

IN THE SUPREME COURT OF THE STATE OF NEVADA

DAVID J. MITCHELL; ET AL.;

Appellants,

vs.

RUSSELL L. NYPE; REVENUE
PLUS, LLC; AND SHELLEY D.
KROHN,

Respondents.

Supreme Court Case No. 80693

District Court No. A-16-740689-B

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APPELLANTS' APPENDIX – VOLUME XI OF XXIX

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LLC, and Live Works Tic Successor, LLC*

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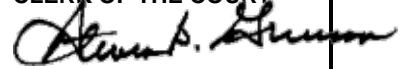
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TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

RUSSELL NYPE,)	
)	
)	
Plaintiff(s),)	CASE NO. A-16-740689-B
)	DEPT NO. XI
vs.)	
)	
DAVID MITCHELL,)	
)	
)	TRANSCRIPT OF
)	PROCEEDINGS
Defendant(s).)	
)	
AND RELATED PARTIES)	

BEFORE THE HONORABLE ELIZABETH GONZALEZ, DISTRICT COURT JUDGE

THURSDAY, JANUARY 2, 2020

BENCH TRIAL - DAY 3

APPEARANCES:

FOR THE PLAINTIFF/ INTERVENOR PLAINTIFF:	JOHN W. MUIJE, ESQ.
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FOR THE DEFENDANTS/ INTERVENOR DEFENDANTS:	ELLIOT S. BLUT, ESQ. BRIAN W. BOSCHKEE, ESQ. JAMES L. EDWARDS, ESQ. H. STAN JOHNSON, ESQ. KEVIN M. JOHNSON, ESQ.
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RECORDED BY: JILL HAWKINS, COURT RECORDER
TRANSCRIBED BY: JD REPORTING, INC.

I N D E X
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1 **LAS VEGAS, CLARK COUNTY, NEVADA, JANUARY 2, 2020, 9:45 A.M.**

2 * * * * *

3 (Pause in the proceedings.)

4 THE COURT: So, Mr. Rich, if you'd stand up to be
5 sworn since it's a new day.

6 THE WITNESS: Yes.

7 **MARK RICH**

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

10 THE CLERK: Please be seated.

11 THE WITNESS: Thank you.

12 THE CLERK: And please state and spell your first and
13 last name for the record.

14 THE WITNESS: Mark Rich. M-a-r-k, R-i-c-h.

15 THE CLERK: Thank you.

16 MR. BOSCHEE: Okay. I'm going to jump right in and
17 not even set up my computer because clearly the
18 miscommunication is with me.

19 THE COURT: No, not necessarily.

20 MR. BOSCHEE: It probably was.

21 THE COURT: Plus we were waiting for Mr. Croteau so
22 you had plenty of extra time.

23 MR. BOSCHEE: Well, that's a -- I mean, that's a -- I
24 can't take credit for that.

25 / / /

JD Reporting, Inc.

CONTINUED CROSS-EXAMINATION

BY MR. BOSCHEE:

Q When we left on Tuesday, and I know it's been New Year's and New Year's day since then so you may not remember, but we were looking at that tax return and the -- with the Charleston Casino partner allocation on the schedule and the LiveWork allocation schedule. Do you remember that?

A Yes.

Q Okay. Other than that, I didn't -- I went through your report again yesterday briefly. I didn't note that you had any other examples of commingling between Mr. Mitchell and Mr. Liberman and 305 specifically in your report. Did I miss something?

A With regard to Casino Partners and 305?

Q Well, with regard to Barnet's -- Barnet Liberman, David Mitchell or -- and 305 commingling money. I didn't see anything in there about shared bank accounts, you know, unity of, like, accounting records, things like that. I didn't see anything. But did I miss something?

A Well, I think -- well, I testified in my deposition that that transaction and also in this trial was a sham. And as a part of that, Charleston Casino Partners really had one purpose, and that was to get the loan for Heartland Bank.

The proof of that is the testimony that we had on Tuesday. That in and of itself, Mr. Liberman and Mitchell's

1 control of that entity, the sole benefit of Charleston Casino
2 Partners was to 305.

3 Q Okay.

4 A And the control was via Mr. Liberman and
5 Mr. Mitchell, and that would be an example of commingling. In
6 other words, there was no benefit of -- I see no benefit of
7 Charleston Casino Partners to Charleston Casino Partners or
8 LVLP. So that is an example of this overall picture here,
9 seeing the forest through the trees, that that in and of itself
10 is commingling.

11 Q Okay. But you testified that Charleston Casino
12 Partners, and again putting the accounting and the records and
13 the QuickBooks of LVLP over here for a second, Charleston
14 Casino Partners never paid rent that you can see to 305; right?

15 A That's correct.

16 Q But they collected rent from some of the tenants;
17 right?

18 A They did.

19 Q Okay. And you just explained to me and to the Court
20 that part of the reason that you think that this was a sham
21 transaction is because Charleston Casino Partners, which,
22 candidly, when you did your initial report you didn't even know
23 was LVLP, but now we know is -- was Las Vegas Land Partners,
24 wasn't getting any benefit out of this; right?

25 I think that's what you just said.

1 A That Charleston Casino Partners was not getting any
2 benefit out of this.

3 Q Right.

4 A Yeah.

5 Q Out of the lease and the guaranty and everything
6 else?

7 A Yes. I mean, when you look at this, really the
8 benefit is to 305.

9 Q Well, but -- but that's where I want to press you a
10 little bit and explain that because the benefit would have been
11 to 305. I mean, they got the financing, but 305 ultimately had
12 to pay the debt to Heartland; right?

13 A That's correct.

14 Q Okay. And theoretically Charleston Casino Partners
15 was going to be paying this rent money that they were
16 collecting back to 305, but they didn't; right? They actually
17 kept it, didn't they?

18 A Well, there were periods of times where they
19 collected it.

20 But before the transaction, LVLP through LiveWork was
21 collecting those rents.

22 Q Right.

23 A And that's just part of this façade or what I had
24 said in my deposition or in this trial on Tuesday that that's
25 a -- it's a sham.

1 Q And I totally understand that, and I read that in
2 your report, but I guess what I'm trying to figure out is if
3 305 is actually conspiring with Las Vegas Land Partners to
4 defraud Mr. Nype, and now we know that Las Vegas Land Partners
5 is on both sides of this; right? Las Vegas Land Partners is
6 the tenant that's supposed to be paying rent, and they're the
7 noteholder that's supposed to be collecting on the LiveWork
8 note; right? I mean, that's been -- we've gone through that
9 ad nauseam, but that's what you believe; right?

10 A Well --

11 Q And we've seen?

12 A Well, I don't mean to interrupt you. I'm sorry.

13 Q No, no. Go ahead. No, I just want to make sure that
14 that's what you've said?

15 A Through two entities.

16 Q Right.

17 A Two supposed separate entities, LiveWork and
18 Charleston Casino Partners, LVLP is the single-member owner of
19 those two --

20 Q Sure.

21 A -- through those two entities that occurred.

22 Q But, candidly, the reason that we're here is because
23 you believe that money should have flown through LiveWork to
24 LVLP to pay Mr. Nype, and it didn't, and that's in large part
25 why we're all sitting in this trial; right? And you've been

1 retained; right?

2 A That is correct.

3 Q Okay.

4 A It's a little more complicated than that.

5 Q I understand.

6 A There are facts that have occurred that there is the
7 theory of how that deal was structured, and then there are the
8 facts of what happened, and those two are different.

9 Q Okay. If LVLP is the tenant that's supposed to be
10 paying rent and ultimately -- and I'm going with you on your
11 alter ego theory for just this -- for purposes of this
12 question, and LVLP is the noteholder that's supposed to be
13 getting paid and ultimately supposed to be paying Mr. Nype,
14 wouldn't it have made more sense if 305 was actually conspiring
15 to defraud Mr. Nype for 305 to actually collect the rent money
16 and then just sit on it, pay other debt, distribute to its
17 members, literally do anything with it? Wouldn't it have made
18 more sense if they were actually trying to take money out of
19 LVLP's hands to defraud Mr. Nype to collect the rent money as
20 opposed to letting LVLP sit on it for all those years?

21 A Well, they couldn't even have done the transaction
22 without the loan, and so that's where that lease comes into
23 play. That lease does not appear to have ever been intended to
24 be enforced.

25 Q Well, sure --

1 A No rents were paid. So all it was was a facilitator
2 for 305. The benefit was to 305 and Mr. Liberman and
3 Mr. Mitchell to have this transaction go through, obtain the
4 loan from Heartland Bank, and they didn't intend to pay the
5 note either because no payments were made on the note.

6 Q Right. But the --

7 A Those are facts, not theory based on, you know,
8 documents that were never enforced.

9 Q Well, the facts of nonpayment I'll go with you with.
10 I mean, the fact of the intent and the fraud whatever, that's a
11 theory of yours, isn't it? I mean, that's -- the intent behind
12 these agreements is your theory, your expert opinion; right?

13 A That is my opinion is that there are elements of
14 fraud and alter ego that lends itself to support my conclusions
15 and opinions, yes.

16 Q Sure. But the lease was a condition for the
17 305-Heartland note that 305 had to repay to Heartland; right?

18 A Yes.

19 Q Okay. So again didn't 305's failure to collect rent
20 from essentially Las Vegas Land Partners and Barnet and --
21 Mr. Liberman and Mr. Mitchell, didn't that leave Las Vegas Land
22 Partners more solvent than it should have been as opposed to
23 rendering it insolvent because they had all the rent money that
24 they shouldn't have had?

25 A Well, the rent money was not enough to satisfy the

1 note. So, no, that's not the case.

2 Q But the rent money would have been good enough to
3 partially satisfy the judgment to Mr. Nype, wouldn't it?

4 A There was --

5 Q Hundreds of thousands of dollars a year for 10 years?

6 A You mean if they would have actually deposited the
7 funds over 10 years?

8 Q I'm not talking about what LVLP did. Whatever LVLP
9 did in their accounting and whatever shell games they're
10 playing over here, that's a whole different conversation.
11 Okay.

12 I'm talking about the fact that 305 didn't make Las
13 Vegas Land Partners pay rent and Las Vegas Land Partners was
14 allowed to keep the rent money from the tenants, that actually
15 put, theoretically, more money in Las Vegas Land Partners's
16 pockets than should have been because there's a lease that they
17 should have been paying it to 305; right?

18 A Say that again.

19 Q Las Vegas Land Partners -- for purposes of my
20 question, I'm taking you -- I'm with you that Las Vegas Land
21 Partners is Charleston Casino Partners. Okay. Do you agree
22 with me on that?

23 A I --

24 Q Basically?

25 A I believe that it's -- Charleston Casino Partners is

1 an alter ego of 305.

2 Q Of 305?

3 A 305 as well as --

4 Q Help me out here. How is --

5 A -- LVLP.

6 Q How is Charleston Casino Partners an alter ego of
7 305?

8 A They have common ownership through Barnet-Liberman.

9 Q Okay.

10 A Additionally, the sole purpose of that entity, when
11 you really go through the facts, was to assist 305 to get a
12 loan. There was no benefit, there's no benefit to LVLP. This
13 was a benefit to 305 to help them get the Heartland loan. I
14 mean, that was essential. They don't even have this
15 transaction. The 305 transaction does not take place without
16 Charleston Casino Partners lease, not payments, the lease.

17 Q I understand.

18 A And that --

19 Q Yeah, totally, and we looked at all those documents
20 with Mr. Johnson?

21 A Yes.

22 Q But what that -- what that lease did was create an
23 obligation for 305 to pay Heartland Bank; right?

24 A That's correct.

25 Q Okay. And Las Vegas Land Partners through Charleston

1 Casino Partners never actually paid anything on that lease and
2 kept the rent money it collected from the tenants, didn't it?

3 A Some of it.

4 Q Well, some of it. Yeah.

5 A The rent stopped in 2012, and the historical rent was
6 300,000, approximately gross per year, and that's not a net
7 amount. That's a gross amount.

8 Q Sure.

9 A So the rents from that, the net operating income was
10 nominal.

11 Q But had Las Vegas Land Partners through Charleston
12 Casino paid on the lease, you would agree with me that Las
13 Vegas Land Partners would have had less money than it did the
14 way it actually operated; right?

15 A If -- repeat that.

16 Q I'm sorry. It was a bad question.

17 If Charleston Casino actually honors the lease
18 agreement and pays the rent that it's obligated to pay under
19 the agreement instead of just keeping it and not paying it, you
20 agree with me that Las Vegas Land Partners had more money than
21 it should've; right?

22 A Had more money than it should have? I don't think
23 so.

24 Q Well, if Las Vegas Land Partners through Charleston
25 Casino is paying rent to 305 under this lease; right?

1 A Yes.

2 Q That would have been money going out of Las Vegas
3 Land Partners to 305; right?

4 A Yes.

5 Q And that never happened, did it?

6 A It never happened.

7 Q Okay. So that money that should have been flowing
8 this way stayed with Las Vegas Land Partners, right, through
9 Charleston Casino? It just stayed there?

10 A Well, there was no money?

11 Q Okay. Well --

12 A If there was no money -- that's the problem with this
13 transaction. There was no money.

14 Q But there was money. You testified earlier that
15 there was rent money coming into Charleston Casino that they
16 kept and then whatever Charleston Casino did with that money,
17 whether they passed it through to Las Vegas Land Partners,
18 whether Las Vegas Land Partners deposited in the bank, I don't
19 know, and candidly I don't care. They got money that should
20 have been going to 305 and kept it, didn't they?

21 A Yes. Some money. Yes, they did.

22 Q Okay. Right.

23 A I agree with that.

24 Q And in so doing, that meant that Las Vegas Land
25 Partners had more money, was more solvent than it would have

1 been had it been making the lease payments to 305; right?

2 A On that one little piece of that transaction?

3 Q Just that piece.

4 A Yes.

5 MR. BOSCHEE: Okay. I have nothing further for this
6 witness, Judge.

7 THE COURT: Thank you.

8 Mr. Blut.

9 MR. BLUT: Thank you, Your Honor. I'm going to
10 handle it from over here because I do not have --

11 THE COURT: That's fine if you keep your voice up.

12 MR. BLUT: And, Mr. Rich, if you can't --

13 THE COURT: Keep your voice up.

14 MR. BLUT: That's what I will try to do.

15 How am I doing so far?

16 THE COURT: You're doing great.

17 MR. BOSCHEE: Ironically, the one person that could
18 have sat down and probably done this is the one that went to
19 the podium.

