you," so I didn't want that.

11          Q     Tell me what you are talking about. Which property?

12          A     Well the Panorama house, the Palm Springs house. So  
13 I didn't want to become roommates with the Herbsts.

14          Q     Explain what you mean by become roommates?

15          A     Well, they get keys to the house so I lose my  
16 privacy. And I didn't want to lose my privacy in that regard.  
17 I realized my life was about to become very, very complicated.

18          Q     How were the houses, just the residential houses,  
19 Panorama, Los Olivos, El Camino, how were they titled?

20          A     Tenants in common.

21          Q     Did the way in which these properties were titled  
22 have some significance at the time?

23          A     It is just that they were -- We are were not  
24 married. We weren't domestic partners. And we owned these

1 properties tenants in common. So if I were to have received  
2 the Judgment, the person would take over my ownership in the  
3 house and have access to the house.

4 Q Did you understand that the Herbsts would be able to  
5 sell that house out from under you?

6 MS. TURNER: Objection. Leading.

7 THE WITNESS: No I

8 THE COURT: Sustained. Wait, wait. It was leading.  
9 Sustained.

10 MR. GILMORE: Okay.

11 BY MR. GILMORE:

12 Q What was your understanding as to the Herbsts'  
13 rights with respect to the tenants in common properties?

14 A That I had the right to keep the house and use the  
15 house, but they had the right to use the house as well, and  
16 they couldn't force me to sell it. But I also probably, if I  
17 wanted to refinance it, they wouldn't cooperate with me to  
18 refinance it. So I would be constantly probably dealing,  
19 using lawyers to use my own houses of where I lived.

20 Q And was that in your mind a result that was  
21 acceptable to you?

22 A No. I didn't want to deal with that.

23 Q What did you understand were the Herbsts' rights  
24 with respect to say Superpumper? Now let me lay some

1 foundation. At the time of the oral Judgment, Superpumper was  
2 what? Superpumper, Inc. What was that?

3 A It was a chain of Shell gas stations in Arizona.

4 Q Who owned Superpumper, Inc., at the time of the oral  
5 Judgment?

6 A It was owned by CWC or PAMAZ, CWC.

7 Q PAMAZ was the name of Consolidated Western before it  
8 changed?

9 A Correct.

10 Q You talked a lot about CWC. We won't get into that  
11 necessarily. At the time of the oral Judgment CWC owned the  
12 stock of Superpumper?

13 A Right.

14 Q Were you an owner of CWC?

15 A Ten percent.

16 Q Do you know what type of entity CWC was?

17 A It was a Nevada LLC.

18 Q Okay. At the time of the oral Judgment, what did you  
19 understand were the Herbsts' options with respect to Paul's  
20 interest in CWC?

21 A That they could probably become owners in the  
22 company 80 percent.

23 Q Did you understand that they had the ability -- I am  
24 sorry. Anything else?

1           A     I don't recall the legal conversations, but --

2           Q     And were those, if you did nothing and the Herbsts  
3 did whatever they could do with respect to Superpumper, was  
4 that an acceptable outcome for you?

5           A     No. I didn't want to become owners with them.

6           Q     So you could have done nothing in response to the  
7 Judgment right?

8           MS. TURNER: Objection, leading.

9           THE WITNESS: Yeah.

10          THE COURT: Sustained. As I explained, I sustained  
11 the objection. He has to ask you another question.

12          THE WITNESS: Sorry.

13          THE COURT: That's Okay.

14 BY MR. GILMORE:

15          Q     If doing nothing was one option, did you have  
16 another option?

17          A     Doing nothing. Yeah, I could buy Paul's percentages  
18 and own the houses and sell him Panorama.

19          Q     How did that discussion go between you and Sam?

20          A     Oh, I took a while thinking about where I wanted to  
21 live, and I decided, because I was so shell shocked, I loved  
22 the house in Reno, and I spent a lot of time building it, I  
23 decided I wanted to spend my time in Laguna Beach.

24          Q     Thank you. At the time of the oral Judgment where

1       did you spend most of your nights?

2           A       Reno.

3           Q       In the Panorama house?

4           A       Yes.

5           Q       At the time of the oral Judgment where did Paul

6       Morabito spend most of his nights?

7           A       He was probably in Reno.

8           Q       Did Paul Morabito have other places where he stayed?

9           A       Yes.

10          Q       Where were those?

11          A       At the time of the oral Judgment he would go to Palm

12       Springs or Laguna Beach. I mean he'd go anywhere. So there

13       were times I was in Reno, to answer to your question, I was in

14       Reno by myself.

15          Q       Mrs. Pike Turner asked you a question that said Paul

16       Morabito was stepping out on you. You heard that, right?

17          A       Yes.

18          Q       September 2010 at the oral Judgment, did Paul have

19       another boyfriend?

20          A       I know he was dating people, so I don't know the

21       exact date when he had an official boyfriend.

22          Q       Do you know when Paul got the Doheny Road condo in

23       West L.A.?

24          A       Actually the document refreshed my memory, and he

1 got the condo in July 2010.

2 Q Perhaps three or four months before the oral  
3 Judgment?

4 A Yeah. He wanted to spend more time in Los Angeles.

5 Q Do you understand if anybody else was spending time  
6 at the Doheny Road condo with Paul Morabito?

7 A Possibly. I don't know.

8 Q You do know, don't you?

9 A Yeah.

10 MS. TURNER: Objection.

11 THE WITNESS: He had --

12 THE COURT: Wait. Wait. Just stop a second. Your  
13 objection?

14 MS. TURNER: Leading. He said I don't know and he  
15 said, oh, you do know.

16 THE COURT: I am not sure that is leading.

17 MR. GILMORE: It is not suggesting the answer.

18 THE COURT: Well, it is telling him he knows.

19 MS. TURNER: It is telling him the answer.

20 MR. GILMORE: I will withdraw the question.

21 THE WITNESS: So I don't --

22 THE COURT: Wait. Wait. Wait. We have to do all  
23 this discussion, okay?

24 THE WITNESS: Sorry. I am not use to this.



1                   THE COURT: Your attorney is going to rephrase the  
2 question.

3 BY MR. GILMORE:

4           Q     Is it easy for you to sit on the stand and talk  
5 about your relationship with Paul Morabito, the personal  
6 issues?

7           A     Yeah, I don't -- I'd rather just talk about this  
8 stuff than personal life. I mean it is bad enough that --

9           Q     I know it is difficult, but I need you to answer the  
10 questions, okay?

11          A     Yeah.

12          Q     At the time of the oral Judgment, did you understand  
13 that Paul Morabito was spending time in the Doheny Road condo  
14 with somebody else?

15          A     Yeah he-- yes.

16          Q     What was your motivation for leaving Reno?

17          A     I was just overwhelmed with the Judgment, and I  
18 just, all kinds of thoughts went through my mind, not good  
19 thoughts, and I was very happy with the house in Reno. I  
20 loved the house in Reno. I spent a lot of time building it.

21          Q     When you left Reno, you took residence in the Laguna  
22 Properties?

23          A     Yes.

24          Q     You remained there since?

1           A     To this day.

2           Q     Do you understand that Dennis Vacco gave a  
3 deposition three or four times in this case?

4           MS. TURNER:  Objection, leading.

5           THE WITNESS:  I am aware of that.

6           THE COURT:  Sustained.  You can't answer the  
7 question.

8           BY MR. GILMORE:

9           Q     Do you know if Dennis Vacco was deposed in this  
10 case?

11          A     Yes.

12          Q     Do you know how many times?

13          A     No.

14          Q     Do you know if Dennis Vacco testified as to his  
15 personal belief as to your and Paul's relationship?

16          MS. TURNER:  Objection.  First it is leading.  
17 Second, it is going to elicit an answer that is not -- that  
18 this witness lacks foundation.

19          THE COURT:  Okay.  Why are we going to try to put in  
20 what the lawyer thought about their personal relationship?

21          MR. GILMORE:  Because they are putting it into  
22 evidence when Dennis Vacco testifies.  This is my only chance  
23 to address it with this witness.

24          THE COURT:  We have got his deposition.

1           MR. GILMORE: Right.

2           THE COURT: Which part is she going to put in?

3           MR. GILMORE: There is a section where Dennis Vacco  
4 said he believed Edward Bayuk and Paul Morabito --

5           MS. TURNER: Wait, wait, wait. He's now suggesting  
6 the answer to the witness.

7           THE COURT: Yes.

8           MR. GILMORE: No, I am not. May I speak on this  
9 issue?

10          THE COURT: Don't tell me what the witness said in  
11 his deposition. Just point to me where I should look. I have  
12 his deposition.

13          MR. GILMORE: This might take me a minute to find  
14 it.

15          THE COURT: Leave and come back to this so you can  
16 sort it out.

17          MR. GILMORE: I will.

18 BY MR. GILMORE:

19          Q Will you grab Volume VII off the shelf and be ready  
20 to talk about it. Why don't you put all of those back. Do  
21 you need help?

22          A No. Go ahead. Go ahead.

23          Q Will you open to Exhibit 258 which has been admitted  
24 into evidence?

1           A     Okay, got it.

2           Q     Exhibit 258 admitted in evidence is a Grant Bargain  
3     and Sale Deed recorded at the Washoe County recorder's office?

4           A     Yes.

5           Q     Directing your attention to the substance of the  
6     Deed which provides Daniel R. Mills and Alicia R. Mills sell  
7     to Paul Morabito, single, as to an undivided two-thirds  
8     interest and Edward Bayuk, a single man as to an undivided  
9     one-third interest as tenants in common. Do you see that?

10          A     Yes.

11          Q     What were the percentage of ownership of Panorama  
12     according to this?

13          A     Sixty-three percent and thirty-three percent.

14          Q     What was the purchase price you and Paul paid to  
15     Daniel and Alicia Mills?

16          A     I think it was \$2,060,000.

17          Q     The Deed reflected that you took title as tenants in  
18     common, right?

19          A     Yes.

20          Q     How did you finance the acquisition of this house,  
21     if at all?

22          A     We both put money down as a deposit, then the  
23     balance was a Bank of America mortgage.

24          Q     Was there a down payment on the mortgage?

1           A     Yeah. We both put down a payment. I put a smaller  
2 amount. That is why I got thirty-three percent, a third.

3           Q     Was the down payment you paid proportional to your  
4 share of ownership?

5           A     Yes.

6           Q     Explain the condition of Panorama when you bough it?

7           A     It was in good shape, but it wasn't what we wanted,  
8 so we did a major remodel. We added to the house as well  
9 during the remodel.

10          Q     I am going to show you what has been marked as  
11 Exhibit 259. Can you look at in your binder?

12          A     Yeah. I know the plans well, because I was there a  
13 lot during the remodel and building of it. So it went from up  
14 to a 10,000 square foot house roughly one single floor, and it  
15 was like 4,800 square foot house or something like that when  
16 it was purchased. The only thing not showing on the drawing is  
17 the four-car garage, the staff quarters, which was a living  
18 room, dining room, bedroom, bathroom, and the generator room.  
19 The generator room was as big as the garage.

20          Q     What do you mean generator room?

21          A     There was a generator we installed in the house. If  
22 the electricity would go out, it would kick in and it had an  
23 automatic transfer switch. It was natural gas operated and it  
24 would power the whole house.

1           Q     This Exhibit 259 has an exhibit stamp. I will  
2 represent to you this was an exhibit that was discussed at the  
3 Michael Sewitz, I don't know if I am pronouncing it right,  
4 deposition?

5           A     Yes.

6           Q     Do you know that man?

7           A     I know him very well.

8           Q     Who is he?

9           A     He is probably the most famous upholstery curtain  
10 fabric person in the world.

11          Q     Where does he live and work?

12          A     His office and plant is in Los Angeles.

13          Q     What was Mr. Sewitz' role in this house with respect  
14 to this house?

15          A     He provided the drapery. Padded wallpaper. It had  
16 padded walls installed in the house. Drapery, wallpaper and a  
17 lot of the fabrics.

18          Q     Who is Mark Paul?

19          A     Mark Paul was an interior designer that I worked  
20 with for 20 years or 18 years.

21          Q     What was his involvement on the house?

22          A     So he would help me pick the color of the curtains,  
23 etcetera. The color of the wallpaper, the color of what I was  
24 going to use on the padded walls, and just carpets, hardwood

1 floors, etcetera. He would help me with my choices. He  
2 understood me, so he understood what I liked and disliked  
3 etcetera. Past experience.

4 Q Did you pay Mark Paul?

5 A Yes.

6 Q Do you know what you paid him, approximately?

7 A Probably \$400,000.

8 Q Did you pay Michael Sewitz?

9 A No. I think Mark Paul paid Michael Sewitz.

10 Q So the work that -- Is it your understanding the  
11 work Michael Sewitz did was covered by the payment you made to  
12 Mark Paul?

13 A I believe so. There might have been some bills that  
14 I had to pay direct, because they were huge.

15 Q Who did the renovation work, the actual demolition  
16 and construction?

17 A Dennis Banks.

18 Q Who is Dennis Banks?

19 A He's a high-end -- Well, he's a local contractor,  
20 very well known and good friends with Art HInckley.

21 Q How did you come to be in contact with Dennis Banks  
22 for the first time?

23 A I met Dennis through dinners and social events with  
24 Art HInckley and Cindy.

1           Q     I will direct your attention to Exhibit 260. Will  
2     you turn there, please?

3           A     Yes.

4           Q     Do you recognize this document?

5           A     Yes.

6           Q     What is it?

7           A     It is a budget of expenses for 8355 Panorama.

8           Q     Whose budget was this?

9           A     Dennis Banks'.

10          Q     Where did you receive this? How did you get this?

11          A     From Dennis Banks.

12          Q     What do these numbers represent?

13          A     Represents the monies that we spent on the house  
14     during the addition and adding. It doesn't include  
15     everything. It just includes what is listed in each of the  
16     description areas.

17          Q     And this number here adjusted balance as of  
18     9-20-2006, what does that mean?

19          A     It would change every so often.

20          Q     Does this document reflect the amount of money that  
21     you paid Dennis Banks for his work?

22          A     Yes.

23          Q     Can you identify that for us on this document  
24     somewhere?



1           A     Looks like at the time there was \$2,388,000.

2           Q     This number down here at the bottom of the corner?

3           A     Yeah.

4           Q     That is how much you actually paid Dennis Banks?

5           A     I believe so.

6           Q     And who paid this money to Dennis Banks?

7           A     Paul and myself.

8           Q     Was it done equally or done in some other share?

9           A     No, most of it done equally.

10          Q     What type of work did Dennis Banks do to the

11               interior of the house?

12          A     Well, we added the -- We totally changed the layout

13               of the house. Again, as I was saying, single floor,

14               approximately 10,000 square feet, four car garage, staff

15               quarters I just described, generator room. It had a full

16               theater so it had 16, I think it was 16 seats. The theater was

17               done, Dennis constructed the theater, but an outside company

18               actually put in the walls, the sound proof walls. It had a

19               professional theater and an IT room. So there was a lot. We

20               took out three or four columns which required us to hire an

21               engineering company, because we put I think an 80 foot steel

22               beam in the back of the house. So that was a little

23               complicated. And Dennis was hugely helpful, got us the

24               engineering company. We wanted that because of the views of

1 Mount Rose and the other mountains in the backyard. The views  
2 from every window of the house was pretty amazing.

3 Q Where is Panorama Drive located with respect to  
4 Reno?

5 A It is off Huffaker. So you drive down South Virginia  
6 and make a right on Huffaker, and then a left on Panorama, a  
7 couple streets up. So all around you you have -- The  
8 Paganetti people who own the Peppermill were behind us. My  
9 neighbors were, there was a pro golf woman. She was famous.