20 THE COURT: Yeah, I know.

21 THE WITNESS: Mr. Blut, I'm going deaf, and,
22 seriously --

23 MR. BLUT: Oh, no, that's what I --

24 THE WITNESS: -- and I have no hearing in my right
25 ear. So if you -- anything you can do to speak up helps a lot.

1 Thank you.

2 MR. BLUT: No problem. I've been told I speak loud.
3 How's that?

4 THE WITNESS: That's good so far. Thank you.

5 MR. BLUT: All right. Thank you.

6 CROSS-EXAMINATION

7 BY MR. BLUT:

8 Q With regard to Casino Coolidge, does David Mitchell
9 have anything to do with Casino Coolidge, LLC?

10 A No. There's no evidence of that after the sale took
11 place.

12 Q Okay. And Casino Coolidge, LLC, did not exist until
13 the sale took place; right?

14 A That's -- I believe that is the case, yes.

15 Q Okay. And Las Vegas Land Partners has nothing to do
16 with Casino Coolidge; right?

17 A Not after the sale.

18 Q Okay. And I meant Casino Coolidge, LLC. Did Casino
19 Coolidge, LLC, was that ever reflected on the Las Vegas Land
20 Partners tax return?

21 A Not after the sale.

22 Q And was it before the sale?

23 A Yes, through Leah Properties.

24 Q Okay. Well, Leah Properties, LLC, is different from
25 Casino Coolidge, LLC; right?

JD Reporting, Inc.

1 A Yes.

2 Q Okay. So the Casino Coolidge, LLC, was reflected on
3 Mr. Liberman's Schedule E and his personal tax return, not on
4 the Las Vegas Land Partners tax return; right?

5 A That is correct, after the sale, just to clarify.

6 Q And before the sale, Casino Coolidge, LLC, did not
7 appear on anybody's tax return because it hadn't been formed;
8 right?

9 A That is correct.

10 Q Okay. And you haven't seen any evidence that
11 \$1 million was not the reasonable equivalent value for that
12 property at the end of 2014, have you?

13 A Other than a related-party transaction being an
14 element of fraud and commingling, there's -- there is no
15 appraisal or anything to the contrary.

16 Q Okay. People can, like -- you can do an appraisal
17 today. Have you seen this in cases where in 2020 an appraisal
18 is done as to the value of December 2014? You've seen that
19 before; right?

20 THE COURT: Retrospective appraisals happen?

21 MR. BLUT: Yes. I'm just seeing if he's run into
22 that.

23 THE WITNESS: I've seen that in estate matters, not
24 in -- not when there's allegations of fraud or, you know, an
25 alter ego issue or there's an existing threat prior to that

1 transaction, but I have seen it for estate purposes or an IRS
2 tax audit.

3 BY MR. BLUT:

4 Q Okay. And did you ask Mr. Muije to obtain a
5 retrospective appraisal so you could have peace of mind as to
6 what the fair market value was in December of 2014 of that
7 Casino Coolidge property?

8 A No. That was not within my scope.

9 Q And are you aware that there was a broker who listed
10 the property for sale?

11 A That has been mentioned in trial, but -- and I
12 believe in my deposition, but I don't have any direct knowledge
13 of that.

14 Q Take a look at --

15 MR. BLUT: This has been admitted, Your Honor.

16 BY MR. BLUT:

17 Q -- Exhibit 33.

18 THE COURT: Thank you.

19 BY MR. BLUT:

20 Q This is the closing statement. And, Mr. Rich, do you
21 see under seller charges it says, Broker's commission North Cap
22 [phonetic]?

23 A Yes.

24 Q Okay. And brokers, to your experience, they get paid
25 a commission on the sale; right?

1 A That's correct.

2 Q So this would be 2 percent. I'm not a math expert,
3 but 20,000 on a million is 2 percent; right?

4 A Yes.

5 Q So if it sells for \$2 million, this broker gets
6 \$40,000?

7 A That's correct.

8 Q Okay. And so do you believe that this broker is in
9 on the conspiracy to defraud Mr. Nype by depressing the value
10 so she gets paid less than what the market might pay her?

11 A In my experience, brokers if parties have agreed and
12 there's a broker involved, they get what they get. So I don't
13 know that, from my standpoint, in evaluation this -- in
14 evaluating this transaction it would make any difference.

15 Q Okay. And I think you had testified Monday that in
16 2000 -- at the end of 2014 or '15, Las Vegas Land Partners
17 still had assets of \$16 million. Do you remember that?

18 A Book value, yes.

19 Q Okay. So did this transaction, assuming for this
20 question that Leah is Las Vegas Land Partners, did this
21 transaction make Las Vegas Land Partners insolvent?

22 A Well, it contributed to it. There was assets with a
23 basis of over \$3 million that was exchanged for \$1 million. So
24 that did not help its situation.

25 Q Okay. And so what was the monthly debt service on

1 the note to Valley National Bank that Leah was obligated to
2 prior to the sale in December of 2014?

3 A I don't recall.

4 Q Okay. And looking at the closing statement, it
5 includes an assumption \$500,000 of that Valley National Bank
6 loan, plus a reduction of principal of 108,000. So, in
7 essence, this took \$608,000 of debt off of the Leah Properties,
8 LLC, books; right?

9 A That's correct.

10 Q Okay. Have you seen the Casino Coolidge, LLC, bank
11 accounts?

12 A Yes, I have.

13 Q Statements. Okay. And in those bank accounts are
14 there any personal expenses of Mr. Liberman that are paid from
15 that account?

16 A It's difficult to tell. I saw numerous distributions
17 to Mr. Liberman from that account.

18 Q Where? Can you point out, similar to what we did
19 with Mr. Johnson, can you point those out to me. Whatever
20 workpapers you need or whatever it is that you need, could you
21 point those out to me.

22 A Those would be in the Bates, the CC Bates, Casino
23 Coolidge Bates.

24 But I did see payments to Mr. Liberman out of Casino
25 Coolidge.

1 Q Okay. Could you -- what do you need to do to look at
2 that?

3 I could pull it up, but I guess I have to scroll
4 down.

5 A I would need the Casino Coolidge production.

6 Q Okay. I mean, I can pull it up which is Exhibit 27.

7 THE COURT: Is it admitted?

8 MR. BLUT: It is admitted.

9 THE COURT: Lovely.

10 MR. BLUT: And it's 107 pages.

11 BY MR. BLUT:

12 Q I suppose I could just scroll down. Is that the
13 easiest way to --

14 A Yes. We could go to the bank statements.

15 Q Okay.

16 A And canceled checks that follow. That's where I saw
17 them.

18 Q Okay. I'm going to scroll down. So page 3 here,
19 that looks like Meadows Bank; right?

20 A Yes.

21 The initial bank statements have payments to Meadows
22 Bank, and in the latter bank statements I saw checks to Barnet
23 Liberman.

24 Q Okay. So how far down should we go? What do you
25 think?

1 A I'm not sure.

2 Q All right. Well, we're still loading here. I'm
3 going to reopen that exhibit, and hopefully that helps us.

4 All right. Let's see. This one might go faster.

5 So let's just randomly we'll scroll down. Here's a
6 page.

7 This is page 66. Any of those? That's Meadows Bank,
8 and this is in 2017; right? Two checks to Meadows Bank?

9 A Yes.

10 Q All right. So you think it would be after this?

11 A What's that?

12 Q It would be -- I apologize. I didn't speak up.

13 It would be after this, right, that we should try to
14 find those checks to Mr. Liberman?

15 A Well, it's somewhere in between. It was set up in
16 '14, and I --

17 Q Okay. We'll go backwards so we can find those
18 checks. These are from a different month, I guess from June.
19 These are not to Mr. Liberman; right?

20 A Right.

21 Q Two more for Meadows Bank from May of '17; right?

22 A Yes.

23 Q This is April of '17.

24 A Yes.

25 Q These are not to Mr. Liberman.

1 Okay. This is March of '17, not to Mr. Liberman;
2 right?

3 A Right.

4 Q Here's one at 35,000?

5 A Yes.

6 Q Okay. Was this the only one, or are there more?

7 A No, I think there were more.

8 Q Okay.

9 MR. MUIJE: What page is that, Counsel?

10 MR. BLUT: 53.

11 MR. MUIJE: Thank you.

12 THE WITNESS: There's another.

13 MR. BLUT: Okay.

14 THE WITNESS: I don't know if that's the same -- I
15 believe that was another to Mr. Liberman.

16 MR. BLUT: Oh, no, that was the same one.

17 THE WITNESS: Okay.

18 MR. BLUT: I was finding the date for Mr. Muije.

19 THE WITNESS: Okay. I couldn't tell the way it was
20 scrolling.

21 MR. BLUT: Oh. No, worries.

22 BY MR. BLUT:

23 Q So here's January of '17.

24 A Uh-huh.

25 Q Nothing to Mr. Liberman?

1 A Yes.

2 Q This is December of '16. Nothing to Mr. Liberman;
3 right?

4 A No.

5 Q This is November of '16.

6 Tell me if I'm moving too fast. I'm just trying to
7 get the --

8 A No, that's fine. That's good.

9 Q Okay. Well, actually in this one it looks like in
10 this one he paid Mr. Harry Marquis for something; right?

11 THE COURT: \$125. That's a big spending.

12 MR. BLUT: \$525.

13 THE COURT: Oh, okay. Sorry. I'm going to have to
14 put my glasses on to read these.

15 UNIDENTIFIED SPEAKER: He paid filing fees.

16 BY MR. BLUT:

17 Q So this is October of '16. None of these are to
18 Mr. Liberman; right?

19 A (No audible response.)

20 Q Is that correct?

21 A That's correct.

22 Q Okay. September of '16, anything to Mr. Liberman?

23 A No.

24 Q Eight, August of '16, anything to Mr. Liberman?

25 A No.

1 Q July of 2016, anything to Mr. Liberman?

2 A No.

3 Q Here Mr. Liberman got 70,000?

4 A Yes.

5 Q And so is it your opinion from an accounting
6 standpoint that a member of an LLC cannot receive distributions
7 from the sole member, LLC?

8 A No, I never said that. You asked me if there were
9 payments to him, and I said there were.

10 Q No, I asked you -- okay.

11 And so what in your -- in your opinion, what's wrong
12 with let's say this \$70,000 check to Mr. Liberman in June
13 of 2016? How was -- how is --

14 A I never said there was --

15 Q How is that somehow an improper payment to
16 Mr. Liberman that supports your theory that you've been giving
17 in this trial?

18 A I never said that these payments -- I never raised
19 that issue, Mr. --

20 Q Oh. Okay. Good.

21 A Mr. Blut, you raised that issue, and I answered your
22 question, and I believe what my testimony was accurate.

23 Q Okay. And are these personal -- and I've asked you
24 before if there were personal expenses of Mr. Liberman paid out
25 of this. So is it -- are there other checks besides checks

1 that went to Mr. Liberman that you believe were somehow
2 personal expenses of his?

3 A It's impossible to tell based on the documents that
4 were provided because these checks are not reflective of the
5 expenses and payments.

6 For example, any of these checks could be related to
7 Mr. Liberman personally. There's no way to tell because the
8 invoices to -- it appeared to be some sort of development that
9 was going on. There's no invoice to tell what that relates to.
10 It could be his personal residence. I don't know. I have not
11 made that allegation about these checks.

12 Q Okay. With regard to -- moving to the 305
13 transaction, the 305 transaction was before the Forest City
14 transaction; right?

15 A Weeks before the closing was, but the transaction was
16 ongoing prior. Obviously an \$80 million deal isn't put
17 together in a week.

18 Q Okay.

19 A Nor are the funds secured.

20 Q And until a real estate deal closes, is there a deal?

21 A No.

22 Q Okay. And so at some point the unjust enrichment
23 claim of Mr. Nype arose no earlier than the day of the close of
24 the transaction with Forest City; right?

25 A Well, I would disagree with that in that the

1 negotiations and the introduction obviously took place some
2 time before that. So it's an ongoing process that the --

3 Q And if there was no deal, there would be no unjust
4 enrichment claim of Mr. Nype; right?

5 A That's correct.

6 Q Okay. And so at what point in time is Las Vegas Land
7 Partners on notice that Mr. Nype has a claim against them?
8 What date?

9 THE COURT: Las Vegas Land Partners?

10 MR. BLUT: Yeah.

11 THE COURT: Okay.

12 THE WITNESS: I would say it's at least at the point
13 in time of closing of the Forest City deal.

14 BY MR. BLUT:

15 Q Okay. So is it your opinion then, to follow up on
16 what you just testified to, that Mr. Liberman, Mr. Mitchell,
17 305 Associates and LiveWork, before the close of the deal and
18 any obligation of Mr. Nype, conspired to take a piece of
19 property out of LiveWork's assets so that it would not be
20 available to pay Mr. Nype?

21 A Well, I believe that that deal has a lot of issues
22 related to it. I think that is a part of it.

23 Q Okay.

24 A That's -- it serves multiple purposes.

25 Q Okay.

1 A Ultimately, that turned out to be the case. And I
2 think as developers enter into deals, their structure and
3 arranged in a certain way that's obviously to their benefit,
4 and there are numerous corners to that deal that -- and that's
5 one of them, yes.

6 Q Okay. So you believe that in May of 2007, 305
7 Second Avenue Associates and LiveWork through Mr. Liberman and
8 Mr. Mitchell decided that they would make a deal in case they
9 closed with Forest City, at which time they may owe Mr. Nype
10 money?

11 A I don't think -- as I've testified in my deposition
12 and as I have testified throughout this trial, I don't believe
13 that was the sole purpose --

14 Q But you believe that that was actually in their mind,
15 that the three parties had that in their mind that this was
16 going to be a way in case they had an obligation that they
17 disputed, in case that came about they were going to reduce the
18 assets of LiveWork prior to even, under your opinion, owing the
19 money?

20 A Well, in the closing statement they acknowledged that
21 there was an amount owing. So we know prior to the closing
22 that this was -- there was ongoing negotiations, and they were
23 aware of --

24 Q But not six weeks prior; right?

25 A -- there was a threat at that point in time. I do

1 believe there was a threat at that time.

2 Q Okay. But not six -- not six -- not a deal that
3 closed six weeks prior?

4 A I think there was -- during that period of time there
5 was an ongoing threat.

6 Q What about the ongoing threat of the Guggenheim
7 [phonetic] loan that was owed on Las Vegas Land Partners
8 properties?

9 A I think that was a threat as well, yes.

10 Q Okay.

11 A That's why Mr. Nype was brought in. Yes, exactly.
12 That was -- that all ties together. That's part of those
13 facets in this is they were desperate to have someone come in,
14 and that's why they brought in Mr. Nype to raise these funds,
15 capital and loans.

16 Q Right. But on the closing statement of the sale from
17 LiveWork to 305, Guggenheim is paid down over \$17 million
18 right?

19 A I don't recall the amount, but there was an amount
20 that was paid down.

21 Q Okay. Let's turn to that exhibit -- which that's not
22 it, but it is admitted. This is 40006.

23 THE COURT: Thank you.

24 BY MR. BLUT:

25 Q So this is 40006. I'll just take you to the top so

1 you can see it. I've made it larger so hopefully you can see
2 it on the screen. This is the LiveWork, the 305 Las Vegas
3 final settlement statement. And if you look down -- I am
4 moving the cursor around. Guggenheim corporate --

5 THE COURT: Where it says pay off loans?

6 MR. BLUT: Yeah, pay off loans. Guggenheim is paid
7 over \$17 million; right?

8 A That's correct.

9 Q Nothing to do with Mr. Nype in this deal, right, that
10 they didn't need Mr. Nype to introduce LiveWork to 305 Second
11 Avenue Associates, did they?

12 A That's correct.

13 Q And the -- if an entity such as Las Vegas Land
14 Partners has assets that it has on its balance sheet of
15 \$16 million, is that sufficient to pay a \$2 million judgment?

16 A Say that again.

17 Q Sure. If you have a book value of \$16 million,
18 right, does that -- are you able to pay a judgment of two and a
19 half million dollars?

20 A It depends on the value of what that book value is.
21 There's book value and then there's value.

22 Q Mr. Boschee had asked you questions about whether --
23 and I think you had agreed with him, that Las Vegas Land
24 Partners's general ledger in 2007 and 2008 shows rent collected
25 from the Aquarius Plaza, which is what was sold to 305; right?

1 A Yes, it does.

2 Q Okay. And were you aware in reviewing any of the
3 documents you read that in the Heartland Bank litigation that a
4 receiver was appointed?

5 A I don't recall that. It's possible. I don't
6 necessarily recall that.

7 Q Okay. And receivers collect rents; right? That's
8 one of the things receivers do when they're appointed?

9 A Yes.

10 Q Okay. And so would that be an explanation as to why
11 Las Vegas Land Partners at some point was not receiving rent
12 was that a receiver for Heartland Bank was collecting the
13 rents?

14 A Well, if that's the case, there was still an
15 obligation to report that revenue. So that revenue needed to
16 be reported. That's an example of these records of they did
17 not report the amounts that were collected on their behalf by
18 the receiver and then record what happened to it.

19 THE COURT: Why do you think that's required under
20 the receivership order?

21 THE WITNESS: Well, those amounts, there's what's
22 called the assignment of rents doctrine by the IRS.

23 THE COURT: Right.

24 THE WITNESS: And so if you still have control of the
25 property or ownership, then you would report those. And, in

1 fact, they did report -- they continued to report rents from
2 Aquarius, various amounts after that period.

3 THE COURT: Okay.

4 BY MR. BLUT:

5 Q And at some point it went to zero. I think you
6 testified earlier after 2012 it went to zero?

7 A That is correct.

8 Q Okay. Do you -- have you seen the lease with option
9 to purchase entered into between Charleston Casino Partners and
10 305 Las Vegas?

11 A I believe so.

12 Q And you know what the plan of Charleston Casino
13 Partners was for development of that property?

14 A No, I don't.

15 Q Okay. Would that be an important thing for you to
16 know that, for example, they plan to put 1100 apartment units
17 on that property?

18 A I think that's relevant information, yes.

19 Q Okay. And let me get to your report, which is the
20 5000 -- 50028. This one has the attachments, and on page 6 of
21 the exhibit --

22 MR. MUIJE: Which exhibit, Counsel, or --

23 MR. BLUT: 50028.

24 MR. MUIJE: -- page within the report?

25 MR. BLUT: 50028.

1 MR. MUIJE: Got it.

2 BY MR. BLUT:

3 Q And this is where you refer to the audited -- oh, and
4 the top paragraph that starts on May 2, 2007, where you say,

5 The auditors of 305 Second Avenue
6 reported in Note 9 of their December 31,
7 2014, audit that Charleston Casino did not
8 pay accrued rent totaling \$11,835,058 through
9 December 31, 2012.

10 Right?

11 A Yes.

12 Q And then I believe we went over it yesterday -- or
13 Tuesday or Monday that they stopped accruing the rent as of
14 that time. So if you extrapolated it out until the settlement,
15 in October of 2014, that number would be higher by more than a
16 million dollars; right?

17 A Yes.

18 Q Okay. And your same exhibit, page 52, which is your
19 amortization schedule of the \$5 million note -- are you
20 familiar with this?

21 A Yes.

22 Q Okay. So as of the note that 305 had was
23 11.8 million as of December 31 was due in rent, and on your
24 amortization schedule, on that same date, where it says Cash
25 Flow Data, Number 1 loan, there was \$6.9 million owed on the

JD Reporting, Inc.

1 note; right?

2 A That's correct.

3 Q So at that point, as of that date, 305 was owed
4 5 million more dollars by Casino Partners than 305 owed to
5 LiveWork; right?

6 A Well, at some point they stopped accruing interest,
7 and I testified as to that.

8 Q I'm just saying that -- and I just want to make sure
9 that my thought process is correct that as of December 31 of
10 2012, 11.8 million was due in rent, and 6.9 million was due on
11 the note; right?

12 A That's -- I don't know that that's correct because
13 they say that they stopped accruing rent in the note. I
14 believe they indicate that they stopped accruing rent.

15 Q Okay. Well, let me -- I'll show you -- we'll go to
16 that. Then we'll come back.

17 A Sure.

18 Q That's Exhibit 80053, which, of course, is in a
19 different set of exhibits.

20 THE COURT: Because that's how life is.

21 BY MR. BLUT:

22 Q And I believe we're going to go to page 13, which is
23 Note 9. There's Note 9. And that's on -- let me just -- just
24 so we're clear, that's on page 14 of Exhibit 80053.

25 So in the bottom of the first paragraph, it says,

1 As of December 31, 2012, unpaid rent
2 plus accrued interest totaled \$11,835,058.

3 Right?

4 A Yes.

5 Q Okay. And so I just want to make sure that my math
6 is correct that according to your schedule, now back on
7 Exhibit 50028 that as the same date that 11.8 million was owed
8 in rent, 6.9 million was owed on the note?

9 A That's correct.

10 Q Okay. So and was the interest on the note greater
11 than the rent due under the lease?

12 A It was less.

13 Q Okay. So then taking to what you would -- the date
14 of the settlement, which was August of 2014 --

15 Remember we looked at that settlement agreement?

16 A Yes.

17 Q Okay. So as of the date of that settlement, that was
18 the end of August of 2014, according to your schedule, there
19 was \$8.9 million owed on the note as of that date; right?

20 A Yes.

21 Q Okay. And so the cancellation, if we assume, for
22 this question, assuming that casino -- Charleston Casino
23 Partners, Inc., is the alter ego of Las Vegas Land Partners --
24 I'm just assuming it -- we're only assuming it for this
25 question.

JD Reporting, Inc.

1 As of the date of the settlement, Las Vegas Land
2 Partners benefits by at least \$3 million, if not actually more,
3 by the cancellation of the lease; correct?

4 A In theory, if that's what transpired. That's not
5 what transpired.

6 Q Okay.

7 A So that's not correct.

8 Q Okay. So but what did transpire was the lease
9 obligation was canceled, and the obligation of the note from
10 305 to LiveWork was also canceled. That's reality; right?

11 A Well, it wasn't canceled. There's no evidence. We
12 talked about that at length with Mr. Johnson. There's
13 absolutely no evidence of that. Other than Mr. Liberman and
14 Mitchell -- Mr. Mitchell agreeing to that, there's no evidence
15 that I've seen in any agreement that LiveWork agreed to that.
16 So if you go with that as a fact, then Mr. Liberman and
17 Mr. Mitchell are the alter ego of LiveWork because they're the
18 ones that signed that agreement, those agreements.

19 Q And did LiveWork -- at some point it was no longer on
20 LiveWork's tax return; right?

21 A LiveWork was what?

22 Q Well, LiveWork is reported on the Las Vegas Land
23 Partners tax return; right?

24 A That's correct.

25 Q Okay. And at some point the note payable was no

1 longer listed on the tax return or their balance sheet or
2 anything; right?

3 A Which note payable are you talking about?

4 Q The 305 to LiveWork.

5 A The 305 to LiveWork. You mean the note receivable on
6 LVLP --

7 Q Sure. I call it payable from 305. Yes, the note
8 receivable.

9 A They -- I went through that with Mr. Johnson.

10 Q Right.

11 A They made a series of entries in '08, '09 and
12 '10 that removed that.

13 Q And do you have any idea what the value was of the
14 Aquarius property in 2014 at the time of the settlement?

15 A No, I don't.

16 Q And if Heartland Bank foreclosed, what would happen
17 to the deed of trust that LiveWork had that was in third
18 position?

19 A Well, LiveWork had various options that if somebody
20 was looking after their interest they could have attended a
21 foreclosure, and that's what happened during that period of
22 time is people who had deeds of trust would attend the
23 foreclosure, or cut the same deal with Heartland Bank that 305
24 did, only for the benefit of LiveWork if that was the interest
25 of Mr. Liberman and Mitchell. But Mr. Liberman and

1 Mr. Mitchell had 65 investors to worry about if that deal
2 failed.

3 So I think when you look at the various corners and
4 all the entities that they were looking after -- 305, the
5 Charleston Casino Partners, LiveWork -- they wore many hats.
6 That's obvious. They chose, instead of protecting LiveWork's
7 interest, to protect 305's interest, and I understand why.

8 Q And was the property worth less than the \$9 million
9 that was owed to Heartland Bank?

10 A Well, they cut a deal with Heartland Bank that
11 reduced that, and Mr. Mitchell and Mr. Liberman were more than
12 willing to kick in an amount to settle that on behalf of 305,
13 not on behalf of LiveWork, and certainly not on behalf of
14 Charleston Casino Partners, who had a vested interest in this.

15 I didn't see any negotiations to reduce those lease
16 payments that we just went through; that during that period of
17 time those are all different things that were going on; that in
18 your theory that you just presented in terms of if the notes
19 were paid and if this happened, there are a lot more other
20 scenarios besides that occurring that really took place during
21 this period of time; that if Mr. Liberman and Mr. Mitchell were
22 not the alter egos of those entities that they would have
23 actually taken care of LiveWork's business, Casino Partners's
24 business, as well as 305. But --

25 Q Okay. And do you know why there was no development

1 on that property by the Charleston Casino Partners?

2 A I don't know the technical reasons, no.

3 Q Okay. But it would be important to know that because
4 of the collapse of the real estate market and the debt and
5 equities market that they were unable to do that. That would
6 be important to know why they were unable to build it; right?

7 A Well, I believe that is the case.

8 Q Okay.

9 A I agree with that, that if somebody had a development
10 plan in place that during that period of time you would've, if
11 you wanted to protect Charleston Casino Partners's interest,
12 you would've renegotiated that lease with 305. And if you
13 would've protected LiveWork's interest, you would've done
14 things to either cut the deal with Heartland yourself, and
15 that's what I saw most trust deed owners doing, where they were
16 actually able to acquire properties for far less than their
17 actual values because they were able to go in and do what
18 Liberman and Mitchell did for 305, and that is come with some
19 cash and cut a deal with the banks. But I didn't see that in
20 any of these documents.

21 Q Well, you understand Mr. Mitchell paid 1,250,000 and
22 that got him out of the guaranty of that lease with Heartland
23 Bank; right?

24 A Yes. And if --

25 Q That's value; right?

1 A Yes. But I didn't see any effort to renegotiate the
2 lease with 305. And I also didn't see 305 enforcing that lease
3 and collecting \$11 million. That's where this transaction is a
4 sham.

5 Q Let me ask you a little about the Forest City deal
6 with Zoe Property and LiveWork. Were you familiar with the
7 purchase and sale agreement that led to that tenants-in-common?

8 THE COURT: Can we stop on your question and take a
9 short break? Our clerk isn't feeling well, and she needs a
10 break too.

11 MR. BLUT: I need a break, Your Honor.

12 THE COURT: All of us need a break.

13 (Proceedings recessed at 10:34 a.m. until 10:44 a.m.)

14 (Pause in the proceedings.)

15 THE COURT: All right. The clerk can go about
16 another hour before she needs another break. Luckily that's
17 the time I've got to break for lunch.

18 MR. BOSCHEE: Well, we've got to get on the call.
19 We've got to get on the phone first and then break for lunch.

20 THE COURT: Uh-huh. But she doesn't need to be here
21 for us to get on the phone.

22 MR. BOSCHEE: No, she doesn't.

23 THE COURT: Because I know the answer that
24 Mr. Gutierrez will give me.

25 MR. BOSCHEE: I think I know the answer that you're

1 going to get from our side too, but I'm going to let him say
2 it.

3 THE COURT: Mr. Muije has a plan.

4 MR. BOSCHEE: Okay.

5 MR. MUIJE: As I understand it, Mr. Chamberlain has
6 to go back tonight or --

7 MR. BOSCHEE: No. Mr. Chamberlain is not leaving
8 until Saturday.

9 MR. MUIJE: But Mr. Liberman --

10 MR. BOSCHEE: Is leaving tomorrow at 4:00.

11 MR. MUIJE: Tomorrow at 4:00, okay.

12 MR. BOSCHEE: And then Mr. Mitchell is leaving
13 tomorrow at 11:00 p.m.

14 MR. MUIJE: Okay. What I was going to propose is
15 that -- again, we've got Mr. Rich here locally. We've got Rob
16 Warns here locally. I've got the trustee locally. If you
17 guys, A -- it would speed up the trial considerably if we could
18 stipulate to a lot of the attorney fee documents, which were
19 admitted into evidence at the sanction hearing, which included
20 all the aggregate fees not awarded by the Court into evidence,
21 that would cut down several witnesses of testimony; and, B, I
22 would be willing to go out of order and allow you guys to
23 present the out-of-state witnesses before I resume to finish
24 with Mr. Nype and Mr. Lawrence --

25 THE COURT: They said no.

1 MR. BLUT: I don't think we need to interrupt. I
2 don't know that we're going to need to. We'll be done in the
3 morning. I mean, we're --

4 THE COURT: So how about this. How about we let
5 witnesses go out of order. You figure out when it's a good
6 breaking point after Mr. Rich to take witnesses out of order.
7 And if you need to put the attorney's fees on at the end after
8 we've taken all the other witnesses out, we can do that.

9 MR. MUIJE: That would work for me, Your Honor.

10 THE COURT: Is that okay?

11 MR. BLUT: Yes, Your Honor.

12 MR. BOSCHEE: That'll work.

13 THE COURT: How's that? All right. I can come up
14 with a plan.

15 MR. BOSCHEE: Good.

16 THE COURT: Okay. Mr. Blut, you're still up.

17 MR. BLUT: Great.

18 THE COURT: Your examination. Sorry for interrupting
19 you. I'm going to stand up because my back hurts.

20 MR. BLUT: Sure.

21 BY MR. BLUT:

22 Q Mr. Rich, were you provided with the purchase and
23 sale agreement between Forest City and Zoe Properties and
24 LiveWork, LLC?