10 Q Patty Sheehan?

11 A Yes. I have had dinner with her a few times and her  
12 girlfriend. Yeah. Most of the houses on the street were  
13 basically farms. Some were bigger than others.

14 Q How long did the renovation take inside and outside?

15 A Probably started -- Immediately after the purchase  
16 we started gutting it, and maybe about a year and a half.

17 Q Do you have an estimate to how much you spent total  
18 on the renovation inside and out?

19 A It exceeded-- It was a lot of money. It was way over  
20 three million, probably. Yeah. It was huge.

21 Q So before you moved in and took permanent residence  
22 there, how much money did you spend acquiring the house and  
23 renovating it to the way you liked not including furniture and  
24 those types of things?

1           A     So we paid \$2,650,000, probably spent three and a  
2     half million renovating. I am guessing. But it was a lot of  
3     money. It wasn't expected.

4           Q     After all the work was done, how did it turn out?

5           A     Well, when it got done, Mark Paul, he wanted  
6     California Magazine, an architectural digest, to photograph  
7     it. I actually had a little argument with him, because I did  
8     not want it photographed because of my privacy. When you get  
9     into those magazines, they want to know who the owner is, and  
10    I just, being a gay guy, I just didn't want my name in a  
11    magazine like that.

12          Q     Would you please turn to Exhibit 262?

13               THE COURT: Are we going on to a different property?

14               MR. GILMORE: No, same property.

15               THE COURT: I am looking when we are going to take a  
16    break. I kind of break it up a little. Now is a good time to  
17    take our first afternoon recess. Court is in recess.

18                       (Short recess taken.)

19               THE COURT: Counsel may proceed.

20    BY MR. GILMORE:

21          Q     Mr. Bayuk, when we broke, I just asked you to turn  
22    to Exhibit 262. Do you have it in your binder there?

23          A     Yes.

24          Q     What was Exhibit 262?

1           A     The entrance to 8355 Panorama.

2           Q     It is a photograph?

3           A     Correct.

4           Q     Did you take these photographs?

5           A     Yes.

6           Q     Approximately when did you take these photographs?

7           A     Probably in 2000 -- I don't know exactly, because I

8     planted the trees, the 36 trees. I planted 36 trees down the

9     long, long driveway. That is what I went to look at

10    yesterday. Probably the last year living there, so Summertime

11    of 2010.

12          Q     This is the Panorama property?

13          A     Yes.

14          Q     What are we looking at in this photograph?

15          A     The entrance to Panorama basically looking at the

16    houses on the left and the trees that I planted. I changed all

17    the fencing from wood fencing to PVC fencing. I changed all

18    the fencing on the property. The property is about five acres.

19    I built gates. The gates were put in and columns and stuff.

20          Q     Is that a motorized gate?

21          A     Yes. A lot of landscape was done. I re-pastured

22    things, lots of trees and shrubs.

23          Q     Turning to the next page, these are Bate stamped so

24    I will give you a direct number. This is Superpumper 1826.

1           A     Right.

2           Q     What are we looking at here?

3           A     Just the pasture, then the front of house.

4           Q     Sorry. Look at the screen?

5           A     The front of the house. The driveway. The driveway

6           there with the flag poles installed with the island. So the

7           driveway there is all new. And then the four-car garage.

8           Behind the four-car garage, behind it is the generator room

9           which is the size of one of the garages which powers the house

10          in case the power goes off. And then the house is completely

11          stone, so before it was not stone. It was stucco. It was a

12          stucco house. Interesting about the house, this was

13          interesting, whether it was Winter or Summer, in the

14          Summertime you didn't have to use the air conditioning too

15          much because it was so well insulated. In the Wintertime when

16          you heated the house, I didn't have to heat. So it was

17          incredibly insulated. It was double. It was like two walls.

18          Q     You mentioned these flag poles. Did you install

19          these?

20          A     Yes. They stainless steel hundred foot flag poles.

21          Q     What are the three flags?

22          A     One is the American flag, Nevada flag and Arizona

23          flag.

24          Q     Why is Arizona up there?

1           A     Because we owned Superpumper. That is a good view  
2     of the driveway with the trees.

3           Q     Let me back up. We are now looking at the bottom  
4     picture on 1827. Is this your driveway?

5           A     Yes.

6           Q     I am going to skip order to when we get to -- Well,  
7     let's go to 1833. Let's look at the bottom picture.

8           A     Right.

9           Q     Where is this in relationship to Panorama Drive?

10          A     It was near Panorama Drive looking at the house. So  
11     the property is five acres, so there is a big pasture in the  
12     front.

13          Q     Did you make any alterations to the pasture land  
14     when you moved in?

15          A     Yeah. I reseeded it and re-did, Moana Nursery  
16     helped me with that, so a different company.

17          Q     Now let's go to 1834?

18          A     Okay.

19          Q     Who put these descriptions here?

20          A     I did.

21          Q     When did you do that?

22          A     I did this for the litigation.

23          Q     Were these photos taken for this litigation?

24          A     No.

1           Q     For what reason were those photos taken?

2           A     Because there was an argument over what the house  
3 was appraised by the appraiser, and I, through you, found out  
4 that there was a disagreement. I am like, well, that can't  
5 be. The appraiser can't be right. And so I put together  
6 evidence to understand how beautiful the inside of the house  
7 was and what I did to the house.

8           Q     These photos are representative of the condition of  
9 house at what time period?

10          A     I want to say it might have been the time period  
11 sometime in 2010, but I'm not sure what time period.

12          Q     Tell us what we are looking at here top page of  
13 1834?

14          A     So you're entering the house, and there is two  
15 double -- there is an entry way, and you're entering the first  
16 set of mahogany doors. I don't know, 18 foot mahogany doors.  
17 Hugely heavily, about 600 pounds each made with mahogany from  
18 Honduras. The first dome, there is a dome there with a  
19 crystal chandelier. Then you see a second dome. After you  
20 pass through the second set of doors, there is another dome  
21 there that was built with a crystal chandelier. In the house  
22 there is approximately five domes. One, two, three, four and  
23 the hallway, so five.

24          Q     When you renovated the house, did you add these

1 doors?

2 A Yes. They are all new.

3 Q How much did you pay for those?

4 A Each door set I think it was about \$18,000.

5 Q What are we looking at here? This is the top  
6 picture of 1835?

7 A Yeah. So you are looking at mosaic tile on the  
8 floor. So as you walk through the hallways, this is the  
9 entryway, there is mosaics. It is blue bahia granite from  
10 Brazil. The floors are marble.

11 Q The top picture of 1836?

12 A So this is the main kitchen. There are two kitchens  
13 in the house. There is a full catering kitchen. This is the  
14 main kitchen, every day living, and you can see there the  
15 hardwood floors are cherry, Brazilian cherry floors. The  
16 ceiling is very intricate. Huge amount of effort was put in  
17 the ceiling in mahogany with coffered ceilings with moldings  
18 and all down lighting, granite triple bullnose granite.

19 Q What are we looking at, bottom of page of 1887?

20 A This picture was taking because I wanted to  
21 emphasize how intricate the ceiling was. Everyone whoever  
22 came to the house, they all spent their time looking up at the  
23 ceilings. And this ceiling in this room, this is the barrier  
24 which is part of the kitchen. It is a separate area. There is



1 a bar and Subzero line fridges in this area. So the intricacy  
2 of that ceiling is pretty amazing. So it was pretty funny  
3 whenever I had people over.

4 Q Now we are looking at the top picture of 1839. What  
5 is this?

6 A That is the TV room off the kitchen, fireplace, flat  
7 screen TV and out those windows you can see Mount Rose.

8 Q The top picture of 1840, what are we looking at?

9 A So this is the home theater I was explaining. So  
10 this is a sound proof room, professional home theater, and  
11 this is the part where when you start asking me dollars, this  
12 room cost about \$500,000. So I know Dennis built the room,  
13 but a different company put the sound proof walls in and the  
14 AV equipment and all. This is where you watch movies.

15 Q How much was just the AV equipment?

16 A Well, I don't recall off the top of my head. It was  
17 a lot of money.

18 Q Let's go to the bottom picture of 18 --

19 A The equipment for the theater stayed with the house.  
20 So did the theater seats. The crystal chandeliers in all the  
21 rooms stayed with the house.

22 Q When you say stayed with the house, what do you  
23 mean?

24 A Well, when I sold the house to Paul, Paul moved to

1 L.A. and the furniture got moved out but the crystal  
2 chandeliers all stayed. All the theater stuff all stayed.  
3 This is the entryway walking towards the theater. Those are  
4 silk, yellow silk padded walls, and that is why Michael flew  
5 up to see the house. He was freaked out when I placed the  
6 order for the fabric, because --

7 Q When you say Michael?

8 A Michael is the owner --

9 Q Michael Sewitz?

10 A Yes. He has done all the houses in Saudia Arabia,  
11 all the big, big houses, and in Tahoe and San Francisco and  
12 L.A. He actually did the most expensive house in the world in  
13 India, a billion dollars. So he showed me pictures of it when  
14 he was visiting. It was wild.

15 Q Michael Sewitz came to the house?

16 A Yeah. He flew up specifically to have lunch with  
17 Paul and myself because he wanted to see the finishings of the  
18 work.

19 Q Let's go to the bottom picture of 1842. What are we  
20 looking at here?

21 A That is a dome ceiling. That is the entryway to  
22 your left into the theater. Then if you keep going, you walk  
23 into the laundry room and then to the catering kitchen and  
24 staff quarters. You see the white wainscoting. That is all

1 wood. There is a lot of detail to the wainscoting of the wood  
2 right there. You go right, you can see the fabric on the  
3 walls and the ribbon used.

4 Q We are now on the top photo of 1848. What is this?

5 A This is the master bedroom. In the distance there  
6 is a fire place and a couch. All the curtains in the house  
7 are remote controlled. So all the curtains in the house are  
8 remote controlled, the fireplace and the flat screen TV. I  
9 think there were five, one, two, three, four, five fireplaces  
10 in the house. And then the fireplaces there is blue bahia  
11 granite from Brazil. I like blue. You are probably getting a  
12 feeling of colors I like. So that is why you see the  
13 headboard and above the ceiling is cherry wood. It is like,  
14 you feel like you are in a boat. Then the padded surround.

15 Q And are these --

16 A Curtains.

17 Q -- motorized curtains you referred to?

18 A Right. All the rooms in the house, each room has  
19 different colored curtains. But this is the master bedroom.  
20 You can get a feel of this ceiling and this bedroom. Every  
21 room had a different ceiling, and this was done slightly  
22 different. Then you have the built-in couch there and the  
23 fireplace.

24 Q How much did you spend on the curtains?

1           A     I don't know.   \$200,000.   \$175,000.

2           Q     Did you take those with you when you moved out?

3           A     No.   All the curtains stayed.

4           Q     Is this the blue Bahia?

5           A     Yes.   I carried that into the master bathroom.

6           Q     We'll speed this up?

7           A     So the master bathroom there, that is the first

8           sink. The counter tops are all done in blue Bahia. There is

9           the wallpaper, tile floors.   Blue Baja in the shower with

10          white marble. The fixtures are from Water Works from England

11          all throughout the house. Most of the house the fixtures were

12          polished nickel. Mosaics on the floor.   All the floors are

13          heated and even heated towel racks. All the floors in the

14          master bathroom were heated.

15                This is the living room.   Again, the cabinets,

16          coffered ceiling, padded wallpaper.   The walls are all padded

17          which is good for sound so you could have conversation and it

18          wouldn't travel to other parts of the house.   So that is why

19          the living room, hallways, formal dining room were done with

20          padded silk wallpaper.

21          Q     How come there is no furniture?

22          A     Because I am moving out.   I am moving out of the

23          house.   There is no furniture.

24          Q     Was there normally a dining room table in the formal

1 dining room?

2 A Yes.

3 Q What was in there?

4 A A big table. The formal dining was oval and it  
5 seated 12 people.

6 Q It is not in this photograph?

7 A No.

8 Q Do you know why?

9 A No, I don't. That is a half bath. Laundry room.  
10 That is the backyard.

11 Q Let's talk about the backyard. This is 1858. What  
12 are we looking at here?

13 A This is the backyard as you kind of walk out toward  
14 the barn. There is a barn with an apartment upstairs.

15 Q Was this landscaping installed after you took  
16 ownership?

17 A Yeah, most of the landscape was installed either by  
18 Dennis or by Moana Nursery. Moana Nursery did a lot. Dennis  
19 helped, too. We broke up the work. There is the barn in the  
20 distance.

21 Q Tell me about this barn.

22 A The barn had a full apartment with a kitchen and  
23 bathroom upstairs. Downstairs was stalls for horses and a wood  
24 workshop. There was a wood workshop that we used. That is

1       where I did -- we did all -- we staged -- because there was so  
2       much wood work in the house, we had a wood shop in there a  
3       year and a half.

4           Q       Now when --

5           A       The pool is right on the right in front of the stone  
6       wall. Well maybe not.

7           Q       This barn, was it attached or detached?

8           A       Oh, no, it was way in the back of the property, in  
9       the back of the property.

10          Q       When do you recall approximately the last night you  
11       ever stayed in Panorama, when that was?

12          A       No, I don't.

13          Q       In relation to the oral Judgment, can you give me a  
14       time frame how long after the oral Judgment it was that you  
15       never came, you left and never stayed there again?

16          A       Oh, I left probably the next day or two days later  
17       to California. I came back only to pack up and for legal  
18       meetings or whatever?

19          Q       When you packed up and left, what was the condition  
20       of the house?

21          A       Amazing. Probably the prettiest house. That is  
22       what Michael said, he had never been in a house like that in  
23       his life. He couldn't understand the size, it was so cozy,  
24       very warm. That is what people felt whenever they came over.

1 Art HInckley, Cindy, Dennis came over, other people, Mike  
2 Haley, the Sheriff and his wife.

3 Q Did you remove the chandeliers?

4 A No.

5 Q Did you remove the HVAC system or generators?

6 A No. No. There was a special closet with all kinds  
7 of special water filtration systems because it was well water.  
8 It was a pretty sophisticated system with blue light  
9 technology. The house was Cat 5 wired. Everything remote  
10 controlled with bluetron lighting.

11 Q Did you destroy anything in the house before you  
12 left?

13 A No. I couldn't. If things were better -- I miss the  
14 house. It is amazing. My first night there I will never  
15 forget. I had a flashback as a kid, because I grew up on a  
16 farm, worked on a chicken farm and cattle farm. It was very  
17 peaceful, and it was very peaceful. It was kind of weird. I  
18 had a flashback as a kid.

19 Q Now I would like to direct your attention to Exhibit  
20 45. You can put that binder to the side and just go to 45.

21 A Got it.

22 Q Okay. You testified earlier there was the Purchase  
23 and Sale Agreement with respect to your sale to Paul Morabito  
24 of your one third interest in the residential property, right?