25 A I believe so.

1 Q And after that agreement was entered into, in June
2 of 2007, who was in control of the new entity that was formed?

3 A Forest City.

4 Q Okay. So any sale of real property from the new
5 entity would have been done under the control of Forest City?

6 A Well, there was a TIC agreement.

7 Q Okay.

8 THE COURT: TIC meaning tenant in common?

9 THE WITNESS: Yes. So the tenant in common agreement
10 gave essentially control to Forest City, but, of course, you
11 know, as a 40 percent owner, it was they essentially owned,
12 meaning the LVLP defendants, 40 percent, and they had rights
13 with regard to the 40 percent as well.

14 BY MR. BLUT:

15 Q Okay. And you don't believe or you're not of the
16 opinion that Forest City is the alter ego of Las Vegas Land
17 Partners; right?

18 A That's correct.

19 Q Okay. And there were capital calls with regard to
20 the TIC; right?

21 A That's correct.

22 Q Okay. And the Las Vegas Land Partners side, LiveWork
23 and Zoe Properties did make a \$2.8 million capital call in
24 2008; right?

25 A I don't recall the amount.

1 Q Okay. Let's look at the general ledger for 2008.
2 Let me make sure I have the right exhibit.

3 MR. MUIJE: What's the exhibit, Counsel?

4 MR. BLUT: I'm looking for it. It's in the 30
5 thousands.

6 (Pause in the proceedings.)

7 MR. BLUT: 30013.

8 (Pause in the proceedings.)

9 MR. MUIJE: 3014 (sic) I think it is.

10 MR. BLUT: That's it.

11 BY MR. BLUT:

12 Q So this is 30014, page 1. You have deposit where my
13 arrow is of 2/7/2008 for Mr. Liberman of \$2.8 million; right?

14 A Yes.

15 Q And then right underneath that it says, Forest City
16 Development, note payable, KeyBank, and it's the same amount.
17 Do you see that there?

18 A Yes, I do.

19 Q Okay. And if I was to represent to you that that was
20 a capital call made to the TIC, would you have any facts to
21 dispute that?

22 A Well, I -- if you could, if we could look at the
23 general ledger and see where the debit of that credit, and I
24 can have some confidence as to how that was posted.

25 Q Okay.

1 A If we could find the other half of that 2.8 million.

2 Q So just scroll down until we see 2.8 million.

3 A So that -- it's not recorded that way at all. In
4 fact, that goes against a note. So it's not -- that's not a
5 capital contribution. That would just be a note payment
6 similar to any other note payment. That is how they recorded
7 it in the books of LVLP. So that's not consistent with what
8 you said.

9 Q Okay. But you don't know, do you?

10 A Well, if you -- you have to -- either that note is
11 not valid, is invalid, or it's not recorded as a capital
12 contribution.

13 Q To the TIC?

14 A Yeah, it's not.

15 Q Okay. But you don't know then what this -- you don't
16 know what this is about; right?

17 A Well, it says Note Payable KeyBank, and there was a
18 KeyBank note payable at that time. So that would be paying
19 down LVLP's note to KeyBank. That's what that is, and there
20 was a note for LVLP's share. On the closing in 2007, there was
21 a note to KeyBank that LVLP had a share in, that a separate
22 note for their 40 percent. And that is what that appears to
23 represent. The 2.8, that is definitely not a capital
24 contribution.

25 Q Okay. When you say definitely not, you haven't

1 actually spoken to anybody at Forest City; right?

2 A No. But either a \$40 million note is completely
3 wrong, and there is a \$40 million note. So, I mean, as a
4 forensic accountant, I would say that's a note payment.

5 Q Well, somebody has to make payment on that note;
6 right?

7 A Yes. And that's not -- that is not Forest City's
8 obligation.

9 When the TIC was created, there was a note taken
10 back, if you look at the escrow statement, to KeyBank on behalf
11 of LVLP, and that appears just to be a payment on that note.

12 Q Let me ask this. At the time of the close in June
13 of 2007, did Las Vegas Land Partners have the ability to pay
14 its creditors?

15 A Did it what?

16 Q Have the ability to pay its creditors?

17 A Yes. It appeared at the end of 2007 that it did.

18 Q Okay. And how much was Mr. Nype owed at that time in
19 2007?

20 A Well, there was a threat for several million, and I
21 know that LVL -- or excuse me, LVLP defendants acknowledged at
22 least 400,000 of that.

23 Q Well, you don't know why the 400,000 was left in
24 escrow, do you?

25 A Well, my understanding, there was a dispute over

1 whether or not Mr. Nype was licensed.

2 I think there were two issues: Mr. Nype was not a
3 licensed real estate salesman, and the other was that the
4 amount was not what Mr. Nype was expecting. That's my
5 understanding.

6 Q Okay. And then what about did Mr. Liberman in his
7 deposition testify as to that 400,000?

8 A I don't -- I don't know. I don't recall.

9 Q Okay. And today is -- Las Vegas Land Partners
10 carries or at least shows on its balance sheet an interest in a
11 TIC; right?

12 A On its balance sheet today, I don't think it does
13 show. It shows some property that appears to me to be related
14 to Wink One.

15 Q Okay. Fair enough. There's the -- the bankruptcy
16 may complicate matters. Is that --

17 A Yes.

18 Q Okay. Fair enough. Let me take you to your report
19 again, 50028, on page 124.

20 (Pause in the proceedings.)

21 BY MR. BLUT:

22 Q I'm trying to open it again. Maybe that will help
23 us.

24 Okay. I'm there. Do you remember this page? This
25 is something that Mr. Spitz prepared?

1 A Yes.

2 Q And some of the data is off by a little bit, and your
3 report has a different number as to the total capital
4 distributions to Mr. Liberman and Mr. Mitchell, but it's within
5 spitting distance; right?

6 A I agree.

7 Q Okay. No pun intended.

8 And this reflects, bottom right corner that money in,
9 money out, Mr. Liberman, at least to this point is down
10 \$1,678,000; right?

11 A That's what that schedule reflects, yes.

12 Q And then Mr. Mitchell is down 229,000?

13 A That's correct.

14 Q Okay. And on page 4 of this -- shoot, that's 45 --
15 page 4 of this exhibit, you indicate --

16 UNIDENTIFIED SPEAKER: It's on the bottom.

17 MR. BLUT: Right.

18 BY MR. BLUT:

19 Q -- the last paragraph on page 4 of Exhibit 50028 that
20 you say, you give a number of 15,148,000 was distributed to
21 them --

22 A That's correct.

23 Q -- during which time the claims were reasonably
24 known; right?

25 A That's correct.

1 Q And I think earlier you testified the reasonably
2 known is June 22 of 2007, when the Forest City deal closed;
3 right?

4 A That's correct.

5 Q So if we go back to 124, the distributions, the
6 capital distributions before 2007, we're not even counting
7 early 2007, but before 2007, about 2.5 to Mitchell; right?

8 A Yes.

9 Q Okay. And 3.3 or so to Mr. Liberman; right?

10 A Yes.

11 Q So just under 6 million of your 15 is in '05 and '06;
12 right?

13 A Yes.

14 Q Okay. And we also, if we turn to page 261 of your
15 report, we had looked at this probably Monday. I apologize for
16 having lost track of time. This is -- these are unallocated
17 contributions from partners of an additional 3.5 million that
18 are not contained on page 124; right?

19 A I would say --

20 MR. MUIJE: What page was that?

21 THE WITNESS: -- that I would dispute that.

22 That's -- these were put in various places. So these amounts
23 are just unknown. Those are unknown amounts. The point of
24 those is not to say that they were in addition because they're
25 not.

1 BY MR. BLUT:

2 Q Okay. And do you remember we took your deposition
3 December 13 of now last year?

4 A Yes.

5 Q Okay. And do you remember talking about this at your
6 deposition?

7 A Yes.

8 Q Okay. Do you remember telling me at your deposition
9 that this was extra money; this wasn't the same money?

10 A Well, it's not the same money, but it's not posted to
11 those accounts. Those are -- there's also other accounts that
12 this has been posted to. I mean, these amounts, the point of
13 that is these are -- it's proof that adjustments were made, and
14 I went through those with Mr. Johnson. Adjustments were made
15 with just unknown amounts, random amounts. Credits to loans as
16 though they were paid because there's a difference between what
17 the loan balance was from a math standpoint and what showed up
18 on a statement, things like that to the tune of millions.

19 So, no, that's -- those -- you can't draw that
20 conclusion off that schedule.

21 Q This is your schedule; right?

22 A No, that's not my schedule. That's Mr. Spitz's
23 schedule.

24 Q Okay. And I believe you testified on Monday that
25 after the Forest City transaction there weren't capital

1 contributions by Mr. Liberman. Is that right, or are my notes
2 bad?

3 A Say what now?

4 Q Yeah. That after the Forest City deal and after
5 there was a threat of Mr. Nype's payment that there wasn't
6 money contributed to Las Vegas Land Partners?

7 A That there was not --

8 Q Is that correct, or are my notes bad?

9 A I went through the contributions with Mr. Johnson --
10 or excuse me, the distributions with Mr. Johnson.

11 Q Okay.

12 A The schedule that you're looking at there, I've only
13 analyzed this schedule right here only from the standpoint of
14 it being just total garbage, you know, amounts that are not
15 applied correctly.

16 Q Okay. Now, back on page 124, which is the summary of
17 money in and money out -- and you did go through with
18 Mr. Johnson the -- when the distributions were. Which of the
19 distributions was the straw that broke the camel's back and
20 made Las Vegas Land Partners unable to pay its debts?

21 A I would say the distributions in 2007 were so
22 substantial, those -- it's in excess of 14, \$15 million. It's
23 almost \$15 million just in that year. Going into '07, the
24 company had I'd say \$8 million in cash at the end of the year,
25 so going into from '06 to '07.

1 So you then had proceeds from the sales, and
2 essentially from that point on the company is cash poor. These
3 contributions that you see are prior to '07. So really from
4 '07 on this entity was cash poor and insolvent and unable to
5 pay its bills. These amounts, these other contributions that
6 you see are made are to sustain this entity after those large
7 distributions are made, that almost \$15 million.

8 Q And how much of the 15 million was made after June 22
9 of 2007 when the Forest City deal was consummated?

10 A We can go through that if you like. I went through
11 that with Mr. Johnson.

12 Q Okay.

13 A I gave specific dates.

14 Q Okay. So whatever those dates are, the dates are?

15 A Yes. I would say from in the second half of the
16 year, like from June on, that's when most of those
17 distributions were made, that 15 million, the bulk of it was
18 during that period of time of Aquarius as well as the Forest
19 City transaction. That's really what those distributions are
20 related to. It's a distribution of the previous cash that was
21 on balance at the end of '06, plus proceeds from the sale.
22 There's a few million left, and then it's -- you can see that
23 it's not able to sustain itself.

24 Q Okay. And anything before the deal with Mr. Nype you
25 believe anything in 2007 was just in case Mr. Nype was going to

1 obtain a judgment at some point down the road? Or do you think
2 it's -- or you think that the threat is there once the deal
3 closed, and that gave rise to whatever Mr. Nype is claiming?

4 A I think there was a threat well before the deal
5 closed because I think in the ongoing negotiations with Forest
6 City and then how this transaction would take place, I think
7 it's -- there was definitely a threat during that period of
8 time.

9 Q And but we don't know the amount, right, because that
10 was what the lawsuit was about?

11 A Well, when there's a threat, you never -- an element
12 of fraud is a threat, not a judgment. And so a judgment is an
13 element of fraud, but a threat is -- that's a standard of fraud
14 that we evaluate. And when I worked with the FDIC, as I had
15 discussed earlier, it's the threat is the trigger for us, the
16 flag. The element of fraud is did a threat exist.

17 Q And what was the threat that the deal with Forest
18 City wouldn't close in June of 2007 before it closed?

19 A Well, I think at that time -- there's a point in time
20 where all deals, and we all know this, certainly Mr. Liberman
21 and Mr. Mitchell know that a deal closing is imminent, and the
22 documents have been -- in a deal of this magnitude and this
23 size, for months the documents have been negotiated, for months
24 the documents have -- there's like a coming of the minds, a
25 meeting of the minds where we're doing this deal, and then it

1 closes.

2 For this type of deal, it's not like it closes in a
3 day. For months, to pull this type of closing together with 60
4 some parcels, just the title effort on that is incredible. So
5 I'm just saying it's obvious to me that months in advance this
6 deal was closed in the minds of the participants, Forest City
7 as well as Mr. Liberman as well as Mr. Mitchell, as well as
8 Mr. Nype. We just all know that that is the case.

9 Q Okay. When you had testified before about
10 commingling of funds, you seem to have an issue with there's
11 two loans that have individuals' names on them, travel and
12 entertainment; right? We talked about that on Monday.

13 A I'm sorry?

14 Q Sure. On Monday, when you had talked about
15 commingling of funds of entities and Mr. Liberman and
16 Mr. Mitchell, you testified the travel, entertainment, and
17 there's two loans that have personal names on the invoice;
18 right?

19 A Travel and entertainment. I don't recall that.

20 Q Okay. So what commingling of personal -- well, let
21 me ask you this. What personal expenses of Mr. Liberman were
22 paid by Las Vegas Land Partners?

23 A Well, Mr. Liberman and Mr. Mitchell obtained
24 financing personally --

25 Q Okay. Those are the loans --

1 A Yes.

2 Q -- that I talked about.

3 A Yes.

4 Q Okay.

5 A And then those payments are made through the LVLP
6 defendant entities, and there's a structure; there's a
7 formality to avoid alter ego, and that would be to structure a
8 note between Mr. Liberman and whichever entity the loan takes
9 place, and there are numerous. There's over 15 entities, I
10 believe, that are a part of that. So a specific entity within
11 that group one would expect to see a note between Mr. Liberman
12 and Mr. Mitchell and that specific entity, not even just LVLP.

13 Now, if a loan was to LVLP, that would be the case,
14 but just assigning notes to the -- when I -- and I don't mean
15 assigning because there was no evidence that any notes were
16 assigned to the entity, but just recording it, I should say, of
17 saying, here, Mr. Spitz, this was money we borrowed on behalf
18 of the company; that should be recorded. Any payments here
19 should be recorded against that note. That's evidence of
20 commingling. That is an element of commingling. So that was
21 the point of that evidence in my report.

22 Q Okay. And have you seen the signature loan
23 documents?

24 A No.

25 Q Okay. And the one that had just Mr. Mitchell's name

1 on it, have you seen -- did you see the loan documents?

2 A I don't -- I don't know that they were in the file.
3 I don't recall seeing them produced, those actual loan
4 documents. They may have, but I don't recall seeing them.

5 I saw the statements. The statements are obviously
6 in their names personally. And in the case of Mr. Mitchell,
7 it's obviously in his name, and his personal residence is noted
8 right on the statement.

9 Q Okay. And so besides those two loans, what other
10 personal expenses of Mr. Liberman were paid by Las Vegas Land
11 Partners?