1           A     You're on 45?

2           Q     I am on 45 page 2.

3           A     Oh, page 2.

4           Q     You with me? At the top here?

5           A     Yes. Yes.

6           Q     Okay. And there was testimony earlier that this

7 property had a current fair market value of 4.3 million

8 dollars. Do you see that?

9           A     Yes.

10          Q     Do you know where that number came from?

11          A     From an appraiser we hired.

12          Q     Let's make sure we get the date right. The date of

13 this Agreement was September 27, 2010; is that correct?

14          A     Right.

15          Q     So we are just under two weeks removed from the oral

16 Judgment, do you agree?

17          A     Yes.

18          Q     And we have a value of 4.3 million dollars. Do you

19 know who provided that number?

20          A     No, I don't.

21          Q     Was that your number or someone else's?

22          A     I'm trying to think. I am trying to remember.

23 Maybe it was a -- that is what I thought it was worth, but --

24          Q     Would you turn to Exhibit 276. Keep that same page



1 on Exhibit 45 and go to the binder with the photographs we  
2 just looked at?

3 A Yes.

4 Q Pull out 276.

5 A Got it.

6 Q Have you ever seen this document before?

7 A Yes.

8 Q Okay. What do you recognize it to be?

9 A It is an appraisal.

10 Q Do you know a man by the name of Darryl Noble?

11 A I have heard his name, yes. I don't think I have  
12 met him. I'm not sure.

13 Q What role did Noble play with respect to Panorama?

14 A He appraised the house.

15 Q Were you ever present when Darryl Noble came to the  
16 property?

17 A I don't think so. I don't think so. The appraiser  
18 was recommended by Mike Haley, the Sheriff, Washoe County  
19 Sheriff, because we didn't know an appraiser we could use.

20 Q Now there was some testimony earlier in response to  
21 the Plaintiff's counsel's questions as to the timing of the  
22 appraisal relative to the timing of this Agreement. So I want  
23 to direct your attention to a couple of documents and see if  
24 you can -- I am sorry, because it is broken up. Your binders

1       aren't the same as mine. Do you have 276 in front of you?

2           A       Yes. Yes.

3           Q       This is the second page of the appraisal from  
4       Mr. Noble. It has a date of September 24, 2010. Do you see  
5       that?

6           A       Yes.

7           Q       Do you know if Mr. Noble had provided this appraisal  
8       prior to the day you signed the Purchase and Sale Agreement  
9       related to this property?

10           MS. TURNER: Your Honor, this is not a stipulated  
11       exhibit. It is a hearsay document that I think counsel is  
12       apparently trying to get it in through this witness. We  
13       object.

14           MR. GILMORE: There was questioning in the original  
15       direct examination with respect to the timing of Mr. Alves'  
16       appraisal with respect to the Purchase and Sale Agreement.

17           THE COURT: No, the question was as to your client  
18       saying when he engaged him not as to when he appraised it.

19           MS. TURNER: Right.

20           THE COURT: There is a difference.

21           MR. GILMORE: Fair point. I would say to that  
22       Mr. Noble is actually a witness in this case, so he will be  
23       able to testify as to his own statements, so he's subject to  
24       cross-examination which makes his conversations or words with

1 Mr. Bayuk not hearsay for purposes of this trial.

2 THE COURT: I am confused. Are you talking about  
3 wanting the exhibit in or talking about some sort of  
4 testimony?

5 MR. GILMORE: So the objection, I am sure, is this s  
6 a hearsay statement.

7 THE COURT: The document is.

8 MS. TURNER: The report is hearsay. Even if  
9 Mr. Noble was here, it would be a hearsay statement.

10 MR. GILMORE: Correct. But Mr. Noble would be able  
11 to testify as to the conversation he had with Mr. Bayuk which  
12 makes fair game. Conversations Mr. Bayuk had with Mr. Noble,  
13 because Mr. Noble will be a witness who can come here subject  
14 to cross-examination. I am not attempting to offer this  
15 document at this time.

16 THE COURT: Okay. So don't put it up on the screen.  
17 The witness has it in front of him. And then the other part  
18 of -- I don't know what your next question is going to be. I  
19 think the objection was to showing the exhibit that wasn't  
20 admitted. So we'll just have to get to whatever questions you  
21 have.

22 MR. GILMORE: Understood.

23 BY MR. GILMORE:

24 Q Mr. Bayuk?

1           A     Yes.

2           Q     Would you please look at the second page of the  
3 exhibit marked 276 and look at it and read it to yourself if  
4 necessary.

5           MS. TURNER: Your Honor, wait. This is an appraisal  
6 report. That is a hearsay document. It would never come in.  
7 There is no way that an expert report comes in for any  
8 purpose.

9           MR. GILMORE: Well, for one, that is actually not  
10 true. It is well established jurist prudence in this state and  
11 the Ninth Circuit, expert reports can actually be offered  
12 against the party offering it. You said not for any purpose

13          MS. TURNER: Okay. Here --

14          MR. GILMORE: Two -- can I address your objection --  
15 number two, I am offering this to the witness to refresh his  
16 recollection to see if it would refresh his recollection as to  
17 the order of things. I am not offering it -- I am providing  
18 it to the witness to refresh his recollection. Don't say  
19 anything.

20          THE COURT: Normally you can't refresh your  
21 recollection with a document that is prepared by someone else  
22 that doesn't relate to you, so I don't know, because I haven't  
23 looked at this exhibit.

24          MR. GILMORE: What about in the case of agency? It

1 clearly is agency. He testified they retained Darryl Noble to  
2 do the appraisal for him. Why is his agency less important?

3 THE COURT: Okay. I didn't know where you were going  
4 to there. The ability to refresh your recollection by  
5 something that was previously reported is available to a  
6 witness and normally is refreshing their recollection to  
7 something they have personal knowledge of. So I don't know  
8 what this page 2 says. If it says that Mr. Bayuk called him  
9 on such and such a date, and that person is going to be a  
10 witness, then I would let him look at that document to refresh  
11 your client's recollection of when he contacted him. However,  
12 if it doesn't say that, then it doesn't fit.

13 MR. GILMORE: I will lay some more foundation, but if  
14 I ask that question, if I don't get there, I won't ask that  
15 question.

16 MS. TURNER: Your Honor, just to move past this, I  
17 think once again counsel is conflating questions that were  
18 posed before. There is no dispute that Mr. Noble provided  
19 some appraisal by September 30th.

20 THE COURT: Right.

21 MS. TURNER: The question was: You didn't have an  
22 appraisal when you set the price. That was the questioning I  
23 had with Mr. Bayuk. So we will stipulate that the appraisal  
24 from Mr. Noble was done before October 1st, just to shorten

1 time.

2 MR. GILMORE: I will get this testimony through  
3 Mr. Noble.

4 THE COURT: The stipulation is still on the record.

5 BY MR. GILMORE:

6 Q Will you put down Volume VII and pick up Volume IV.  
7 115 through 198. Please turn to Exhibit 180 which is admitted  
8 into evidence.

9 A Got it.

10 Q Exhibit 180 is admitted. It is a letter from Mark  
11 Justmann to Mr. Lehman. Who is Mr. Mark Lehman?

12 A My real else state attorney.

13 Q Where does he work?

14 A Los Angeles.

15 Q And do you recognize the number at the bottom of the  
16 page, \$2,500,000 as it relates to 570?

17 A Yes.

18 Q The date of September 28, 2010. So the Justmann  
19 letter is dated September 28, 2010, right?

20 A Correct.

21 Q And the Purchase and Sale Agreement is dated  
22 September 27, 2010, right?

23 A Correct.

24 Q You testified to the previous questioning that you

1 had amended the Purchase and Sale Agreement after you received  
2 appraisals of certain Properties; is that true?

3 A Correct.

4 Q Let's look at Exhibit 46 which is dated September  
5 28th.

6 A Got it.

7 Q Will you please look at the bottom of page 1.  
8 "Correcting values of properties and interests: MAI  
9 appraisals were conducted and the parties hereby replace the  
10 fair market values and current value of the following  
11 properties stated in the recitals as follows to more  
12 accurately reflect the values established by the appraisals."  
13 Do you see that?

14 A I see that on the screen. What exhibit is this in?

15 Q 46?

16 A Sorry, I was on 45. Yes I see it.

17 Q Do you recognize these numbers?

18 A Yes.

19 Q 1.95 million?

20 A That is the value of El Camino Del Mar.

21 Q Where did that number come from?

22 A From the appraisal.

23 Q What is this number 1.9 million?

24 A From the appraisal.

1           Q     So do you have knowledge of what came first, the  
2 appraisal or the Purchase Agreement?

3           A     Purchase Agreement came first.

4           Q     And then was there a subsequent amendment to the  
5 Purchase Agreement?

6           A     Yes.

7           Q     Was it amended before or after the appraisal?

8           A     It was amended to reflect the appraisal values.

9           Q     On exhibit, keep open to 45, there is a reference to  
10 water rights at the Panorama property?

11          A     In 45? Probably.

12          Q     Yes. Okay. I will direct your attention to the  
13 second page of Exhibit 45 Paragraph D?

14          A     Got it.

15          Q     It says: "Associated with the Panorama property,  
16 excess water rights owned seventy percent by Paul Morabito and  
17 thirty percent by Edward Bayuk." Do you see that?

18          A     Yes.

19          Q     The ownership interest in the water rights,  
20 according to this document, is different than the ownership  
21 interest in the actual real property in this document. Can  
22 you explain that?

23          A     I'm not sure. I think some of the water rights  
24 might have been sold, but I'm not sure.



1           Q     And then --

2                   THE COURT: I am sorry, that doesn't make sense.

3                   THE WITNESS: So different properties have, some

4 properties have large water rights.

5                   THE COURT: I totally understand water rights. That

6 is not the part of your answer that did not make sense.

7                   THE WITNESS: It is either a typo--

8                   THE COURT: The question was why is this different

9 than the percentage interest in the Panorama house.

10                  THE WITNESS: I would be guessing.

11                  THE COURT: We are talking about percentage.

12                  THE WITNESS: I'm not sure.

13                  THE COURT: You don't know?

14                  THE WITNESS: No.

15                  THE COURT: Thank you.

16                  THE WITNESS: Sorry.

17                  THE COURT: That's okay.

18                  THE WITNESS: Thanks for helping me.

19 BY MR. GILMORE:

20           Q     Was there discussion with Mr. Morabito about the

21 time you executed this Agreement on Exhibit 45 as to what the

22 value of the water rights were?

23                   THE COURT: I am sorry, which Mr. Morabito?

24     ///

1 BY MR. GILMORE:

2 Q Did you have any conversation with Paul Morabito  
3 about the value of the water rights on September 28, 2010?

4 A I believe we put a value on the water rights.

5 Q How was that value arrived at?

6 A I think they called someone who knew a lot about  
7 the value of water rights at the time and that's how they got  
8 to the number.

9 Q Do you purport to have any specialized knowledge  
10 that could be the value?

11 A Zero.

12 Q And what happened with respect to excess water  
13 rights that were associated with Panorama?

14 A They were part of the true-up, you know, when I sold  
15 the property to Paul. So I think it is in the summary sheet.

16 Q Did Paul purchase your interest?

17 A Yes.

18 Q Do you know what the amount he paid for it was?

19 A I forget.

20 Q Same questions with respect to the theater  
21 equipment. How was that valued?

22 A We knew roughly what the theater cost to build, so  
23 that is how, from old bills, that is how the number -- It was  
24 pretty easy to arrive at that number and the equipment.

1           Q     Did you endeavor to have a professional value of the  
2 theater equipment?

3           A     No, because the house was finished in 2007, and when  
4 I sold my third interest in the house to Paul, it was 2010, so  
5 three years.

6           Q     So the answer is no?

7           A     No.

8           Q     Do you have any specialized education or training  
9 that would be able to explain why water rights might be  
10 appurtenant to real property or might be held in gross?

11          A     They are held separately.

12          Q     I am asking a more general question. Do you have  
13 specialized education or training that can explain to the  
14 Court the difference between appurtenant water rights and in  
15 gross water rights?

16          A     No. I know nothing about water rights.

17          Q     Please turn to Exhibit 263.

18          A     What volume is that?

19          Q     Should be in Volume VII which is admitted into  
20 evidence. It would be the same binder with the photographs in  
21 it. That one right there.

22          A     Got it.

23          Q     Did you execute a Water Rights Deed on or about the  
24 22nd day of December 2012?

1           A     Water Rights Deed?

2           Q     Did you execute a Water Rights Deed?

3           A     Yes.

4           Q     And this purports to transfer Edward Bayuk, a single  
5 man as to one third interest referred herein and Paul  
6 Morabito, a two third interest to the grantors RCA Trust 1.  
7 Do you see that?

8           A     Yes.

9           Q     Does that mean anything to you?

10          A     Well, I owned one third of the house so that makes  
11 sense.

12          Q     What did you understand this Water Rights Deed was  
13 doing, the legal effect of it?

14          A     Basically transferring the water rights on the  
15 property to the new owner.

16          Q     When you say the new owner, what do you mean?

17          A     I think the owner bought it in his Trust.

18          Q     After you sold your interest in Panorama to Paul  
19 Morabito, do you know what happened to that property  
20 subsequent?

21          A     Yes.

22          Q     What happened?

23          A     There was a forced sale by the Herbsts so Paul -- It  
24 got sold for like two and a half million.

1 Q Do you know who it was sold to?

2 A Yes. Oh, God, let me think for a second his name.  
3 Skip Avansino.

4 Q Who was he?

5 A He was -- He's a local person in Reno who knew a lot  
6 of people.

7 Q Do you know if Skip Avansino had affiliation with  
8 the RCA Trust 1?

9 A I have no knowledge of that.

10 THE COURT: I am sorry, do I understand Skip  
11 Avansino bought it or handled the sale?

12 THE WITNESS: Bought the house. It was a real estate  
13 broker.

14 BY MR. GILMORE:

15 Q 12-31-2012, do you know what was significant about  
16 that date with respect to the Panorama property?

17 A I think that's when the house got sold.

18 Q And do you know if the house was sold using any type  
19 of brokerage service?

20 A Yes.

21 Q How do you know that?

22 A Because she called me two or three times and was  
23 pretty mad at me.

24 Q Do you know who -- Who was this person?

1           A     From Dickson Realty.

2           Q     Do you know who she represented?

3           A     Skip Avansino. And I think Paul signed a listing

4     with her, so she was getting paid from both sides.

5           Q     And I want you to describe your conversation with

6     her, but I don't want you to tell me what she said. I only

7     want you to tell me what you said. What did you say to the

8     broker for Skip Avansino?

9           A     That I would not help them decorate their house.

10    They wanted me to get involved and meet with his wife and

11    decorator.

12          Q     Whose wife?

13          A     Skip's wife.

14          Q     When did this conversation occur?

15          A     Probably a day or two after the sale.

16          Q     What did you tell this broker about your willingness

17    to help decorate the house?

18          A     That I would not help.

19          Q     And what was her response? What was her reaction?

20    Don't tell me what she said.

21          A     She was furious. Very mad.

22          Q     What did you say to her in response?

23          A     I'm sorry, I will not help you or him. I was just

24    very clear I did not want to get involved.

1           Q     Why not?

2           A     Because I was living in Laguna Beach, and they  
3 wanted me to fly up, and like no. They bought the house, and,  
4 you know, I did not want to get involved.

5           Q     Have you ever spoken to Skip Avansino in your life?

6           A     No. But through the broker I heard he was pissed.

7           Q     Don't say that, okay?

8           A     Okay.

9           Q     When you sold you interest in the house, in the  
10 Panorama house to Paul, did you sign a Deed transferring your  
11 interest to Paul Morabito?

12          A     Yes.

13          Q     I should say did you sign a Deed transferring your  
14 interest as tenants in common to Paul Morabito as Trustee of  
15 the Arcadia Living Trust?

16          A     Yes.

17          Q     And this document purports to be recorded.

18               THE COURT: What document is it?

19               MR. GILMORE: This is Exhibit 50 which is in?

20               MS. TURNER: It is.

21               THE WITNESS: I am sorry. Your Honor.

22               THE COURT: That's okay.

23       BY MR. GILMORE:

24          Q     Exhibit 50, this Deed was recorded at the Washoe

1 County Recorder's office evidencing the transfer, is that  
2 true?

3 A Yes.

4 Q Did you utilize an escrow service to facilitate the  
5 transfer of the Panorama house?

6 A I believe so. It says on here First American Title.

7 Q Let's talk briefly about 371 El Camino. There was  
8 testimony earlier about how El Camino was titled. Do you  
9 recall how it was titled?

10 A Yeah. I guess it was originally titled in tenants  
11 in common with Edward Bayuk's name and Paul Morabito's name,  
12 so then it got retitled.

13 Q How did you and Mr. Morabito or you respective  
14 Trusts hold the property?

15 A In my Living Trust, Edward William Bayuk Living  
16 Trust.

17 Q As a married couple?

18 A Tenants in common.

19 Q How was it decided who would take these properties  
20 as between you and Paul Morabito?

21 A Paul was moving back to L.A. to spend his time in  
22 L.A., and I was moving back to Laguna Beach.

23 Q So what was the impetus behind your decision to  
24 purchase Paul's interest in El Camino?



1           A     He wasn't going to be coming down to Laguna much  
2 anymore, so that's when I purchased it.

3           Q     Why did you buy Paul's interest in the furniture at  
4 Panorama?

5           A     Because he was moving, and I was going to use some  
6 of it in the other houses.

7           Q     Did Paul want it?

8           A     No.

9           Q     Did he tell you why not?

10           MS. TURNER:  Objection.

11           MR. GILMORE:  Strike that.

12 BY MR. GILMORE:

13           Q     If you will turn to Exhibit 46.  I am sorry.  52.

14           A     Got it.

15           Q     Did you sign and record a Deed evidencing the  
16 transfer of Paul's Trust interest in El Camino to your Trust?

17           A     Yes.

18           Q     And this is a copy of the original Deed recorded in  
19 Orange County, California?

20           A     Yes.

21           Q     Let's talk about El Camino-- Los Olivos.  How was  
22 Olivos held?

23           A     In my Edward William Bayuk Living Trust.

24           Q     Who were the owners?

1           A     Paul Morabito and Edward Bayuk.

2           Q     What was the nature of the joint ownership?

3           A     Fifty percent each, tenants in common.

4           Q     When you sold your -- When you purchased

5     Mr. Morabito's percentage of the Los Olivos house, did you

6     record a Deed reflecting the transfer?

7           A     Yes.

8           Q     Would you turn to Exhibit 51 which I believe is

9     admitted.

10           THE COURT:   Yes, Exhibit 51 was admitted.

11           BY MR. GILMORE:

12           Q     Is 51 a Grant Deed reflecting Paul Morabito as

13     Trustee of the Arcadia Living Trust granting to Edward William

14     Bayuk, Trustee of Bayuk Trust his interest in the 370 Los

15     Olivos property?

16           A     Yes.

17           Q     Will you go to the seventh volume which is the --

18           A     Right.

19           Q     -- same as the photos?

20           A     What number?

21           Q     Let's start at 265.

22           A     Got it.

23           Q     Do you recognize the document marked as 265?

24           A     It is a wire.

1 Q My question is do you recognize it?

2 A Yes.

3 Q What is it?

4 A I see a wire coming from me, but hold on one second.

5 It is a wire going to Paul for it looks like sixty thousand,

6 one point something. It is hard to read.

7 Q Now in order to lay some foundation, do you see at

8 the bottom of the page there is a URL or web address WTQ Bank

9 of America?

10 A Yes.

11 Q Do you know what that means?

12 A No.

13 Q Do you know where this document came from?

14 A Probably from -- probably from my files.

15 Q What leads you to believe that?

16 A Probably from my bank statement I had to order three

17 times from the bank.

18 Q Is it your testimony 265 is a copy -- Let me back

19 up. Now that you have reviewed the document, discussed it, do

20 you have a recollection as to what it is?

21 A Yeah. It is just dollars I owed Mr. Morabito.

22 Q Tell me what the document is not necessarily what it

23 represents?

24 A It is a wire from me, my account, my Bank of America

1 account.

2 MR. GILMORE: Your Honor, I offer Exhibit 265 into

3 evidence.

4 THE COURT: Counsel.

5 MS. TURNER: No objection.

6 THE COURT: Exhibit 265 is admitted.

7 (Exhibit 265 admitted in evidence.)

8 BY MR. GILMORE:

9 Q Now that it has been admitted, I want to ask you one

10 question about it. It is not very legible, but do you know

11 what this document is intended to reflect, Mr. Bayuk? What is

12 it showing us?

13 A It is just a wire from my Bank of America account.

14 Q Bank of America under the name Edward Bayuk?

15 A Correct.

16 Q To whom?

17 A To -- I couldn't see it. Oh, it is the Bank of

18 Montreal.

19 Q Do you know who the account holder was?

20 A Yeah, Paul Morabito. His name is at the bottom

21 three lines up. I didn't see it.

22 Q There is a pretty legible number, can you decipher

23 that?

24 A It looks like \$60,117.00.

1 Q So you paid Paul Morabito \$60,117.00?

2 A Correct.

3 Q Do you know when this transaction occurred?

4 A The date is on the document. I am looking for the  
5 date.

6 Q Do you see this right here where it says: Sent date?  
7 Do you know what this number means?

8 A 10-1. Looks like 10-1. I can't read it.

9 Q What is your recollection as to when you wired this  
10 money to Paul Morabito?

11 A Pretty much after everything was okayed by the  
12 lawyers and how much I owed them and all. So that is what I  
13 owed him.

14 Q Keep that for another couple of exhibits. Let's go  
15 now to Exhibit 266.

16 THE COURT: Are you asking him about 266?

17 MR. GILMORE: I will in a second. I have to go  
18 through.

19 BY MR. GILMORE:

20 Q Okay. I will not show you on the screen, Mr. Bayuk.  
21 Would you turn to 266 and let me know when you're there?

22 A I am there.

23 Q Do you recognize this document?

24 A Yup. Yes.

1 Q Whose handwriting is depicted in this exhibit?

2 A It is my handwriting, and I am writing a check to

3 Paul Morabito for the furniture from Panorama.

4 Q What is this document? Describe it for us?

5 A It is a check.

6 Q Well --

7 A For payment for the furniture.

8 MR. GILMORE: Your Honor, I will offer Exhibit 266 in

9 evidence.

10 THE COURT: Any objection?

11 MS. TURNER: No.

12 THE COURT: Exhibit 266 is admitted.

13 (Exhibit 266 admitted in evidence.

14 BY MR. GILMORE:

15 Q Now, Mr. Bayuk, did you pay Paul Morabito \$29,383 by

16 way of check on October 1st, 2010?

17 A Yes.

18 Q What for?

19 A For the Panorama furniture.

20 Q Do you know if this check was ever negotiated?

21 A No. It was cashed. The second page is the,

22 whatever they stamped it.

23 Q I should have said cashed. Do you know if this

24 check was ever cashed?

1           A     It was cashed, yes.

2           Q     Please then turn to 268. Let me know if you

3 recognize this document?

4           A     Yes.

5           Q     What is it?

6           A     Furniture for Los Olivos.

7           Q     Sorry. Describe it for me.

8           A     It was the check when I purchased the furniture in

9 Los Olivos.

10          Q     That is your handwriting?

11          A     Yes.

12               MR. GILMORE: I offer 268.

13               THE COURT: Any objection?

14               MS. TURNER: Yeah, that is fine.

15               THE COURT: Exhibit 268 is admitted:

16                     (Exhibit 268 admitted in evidence.)

17 BY MR. GILMORE:

18          Q     Mr. Bayuk, did you write a check to Paul Morabito

19 October 1st, 2010 for \$12,763.00?

20          A     Yes.

21          Q     What was the check for?

22          A     Furniture for Los Olivos.

23          Q     Do you know if this check was ever cashed?

24          A     Yes, it was.

1 Q Please turn to 269. Do you recognize this document?  
2 A Yes.  
3 Q What is it?  
4 A It is a check for the furniture for El Camino Del  
5 Mar.  
6 MR. GILMORE: Offer 269.  
7 THE COURT: Counsel, any objection?  
8 MS. TURNER: No objection.  
9 THE COURT: Exhibit 269 is admitted.  
10 (Exhibit 269 admitted in evidence.)  
11 BY MR. GILMORE:  
12 Q Did you pay Paul Morabito \$31,284.00 October 1st  
13 2010?  
14 A Yes.  
15 Q Again, what was it for?  
16 A For the furniture at El Camino Del Mar.  
17 Q Do you know if that check was ever cashed? Turning  
18 to the second page?  
19 A Yes, it was.  
20 Q Let's talk about Baruk Properties. You testified to  
21 earlier questions Baruk Properties owned two parcels of  
22 commercial property, the Glenneyre Properties?  
23 A Yes.  
24 Q The residential property, Mary Fleming, Palm



1       Springs?

2           A       Yes.

3           Q       And the Clayton Way property in Sparks?

4           A       Yes.

5           Q       Describe the Clayton Way property.

6           A       It was like a half a donut shaped property and it

7       surrounded a gas station, I believe.

8           Q       There was some testimony earlier related to Desi

9       Moreno. What do you know about Desi Moreno?

10          A       He owned the property inside the donut and next to

11       Clayton Way so he owned the gas station property.

12          Q       Adjacent properties?

13          A       It was right nextdoor, yes.

14          Q       What do you know about the Desi Moreno lawsuit with

15       Paul Morabito?

16          A       I just know Paul got sued by Desi Moreno.

17          Q       Do you know if the lawsuit had anything to do with

18       Berry-Hinckley and anything CNC owned?

19          A       I didn't know anything about the lawsuit except

20       there was a lawsuit against Paul.

21          Q       At the time you realized Clayton Way was owned by

22       Baruk Properties, did you have any intended uses for it?

23          A       No.

24          Q       Let's talk about the condition of 570 Glenneyre at

1 the time you purchased Paul's interest in Baruk Properties  
2 okay?

3 A Right.

4 Q 570 Glenneyre is a commercial property?

5 A Yes.

6 Q Describe the shape of it?

7 A It was empty inside. There was no tenant.

8 Q How many offices or potential tenants?

9 A It is a six thousand square foot building. It is  
10 the old U.S. post office for Laguna Beach built in the '60's.

11 Q At the time you purchased Paul's interest in Baruk  
12 Properties, so let me just give you, let's call it the end of  
13 September beginning of October, okay? Did it have any tenant  
14 improvements?

15 A At the time I had redone the floors and I think that  
16 was it.

17 Q It had space for how many tenants?

18 A It was one big room.

19 Q And occupied how much leasable space?

20 A Six thousand square foot. I think the lot is  
21 10,000.

22 Q At the time that you purchased Paul's interest, was  
23 there a rent paying tenant in 570?

24 A No, there was no tenant.

1 Q And was there debt service on 570?

2 A Yes. There was a Bank of America mortgage.

3 Q We'll talk a bit more about that later, but what was  
4 the amount of debt service on 570 at the time you bought  
5 Paul's interest?

6 A It was a lot. The mortgage was approximately a  
7 million. At one time, debt service per month was \$12,000  
8 something.

9 Q And who was the lender on the 570 Glenneyre loan?

10 A Bank of America.

11 Q Who were the borrowers?

12 A The borrowers were Baruk Properties.

13 Q Had you or Paul Morabito executed personal  
14 guarantees of the Baruk loan?

15 A There was a mortgage, commercial mortgage. I know I  
16 probably had to sign something.

17 Q Something personally on your behalf?

18 A On the company's behalf. I am not sure if there was  
19 a personal guarantee.

20 Q Same question with respect to Paul Morabito, do you  
21 know if he personally guaranteed this loan?

22 A I don't think so. It was company guaranteed.

23 Q When you purchased Baruk Properties, did any income  
24 from 570 Glenneyre support its operating expenses?

1           A     No.

2           Q     What was the monthly negative for operating of that  
3 property alone?

4           A     Well the mortgage was twelve thousand some odd  
5 dollars a month. Then I had property taxes on the building of  
6 \$26,000 a year. I had liability insurance of 4,000 or 5,000 a  
7 year, plus earthquake insurance at \$10,000 a year. So  
8 multiply that out and you're looking at just under \$200,000  
9 cash flow negative.

10          Q     Per year?

11          A     Yes.

12          Q     Was there ever a time after you bought Paul's  
13 interest, in which Glenneyre had a rent paying tenant?

14          A     In 2011, August 2011 I had a tenant I found who  
15 wanted the building, and I signed a lease with him, but I had  
16 to do tenant, the only caveat, I had to do tenant improvements  
17 for that, and so we made a budget for it.

18          Q     So in the time between you buying Paul's interest  
19 the end of September, early October 2010 --

20          A     Right.

21          Q     -- and the time you got your first rent paying  
22 tenant, how much negative were you on this property?

23          A     Well 2010 and then you get into 2011, so it was  
24 August, almost a full calendar year, so I was down a lot of

1 money.

2 Q Can you estimate it for us the best you can?

3 A \$200,000.

4 Q Did you provide any money toward tenant improvements  
5 before you landed this tenant?

6 A Yeah. I had to spend about \$360,000 maybe even  
7 more. At least that. I have a spreadsheet that is in the  
8 file.

9 Q How did you finance, sorry, how did you pay for  
10 tenant improvements?

11 A I paid for it.

12 Q With cash or financing?

13 A I had money I borrowed from a, from a bank. So I  
14 borrowed the money.

15 Q So who was the borrower of that money?

16 A Actually, I take that back. In 2011 it was my  
17 money, so I had to put my money into the company to pay these  
18 tenant improvements.

19 Q So between the tenant improvements and the cash flow  
20 negative, how much in the red were you on this property from  
21 the time you bought it from Paul until you got a tenant?

22 A The tenant moved in January 1, 2012, and they didn't  
23 start paying rent because of the lease until March 1, 2012.  
24 So from from 2010 until March 1st, I had no income on the

1 building, so you add the renovation like \$360,000 plus  
2 \$200,000 up until August, then another few more months, you  
3 are way over half a million. Way beyond.

4 Q You said the tenant started paying rent in March of  
5 2012?

6 A Correct.

7 Q Did you believe it was fair market rent?

8 A Yes.

9 Q After you received -- acquired that tenant, was 570  
10 cash flow positive considering all operating expenses  
11 associated with that property?