12 A Well, that's the evidence that I have in my report.

13 Q Okay. So that's it?

14 A I believe so.

15 Q Okay. Do you remember on Monday testifying that you
16 had a schedule of journal entries that showed adjusting journal
17 entries going back to 2006?

18 A There's a schedule attached to my report that gives
19 an example of the journal entries that we were talking about.

20 Q Okay. That should be page -- I thought it was 227.
21 It's not.

22 (Pause in the proceedings.)

23 BY MR. BLUT:

24 Q Oh, there it is. I apologize. 229.

25 Do you remember going through these on Monday?

1 A Yes.

2 Q And my recollection is that you were testifying that
3 this was a compilation of journal entries going back to 2006,
4 but these seem to start in 2012. I just wanted to -- maybe my
5 notes were again bad.

6 As I scrolled through them, I didn't see any before
7 2012.

8 A Nor did I.

9 Q Okay. I apologize.

10 Do you see any correspondence between Mr. Spitz and
11 Mr. Liberman?

12 A I don't know what you mean.

13 Q Any correspondence, you know, a letter --

14 A Between them?

15 Q -- an email?

16 A I think that the primary correspondence, and I may
17 have -- or Mr. Liberman may have been copied, was between
18 Mr. Spitz and Mr. Mitchell.

19 Q Okay. You had testified and it's in your report that
20 there's 6.9 million of what you call preferred creditors. Do
21 you remember that?

22 A Yes.

23 Q Okay. And that -- are you -- and preferred
24 creditors, you mean actual creditors of Las Vegas Land
25 Partners, but not Mr. Nype?

1 A Well, yes.

2 Q Okay.

3 A That is -- in other words, and you typically see this
4 in, you know, prebankruptcy or a company that's in trouble
5 that's being chased down with the levies and things like that.
6 That's where I typically see this, and that is where money
7 comes in and money goes out to avoid creditors or establish a
8 pattern of working without a bank and things of that nature
9 where, like, in the case of LVLP, it started like that where
10 Mr. Mitchell would deposit money and then make a payment, and
11 then eventually there was no account whatsoever. I believe
12 I've testified that occurred in about 2015.

13 Q So just to be clear, the six -- you don't quarrel
14 with the payment of the 6.9 million. You just would have
15 preferred it to be paid to Mr. Nype?

16 A Well, I would say it's once again, these are all
17 elements of fraud. So when you -- this type of tactic is an
18 element of transferring funds to avoid creditors or to not have
19 any money in your bank account that can be levied from other
20 creditors. But it's a tactic, a methodology, and it's
21 important for the Court to understand that was being practiced.
22 That's all.

23 Q And that's -- and that's before the judgment in 2015?

24 A Yes.

25 Q Okay.

1 A It's evidence of insolvency.

2 MR. BLUT: No further questions. Thank you.

3 THE COURT: Mr. Muije.

4 REDIRECT EXAMINATION

5 BY MR. MUIJE:

6 Q While it's fresh in my mind, Mr. Rich, we just heard
7 counsel ask you whether there was evidence of any
8 correspondence from Mr. Spitz to Mr. Liberman.

9 I'm going to ask our assistant to pull up
10 Exhibit 60029.

11 UNIDENTIFIED SPEAKER: That's not --

12 MR. MUIJE: No. Are we went off again?

13 MR. K. JOHNSON: 60029 has not been admitted, Your
14 Honor.

15 THE COURT: It's not been admitted.

16 Good catch.

17 MR. MUIJE: Okay. Let me see. My document --
18 Court's indulgence.

19 (Pause in the proceedings.)

20 MR. MUIJE: I'll check on that shortly, Your Honor.

21 BY MR. MUIJE:

22 Q We did -- there was a lot of discussion again about
23 305's transaction, pros and cons, et cetera. Am I correct in
24 my understanding that shortly after 305 purchased acquisition
25 of the real estate that Mr. Liberman and Mr. Mitchell took

1 substantial distributions from the approximate \$2.8 million in
2 cash that was available and that had come in to the corporation
3 at that time?

4 A Could you restate the question.

5 Q Sure. When the escrow closed, and I believe counsel
6 showed you some of those materials --

7 A Which, which escrow?

8 Q The 305 escrow.

9 A Okay.

10 Q Shortly thereafter, Mr. Mitchell and Mr. Liberman
11 took a personal distribution. Do you recall that?

12 A Yes.

13 I'd ask that we pull up Exhibit 3015.

14 THE COURT: Has 3015 been admitted?

15 MR. MUIJE: I'm 90 percent sure, Your Honor.

16 THE CLERK: Yes.

17 THE COURT: Great.

18 MR. MUIJE: Yes.

19 BY MR. H. JOHNSON:

20 Q And if we could look at page 2 of that, there are two
21 entries on July 3rd that indicate draws. One says Barnet
22 Liberman. One says David Jan [phonetic] Mitchell.

23 Do you have those before you, Mr.-- Mr. Rich?

24 A Do I have what before me?

25 Q The 7/3/07 entries showing draws by Mr. Mitchell and

1 Mr. Liberman?

2 A Is that this document in front of me right now?

3 Q It should be.

4 A Can you --

5 Q I'm looking at Exhibit 3015, page 2.

6 A Well, those are, once again, these are checks, but if
7 you move down further, we can see the actual recordation of the
8 distributions that I went over with Mr. Johnson on Tuesday.

9 Q Okay. Approximately how far down will we need to go?

10 A That would be in the equity section, several pages
11 after this, and it will give us the -- I can go get the general
12 ledgers if you like again and read it into the record once
13 again.

14 Q If you would. You may be able to grab them quicker
15 than we can locate it.

16 (Pause in the proceedings.)

17 BY MR. MUIJE:

18 Q Would it be towards the end or?

19 A The problem is my print on this screen is so small
20 that I'm -- you'll need to go down further, I believe. I would
21 say further.

22 Q Do you have an accounting code category?

23 A It would be right before the P&L transactions you
24 will see the equity transactions.

25 No. That's not it.

1 You need to go down further.

2 Q At approximately page 14, possibly 13?

3 A It's down further. It's down further. There's --
4 you're getting close. If you -- my problem is I can't read
5 this until it's enlarged, and I'm not able to tell where you're
6 at on this.

7 That -- you need to go up, back up because now you're
8 in the P&L.

9 Q In the middle of 14, there's a section that says --

10 A That's not -- that's not it. You're in the P&L
11 section. It will be right above this.

12 That's not it either. It should be somewhere around
13 there.

14 Those are contributions. If you go down further, you
15 may be able to see the distributions in that right there.

16 Okay. There's Mr. Liberman's distributions totaling
17 10,537,000.

18 Q Okay. Very good. And what page is that on?

19 A That's on page 13 of the 2007 general ledger. And
20 Mr. Mitchell's will be somewhere either above or below those
21 distributions.

22 Q Okay. Let's go to page 14, I think, and there's a
23 block in the middle now on July --

24 A Those are Mr. Mitchell's distributions for 2007.

25 Q Correct. And on July 3rd, there's a distribution

1 of three hundred thirteen thousand, seven, thirty, ninety; is
2 that correct?

3 A That's correct.

4 Q And do you know whether or not that relates to the
5 305 transaction?

6 A Well, these aren't identified based on transaction.
7 Distributions really aren't identified that way. They were
8 just based on what cash is available. So, you know, for
9 distribution. So these -- these are not necessarily organized
10 in that manner or distributed in that manner. You can see
11 though that these, just as I testified, these distributions
12 begin in June, these large distributions, the 10 million to
13 Mr. Liberman as well as this 4 million to Mr. Mitchell.

14 Q Very good. And you testified extensively that these
15 deals don't get put together in a matter of days. They span
16 weeks, if not months and years; correct?

17 A I'm sorry?

18 Q The transactions, like the 305 transaction and the
19 Forest City transaction, those don't materialize and close
20 within a matter of days. They take weeks and probably months
21 to go from initial discussions to fruition; is that correct?

22 A That's correct, especially the Forest City
23 transaction was a substantial transaction involving 61 parcels.
24 Or when I say that, I believe it was 61. That's my
25 recollection, but 60 some parcels were involved in that

1 transaction.

2 Q And Mr. Nype's retention and engagement occurred
3 many, many months before the closing; is that correct?

4 A Yes.

5 Q So as of the date that the 305 transaction closed in
6 May of 2017, Mr. Nype had already been on board in terms of
7 identifying, locating, negotiating, assisting with the Forest
8 City transaction for many months by that date; correct?

9 A Prior to the closing of which one?

10 Q Of the 305 transaction which we know occurred a few
11 weeks before the Forest City.

12 A Yes.

13 Q So as of that date, the partners in 305 and in casino
14 Charleston knew or reasonably should have known that there was
15 a (indiscernible) deal for Forest City with very large numbers
16 on which there was, A, originally a agreement with First Wall
17 Street and then that Mr. Nype continued to work on it even
18 after the relationship with First Wall Street broke down;
19 correct?

20 MR. BOSCHEE: Objection, Your Honor.

21 THE WITNESS: Yes.

22 MR. BOSCHEE: Calls for speculation as to 305's
23 knowledge.

24 THE COURT: Overruled.

25 UNIDENTIFIED SPEAKER: Thank you.

1 THE WITNESS: Yes.

2 BY MR. MUIJE:

3 Q Okay. Do you recall approximately how much casino
4 Charleston was collecting in monthly rentals from the tenants
5 of the Aquarius Plaza?

6 MR. BOSCHEE: Objection. Asked and answered.

7 THE COURT: Overruled.

8 THE WITNESS: Approximately 300,000.

9 BY MR. MUIJE:

10 Q Per month?

11 A No, per year.

12 Q Per year. Okay. And what was the lease obligation
13 that casino Charleston owed to 305 per year in the earlier
14 years, in '7, '08, '09?

15 A I believe in excess of a million per year.

16 Q Okay. So functionally there was no way that the cash
17 flow was going to service that obligation; correct?

18 A That's correct.

19 Q Now, the Heartland loan did put money directly in to
20 305 if I understand correctly. Is that true? The Heartland
21 loan.

22 A The Heartland loan, yes.

23 Q And do you recall approximately how much that was?

24 A Well, the original balance was I believe nine and a
25 half million.

1 Q But some of that was to pay off preexisting debt;
2 correct?

3 A Yes.

4 Q Do you recall how much cash went into 305 as a result
5 of closing the loan with Heartland and the deal with LiveWork?

6 A No, I don't.

7 Q Let's look at I believe it's 8053 -- no, that's the
8 wrong one. I'm sorry.

9 MR. MUIJE: Counsel, you had put up the escrow
10 statement on 305. Do you recall what number that was?

11 MR. BLUT: 40006.

12 THE COURT: Thank you.

13 MR. MUIJE: Thank you.

14 BY MR. MUIJE:

15 Q We see the details of the new loan with Heartland,
16 and I think it's broken down in to two constituent components?

17 A (No response.)

18 Q Are you finding the Heartland loan amount, sir?

19 A The 7 million.

20 Q Right. And I believe right below that there is an
21 additional amount; is that correct?

22 A I can't see because it's --

23 Q It says, New loans --

24 A I still can't see.

25 Q -- in this section down there at the bottom.

1 A There it is.

2 Q Am I right? Is that a \$4 million additional amount
3 on the Heartland Bank loans?

4 A Yes.

5 Q Okay. We also see right below that the new loan
6 amount from money lent from LiveWork; is that correct?

7 A Correct.

8 Q Okay. Now, coming back up right above the new loan
9 amounts we have two entries in the sellers columns. One would
10 appear to be a \$700,000 input from Las Vegas Land Partners; is
11 that right?

12 A Yes.

13 Q And then a \$2.8 million coming from 305 through this
14 transaction; is that right?

15 A That's correct.

16 Q Okay. So as of the date this closed in May of 2007,
17 it was a pile of cash in LiveWork, so to speak, that was not
18 available prior to this closing?

19 A Well, there's 2.8 million that came in through
20 closing.

21 Q Okay. So that would have been more than ample to
22 cover immediate distributions to Mr. Mitchell and Mr. Liberman?

23 A To cover what distributions?

24 Q Immediate distributions to the two partners?

25 A Yes.

1 Q Okay. To your knowledge, did 305 ever sue Barnet
2 Liberman on his personal guarantee of the lease?

3 A I'm not aware that they did.

4 Q Okay. Do you know if LiveWork received any
5 consideration for the release of the guarantees and the release
6 of the lease obligations?

7 A If LiveWork did?

8 Q Did LiveWork?

9 A I'm not aware that they did.

10 Q Do you know if 305 for that matter received any
11 consideration other than the tenant vacating the property on
12 which it hadn't paid rent in several years?

13 A Well, 305 received the benefit of the lease guarantee
14 by both Mr. Mitchell and Mr. Liberman, which was a few million
15 dollars.

16 Q Paid to Heartland Bank though; right?

17 A That's correct.

18 Q But other than that it netted no cash in his pocket.
19 Nobody paid money to 305 in that deal?

20 A Not that I'm aware of.

21 Q Had 305 vigorously enforced the personal guarantees
22 by both Mr. Mitchell and Mr. Liberman, would it have had the
23 possibility of recovering the full funds owed on the lease?

24 MR. BOSCHEE: Objection. That absolutely calls for
25 speculation on several fronts.

1 THE COURT: Overruled.

2 You can answer.

3 THE WITNESS: Well, had they -- the lease was
4 guaranteed by Mr. Mitchell and Mr. Liberman. So 305 could've
5 enforced that and said, hey, pay us the 11 million.

6 BY MR. MUIJE:

7 Q And if it succeeded in those efforts, it would have
8 had the money in turn to pay the note; is that correct? As I
9 understand your prior testimony?

10 A Paid the \$5 million loan --

11 Q The promissory note to LiveWork.

12 A -- plus accrued interest, yes.

13 Q There was one item in your report, sir, and I believe
14 this was in your supplemental report which was a later number,
15 and it's apparently on page 9, right above accounting records.

16 (Pause in the proceedings.)

17 BY MR. MUIJE:

18 Q And let's get that statement in your report briefly,
19 and your report was admitted into evidence at Exhibit 7043
20 (sic). If we could go to page 9 on that.

21 MR. BOSCHEE: This is the original report, isn't it?

22 MR. MUIJE: This is the supplemental report that was
23 filed on November 25th.

24 MR. BOSCHEE: I don't think so.

25 MR. MUIJE: You are correct. I misspoke. My bad.

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1 (Pause in the proceedings.)

2 MR. MUIJE: 50037. And at page 9 of the actual
3 report which is page 15 of the document.

4 Thank you for clarifying that, Brian.

5 (Pause in the proceedings.)

6 BY MR. MUIJE:

7 Q Could you explain what you mean -- and it shows that
8 this was supplemented on November 22nd, 2019. There's two
9 paragraphs there, and could you explain those two paragraphs to
10 the Court.

11 THE COURT: Which two?

12 MR. BOSCHEE: Objection, Your Honor. It goes beyond
13 the scope of cross, and I didn't ask him about this
14 specifically so that Mr. Muije would not be able to redirect
15 him on this.