12 A Yes.

13 Q Okay. What was the monthly net positive cash flow  
14 associated with 570 after tenancy?

15 A I don't remember. I don't remember the month I  
16 re-did the B of A mortgage. I did a different mortgage with a  
17 different bank. So when I did that, I was able to get that  
18 mortgage payment down, same amount of money, to \$6,600 a  
19 month.

20 Q Let me ask you that question.

21 A It became cash flow positive in March.

22 Q How much cash flow -- Let me ask the question again.  
23 What was the monthly cash flow positive of 570 Glenneyre after  
24 the tenant was paying rent?

1           A     Well, their rent to me in March 2012 was about just  
2     under \$25,000 a month.

3           Q     So can you tell me how much net income you were  
4     generating from 570 after tenancy?

5           A     You have to subtract your mortgages and your  
6     liability insurance and earthquake insurance so whatever that  
7     was.

8           Q     Can you give us that number as best you can?

9           A     Probably \$160,000 a year.

10          Q     Now let's talk about 1461?

11          A     Okay.

12          Q     At the time you purchased Paul's interest, did 1461  
13     have any tenants?

14          A     Yes.

15          Q     How many tenants did it have?

16          A     I had three tenants at the time.

17          Q     Did you occupy any space at 1461?

18          A     When I moved back to Laguna, yes.

19          Q     Why did you want to buy the Glenneyre Properties  
20     from Paul?

21          A     Oh, because they were a block, 570 was a block from  
22     my house. And 1461 Glenneyre was six blocks south of my house,  
23     so I could walk to either one. You walk. The reason why I  
24     changed it to Snowshoe Property LLC. California was because I

1 was moving back to California.

2 Q What is Snowshoe Property? What does it mean?

3 A It is a commercial property company.

4 Q Does the name have any significance?

5 A Yeah. I had a cat for 18 years, and it passed away.

6 It was a breed, a Snowshoe breed of cat for people who have  
7 allergies. But it is a cool cat. It is a beautiful cat.

8 Q When you decided to buy Paul's interest in Baruk,  
9 did you already understand the cash flow situation of the  
10 Glenneyre properties?

11 A Yes. I knew they were cash flow negative.

12 Q Was 1461 Glenneyre at the time you bought Paul's  
13 interest, was it cash flow positive?

14 A No. It was cash flow negative.

15 Q Explain why?

16 A Well, it had property taxes, liability insurance and  
17 I had, you know, it is an old building, so I did a lot of work  
18 this year again on it because the building, the property part  
19 of the building was built in 1926. The back parts of the  
20 building were billed in the late 50's or '62, something like  
21 that. So there is always more maintenance on that than the  
22 other building.

23 Q When you acquired Paul's interest in 1461, what was  
24 the monthly net negative?



1           A     I'm not sure.

2           Q     Can you give us your best estimate?

3           A     Probably negative \$45,000.

4           Q     A year?

5           A     Yeah. I am trying to remember my tenant back then.

6           Q     At the time that you bought Paul's interest in 1461  
7     Glenneyre, did you have market rent tenants?

8           A     That is a weird building. No. I had probably, I  
9     had two tenants that were market rate, then one tenant that  
10    was not market rate.

11          Q     Do you now what the term mixed use is?

12          A     Yes.

13          Q     What do you understand that to mean?

14          A     So 570 is a commercial building, so there are  
15    restrictions on commercial buildings, whereas 1461 is a very  
16    strategic building. That are not a lot of buildings built in  
17    Laguna that are mixed use. So I could, if I felt like it,  
18    there are five units in the building, I could change all five  
19    units into, and technically the building is probably worth  
20    more as all apartments than commercial office spaces. But  
21    there is two issues: One, when you have an apartment  
22    building, you have more complaints, more problems versus an  
23    office building with offices, so I rented the suites. All the  
24    suites at the time were office except for one could have been

1 a live-work office. It was actually used for Disney design  
2 people.

3 Q You didn't rent it out to any residential people did  
4 you?

5 A No, not at the time.

6 Q Did 1254 Mary Fleming ever generate income?

7 A No.

8 Q What was its monthly expenses, operating expenses  
9 roughly at the time you purchased it from Paul?

10 A Oh, so it had a mortgage, property taxes and  
11 maintenance, so.

12 Q Let's talk about the mortgage that was encumbering  
13 Mary Fleming the day you purchased Paul's interest in the  
14 property?

15 A Yeah. It was --

16 Q You testified to it a little while ago, but I want  
17 to get some further explanation. Prior to purchasing Paul's  
18 interest in Mary Fleming, was there a debt on the property?

19 A Yes.

20 Q Who was the lender?

21 A Bank of America.

22 Q When was that debt acquired?

23 A I would say 2004 or '5. 2004.

24 Q And who was the borrower of the debt against Mary

1 Fleming?

2 A Paul Morabito.

3 Q And do you recall the amount of the initial  
4 principal balance of the loan?

5 A When I took it over, it was \$350,000, but it was  
6 probably \$450,000 back then. It was higher.

7 Q And when Paul took this loan from Bank of America,  
8 did you receive any of the proceeds?

9 A No.

10 Q Do you know what he did with the proceeds?

11 A No, but he got the money. I didn't get the money.  
12 He also paid the mortgage there because it was his mortgage.

13 Q And so when you took over the property, did you  
14 continue to pay the mortgage?

15 A Yeah. I continued to pay the mortgage until I  
16 refinanced it.

17 Q And when you refinanced it, how did you treat the  
18 balance of the Mary Fleming loan as it related to you and  
19 Paul?

20 A So, so I inherited the mortgage. I gave myself a  
21 credit for the mortgage amount.

22 Q Who has paid the Mary Fleming mortgage ever since?

23 A I started paying it when I bought the house from  
24 Paul.

1           Q     You paid it ever since?

2           A     Right.

3           Q     Has Paul ever contributed to the Mary Fleming

4 mortgage payment?

5           A     Let me back up for one second. So the mortgage was

6 in Paul's name. Excuse me. Did I contribute to his mortgage?

7           Q     No. Did he ever make any contributions or payments

8 toward the Mary Fleming mortgage after you purchased his

9 interest?

10          A     No, none of the mortgages.

11          Q     Say that again?

12          A     Well none -- all the houses I purchased from him,

13 the three houses, I paid the mortgage and the property taxes.

14          Q     Now you already testified that in exchange for the

15 residence on Los Olivos, El Camino Del Mar and Panorama, you

16 transferred your respective interests, there was a balance due

17 you owing to him, true?

18          A     Correct.

19          Q     Do you recall, we looked at the wire, do you know

20 what the relationship between the wire for \$60,000 was to the

21 exchange?

22          A     It was the dollar difference I owed him.

23          Q     To make it equal?

24          A     Yes.

1           Q     And you testified earlier with respect to buying  
2     Paul's interest in Baruk Properties, you didn't pay him cash  
3     upfront, did you?

4           A     No.

5           Q     He took back a note?

6           A     Correct.

7           Q     Why did you execute a note instead of just pay him  
8     the 1.67 million in cash?

9           A     I had to have certain cash levels for the banks to  
10    run the business in Arizona, and I think just my banks  
11    required me to have certain levels.

12          Q     What do you mean about the requirement of Arizona?

13          A     Well, the bank -- Arizona had a landlord and a bank.  
14    There was a bank loan and a credit line as well, so that bank  
15    required me to send them one of my bank statements every  
16    quarter.

17          Q     To reflect what?

18          A     Just to reflect the bank balance of money I had on  
19    hand, cash on hand.

20          Q     When you sold Mary Fleming, did you sign a Deed?

21          A     Yes.

22          Q     Do you know if the Deed was ever recorded --

23          A     Yes.

24          Q     -- for the sale of the personal property at Mary

1 Fleming we looked at? I would like to direct your attention  
2 to Exhibit 55. Do you have that in front of you?

3 A Yes.

4 Q Would you please take a look at it? This exhibit is  
5 already in evidence. Did you sign a Bill of Sale for the  
6 personal property which was contained inside Mary Fleming?

7 A Yes.

8 Q Did you pay Paul Morabito what you owed him pursuant  
9 to that Bill of Sale?

10 A Yes.

11 Q And attached to that Bill of Sale on the last page  
12 is an inventory. Can you explain what this is?

13 A It was an inventory that was in the house.

14 Q Who prepared this inventory?

15 A I probably did.

16 Q Was it an accurate reflection of the furniture that  
17 was existing at the property at the time you purchased Paul's  
18 interest?

19 A Yes.

20 THE COURT: Counsel, what exhibit were you looking  
21 at?

22 MR. GILMORE: I'm sorry, Your Honor, that was 55.

23 THE COURT: Thank you.

24 ///

1 BY MR. GILMORE:

2 Q Your testimony was that you recorded a Deed. There  
3 was a Deed recorded?

4 A Yes.

5 Q You testified earlier that upon the completion of  
6 your purchase of Paul's percentage of Baruk Properties, you  
7 changed the name?

8 A Correct.

9 Q And do you recall how that was accomplished  
10 formally?

11 A Yeah. The lawyers drew up paperwork, corporate  
12 paperwork and formed a new company called Snowshoe Properties,  
13 LLC.

14 Q Do you know who assisted you with that?

15 A I want to say it was Mark Lehman or Dennis Vacco,  
16 one of the lawyers.

17 Q Do you know if there were any filed or recorded --  
18 Let me ask: Do you know if you filed any document with the  
19 California Secretary of State reflecting the merger?

20 A Yes.

21 Q Do you have available to you Exhibit 63?

22 A I have it.

23 Q I am showing you what has been marked and admitted  
24 as Exhibit 63. Do you recognize the signature on page 63?

1           A     Yes.

2           Q     Is that your signature?

3           A     Yes.

4           Q     And do you know what this document is?

5           A     It is a filing with the Secretary of State.

6           Q     It identifies itself as Certificate of Merger for

7     Baruk Properties, LLC. Does that mean anything to you?

8           A     Yeah, just making a public announcement officially

9     with the State.

10          Q     Prior to the merger, Baruk Properties was organized

11     in what state, do you know?

12          A     Nevada.

13          Q     You changed it?

14          A     To California.

15          Q     Did the name change from Baruk Properties to

16     Snowshoe Properties have anything to do with the Herbsts?

17          A     No. It was my company, so I chose the name for it.

18          Q     After Snowshoe Properties was formed, what

19     Properties did it own?

20          A     It owned 570 Glenneyre and 1461 Glenneyre.

21          Q     Okay. Was there a time that Snowshoe Properties

22     owned any other parcels?

23          A     No.

24          Q     Go to Exhibit 65, please. I believe this is also in.



1 Do you recognize this document?

2 A It is a Grant Deed.

3 Q Okay. This is admitted in evidence. Grant Deed  
4 recorded in Riverside County, California Recorder's office  
5 dated November 34, 2010. Do you see that?

6 A Yes.

7 Q And this reflects a Grant Deed from Snowshoe  
8 Properties LLC., to the Edward William Bayuk Trust for 1254  
9 Mary Fleming. Do you see that?

10 A Yes.

11 Q Why did you record a Deed from Snowshoe Properties  
12 to your Trust in November of 2010?

13 A I was transferring it from the property company to  
14 my Trust.

15 Q What was the rationale for doing that?

16 A Because it was a residential property and it wasn't  
17 used. It didn't make sense to be in the property company.

18 Q Did that decision have anything to do with the  
19 Herbsts?

20 A No. It was my decision. I asked the accountant.

21 Q Excuse me. I am making sure we don't cover any  
22 territory twice that we already covered, so bear with me. I  
23 will direct your attention to Exhibit 134. Let me know when  
24 you have a second. Now before we get into the substance of

1 Exhibit 134, will you turn to the second page? In the middle  
2 of the page there is an e-mail, purports be an e-mail from  
3 Paul Morabito to Stan Bernstein, Dennis Vacco, Virginia Pool,  
4 Edward Bayuk, April 11, 2012. Do you see that?

5 A Yes.

6 Q There were questions from Plaintiff's counsel  
7 related to a transaction with a gentleman by the name of Tim  
8 Haves. Do you remember that?

9 A Yes.

10 Q And do you recall what your testimony was with  
11 respect to who Tim Haves was?

12 A He was a broker, business broker.

13 Q What business relationship did Tim Haves have to  
14 Snowshoe Properties?

15 A He had nothing.

16 Q Was Tim Haves ever retained by Snowshoe Properties  
17 to do any work?

18 A No.

19 Q When I say Snowshoe Properties I am talking about  
20 the Glenneyre commercial buildings. There's a lot of  
21 Snowshoes?

22 A Right.

23 Q Now you testified earlier, you were asked questions  
24 in your direct examination about a company called Snowshoe

1 Capital LLC.

2 A Right.

3 Q Have you ever held any membership interest in  
4 Snowshoe Capital?

5 A No.

6 Q Do you know if Snowshoe Capital is an organized  
7 entity in any state in the United States?

8 A I know it is Paul's company.

9 Q Do you know if it is formally organized?

10 A Probably.

11 Q Do you know what its business is?

12 A Looking for business deals around the United States.

13 MR. GILMORE: Your Honor I would offer for admission  
14 one of Plaintiff's exhibits, Exhibit 134 expressly for the  
15 purpose of responding to a claim of recent fabrication under  
16 the hearsay rules.

17 MS. TURNER: Well, Your Honor, I don't know what the  
18 recent fabrication is, but we will stipulate to our own  
19 exhibit coming in.

20 THE COURT: Exhibit 134 is admitted.

21 (Exhibit 134 admitted in evidence.)

22 BT MR. GILMORE:

23 Q I want you to look at now -- Mr. Bayuk, do you  
24 recognize by and large e-mails when they are printed

1 chronologically they work from back to front, oldest to  
2 earliest?

3 A I learned that. I didn't realize that.

4 Q The oldest e-mail in time here, I am asking you to  
5 go to page 68537 and tell me when you're there.

6 A I am there.

7 Q There is an e-mail from Paul Morabito to Tim Haves  
8 April 10, 2012. Do you see that?

9 A Yes.

10 Q What business ventures did you engage in with Paul  
11 Morabito as of April 10, 2012?

12 A That I joined with him?

13 Q Did you have any business ventures with him?

14 A No. No.

15 Q I am going to direct your attention to the very next  
16 e-mail in time in this chain which is an e-mail from Tim Haves  
17 to Paul Morabito. Do you see at the bottom of this page it  
18 says: "Paul: Here are all the forms and questions that need  
19 to be answered." Do you see that?

20 A What page?

21 Q I am on page 535, the bottom right-hand corner. Do  
22 you see this?

23 A Yeah, I see it.

24 Q You can just follow my finger. It might be easier.

1 "Ere are all the forms and questions that need to be answered.  
2 Bench Mark Capital have told me they will work with your CPA  
3 to get this information." Do you know what Bench Mark Capital  
4 is?

5 A Some sort of finance company. I don't know them.

6 Q Okay. Tim Haves tells Paul: "He following is an  
7 updated list of the items necessary to close this loan and  
8 provide a bank commitment letter." If you follow that page and  
9 the next few pages, there are a number of numbered paragraphs  
10 with questions. Do you see that?

11 A Yes.

12 Q And then after the questions there are answers.  
13 Strike that. After the questions there are all caps where the  
14 type base changed. Do you see this?

15 A Yes.

16 Q With respect to number six, there is a statement:  
17 "Virginia will get you the mortgage statement on Panorama  
18 Drive." Do you know who Virginia is?

19 A Yeah. She was an accountant that worked for  
20 Mr. Morabito.

21 Q So does this give you any indication as to who might  
22 be writing in the all caps?

23 A She was a bookkeeper, not an accountant. Sorry.

24 Q I will ask my question again: Does that -- You're

1 familiar with Virginia -- give you any indication who is  
2 providing the commentary in all caps?

3 A Paul.

4 Q Because Virginia is one of Paul's employees?

5 A She's working for Paul, yes.

6 Q So let's go down to Paragraph 10. That is the one I  
7 want to spend our time on. So this is Tim Haves asking  
8 questions of Paul Morabito. These are Paul Morabito's  
9 responses. "Seller, Edward Baruk is the owner of Snowshoe  
10 Properties LLC." Is that true?

11 A Yes.

12 Q "And Paul Morabito is the owner of Snowshoe Capital  
13 LLC," is that true?

14 A Yes.

15 Q Tim Haves says: "However, we will still require him  
16 and Edward Baruk, with both companies having the same initial  
17 name and no listing agreement with the real estate broker  
18 company, with no brokerage acquisition fees being paid and  
19 with Baruk Properties LLC., listed as an entity owned by Paul  
20 Morabito on his 2010, 1040 schedule." Do you see that?

21 A Yes.

22 Q Do you know if Paul Morabito is listed on his tax  
23 returns as an owner of Baruk Properties in 2010?

24 A 2010? Yeah, he would be.

1           Q     So in response to Tim Haves questions, there are  
2     some responses. Do you see this?

3           A     Yes.

4           Q     There is a section symbol: "What is Paul Morabito's  
5     current ownership percentage in Baruk Properties LLC.?"

6           A     Zero.

7           Q     Do you know if this is Paul's statement?

8           A     No. That is probably Virginia's.

9           Q     Does Paul Morabito currently own any percentage of  
10    Edward Bayuk's enterprises other than Baruk Properties?

11          A     No.

12          Q     "Hat is Paul Morabito's future relationship  
13    projected to be with Edward Bayuk subsequent to subject  
14    transaction close?" And that may be an indication who the  
15    author is. "Edward is my former long-time companion, but we  
16    have a very strong personal relationship, and he's my family,  
17    and will be the central person in my life for the rest of my  
18    life." Do you see that?

19          A     Yes.

20          Q     Do you believe that to be a true, a true statement?

21          A     Yes. I have other past boyfriends that feel the  
22    same way I am best friends with.

23          Q     The next response is a question from Tim Haves:  
24    "Does Edward Bayuk currently have an ownership interest, no

1 matter how small ownership interest?"

2 The response: "Yes. He owns twenty percent of  
3 Versanet?"

4 And in April 2012, what was Versanet?

5 A What year?

6 Q April 2012.

7 A 2012 so --

8 MS. TURNER: Your Honor, I am happy to spend half  
9 this trial on Versanet which is another pending litigation. I  
10 think that counsel is opening a door. He can go through it,  
11 but we are going to talk about Versanet if you open that door.

12 MR. GILMORE: I will tell you how narrow the door is  
13 going to be, that is for the purpose of establishing whether  
14 there were any other ventures. This is where the examination  
15 is going to open and end, whether or not there were any other  
16 ventures between Paul Morabito and Edward Bayuk that would  
17 explain some of these transactions.

18 THE COURT: Well, I don't know about Versanet.

19 MR. GILMORE: I don't think you're going to learn  
20 anything about Versanet. Let me rephrase the question.

21 THE COURT: Maybe it isn't a great thing to go into,  
22 because if it in any way explains something from your  
23 standpoint, then the Plaintiff would be entitled to put on  
24 evidence that your theory is incorrect. We probably will have



1 a lot longer trial.

2 MR. GILMORE: Probably.

3 BY MR. GILMORE:

4 Q Okay. So let's go to the next one: "If Edward Bayuk  
5 currently has or in the past had no ownership interest in the  
6 buying entity, Snowshoe Capital LLC.. and, by the same token  
7 if Paul Morabito has or in the past had no ownership interest  
8 in the selling entity Snowshoe Properties LLC., as has been  
9 indicated, what document can be provided to prove this?"

10 The response: "I had an interest in the past, fifty  
11 percent interest in Baruk. DV can attest." Do you know who DV  
12 is?

13 A Dennis Vacco.

14 Q Do you disagree with any of the statements, the  
15 veracity of any of the statements that Paul Morabito gave in  
16 response to Tim Haves' questions?

17 A Ask that again.

18 Q That is too many legal words. Do you agree that Paul  
19 Morabito's statements in response to Tim Haves were accurate?

20 A Yes.

21 Q You don't own any percentage of Snowshoe Capital do  
22 you?

23 A No.

24 Q Paul doesn't own any interest in Snowshoe Properties

1 does he?

2 A No.

3 Q Was there discussion between you and Paul Morabito  
4 about doing a deal between Baruk Properties and Snowshoe  
5 Capital?

6 A You mean Snowshoe Properties and Snowshoe Capital?

7 Q Sure?

8 A Yes.

9 Q When did those discussions commence?

10 A In 2012.

11 Q What types of deals did you consider?

12 A Just companies we were looking at and dealing with.

13 Q Like what?

14 A There were companies in Florida. We were going to  
15 buy a chain of gas stations in Florida, then Chicago and New  
16 York, New Mexico. There was a communications company. I was  
17 trying to complete things that I was a managing member of.

18 Q Did --

19 THE COURT: Is that two different things?

20 THE WITNESS: It was all these different types of  
21 opportunities, business opportunities. So there was a  
22 business opportunity in Florida, a chain of gas stations we  
23 were talking to.

24 THE COURT: I followed that. What was it you were a

1 managing partner in?

2 THE WITNESS: Yeah. So at the time, 2012, I was a  
3 managing member of a communications company. So I was trying  
4 to buy other stuff.

5 BY MR. GILMORE:

6 Q Did any of the proposed -- Give me a second.

7 Did Snowshoe Capital and Snowshoe Properties ever do  
8 a deal?

9 A No.

10 Q Was there an attempt to do a deal?

11 A Yes.

12 Q Just didn't get done?

13 A Didn't happen.

14 Q I will address that in a minute. Let's talk about  
15 Superpumper. And I am not going to cover anything that you  
16 have already covered. Prior to your purchase -- You already  
17 testified Consolidated Western, CWC owned Superpumper, right?

18 A Right.

19 Q And then your company, Snowshoe Petroleum purchased  
20 the merged entity of Superpumper and its equity, right? Is  
21 that fair?

22 A Correct.

23 Q I don't want to cover any of that again. Prior to I  
24 will call that the merger, if I say the merger I am referring

1       between CWC the parent company and Superpumper the succeder.

2       Do you understand that?

3           A       Yes.

4           Q       Do you know when that occurred?

5           A       The merger of the two companies, I don't remember  
6       the exact date.

7           Q       Was it roughly the same time as the rest of these  
8       property exchanges?

9           A       Yes.

10          Q       Let's call it the merger. Prior to the merger, what  
11       was your active role at Superpumper, the operating company?  
12       What did you do?

13          A       So I was -- I was President, so I was on all the  
14       licenses for the company with the State of Arizona. We had a  
15       liquor license, lottery license, environmental licenses,  
16       insurance, etcetera.

17          Q       Were you involved in the finance -- What is the  
18       correct way to ask this question -- financial aspects of the  
19       company?

20          A       No. We had accounting people at the office and then  
21       Sam interacted with them and was deeply involved with the  
22       operations of the business.

23          Q       Were you involved in the day-to-day operations of  
24       the stores prior to the merger, before the merger?

1           A     I went to the store manager store meetings  
2           periodically and visited the market in the stores  
3           periodically. Dealt with human resource issues. So made sure  
4           people were doing sensitivity training and stuff like that.

5           Q     Did you have a vote with respect to issues like  
6           distribution of the profits in Superpumper prior to the  
7           merger?

8           A     No.

9           Q     Who was making these decisions?

10          A     Prior to the merger?

11          Q     Before the merger?

12          A     CWC. It was Paul.

13          Q     Did Sam have involvement or did Sam vote on things  
14          like when to make distributions in Superpumper before the  
15          merger?

16          A     No. It was Paul.

17          Q     What about, do you recall ever voting as a  
18          shareholder of CWC with respect to anything at Superpumper  
19          with respect to company business?

20          A     No, I don't think so.

21          Q     After the merger, did your role change?

22          A     Yes.

23          Q     How so?

24          A     Well, I just started visiting the market more and

1 understanding the business more and spending more time there.  
2 But Sam spent the most time there.

3 Q After the merger, did you ever involve yourself in  
4 the financing of the company?

5 A No.

6 Q How about the bookkeeping?

7 A No.

8 Q How about the accounting or auditing?

9 A No.

10 Q Who did?

11 A Basically, Sam would deal with the accountant and  
12 the auditors.

13 Q Who was in charge of personnel and staffing before  
14 the merger?

15 A We had an operations manager who dealt with the  
16 store employees and the store managers.

17 Q And what about after the merger?

18 A Same thing. We kept the same employees. We hired  
19 some additional -- actually, no. We did make a big change.  
20 We got rid of some people and hired a new manager. So Sam  
21 made a lot of changes. We made a lot of changes. We had to.

22 Q After the merger, did Paul ever visit any of the  
23 stores, to your knowledge?

24 A No.

1           Q     After merger, did Paul have any say in the salaries  
2     that were paid at Superpumper?

3           A     No.

4           Q     After merger, did Paul have any involvement in how  
5     or when distributions would be made?

6           A     No.

7           Q     What role did Paul Morabito have at Snowshoe  
8     Petroleum after merger?

9           A     We seeked, Sam and I seeked his advice when the  
10    accountants were all trying to figure out the note thing and  
11    making sure Spirit was happy, the landlord and the bank.  
12    Paul's background is in banking.

13          Q     Did he have any management responsibility at  
14    Superpumper?

15          A     No.

16          Q     Or Snowshoe Petroleum?

17          A     No, No, no.

18               MR. GILMORE:  Is 77 admitted?

19               THE COURT:  77 is admitted.  It is okay.

20    BY MR. GILMORE:

21          Q     Let's go to Exhibit 77. It has been admitted against  
22    my objection, but here it is.  So let's talk about it?

23               THE COURT:  You can admit it again.  I don't think  
24    she will object.

1 MS. TURNER: None.

2 MR. GILMORE: She probably wouldn't object if I  
3 withdrew my objection.

4 BY MR. GILMORE:

5 Q May 2010. You are looking at Exhibit 77?

6 A Yes.

7 Q This is a May 2010 e-mail from Paul to a whole  
8 number of people including you, true?

9 A Yes.

10 Q Okay. I am going to ask you if you can tell me  
11 anything about the following names? Do you know what  
12 Consolidated Canada Corporation is?

13 A No.

14 Q Do you know if it was ever formed?

15 A I don't know.

16 Q Let me lay some introduction. He says to all. He's  
17 talking to Dennis Vacco, Mark Frederick, do you know who that  
18 is?

19 A He's a friend of mine in Canada. He's a lawyer.

20 Q Do you know who Jeffrey Fletcher is?

21 A A friend of mine in Arizona.

22 Q Have you ever had any business relationship with  
23 Jeff Fletcher?

24 A He was Vice-President of Spirit.



1           Q     What was Spirit?

2           A     The public RET company that helped us buy

3     Berry-Hinckley.

4           Q     Does he have a management role at Spirit?

5           A     Yeah. He's Vice-President.

6           Q     May 2010 did Superpumper have any landlords?

7           A     Yes.

8           Q     Do you know who the landlords were?

9           A     The biggest landlord was Spirit.

10          Q     Do you know if Jeff Fletcher was associated with

11     Spirit at that time?

12          A     I think so, yes. Yes.

13          Q     Do you know what his role was?

14          A     He was one of the chief officers of the company.

15          Q     Okay. So Paul Morabito is saying to all these

16     gentlemen: "We have made the determination to proceed with

17     placing a binding bid on June 22 with Exxon Mobile for 88

18     stores in the Chicago market place." And you testified before

19     there were discussions with you and Paul related to

20     potentially exploring the Chicago market?

21          A     Yes.

22          Q     He says: "The following process needs to happen

23     ASAP," and he gives a litany of things he wants done, right?

24          A     Yes.

1           Q     Number one, set up Consolidated Canada Corporation  
2     as a British Columbia limited liability corporation wholly  
3     owned by Snowshoe Capital LLC., see that?

4           A     Yes.

5           Q     Do you know if Consolidated Canada Corporation was  
6     ever formed?

7           A     I don't know.

8           Q     Did Consolidated Canada Corporation ever do business  
9     with Superpumper?

10           MS. TURNER: Objection. Calls for speculation.

11           THE COURT: Sustained.

12     BY MR. GILMORE:

13           Q     Do you know what Hanoosh Holdings Ltd. Is?

14           A     No.

15           Q     Here is the paragraph that counsel focused on:  
16     "Arrange paperwork for me to transfer into CCC." Do you know  
17     if that refers to Consolidated Canada Corporation?

18           A     I don't know.

19           Q     "One hundred percent of the shares of Consolidated  
20     Western which owns 100 percent of Superpumper." And here he  
21     says: "At FNB of thirty million." You already talked about  
22     that?

23           A     Yes.

24           Q     "Arrange paperwork to transfer into CCC one hundred

1       percent of the shares of Victoria & Greenland Auto Service,  
2       Ltd." Do you know what that is?

3           A       No.

4           Q       Did you ever have any involvement with Victoria &  
5       Greenland?

6           A       No.

7           Q       "We are seeking financing from BMO Harris with  
8       support EDC." Do you know what that is?

9           A       I don't know.

10          Q       Okay. Now take a look at the bottom signature, Paul  
11       Morabito, Chairman. He lists a number of companies. Do you  
12       know if Signal Specialty Risk, LLC., was ever an operating  
13       company?

14          A       No.

15          Q       You don't know?

16          A       I don't know.

17          Q       Now let's go to 79?

18                 THE COURT: Let's take a break here. We'll take a  
19       short recess and be back on the record at 5:00 o'clock for our  
20       last hour.

21                 MR GILMORE: Thanks.

22                         (Short recess taken.)

23                 THE COURT: Thank you. Please be seated. You may  
24       proceed

1                   MR. GILMORE: Thank you.

2           BY MR. GILMORE:

3           Q     Mr. Bayuk, what is Watch My Block?

4           A     It was a company that Paul thought of and I thought  
5           of. It is a neighborhood watch type of idea.

6           Q     Give us the gist of the idea if you can?

7           A     Basically, Neighborhood Watch is formed by law  
8           enforcement. It's for the neighborhood people to talk to one  
9           another. And so Paul was probably ahead of his time because  
10          technology, apps at the time were not developed to that extent  
11          in that year. So basically the idea was Neighborhood Watch  
12          would evolve into an app so you can communicate with your  
13          neighbors and law enforcement and report, you know, bad things  
14          and good things and you could talk to your neighbors.