16 THE COURT: Overruled.

17 Can you show me which two paragraph since you have
18 the whole thing on the page.

19 MR. MUIJE: The commingling, the two paragraphs under
20 commingling.

21 THE COURT: Okay. They're near the top.

22 There you go, sir.

23 MR. BLUT: And it's also asked and answered, Your
24 Honor. He testified as to three separate audited financial
25 statements of 305 --

1 MR. MUIJE: And Mr. --

2 MR. BLUT: -- that talked exactly about this. He's
3 already gone through this.

4 THE COURT: Overruled. Okay.

5 BY MR. MUIJE:

6 Q Could you help clarify and explain what you mean by
7 these two paragraphs, sir.

8 A Well, the tax returns of 305 Second Avenue show on
9 three of the years -- it's actually more, but it's because the
10 balance then is zero at the end of one year. It shows
11 fluctuating amounts between Charleston Casino and 305
12 Second Avenue. So it's indicative of commingling.

13 Q Okay. And more importantly, what does the second
14 paragraph tell us? What does that show?

15 A Well, in this particular case, there's an email
16 that's referred to in those Bates, and Mr. Mitchell is giving
17 instruction to no longer use the signature account to deposit
18 funds, but to use Heartland Bank account of 305 and give
19 specific instruction as to the account number as though he has
20 the authority to do so.

21 Q Even though on its face he had no management role,
22 active management role in terms of 305; correct?

23 A That's correct. Those types of instructions should
24 come from the management of 305, obviously.

25 MR. MUIJE: And I believe I just have one or two more

1 at this time, Judge.

2 THE COURT: If we can go quick because I've got a
3 conference call, slash, court appearance at 11:45.

4 MR. MUIJE: Okay.

5 THE COURT: So we're going to break for lunch, and
6 I'll see you guys about 1:15. I'm going to start my 11:45 now.

7 MR. MUIJE: Very good, Judge. Your Honor.

8 THE COURT: Okay.

9 MR. BLUT: Thank you, Your Honor.

10 MR. BOSCHEE: Thank you.

11 MR. H. JOHNSON: Thank you.

12 THE COURT: How long do you think your recross, if
13 any, Mr. Johnson?

14 MR. H. JOHNSON: Not very long. Maybe --

15 THE COURT: Half hour or so?

16 MR. H. JOHNSON: Yeah.

17 THE COURT: Okay.

18 (Proceedings recessed at 11:45 a.m. until 1:11 p.m.)

19 (Pause in the proceedings.)

20 (Pause in the proceedings.)

21 THE COURT: Mr. Muije, we were on you. You said you
22 had a couple of questions left, but you were taking too long.
23 So I had to break for my 11:45.

24 MR. MUIJE: Correct, Your Honor. I had narrowed it
25 to four questions. I'm going to need one minute to get set

1 up and I'll be ready to go.

2 THE COURT: So we went from 2 to 4 by me breaking for
3 lunch, huh?

4 MR. MUIJE: I couldn't quite hear that, Your Honor,
5 without the headphones.

6 THE COURT: Never mind. Get your headphones on.

7 MR. BOSCHEE: Of course, as it turned out, we could
8 have started the call at 11:49 and been done by 11:50, but
9 that's all right.

10 THE COURT: I didn't know that.

11 MR. BOSCHEE: I suspected that. I didn't know.

12 (Pause in the proceedings.)

13 THE COURT: And you can begin whenever you're ready,
14 Mr. Muije.

15 MR. MUIJE: Thank you, Your Honor. 15 seconds.

16 THE COURT: Oh, I'm waiting for Mr. Blut. So you're
17 not --

18 MR. MUIJE: Okay.

19 THE COURT: Blut.

20 (Pause in the proceedings.)

21 MR. BLUT: Is it already 9:45?

22 THE COURT: You're funny.

23 Let's go.

24 MR. MUIJE: Very good, Judge.

25 / / /

1 BY MR. MUIJE:

2 Q Mr. Mitchell, you recall yesterday that Mr. Johnson
3 was asking you if you'd ever seen -- Mr. Rich. I'm sorry. I
4 misspoke.

5 You'll recall that Mr. Johnson was asking you
6 yesterday whether you'd ever seen any single owner, single
7 entity -- single partial real estate entities? Do you recall
8 that?

9 A Yes.

10 Q And he asked you have you ever seen or observed such
11 an entity without a bank account, and I believe you answered
12 yes as well; correct?

13 A That's correct.

14 Q Is that what you recommend your clients do?

15 A Absolutely not.

16 Q Do you recommend they commingle accounts with the
17 parent entity?

18 A Absolutely not.

19 Q And what is your reason that you would not recommend
20 such conduct to your clients who had subsidiary real estate
21 entities?

22 A Well, those are all elements of alter ego, and for
23 that reason it opens that door that I spoke about in my
24 testimony for those types of issues that relate to alter ego.

25 Q Is that the kind of thing you looked for when you

1 were an FDIC examiner?

2 A Yes.

3 And I'd like to clarify. I was not an FDIC examiner.
4 I was engaged by the FDIC to do exactly what we're doing here
5 in this case.

6 MR. MUIJE: Okay. I --

7 THE COURT: As a consultant?

8 THE WITNESS: Yes.

9 THE COURT: All right.

10 MR. MUIJE: I appreciate the clarification.

11 BY MR. MUIJE:

12 Q Now, we've talked a lot about the resolution of the
13 305 Casino Charleston transactions. Did LiveWork ever approve
14 or sign off on that?

15 A There's no evidence of that.

16 MR. BOSCHEE: Objection. Asked and answered.

17 THE COURT: Overruled.

18 THE WITNESS: I'm sorry. There's no evidence of
19 that.

20 BY MR. MUIJE:

21 Q When did you first see the general ledgers and the
22 backup accounting data regarding LVLP in this case, related to
23 this case?

24 A Related to this case?

25 Q Correct.

1 A Probably sometime in 2015.

2 Q Would that be in the fall after we had done the
3 initial debtor exam?

4 A Probably.

5 Q Okay. And had you ever seen the backup ledgers or
6 accounting detail for LVL P prior to that time?

7 A That is definitely not within my scope in the first
8 engagement, which was related to the fees.

9 Q Very good. And, finally, you were asked this morning
10 about the dichotomy or the timing of the Forest City closing
11 versus the 305 closing. That was partially addressed in your
12 report, was it not, in terms of the details underlying the
13 Forest City closing?

14 A Yes.

15 Q And let me pull this up and show you an item out of
16 your report, which I believe is 5028 (sic)?

17 THE COURT: Is this the original or supplemental?

18 MR. MUIJE: This was the original, Judge.

19 THE COURT: Thank you.

20 MR. MUIJE: And I'll just verify that before I stick
21 my foot in my mouth further.

22 Yep. And I want to say that would be Exhibit 15, and
23 let me try to find that page. It starts at page 188.

24 BY MR. MUIJE:

25 Q This is the noncolor version. The original of this

1 was in color; correct?

2 A I don't have that exhibit on my screen.

3 Q 188, right there.

4 A Okay.

5 THE COURT: Do you have it now?

6 THE WITNESS: Yes, I do now.

7 THE COURT: Great.

8 BY MR. MUIJE:

9 Q Do you see that one, Mr. Rich?

10 A Yes.

11 Q And is this a detailed report regarding the various
12 parcels involved in the Forest City transaction?

13 A Yes. What we did is we took the parcels of LVLP and
14 then color-coded the various parcels to see where they started
15 and where they ended up.

16 MR. MUIJE: Okay. And, in fact, I find that the
17 color version, Your Honor, is contained in Exhibit 7043 (sic).
18 I think it makes it a little clearer. We can switch to that.

19 THE COURT: Okay.

20 BY MR. MUIJE:

21 Q And very briefly, can you describe to the Court the
22 methodology you used to generate these spreadsheets at sub
23 Exhibit 15 to your January report.

24 A Yes. Included in our work papers are records from
25 the county recorder's office where we went through each parcel

1 to identify the comings and goings.

2 And the color coating just represents trying to keep
3 the parcel blocks together as to where they ended up.

4 Q And there was a similar methodology that you
5 undertook at your sub Exhibit 13, which is I think a related
6 subset of Exhibit 15 here; is that correct? Starting at
7 page 180 -- oh, actually, there it is at 179, and this one is
8 heading original TIC agreement parcels. Does that make sense?

9 A Yes. And so what we've done here is we took those
10 parcels that were related to the TIC agreement, isolated those.
11 Once we had the initial spreadsheet and color-coded those based
12 on the various transaction so that we could understand them,
13 then we were able to isolate them by the various transactions
14 that occurred.

15 Q Very good. And in doing so, you had to go look at
16 all of the original deeds as the assessor for parcels,
17 et cetera, to compile this kind of spreadsheet?

18 A Yes.

19 MR. MUIJE: I have nothing further, Judge.

20 THE COURT: Anything further, Mr. Johnson?

21 MR. H. JOHNSON: Sure.

22 RECROSS-EXAMINATION

23 BY MR. H. JOHNSON:

24 Q Mr. Rich, how does a distribution of capital affect
25 the balance sheet?

1 A I'm sorry?

2 Q How does the distribution of capital affect the
3 balance sheet?

4 A Well, it depends because the distribution of capital
5 can come from various types of assets. So it could be a
6 distribution of cash. It could be a distribution of assets.
7 Various types of assets. So typically that distribution is a
8 reduction of some asset category and then is distributed out to
9 whoever the owners are of that entity in a flow-through like an
10 LLC or an S Corp, those types of entities.

11 Q So let's assume it's cash. Does that reduce the net
12 worth of the company, or is there an offsetting reduction in
13 equity that means the overall financial stability of the
14 company doesn't change?

15 A Well, there's two sides to that entry, and so one
16 would be to remove it out of cash, and then the other would be
17 to show it as a distribution of capital which reduces equity.
18 So it has that affect.

19 So a distribution of capital would result in a
20 reduction of working capital or of cash. It would be a
21 reduction of working capital. And then also that naturally
22 impacts at the same time the equity in the entity.

23 Q Okay. Does that affect the insolvency of the
24 company?

25 A The insolvency, absolutely.

1 Q Because of the reduction in equity?

2 A In both. One has to do with working capital. So in
3 the case of cash, it would reduce your working capital. And
4 then reduce the equity in the company as well.

5 Q Okay. All right. Now, you mentioned that you felt
6 the 305 transaction was a sham transaction. Can you define for
7 me what you consider a sham transaction.

8 A Well, that's slang. So I apologize, but that was in
9 my depo, and then you asked me about that same terminology.
10 But I would say that based on my experience, the best way to
11 explain that is when things just don't add up. No reasonable
12 person or individual would sit where I'm sitting and go that
13 makes sense, and so that's the best way I could explain it to
14 you.

15 Q Okay. So to clarify that a little bit, the actual
16 sale of the property from LiveWork to 305, would you consider
17 that a sham?

18 A I think that's an element of fraud, and that's
19 because there is a related party, and an asset is being
20 transferred out of an entity that has a known threat. So those
21 are two what we would say elements of fraud would be, and
22 that's what encapsulates that whole -- that part of it.

23 And there's a domino effect from there, but the best
24 way I could explain it is two things happened. One is we have
25 an interested party, not a disinterested party, not a third

1 party. This person has a vested interest in both companies.

2 And then also there was a known threat, and that adds
3 up to elements of fraud.

4 Q Okay. So that's what you've said are certain
5 elements of fraud, but the actual transaction where you sell an
6 asset from one entity to another entity for consideration, is
7 that normally a sham transaction?

8 A Set aside those two elements, that there is no threat
9 and there's not a related party or an interested party in this,
10 and that would just be a sale. I wouldn't call that a sham,
11 no.

12 Q Okay. And if I understand, it's taking back a note
13 by itself, is that a sham transaction? I'm sure you've seen
14 that numerous times?

15 A Yes. By itself, without any of the elements of fraud
16 that we've discussed throughout my deposition and this trial,
17 each of those transactions in and of themselves, the initial,
18 you know, like I say, there's other things that occur
19 subsequent, but taking back a note, I agree that that's not an
20 element there.

21 Q Okay. And so just to again clarify a little more, so
22 is it the main issue the nonpayment of the note and the
23 nonpayment of the lease? Is that what you consider the main
24 problem with that transaction?

25 A There are multiple facets related to that one

1 transaction. And not only is it at the date of the transaction
2 when there's a known threat, but also throughout that seven or
3 eight year period there are what I would call irregularities
4 that are elements of fraud where the parties did not take the
5 action that, like I say, a reasonable person would have taken.
6 And in my experience, I did see taken in similar circumstances
7 over and over and over and over during that period of time by
8 other parties to preserve the assets of their company and to
9 protect their company.

10 Q And when you're saying that, you were talking about
11 not -- the Mitchell defendants. You're talking about other
12 companies?

13 A Yes. I'm saying in my experience the things that
14 Mr. Mitchell and Mr. Liberman did not do and Casino Partners
15 and 305 and Mr. Liberman -- I don't know if I mentioned him or
16 not, but Mr. Liberman and Mr. Mitchell, 305, Casino Partners as
17 well as LiveWork, there were actions that were not taken that
18 anyone in this room would've taken to preserve those assets if
19 they just were dealing with -- if they were trying to protect
20 their company.

21 Q Do you think there was any problem with selling that
22 asset to pay down over \$17 million in debt that was owed to
23 Guggenheim? Is that a sham?

24 A Are you talking about the initial transaction again?

25 Q Yes.

1 A No. In and of itself, that is not. I don't believe
2 that that necessarily is an element of fraud.

3 Q Besides what you call these elements of fraud, is
4 there anything else in that transaction that would indicate
5 that that transaction was done to avoid paying Mr. Nype?

6 A Yes. I think there's numerous -- there's numerous
7 aspects of that transaction.

8 Q Well, we've gone through all the steps of it, but
9 beyond that, anything else?

10 A Beyond what I've already testified on?

11 Q Well, you just testified about some issues with
12 insider, the sale being to an insider, and things like that
13 that you called red flags. Anything else beyond that?

14 A Yes. Over the period of -- are you talking about
15 that date or subsequently what occurred?

16 Q That transaction. That transaction?

17 A Just said that initial transaction back in '07?

18 Q Yes.

19 A I would say, you know, that's -- those are the flags
20 right there, elements of fraud in that initial transaction that
21 would draw attention. That's all that comes to mind at the
22 moment.

23 Q Okay. Now, you've testified numerous times about
24 these flags. Are these -- is there a treatise, or is there a
25 book, or is there something that lists these that you're

1 relying on? Where do you -- where does your knowledge come
2 from about these flags?

3 A Yes. They're similar to -- the elements of alter ego
4 and the elements of fraud are similar to what the Court would
5 consider, and there's numerous -- there's about five elements
6 that we look at for alter ego. And then the fraud, some of
7 them are similar. Like there's overlap where those five alter
8 ego also are -- a lot of them are considered, you know,
9 transfers to a party of interest and, you know, liquidity and
10 whether or not, you know, the transactions are actually
11 formalized, all those. There's a lot of overlap between those
12 five.

13 But there's probably -- I don't have them all
14 memorized, but with regard to fraud, there's eight or ten. And
15 with regard to alter ego there's five, and we do look at them
16 that way. We do --

17 Q Who is we, forensic accountants?

18 A I'm sorry?

19 Q Who is we, forensic accountants?

20 A Forensic accountants, the Court, people who do this
21 type of work, the FDIC. That is -- those are kind of common
22 standards that we view as elements. I understand the Court
23 calls them badges. I've been trained to call them elements of
24 fraud.

25 Q But you're not here to give a legal opinion as to

1 fraud or fraudulent conveyance or alter ego; correct?

2 A That is correct. I'm not here to give any legal
3 opinions. I'm a friend of the Court. I'm just providing
4 information to the Court.

5 THE COURT: Well, actually today you're an expert.
6 So. You're always a friend, but today you're an expert.

7 THE WITNESS: And I -- that's how I view my testimony
8 is all I'm saying. I don't know Judge Gonzalez. So I don't
9 want a misunderstanding other than interactions in cases. I
10 just mean I do my testimony, and I try to be as unbiased as
11 possible and just give information to the Court, okay.

12 MR. H. JOHNSON: Yeah, I understand.

13 BY MR. H. JOHNSON:

14 Q I was just trying to kind of clarify where those
15 particular elements or flags were located, whether that was a
16 particular legal case that you were referring to or some
17 treatise or something of that nature. But I think you've
18 answered that.

19 A Yes. It's more from a legal standpoint. It has been
20 my training although I am not an attorney, but we use those
21 same standards because when we hand it off to the FDIC or the
22 next step that takes place, that's important for us to have
23 considered those issues from that standpoint.

24 Q Okay. And you would agree there's a difference
25 between what would be the elements of fraud versus what would

1 be the elements of fraudulent conveyance?

2 A Well, I think there could be elements that overlap.

3 Q Were there any representations -- you reviewed lots
4 of documents. Was there anything in any of the documents you
5 reviewed that indicated there was any representation from LVLP,
6 Mr. Mitchell and Mr. Liberman to Mr. Nype about paying his
7 judgment?

8 A About paying his judgment?

9 Q Yes.

10 A I don't recall viewing anything of that -- I mean,
11 that's not really in my scope, but I really am not familiar
12 with that.

13 Q Okay. So you can't point to any representation they
14 made. Is that accurate?

15 A Not -- not anything other than my understanding of
16 what took place.

17 Q Okay.

18 A If I understand your question correctly.

19 Q Yeah. Was there any representations made to Mr. Nype
20 that dealt with the 305 LiveWork transaction? Did you see any
21 representations made to him regarding that transaction?

22 A Regarding to Mr. Nype?

23 Q To Mr. Nype.

24 A Like an email or a letter or anything?

25 Q Anything.

1 A Not to my knowledge.

2 And you have not mentioned like the, as I understand
3 your questioning, the Forest City transaction, correct, in your
4 questioning? Just now you're talking about the 305
5 transaction?

6 Q Well, I was talking about not a promise regarding
7 compensation that was dealt with in the prior litigation or
8 whether there was a promise or anything.

9 A You mean his contract with Forest --

10 Q No. No. I'm not talking about the contract. I'm
11 talking about -- because that's been litigated.

12 A That's correct.

13 Q What I'm talking about is the payment of the
14 judgment. Is there any representations you saw regarding the
15 payment of his judgment?

16 A From Mr. Liberman or Mr. Mitchell to Mr. Nype?

17 Q Correct.

18 A Not that I recall.

19 Q Or from LiveWork or from LVLP?

20 A Other than what was in the escrow where there was
21 400,000 set aside, that's pretty much the only written thing
22 that I've seen in that regard that I can recall.

23 Q Yeah. And that was the Forest City escrow; right?

24 A That's correct.

25 Q Okay. So there wasn't anything in the escrow

1 regarding 305 indicating he would be paid from that escrow or
2 anything of that nature; correct?

3 A I'm not aware nor do I recall anything like that.

4 Q Okay. Can we look at Exhibit 40006. This is the
5 settlement statement from the 305 transaction. If we scroll
6 down a little bit -- that's good, under I think it says new
7 loans --

8 MR. H. JOHNSON: Can you enlarge it just a little
9 bit. Yeah. Under new loans.

10 BY MR. H. JOHNSON:

11 Q Yeah, under new loans, it says, Appraisal fee
12 Heartland Bank, \$5,800. Do you see that?

13 A Yes.

14 Q Okay. So would you agree that Heartland Bank had an
15 appraisal performed regarding the land that was the subject of
16 that transaction?

17 A Apparently. I haven't seen it though.

18 Q Okay. And you didn't take any steps to obtain that
19 appraisal?

20 A No.

21 Q Are you familiar with the appraisal that was
22 performed by CBRE regarding that same property?

23 A Not necessarily.

24 Q Okay. You don't recall seeing that?

25 A No.

1 Q Okay. I just wanted to make sure whether you had
2 looked at either of those appraisals in giving your opinions
3 related to this 305 transaction.

4 A Yeah, I don't believe the appraisal that's listed
5 here was provided. I haven't seen it.

6 Q Okay. And you did review the CBRE appraisal?

7 A I don't recall.

8 Q Okay. Now, there's been talk about, and I think you
9 used the term diverted or diversion in your report where you're
10 talking about the payments that were related to the note and
11 then also in some respects to the lease. Do you recall that in
12 your report?

13 A On 305?

14 Q Yes.

15 A Are you referring to my conclusion, or are you
16 referring to the body of the report?

17 Q Well, we don't have to search for the term diverted.
18 That's not really that important. But in reality, what
19 happened was there were no payments on the note; correct?

20 A Yes.

21 Q Okay. So in the real world, there were no payments
22 on the note; correct?

23 A Correct.

24 Q And there were no direct payments from the lease;
25 correct?

1 A Correct.

2 Q So since there were no payments, those couldn't have
3 been diverted or hidden in some manner; correct?

4 A Well, the note itself is what's diverted is the note
5 itself, which is the same as funds. It's an asset that's
6 diverted, and then interest that would accrue on that has been
7 diverted, and that's what I'm referring to.

8 Q Well, is diversion the right term? Because it never
9 happened. In my world, when you divert something, it exists,
10 and if you're taking the \$5 million then you're putting it over
11 here, that would be diversion.

12 But there were no payments; correct?

13 A Well, in my world, when there's a note exists and it
14 leaves the building, that's diversion, and especially if there
15 were fees and interest and accruals on it. So that's what I'm
16 referring to.

17 Q Okay. But the note didn't go anywhere. It just
18 wasn't paid; correct?

19 A Well, it did go somewhere. It disappeared. It's
20 gone.

21 Q Well, okay. Down the road, but I'm talking about as
22 far as the note was created as part of the sale; correct?

23 A Correct.

24 Q And that made up part of the purchase price; correct?

25 A Correct.

1 Q But the payments were not made. In the real world,
2 the payments were not made; correct?

3 A The payments were not made. That is true.

4 Q Okay. So no one took payments that were made and hid
5 them or transferred them; correct?

6 A Well, the note is diverted, and as --

7 Q Well, I'm talking about the payments now.

8 A Yeah. Well, I have not alleged that payments were
9 diverted. I've alleged that the note itself is gone.

10 Q I understand.

11 A And should still exist.

12 Q But I'm talking about the actual payments that were
13 required to be made under the note. Those weren't made to some
14 other entity. They weren't made and then hidden or transferred
15 away; correct?

16 A Not that I'm aware of.

17 Q Okay. And the same with the lease, the lease payment
18 required certain -- the lease agreement required certain
19 payments, but those were just not made; correct?

20 A That's correct.

21 Q All right. So those payments weren't made and then
22 hidden or transferred away; correct?

23 A I've never alleged that the lease payments or that
24 the note payments were -- that someone else got them.

25 Q Okay. I just wanted to make sure.

1 In general, if there is available cash in a company
2 in an LLC, is there anything wrong with making a distribution
3 to the members?

4 A I would say in general, absent liquidity issues and
5 creditors existing or a known threat, I would say just as we
6 discussed, principles, you know, in our initial discussion here
7 on redirect, yes, absent any of those elements, there's nothing
8 wrong with making a distribution out of a flow-through entity
9 to an owner.

10 Q Okay. And is there anything in the distributions
11 that occurred in 2007 that would indicate those were done with
12 Mr. Nype's threat in mind?

13 A I believe so.

14 Q And how do you come to that conclusion?

15 A Well, the element starts with the threat, and that is
16 how I arrive at that conclusion.

17 Was there a threat? If there is a flowchart, yes,
18 there was.

19 Was there a distribution? Yes, there was.

20 Did it create a liquidity issue? Yes, it did.

21 Those are all elements that add up to not only alter
22 ego issues, but the issues related to fraud elements and
23 liquidity and transfers made when there is a known threat.

24 Q Now, when you say "known threat," does it depend on
25 what is the nature of the threat?

1 A Threats generally, in my world, the threats come from
2 an anticipation of some sort of litigation, unasserted claim or
3 an asserted claim.

4 An unasserted claim would be the threat we're talking
5 about here where you have a dispute, and you're fairly
6 confident that it's going to result in litigation.

7 And then the, you know, an asserted claim, there's
8 been some suit filed.

9 But both of those, the threat, and I want to make it
10 perfectly clear, is an element of fraud, the threat itself,
11 not -- it doesn't go all the way to a judgment as has been
12 suggested, you know, throughout this, throughout my testimony.
13 It really starts with a threat.

14 Q So as long as there's a threat, there can't be any
15 distributions?

16 A No. I would say what you don't want to have happen,
17 in my experience, is have a threat and then have what's
18 occurred here where you have liquidity issues. And then
19 there's a practice and a methodology that's set forth to have
20 assets go to affiliated companies. Those now, that's starting
21 to add up and accumulate.

22 And then, you know, you have conclusions that are
23 reached that we have not just one element; we have various
24 elements. So I would suggest to clients not to when there's a
25 known threat start taking actions like LVLP and the defendants

1 took.

2 Q But again wouldn't you consider the nature of it, the
3 size of the threat, how likely the threat would actually result
4 in liability or a judgment? Wouldn't you take those factors
5 into consideration also?

6 A Absolutely. So, for example, a doctor's bill for
7 \$50, I don't think would preclude an individual from taking
8 action.

9 But a dispute such as the nature of Mr. Nype's, I
10 think that it would be inadvisable to start doing some of the
11 things that LVLP has done: Transferring assets; making
12 distributions; conducting themselves as though they're in
13 bankruptcy, and they're not yet.

14 And then ultimately the proof is as we go through
15 this entire period, now LVLP is in bankruptcy. I think any
16 reasonable person would conclude that what they set out to do
17 they accomplished.

18 Q "What they set out to do"?

19 A Yes. They set out to cause this entity to be
20 illiquid and have no funds to satisfy a creditor, a major
21 creditor.

22 Q Okay. So the purpose of forming the entity and going
23 through all this, wasn't that to acquire property and develop
24 the property?

25 A Yes.

1 Q This wasn't all done out of a scheme to defraud
2 Mr. Nype out of the payment of his judgment. This had to do
3 with developing land; correct?

4 A Yes. I think that there were definitely legitimate
5 motives to, you know, develop that property at the time that
6 they were doing this assimilation of parcels, yes, they
7 definitely had that in mind.

8 I think that what's happened though is, the bone of
9 contention is when that threat came down their actions from
10 that standpoint.

11 Q Okay. But you would agree they invested a
12 substantial amount of capital in order to begin this process of
13 acquiring land and then developing the land; correct?

14 A Yes. In '05 and '06 they did.

15 Q And they incurred substantial amounts of liability
16 and debt borrowing from different banks and sources of that
17 nature in order to develop this land; correct?

18 A Agreed.

19 Q And they entered into a very large transaction with
20 Forest City in order to move forward with that development of
21 the land; correct?

22 A That is correct.

23 Q All right. So you're not alleging those things were
24 done with the intent to defraud Mr. Nype, are you?

25 A I'm not alleging that.

1 Q Oh, the other day we went through all the general
2 ledgers, and you picked out the distributions, or you
3 identified particular transactions. And for 2017, you
4 identified two distributions. One was for seventy-two
5 thousand, five, twenty-seven, to Mr. Liberman and approximately
6 the same amount to Mr. Mitchell.

7 When I went back and looked, I didn't see a general
8 ledger for 2017. So I was wondering where those numbers came
9 from. Did I miss something? Was there actually a ledger for
10 2017?

11 A There is in the QuickBooks that was at some point
12 electronic QuickBooks, and that was printed out.

13 Q But yesterday when we -- or Monday -- no. Was it
14 Tuesday? Tuesday?

15 THE COURT: I don't know. They've all run together.
16 BY MR. H. JOHNSON:

17 Q Did you actually look at a 2017 ledger to identify
18 those transfers?

19 A Yes.

20 Q Okay. Because again, I didn't see one. I hate to
21 take the time, but could you look at that and identify where
22 the 2017 ledger is. It was I think Exhibit 30015 I think was
23 where it began?

24 A I'm not -- I don't understand the question.

25 Q Well, Tuesday you looked at a number of general

1 ledgers. But when I went back to look, there doesn't seem to
2 be a ledger for 2017 that's been produced in the exhibits?

3 A As I indicated, I went back to my portfolio to look
4 and see.

5 Q Okay.

6 A And in there is one that was printed out from LVLP's.
7 It was produced at some point by I believe Mr. Spitz that was
8 a -- that included that 2017 QuickBooks file.

9 Q Okay. And that's where those numbers came from;
10 correct?

11 A Yes, from Mr. Spitz.

12 MR. MUIJE: I will indicate on the record that
13 Exhibit 30015 is a general ledger for 2017.

14 MR. H. JOHNSON: Is it?

15 MR. BLUT: It says 2007.

16 MR. H. JOHNSON: 2007.

17 MR. MUIJE: Oh, my bad. I am blind.

18 MR. H. JOHNSON: And I guess the problem is there is
19 a difference between the paper general ledgers and the ones
20 that have been produced. I guess that's a -- so I'm not going
21 to spend more time on that.

22 I think that's it.

23 THE COURT: Mr. Boschee, anything else?

24 MR. BOSCHEE: I don't need to go to the podium for
25 these handful of questions.

RECROSS-EXAMINATION

BY MR. BOSCHÉE:

Q I just want to confirm, Mark, you did not look at an appraisal from CB Richard Ellis that was performed in 2007 that was produced, 2007? It was produced in the trove of Mitchell documents that you got and reviewed? You don't remember seeing that?

A I do not remember seeing that.