15          Q     Okay. When did that idea originate?

16          A     In mid 2000.

17          Q     And was there an entity formed to potentially pursue  
18          that idea?

19          A     Yes.

20          Q     Okay. What was the name of the entity, do you know?

21          A     Watch My Block, LLC.

22          Q     Who were the -- What type of entity was it?

23          A     It was a Nevada LLC.

24          Q     Who were the members.

1           A     Myself and Paul.

2           Q     Do you know what the ownership percentages were?

3           A     He owned more. I think it was 90/10.

4           Q     And from 2005 until October 1st of 2010 did Watch My  
5 Block ever own any assets?

6           A     No.

7           Q     Other than potentially the idea?

8           A     It was just an idea.

9           Q     Did it ever own any property?

10          A     No.

11          Q     Did it ever transact any business?

12          A     No.

13          Q     What type of things did you and Paul do from 2005 to  
14 2010 to promote Watch My Block?

15          A     We had meetings with different law enforcement  
16 people in California and Nevada, with Sheriff Haley. We had a  
17 relationship with the Sheriff because of the Shop with the  
18 Sheriff program that Paul sponsored and all. So we had a good  
19 relationship with him and the Sheriff before him as well  
20 because we were doing business up here since 1999. So we  
21 were --

22          Q     So did you and Paul try to get Watch My Block off  
23 the ground?

24          A     Yes. And the Sheriff liked the idea, so I think a

1 company similar to it called Nextdoor started. It was  
2 something like that.

3 Q So in 2010, October 1st, 2010, thereabout, you and  
4 Paul co-owned this entity?

5 A Yes.

6 Q What did you, around that time, what did you decide  
7 about your interest in that ownership in that company?

8 A I bought the company from Paul, and it is just an  
9 idea, so I didn't pay him a lot of money for it. It wasn't  
10 really worth anything.

11 Q Why did you buy it?

12 A I liked the name.

13 Q Did you have any intention of what you were going to  
14 do with it?

15 A No. I still own it and I own the domain name, too.

16 Q How much did you pay for it, do you recall?

17 A I don't know, probably a \$1,000 or something like  
18 that.

19 Q Where did that purchase price come from?

20 A We just decided.

21 Q Did you --

22 A It was actually, now that I think about it, it was a  
23 lawyer. I think it was a dollar a share thing or something.

24 Q Did you request anyone to assist you with documents

1 or the formalities of the transfer?

2 A I think Dennis' office.

3 Q Dennis Vacco?

4 A Yes.

5 Q After you acquired it, did you do anything with the  
6 property, with the company?

7 A No.

8 Q Has it ever owned an asset?

9 A No.

10 Q Even today, do you have any anticipation that this  
11 company may do business?

12 A No, not as of today.

13 Q Do you know if Paul has ever had any control --  
14 sorry I won't use that word. Do you know if Paul has had any  
15 involvement in Watch My Block after October 1, 2010?

16 A No.

17 Q You don't know or he was not?

18 A He has not.

19 Q Have you done anything with Watch My Block since  
20 2010?

21 A No.

22 Q So in the history of its existence has it ever owned  
23 an asset?

24 A Just the domain name that I bought.

1 Q What do you mean?

2 A Well, it is a domain name, Watch My Block.com, if  
3 you want to call that an asset.

4 Q Has it ever generated any income?

5 A No.

6 Q Let's talk about Raffles. Would you turn to Exhibit  
7 256. It should be Volume VII.

8 MS. TURNER: While he's looking for that, Madam Court  
9 Reporter is it idear or idea?

10 MR. GILMORE: That is the Jersey.

11 BY MR. GILMORE:

12 Q Before we start talking about Raffles, let's go back  
13 and ask some questions about this particular asset. You  
14 testified earlier -- Are you with me?

15 A Yes, I am. I am with you.

16 Q Big picture, what is Raffles?

17 A It is a self-insured program.

18 Q When did you first have any affiliation or  
19 association with Raffles?

20 A When we purchased Berry-Hinckley.

21 Q When would that have been?

22 A 2005.

23 Q And can you describe what Raffles consisted of?  
24 What was its business purpose?



1           A     It was a fund, self-insured fund for high risk  
2     petroleum companies, and it had hundreds and hundreds of  
3     companies inside the fund.

4           Q     Do you know how CNC joined Raffles?

5           A     The certificates had to be parked somewhere when we  
6     sold Berry-Hinckley.

7           Q     Let me back up to the Berry-Hinckley today is  
8     Consolidated Nevada?

9           A     Correct.

10          Q     That is the entity that sold BHI to the Herbsts?

11          A     Correct.

12          Q     So back to the sale, prior to the sale to the  
13     Herbsts, how did CNC Consolidated Nevada join Raffles? How  
14     was it done?

15          A     They paid premiums into the fund every year, because  
16     they had, they had self-insured funds for insurance. They had  
17     liability policies. They also had reinsurance policies. So  
18     the company had all kinds of insurance policies. The reason  
19     why the self-insurance fund was set up is it paid claims that  
20     were large. And so the fund would pay those claims if there  
21     was a claim made. If there was no claims made, your equity  
22     would grow. It would continue to grow. But they would go  
23     down, because if another company in the fund had a claim that  
24     was huge, your equity would go down as well, even though you

1       had no claims.

2           Q       And after CNC sold Berry-Hinckley to the Herbsts,  
3       did CNC have any business purpose for Raffles?

4           A       No.

5           Q       You testified earlier that Raffles was not included  
6       in the sale to the Herbsts, true?

7           A       Correct.

8           Q       Do you know how Raffles came to be certificated to  
9       CWC from CNC?

10          A       It got a certificate offer by the Kensington group.

11          Q       Was there anything required of Consolidated Nevada  
12       when it acquired Raffles? Was there any requirement that it  
13       provide anything other than premiums?

14          A       It required a line of credit. Letter of Credit,  
15       sorry, Letter of Credit.

16          Q       Explain that if you can?

17          A       So because of the fund, let's say your premiums were  
18       \$250,000 a year, you still were required for you to belong a  
19       Letter of Credit. And the reason being, let's say another  
20       company had a large claim and money was taken out of the fund,  
21       if there wasn't enough money in the fund, they would draw --  
22       they would draw on your Letter of Credit. So even though you  
23       are paying let's say \$250,000 into the fund every year, and  
24       there is some big claim by another company they had, and they

1 had to draw down, they could potentially, even on top of your  
2 two fifty draw, make another two fifty off your Letter of  
3 Credit, because another company in the fund had a huge claim,  
4 catastrophic claim. That is what the fund was used for.

5 Q Do you know if CNC and Consolidated Nevada ever  
6 acquired a Letter of Credit?

7 A Yes.

8 Q Do you have Exhibit 75 in front of you?

9 A 75?

10 Q Yes.

11 MR. GILMORE: This has been admitted now?

12 MS. TURNER: 75? Yeah, that is the one we  
13 stipulated to earlier.

14 BY MR. GILMORE:

15 Q Okay. Mr. Bayuk, Exhibit 75 has been admitted into  
16 evidence. There were questions of you early in the testimony  
17 when this exhibit was only one page, and I will represent to  
18 you now the lawyers have agreed this exhibit should be three  
19 pages. In that one there is only two. The E.L.M.O. binder was  
20 now updated. But I have it in mine. We can work from it. Sorry  
21 about that, Judge. Does your Exhibit 75 have three pages?

22 A Yes.

23 Q Okay. This is 2012, March 2012, so we are two years  
24 after merger?

1           A     Correct.

2           Q     A little less than two years. Eighteen months or  
3 so, do you agree?

4           A     Yes.

5           Q     So you were asked earlier about this request from  
6 Dennis Vacco to you and he said: "Please review the attached  
7 letter. We need this letter to B of A so it can initiate a  
8 request to Royal requesting a diminution of the security  
9 collateral/Letter of Credit." Can you help us understand the  
10 relationship between B of A, Royal and a Letter of Credit?

11          A     Yes.

12          Q     Help us. What do you understand B of A to mean?

13          A     It is easier if I can just draw a picture, because I  
14 think everyone will understand. But basically Raffles  
15 required a -- In your lower right corner, a piece of paper,  
16 just do Raffles.

17               MR. GILMORE: Your Honor would it permissible for  
18 the witness to draw a diagram to demonstrate?

19               THE COURT: Yes. I am not sure it is necessary.

20               THE WITNESS: It is easier. Raffles lower right  
21 corner requires a Letter of Credit. And so up at the top,  
22 Royal Bank of Canada which is in Canada, so they issue the  
23 Letter of Credit to Raffles. So that is done. But in order  
24 for Royal Bank of Canada to do that, they need some monies or

1 collateral. So Bank of America on the left issues a Letter of  
2 Credit to Royal Bank of Canada, and over at Bank of America  
3 there is a lock box, and you have to have money on deposit for  
4 them to issue that Letter of Credit. You have to have money on  
5 deposit at Bank of America. So that money on deposit at Bank  
6 of America was Paul's money at Bank of America.

7 BY MR. GILMORE:

8 Q Did Paul deposit this money into the Bank of America  
9 lock box as you call it?

10 A When we purchased Berry-Hinckley.

11 Q When was that?

12 A In 2005.

13 Q You didn't contribute to the cash deposits at Bank  
14 of America?

15 A No.

16 Q So when CWC merged with Superpumper, did you  
17 attribute any of the value of the Raffles to the purchase  
18 price you paid to Paul Morabito?

19 A Say that again.

20 Q Yeah, sorry. You bought -- You and Sam, through  
21 Snowshoe, bought Paul's interest in Superpumper?

22 A Correct.

23 Q You paid him a purchase price for that, true?

24 A Correct.

1           Q     Did the purchase price include any accounting for  
2     the value of Raffles?

3           A     Did the purchase price-- I am trying to remember.  
4     Did any purchase price -- Well, we sold -- Paul bought our  
5     shares in the Raffles program because Raffles was part of  
6     Berry-Hinckley.

7           MS. TURNER: Your Honor, it may be inadvertent, but  
8     when counsel asks a question of the witness, the witness looks  
9     at Sam and Sam shakes his head.

10          THE WITNESS: I am not looking.

11          MS. TURNER: This is something that can be observed  
12     from JAVS or something, but it is something I just observed  
13     and I haven't stared at Sam before this question, but that  
14     just happened where I saw this from Sam and the witness  
15     looking over here.

16          THE COURT: Okay. So I want to encourage you not to  
17     communicate during the testimony, and I will just ask the  
18     bailiff to keep an eye on it.

19     BY MR. GILMORE:

20          Q     Keep your eyes on me or the eyes on the Judge, do  
21     you understand?

22          A     Maybe I should just look at the Judge for the rest  
23     of the time. I don't want any accusations.

24          Q     Okay. So let me not ask that question at this time.

1 Is it your testimony that at the time Superpumper was merged,  
2 Mr. Bayuk, are you with me?

3 A Yes.

4 Q At the time of the merger, did you have any  
5 discussions about what to do with the Raffles asset in terms  
6 of who wanted to own it?

7 A Paul wanted to own it.

8 Q Okay. And what was your response to that?

9 A I said that was fine, and we used a statement and he  
10 paid.

11 Q Let me just ask the question: What was your  
12 response to Paul's indication he wanted to buy it? What was  
13 your response?

14 A I did tell him, you know, it is very erratic and it  
15 can go up and go down. It can go to negative pretty quickly.  
16 There is potential risk and rewards to owning it. So he was  
17 willing to take the risk to potentially make more money from  
18 owning it.

19 Q Why didn't you buy it?

20 A I would rather have the money at the time.

21 Q Okay. So did you personally do anything in order to  
22 try to ascertain what a fair price would be for your  
23 percentage of Raffles?

24 A Yeah. I contacted Kensington to get a statement and

1 I received it in September. I think it was September 30th. It  
2 was probably, I probably received it in October, because there  
3 is a month delay. Now that I think about it, even though it  
4 is dated September 30th, I believe I probably didn't get it  
5 until late October.

6 Q So --

7 A So I had to use the previous statement and kind of  
8 guesstimate.

9 Q Explain that. So at the time you made the decision  
10 to be bought out of Raffles --

11 A Right.

12 Q -- what statement relative to the equity in Raffles  
13 did you have access to?

14 A So I had access to all the statements in the past.  
15 So I had all the binders and all the statements. So you could  
16 look at each statement and see the equity every year, so you  
17 could see some years it went up and some years it went down.  
18 In 2007 and '8 it went down. And if the company had a claim,  
19 it would go down. And so I tried to, I looked at those past  
20 years statements and then I think the September statement was  
21 coming out, but I didn't know what the exact number was going  
22 to be. So from looking at the past years of statements, I was  
23 able to make a good judge. But I also told Paul if you take  
24 this, there is a high risk to it. You could make a lot of



1 money or you could lose money.

2 Q And did you contact anybody at Kensington to help  
3 you determine value?

4 A Yeah. I spoke to Murphy and there was another lady  
5 that helped me work through the numbers and give me a good  
6 estimate.

7 Q After your inquiry with Kensington and review of the  
8 documents, did you come to a number you were satisfied with?

9 A Yes.

10 Q Do you recall what that number was, approximately?

11 A Not off the top of my head, but then with whatever  
12 the number was Paul paid me twenty-five percent and then paid  
13 Sam appropriately 20 percent ownership, and then he owned 100  
14 percent of Raffles.

15 Q Tell me why the percentages in Raffles were  
16 different than the percentages of CWC ownership?

17 A CWC was 80/10/10. Raffles was started at  
18 Berry-Hinckley, and it doesn't issue -- Even though you're  
19 putting premium dollars into the fund every year, they could  
20 have a claim, they could draw on the Letter of Credit and the  
21 equity changes. It didn't start paying any dividends until  
22 seven years. So you had to wait a really long time. It paid no  
23 dividends when it would close-out. So the term was seven years  
24 it started paying, then after that it would pay every year.

1       So you get some monies and some years you get more as the  
2       claims would have to close out.

3           Q       So this question is: You owned only ten percent of  
4       CWC, right?

5           A       Correct.

6           Q       But only twenty-five percent of Raffles. Why the  
7       disparity?

8           A       Because I owned twenty-five percent of  
9       Berry-Hinckley.

10          Q       And so is it your testimony that Paul purchased from  
11       you your share of Raffles?

12          A       Yes.

13          Q       And do you recollect the amount of money he paid you  
14       for that?

15          A       I think it was \$420,000 roughly.

16          Q       Okay. Do you know when approximately you received  
17       that money from him?

18          A       Probably in September.

19          Q       After the sale of Berry-Hinckley to the Herbsts, did  
20       CNC or CWC have any need to continue paying premiums to the  
21       Raffles fund?

22          A       Say that again.

23          Q       So after you sold Berry-Hinckley to the Herbsts?

24          A       Correct.

1           Q     Did CNC or CWC continue with paying premiums to  
2     Raffles?

3           A     No. I actually asked if I could, and they said no  
4     because my company wasn't big enough.

5           Q     When you say your company, what do you mean?

6           A     Well, I thought of using -- I thought of self-  
7     insuring Superpumper, and I asked the Raffles people,  
8     representative. They said you are not big enough. You have  
9     to be bigger. It is not worth the time and effort. And I had  
10    that conversation with them, you know, when I was talking to  
11    them about the values and looking at the five years of reports  
12    and trying to get a feel for the value, the equity of the  
13    fund.

14          Q     Now let's look at Exhibit 75 with that context. So  
15    March 30, 2012, you already testified the merger of  
16    Superpumper and CWC occurred October of 2010, right?

17          A     Yes.

18          Q     So we are eighteen months after that. Dennis Vacco  
19    says: "We need a letter to B of A so it can initiate a  
20    request to Royal requesting a diminution of security  
21    collateral."

22    Do you know why Dennis Vacco was asking you for a letter to  
23    Bank of America?

24          A     Yes, because I knew the people at Raffles.

1           Q     And so then he attaches, this is the addition we  
2     made over the evening, he attaches a letter. This is, I  
3     should say this is a document that was attached to the e-mail  
4     we just looked at. Do you see that?

5           A     Yes.

6           Q     It is addressed to Bank of America in Los Angeles.  
7     It has got a signature line for you on behalf of Consolidated  
8     Western Corporation, LLC., and Snowshoe Petroleum, Inc. In  
9     March 30, 2012 was there a company in existence called  
10    Consolidated Western Corporation?

11          A     No.

12          Q     What had happened to it?

13          A     It got merged. Dissolved.

14          Q     And Snowshoe Petroleum at that time, what did it  
15    own?

16          A     It held the shares of Raffles.

17          Q     Okay. And so it is cc'd to a few gentlemen who we  
18    discussed before. Do you know who Dave Morello is?

19          A     He's with Bank of America.

20          Q     Do you know who Steve Peek is?

21          A     He is living up in Reno. He's a lawyer up here.  
22    Good lawyer.

23          Q     Okay. There is this letter you have been asked to  
24    sign which says: "Please be advised on behalf of Consolidated

1 Western and the parent company, Snowshoe Petroleum, I am  
2 writing to request Bank of America send a formal request to  
3 Royal Bank of Canada requesting a reduction in the security  
4 collateral which is on deposit with Bank of America." Do you  
5 see that?

6 A Yes.

7 Q Is that consistent with your understanding how Royal  
8 Bank and Bank of America worked with respect to Raffles?

9 A Yes.

10 Q Presently there is \$1,240,479 in the security  
11 collateral held by the Bank of America. Is that the lock box  
12 you were referring to?

13 A Yes.

14 Q And so Mr. Vacco was asking you to send a letter to  
15 Bank of America attaching a letter from Raffles. Do you see  
16 that?

17 A Yes.

18 Q Do you know why this needs to be done, why Dennis  
19 Vacco is asking you to do that?

20 A Yes, because the money is locked in the lock box at  
21 Bank of America. And even though Raffles didn't need -- They  
22 needed a Letter of Credit. The letter goes on dropping it to  
23 \$81,000, so we were trying to get the money, Dennis was trying  
24 to get the money released out of the Bank of America.

1           Q     Do you know why Dennis was trying to get the money  
2 released from Bank of America?

3           A     Because Paul had put up the money for the Letter of  
4 Credit.

5           Q     Do you know why Steve Peek would be copied on such a  
6 letter to Bank of America?

7           A     I think he was representing Bank of America.

8           Q     In what affair?

9           A     In this affair, I believe. I don't know. I believe  
10 so.

11          Q     And so the last page of that exhibits is a letter of  
12 March 28, 2012 from Catherine Murphy. Do you know who she is?

13          A     Yes.

14          Q     Who is she?

15          A     She works for Kensington Management Group.

16          Q     Is she one of the people you talked to when you were  
17 trying to investigate?

18          A     Yeah, she's one of them, not all of them.

19          Q     And so there is a letter from Raffles to Snowshoe  
20 Petroleum. All members of Raffles have the option of  
21 providing security in the form of cash and/or a Letter of  
22 Credit. See that?

23          A     Yes.

24          Q     What did you understand the purpose of this letter

1 to be?

2 A Basically that the requirement was dropping to  
3 \$81,000.

4 Q So did you recall sending that letter to Bank of  
5 America?

6 A Yes.

7 Q Do you have any understanding as to what happened  
8 thereafter?

9 A Yeah, they released the monies.

10 Q Did you ever receive any of the proceeds from the  
11 money that was released from the Bank of America lock box?

12 A No.

13 Q Why not?

14 A Because that was the money that Paul put on deposit  
15 at Bank of America for the Letter of Credit.

16 Q Do you know if Paul received any distribution or  
17 payments or any money of any kind from Raffles after the  
18 merger?

19 A Yes.

20 Q You do know that?

21 A Yes.

22 Q Do you have any understanding as to the amount?

23 A I think one of the checks was \$658,000 and then  
24 there was more checks that came out.

1           Q     Can you open Exhibit 147.

2                   MS. TURNER: Did you say 147?

3                   MR. GILMORE: Yes.

4                   MS. TURNER: If you want to use it, I am happy to

5 admit it for all purposes?

6 BY MR. GILMORE:

7           Q     Let's go to Exhibit 73 and 72. Sorry, 73 and 74.

8 Let's talk about the Promissory Note that you made in favor of

9 Paul and 1.6 million dollars and change okay?

10          A     Right.

11          Q     In some of the filings in this case, that has been

12 called the Baruk note, okay?

13          A     Okay.

14          Q     I represent it had been call the Baruk note in

15 filings because it refers to the amount that you agreed to pay

16 Paul for his interest in the Baruk Properties, the commercial

17 property, okay?

18          A     Okay.

19          Q     I am going to call it the Baruk note for ease of

20 reference?

21          A     Right.

22          Q     So you were shown the Exhibit of the Baruk note that

23 you made in response to Paul's exchange of the Baruk

24 Properties to you, true?



1           A     Yes.

2           Q     Okay. And you testified that from that point forward  
3 you made payments to Paul on that note, true?

4           A     My accounting is credited to my 1.6 million.

5           Q     Is it your testimony you paid that note in full?

6           A     Yes.

7           Q     Principal and interest?

8           A     Yes.

9           Q     But when that note was paid in full, you already  
10 testified that you continued to give money to Paul or for  
11 Paul's benefit, true?

12          A     Yes.

13          Q     And you testified that you had considered it a loan,  
14 right?

15          A     Yes.

16          Q     Okay. So now let's talk about the Declaration that  
17 you gave to the Bankruptcy Court, okay?

18               THE COURT: That has not been admitted.

19               MR. GILMORE: 74? I am sure it has.

20               THE COURT: I do not show 74.

21               MS. TURNER: I did forget. I think it's a matter  
22 that can probably be taken as judicial notice.

23               THE COURT: It could be, but nobody asked me to.

24               MS. TURNER: I didn't. I apologize to counsel and to

1 the Court. After the fact I will move to admit it.

2 MR. GILMORE: As to judicial notice, she can take  
3 judicial it has been filed, not necessarily the truth or  
4 falsity of the statement therein.

5 THE COURT: Do you want me to consider Exhibit 74?

6 MR. GILMORE: My expectation was she did not offer it  
7 accidentally and when she reviewed her notes at the end of it  
8 she would offer it. It is still your case-in-chief.

9 MS. TURNER: I can come back and do it on redirect or  
10 have the conversation right now.

11 MR. GILMORE: Just admit it.

12 THE COURT: So you're not going to object. You want  
13 to move its admission. He's not going to object.

14 MS. TURNER: Right, Your Honor.

15 THE COURT: Exhibit 74 is admitted.

16 (Exhibit 74 admitted in evidence.)

17 THE COURT: Counsel, you may proceed.

18 BY MR. GILMORE:

19 Q You did sign this Declaration, right?

20 A Yes.

21 Q So when did you -- When did you believe that you had  
22 paid the Baruk note in full, principal and interest?

23 Approximately when?

24 A In 2013.

1           Q     What are you looking at to help you with that?

2           A     73.

3           Q     Is that your ledger, 73?

4           A     Yes.

5           Q     Which is admitted in evidence. So you already

6 testified by June of 2013 the amount you attributed to the

7 Baruk note payment is reflected here?

8           A     Yes.

9           Q     1.7 million and change?

10          A     Right.

11          Q     From June 13th, you continued to give Paul money?

12          A     Yes.

13          Q     So from June of 2013 as reflected in that ledger the

14 last payment on the Baruk note. You signed this Declaration

15 what day?

16          A     October 3, 2014.

17          Q     Okay. How much time elapsed between the date you

18 signed this Declaration and the payoff of the Baruk note?

19          A     A year and a half, roughly.

20          Q     A year and change. Okay. Let's talk about the

21 circumstances that led to your execution of this Declaration.

22 Do you recall specifically the circumstances when you first

23 discussed the possibility of signing a Declaration like this?

24          A     Yeah. I received a phone call from Paul Morabito

1 asking how much money have I given him. I said I didn't know  
2 because I was back East. And he says well I have to know. And  
3 I said I would have to do it off the top of my head and  
4 approximate.

5 Q And so did he give you any indication as to the time  
6 constraints?

7 A Yeah. He needed it today. And I'm like, well, that  
8 doesn't work for me. I had an argument with him.

9 Q And so ultimately what did you decide?

10 A I signed a Declaration.

11 Q In which you indicated that you believed  
12 Mr. Morabito owed you \$600,000?

13 A Right.

14 A At the time you executed this Declaration, was that  
15 your best estimate?

16 A Yes. I guesstimated.

17 Q Okay. And then you say here that in consideration  
18 of your past friendship, your loyalty and successful business  
19 ventures, you destroyed the Promissory Note and you have no  
20 intention of making a claim in the bankruptcy. Was that true  
21 when you said it?

22 A Yes.

23 Q And you have not made a claim in the bankruptcy,  
24 have you?

1           A     No.

2           Q     Now you were asked then, well so Mr. Morabito might  
3     owe you money today and you said he might?

4           A     Yes.

5           Q     Do you remember that?

6           A     Yes.

7           Q     And then she said do you have any expectation that  
8     you will ever be repaid? Do you remember this?

9           A     Yes.

10          Q     And your testimony was yes?

11          A     Yes.

12          Q     And she said, even though you are behind the Herbsts  
13     eight figure Judgment, you said yes?

14          A     Yes.

15          Q     What is it that gives you any hope that if Paul  
16     Morabito owes you any money he might be able to pay it if it  
17     is understood that your note would be subordinate to  
18     everything he owes the Herbsts?

19          A     Because I know the truth.

20          Q     You said that before?

21          A     Everyone is entitled to their opinion, and I believe  
22     that Paul will be successful in his endeavors.

23          Q     Do you care to elaborate on that?

24          A     He's like a Thomas Edison, I know he's not an

1 operator, but he's a visionary and he has done numerous  
2 businesses where it benefited millions and millions of people,  
3 more than one business. One business in particular, all of  
4 America. He's been in every magazine and newspaper in the  
5 United States in the early 90's, and he will be in every  
6 magazine and newspaper in the United States again I believe  
7 because of some of the things he's done. And I work with  
8 super smart people. I have met super smart people. The last  
9 eight years I have worked with amazingly, amazingly smart  
10 people from our government and our military. So I'm very  
11 experienced at meeting smart people. I may not be a smart  
12 person. I am kind of an engineer. I am a layman. I am not  
13 the brightest guy. I don't follow some things sometimes. I  
14 kind of lose it sometimes. I am not listening. I am a poor  
15 listener, not the best speaker, but I try my best. And I am  
16 always respectful to people.

17 Q Let me stop you there. Does your impression as to  
18 what Paul Morabito's future opportunities are have anything to  
19 do with whether or not you expect to be repaid?

20 A You know, when you meet people and you believe in  
21 people and you develop friendships, I mean I have a lots of  
22 good friends that have helped me, not just --

23 A I am going to have to stop you. We are running out  
24 of time. Let me have you focus on the question?

1           A     Sorry.

2           Q     So even if Paul were not able to earn his way out of  
3 this Judgment and other things, would you still have given him  
4 money?

5           A     Well, let me just say that I have worked with a lot  
6 of smart people, and I recognize people who are smart, and I  
7 just believe in different people and Paul's one of those  
8 people I feel is very talented, and he will get his way out of  
9 this.

10          Q     Would you have given him the money even if you  
11 thought there was no chance he was ever going to repay you?

12          A     Probably. You know, he's a friend, and he's helped  
13 me in many ways.

14               MR. GILMORE: Let me check my notes. I just have a  
15 few other things here.

16               THE COURT: Okay.

17               MR. GILMORE: Your Honor, I have two more topic areas  
18 to go into. Would you like me to start and go as far as we  
19 can?

20               THE COURT: Would you rather not?

21               MR. GILMORE: I mean --

22               THE COURT: It is okay. You can tell me what you  
23 really want to do. Do you want to take another break?

24               MR. GILMORE: Only because this one is like a lot of

1       flipping back and forth.

2               THE COURT: We are set to start tomorrow morning at  
3       8:00. When you all get here in the morning you will be coming  
4       in a few minutes before 8:00. You should tell the people at  
5       the door you're coming for the trial in Department 34. The  
6       COs all know to let you in if you're coming to trial. You  
7       have to notify them as you get here, and then you can come on  
8       up. They just don't always expect us to start at 8:00, but  
9       we'll try to start at 8:00, okay? You think we'll be able to  
10      get through this area pretty quick?

11              MR. GILMORE: I will be done in under half an hour.

12              THE COURT: Of course we just need to try get a  
13      little bit closer on schedule. We'll see how it goes.

14              MR. GILMORE: My expectation is Sam Morabito is going  
15      to be quick. That is my expectation.

16              MS. TURNER: Mine as well.

17              THE COURT: You have probably gone through a lot  
18      already, so that will be great. Is there anything else I need  
19      to tell them, deputy, about getting in tomorrow?

20              THE BAILIFF: No. I will be here early. It will be  
21      open.

22              THE COURT: Thank you very much.

23              MS. TURNER: We can leave our things?

24              THE COURT: Nobody is going to be here. When the



1 clerk and the bailiff leave the door will be locked and be  
2 open when you get back. Okay. That will conclude for tonight  
3 and we'll see you all back tomorrow morning. Thank you.  
4 Court's in recess.  
5 (Whereupon the Court adjourned until Wednesday,  
6 October 31, 2018 at 8:00 a.m.)  
7 (Whereupon, the proceedings were concluded.)  
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1     STATE OF NEVADA,     )  
2                             )   ss.  
3     COUNTY OF WASHOE.   )

4             I, Judith Ann Schonlau, Official Reporter of the  
5     Second Judicial District Court of the State of Nevada, in and  
6     for the County of Washoe, DO HEREBY CERTIFY:

7             That as such reporter I was present in Department  
8     No. 34 of the above-entitled court on October 30, 2018 at the  
9     hour of 9:45 a.m of said day and that I then and there took  
10    verbatim stenotype notes of the proceedings had in the matter  
11    of WILLIAM LEONARD, JR. TRUSTEE vs. SUPERPUMPER, INC. ET AL,  
12    Case Number CV13-02663.

13            That the foregoing transcript, consisting of pages  
14    numbered 1-238 inclusive, is a full, true and correct  
15    transcription of my said stenotypy notes, so taken as  
16    aforesaid, and is a full, true and correct statement of the  
17    proceedings had and testimony given upon the trial of the  
18    above-entitled action to the best of my knowledge, skill and  
19    ability.

20    DATED: At Reno, Nevada this 9th day of November, 2018.

21  
22                                   /s/ Judith Ann Schonlau  
23                                   JUDITH ANN SCHONLAU CSR #18  
24