Q Okay. I just -- that was one of the few documents out of the thousands and thousands that I remembered. That's why I was -- I was a little surprised.

You talked a little bit on redirect about the money that -- the distributions that Mr. Mitchell and Mr. Liberman took out right after the 305 transaction. Remember that?

A I'm sorry. Say that again.

Q You do remember testifying about the distributions that Mr. Mitchell and Mr. Liberman took out of LVL P right after the 305 transaction?

A Yes.

Q You didn't see any evidence or anything in any of the ledgers of any of that money, any of those distributions going back to 305 or to Win Chamberlain or anybody else affiliated with 305, did you?

A I don't recall any evidence to that nature.

Q Okay. You also testified that the partners of 305

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1 should have known that there was some deal in the works with
2 Mr. Nype when the 305 transaction closed. Really it was only
3 one partner of 305 that would have known that; right?

4 A It would have been Mr. Liberman.

5 Q Right. You also -- Mr. Muije -- you and Mr. Muije
6 were nice enough to actually put a number on the question that
7 I couldn't get a number on when I was asking you. You said it
8 was about \$300,000 in rent that were collected every year by
9 Charleston Casino Partners from the tenants until the lease
10 went away; right?

11 A No, that's not correct.

12 Q Okay. What -- I'm sorry. Maybe I misheard you then.

13 A He asked, as I understood the question that Mr. Muije
14 asked, is what were the rents, and in the years prior to the
15 sale, it was 300,000 a year.

16 Q Okay.

17 A Then it changed. Like there was a historical amount
18 that the gross rents were about 300 a year.

19 Q Okay.

20 A Then it just became sporadic. Some years there were
21 no rents, and then there were rents, and so it's unexplained as
22 to what happened to those rents.

23 Q But do you sitting here right now know how much rent
24 was taken in in the aggregate from 2007 until 2014 by
25 Charleston Casino Partners and by proxy Las Vegas Land

1 Partners?

2 A No, I do not.

3 Q Okay. Was it more or less than \$2 million?

4 A You mean that was reported on --

5 Q Yeah.

6 A -- LVLP's books?

7 Q That you could ascertain by looking at their books.

8 A Yeah. From -- yes. Okay. Now I understand the
9 question.

10 Q Sure.

11 A On the tax returns on Schedule E, it would be over a
12 million, but I believe under 2 million, but that includes the
13 before the transfer in '07.

14 Q Okay.

15 A So there's '05, '06, '07, and I believe those years
16 it was about 300,000, and then it goes down I'm going to say to
17 about 200. This is strictly off my memory.

18 And then it's just sporadic. I don't believe it hits
19 300,000 again and then goes away in 2012. That's my
20 recollection.

21 Q Okay. So somewhere less than 300,000, maybe a little
22 less than 200,000, but from 2007 until 2012, there is some
23 amount of rent that's coming into Las Vegas Land Partners that
24 gets reported on the taxes, but doesn't go any farther than
25 that; right?

1 A That's correct.

2 Q Okay. You also testified -- you also mentioned
3 that -- Mr. Muije asked you if 305 ever sued Mr. Liberman on
4 the lease. Do you remember that?

5 A Yes.

6 Q But 305 did commence litigation against Charleston
7 Casino Partners that was wrapped up as part of the 2014 global
8 settlement, didn't they?

9 A Yes.

10 Q Okay. In terms of the sham transaction that you
11 talked about.

12 A I'm sorry. If we could go back to that question.

13 Q Okay.

14 A Of whether or not -- can you repeat the question you
15 just asked me about the -- because right now I'm just thinking
16 was that Heartland Bank. I know there was a settlement with
17 Heartland Bank, but commencing action, 305 commencing action
18 against Charleston Casino Partners?

19 Q Well, there were three -- there were three
20 litigations, and I think you identify them in your report.
21 There's the Heartland Bank litigation. That's in Missouri.

22 A Yes.

23 Q There's the LiveWork litigation, and then there's the
24 action against Charleston Casino Partners that both take place
25 here, and all three of those I believe get wrapped up in the

1 same settlement, the one that you've talked about that LiveWork
2 didn't sign off on, didn't get consideration on. All three of
3 those litigations wrapped up in the one settlement; right?

4 A Well, I know that the parties to that settlement were
5 Mr. Liberman, Mr. Mitchell, 305 and Charleston Casino Partners
6 in the settlement with Heartland.

7 Q With (indiscernible) Heartland. They were
8 probably -- they were a pretty important party to that
9 settlement too, I think.

10 A Yes, absolutely.

11 Q Okay. I just want to revisit one thing. And I
12 understand your position. I understand your opinion about the
13 things not adding up, but if, as I read this, as I understood
14 the documents in your testimony, if that Charleston Casino
15 lease development agreement is not in place, 305 doesn't get
16 the loan from Heartland to buy the property; correct?

17 A I think that was established in my testimony on
18 Tuesday, yes, and also Mr. Johnson's, you know, presentation as
19 part of that.

20 Q All right. I just wanted to make sure.

21 So if that transaction never takes place, there would
22 have never been a \$5 million carryback loan, would there?

23 MR. MUIJE: Objection. Calls for speculation.

24 THE COURT: Overruled.

25 THE WITNESS: If it's not sold, there's not a note.

1 That's correct.

2 BY MR. BOSCHÉE:

3 Q And no note to repay; right?

4 A Yes. That would be a like -- I would call that a
5 theoretical situation because that's not what happened, but
6 theoretically yes, I would agree with that.

7 MR. BOSCHÉE: Nothing further, Your Honor.

8 THE COURT: Mr. Blut?

9 MR. BLUT: Nothing further, Your Honor.

10 MR. MUIJE: Just one question, Your Honor.

11 THE COURT: We are all keeping track.

12 MR. BOSCHÉE: His 4 questions were 11 before. I do
13 remember that. Just to give him a hard time.

14 FURTHER REDIRECT EXAMINATION

15 BY MR. MUIJE:

16 Q Mr. Johnson asked you about the badges of fraud or
17 the indicators of fraud that you talked about. Are you
18 familiar with NRS 112.180, sub 2?

19 A I don't have all the --

20 MR. BOSCHÉE: Objection, Your Honor. How does that
21 not call for a legal conclusion?

22 MR. MUIJE: I asked if he was familiar.

23 THE COURT: Sustained.

24 BY MR. MUIJE:

25 Q Let me read you --

1 THE COURT: No. You already --

2 MR. MUIJE: (Indiscernible), Your Honor. I'm just
3 going to read from the --

4 THE COURT: I am reading NRS 112.180(2) to myself
5 right now.

6 MR. MUIJE: That is all we need, Your Honor.

7 THE COURT: Thank you. It's up here on my computer.
8 It's been there since Monday.

9 MR. MUIJE: Okay. Nothing further, Mr. Rich.

10 THE COURT: Thank you. You may step down and leave
11 before they change their minds. Have a good holiday. Happy
12 new year.

13 THE WITNESS: Same to you, Your Honor. I appreciate
14 it.

15 THE COURT: All right. So we were going to see who
16 we could call out of order to make sure those folks who were
17 traveling would be able to meet their travel schedules.

18 Who is your next witness?

19 MR. MUIJE: To accommodate that, Your Honor, I have
20 gone ahead and prepared for Mr. Liberman. So if we want to
21 bring him to the stand.

22 THE COURT: Mr. Liberman, if you could come up,
23 please.

24 THE WITNESS: Can I just take 30 seconds so I'm
25 comfortable?

1 THE COURT: So we're going to go take a short rest
2 room break. If we could keep it to five minutes though.

3 MR. BOSCHEE: Absolutely.

4 (Proceedings recessed at 2:01 p.m. until 2:04 p.m.)

5 (Pause in the proceedings.)

6 THE COURT: You ready? It's not as bad as you think.

7 THE WITNESS: It's not what?

8 THE COURT: It's not as bad as you think.

9 THE WITNESS: Okay.

10 THE COURT: Okay, guys. Let's go.

11 Raise your right hand to be sworn.

12 **BARNET LIBERMAN**

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

15 THE CLERK: Please have a seat and state and spell
16 your name for the record.

17 THE WITNESS: It's Barnet, B-a-r-n-e-t, L, Liberman,
18 L-i-b-e-r-m-a-n.

19 THE COURT: So, Mr. Liberman, I think your counsel is
20 going to ask you first, and then everybody else is going to go
21 around the room. Okay?

22 MR. BLUT: No. I think Mr. Muije was going to -- I
23 thought he was going to ask questions.

24 MR. MUIJE: No.

25 THE COURT: Are you going to do him -- are you doing

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1 your --

2 MR. MUIJE: And I can do him as a.

3 THE COURT: Who wants to do direct first? It doesn't
4 matter. Whoever wants to go first, go.

5 MR. MUIJE: I would defer to them because again
6 normally he would be their witness.

7 THE COURT: Because, you know, I want you to be able
8 to do your direct.

9 MR. BLUT: Okay. Thank you, Your Honor. I didn't
10 know if that's -- I didn't know that that's what was
11 Mr. Muije's offer.

12 THE COURT: You may do whatever you like.

13 MR. BLUT: Thank you, Your Honor.

14 THE COURT: I'm being flexible with you today. Don't
15 count on it in any other court.

16 MR. BLUT: He can't testify three days? Okay.

17 THE COURT: Not if he's going to make his airplane.

18 DIRECT EXAMINATION

19 BY MR. BLUT:

20 Q Mr. Liberman, how do you know David Mitchell?

21 A David and I attended the Sixteenth Street Synagogue,
22 formally known as the Young Israel of Sixteenth Street in the
23 '90s, late '90s, and we knew each other through that.

24 Q And how did you first become aware of real property
25 acquisition possibilities in Las Vegas?

1 A I think it was in the autumn of 2004. David and I
2 were talking at some school function, and he told me there were
3 a lot of opportunities in Las Vegas and that he'd like for me
4 to come see one. He'd like me to come take a look at it.

5 Q Okay. And did you come out here?

6 A Yes.

7 Q Okay. And ultimately you and Mr. Mitchell formed
8 some entities that purchased parcels of real property?

9 A Yes, quite a few.

10 Q Okay. And at some point there was a transaction with
11 Forest City; is that right?

12 A Yes.

13 Q And what was your involvement in the transaction?

14 A Well, we had to first meet with the principals, and
15 they had a great staff of very talented people with a lot of
16 experience, and we met with them and brought them out here. We
17 toured the property. And prior to that we had been working
18 with the City and in particular with Scott Adams who at that
19 point was the head of the office of development, and we worked
20 through a whole dynamic proposal for what we called the five
21 blocks of downtown, which included what is currently the City
22 Hall block, what is currently the Regional Transportation
23 Center and basically the blocks between them from Main through
24 is it Third? Main, Casino -- Main, First, Casino -- to Casino,
25 from Main to Casino.

1 And when -- and that was the part having assembled
2 all the property and engaged with the City to work through a
3 major development for downtown Las Vegas that we thought that
4 that structure of a deal would be something that Forest City,
5 who had been active around the country in deals of that nature
6 would be interested in.

7 Q Okay.

8 A So we had -- and I had personally -- you know, David
9 and I are from New York, and contrary to the process out here
10 where it appears everything just it's a bid, and I asked an
11 escrow agent, you know, part of what was interesting to me and
12 exciting was meeting the sellers to come to a -- find out what
13 their real needs were, to see if they would take back paper,
14 you know, to try and structure a deal with the seller to put it
15 together.

16 So a great part of the time spent out here was
17 meeting with the different sellers, some of whom family had
18 owned the property since 1906 or '7, and the selling parties
19 were now second cousins that were spread significantly around
20 the west. I think one of them was then I think in prison in
21 Kansas. You know, we had to get a lot of difference consents
22 and meet with a lot of people.

23 And since it was significant for us to assemble, you
24 know, contiguous properties for the purpose of what we were
25 trying to achieve, you know, we really were intensely involved

1 with the sellers and at the same time intensely involved with
2 the City and independently the Regional Transportation -- RTC,
3 the Regional Transportation --

4 THE COURT: Commission.

5 THE WITNESS: Commission. Thank you.

6 THE COURT: I'm there for you.

7 THE WITNESS: Thank you.

8 We met with them.

9 BY MR. BLUT:

10 Q And so we'll just back up a little. How did you
11 first become acquainted with Mr. Nype?

12 A We had been working with Cabot [phonetic] Lodge
13 [phonetic], and he had introduced Mr. Nype as someone who was
14 familiar with Las Vegas. So that was I think Mr. Cabot Lodge.

15 Q And then did you enter into some type of agreement
16 with Mr. Nype when he was employed at something called Wall
17 Street?

18 A Yes. With Wall Street we entered into a brokerage
19 agreement.

20 Q Okay.

21 A With Wall Street. Then Mr. Nype at that point was
22 employed by Wall Street.

23 Q Okay. And did Wall Street end up being the broker
24 that received a commission in the Forest City deal?

25 A Yes. We had -- we had paid them a commission in the

1 Forest City deal. Nype had worked for them, yes.

2 Q Okay. And eventually there was a deal that was
3 entered into between LiveWork, Zoe Property and Forest City.
4 Is that your -- is that your recollection?

5 A It's -- yes.

6 Q And as part of that there was a tenancy in common
7 agreement that was entered into?

8 A Yes.

9 Q All right. And so then what did LiveWork and Zoe
10 Properties end up with as part of that TIC agreement?

11 A The Forest City Enterprises ended up with 60 percent
12 of the ownership, and Las Vegas Land Partners had 40 percent.

13 Q Okay. And Mr. Nype, there was money left behind in
14 escrow for Mr. Nype; is that right?

15 A There was money put aside at the -- well, I'll wait
16 until I'm asked the question I guess.

17 Yes, there was some money put aside.

18 Q Okay. And did you believe that Las Vegas Land
19 Partners, LiveWork, Zoe Properties, anyone owed Mr. Nype
20 anything at that time?

21 A No. I didn't think we did.

22 Q And why is that?

23 A Well, A, we had paid a brokerage fee to Wall Street;
24 and, B, he didn't do anything.

25 Q Okay. So why was there roughly \$400,000 left in the

1 escrow at the close of the purchase and sale agreement between
2 Forest City, LiveWork and Zoe Property?

3 A That was done, A, to move forward; and, B, because
4 the David LaRue, who was I'm pretty sure at that point it might
5 have been the president of Forest City Enterprises didn't want
6 to deal with Rusty Nype at all under any circumstances, and he
7 basically told us, you know, make him go away because he was --
8 he was placing himself and promoting himself --

9 MR. MUIJE: Objection. Hearsay.

10 THE COURT: Sustained.

11 You can't tell me what he told you. You can tell me
12 what you did as a result.

13 THE WITNESS: I can't say what David LaRue told me.
14 Right. Okay. Got it. Okay.

15 As a result of the conversation with David LaRue,
16 to --

17 Can I say satisfy his requests?

18 THE COURT: Sure. As long as you don't tell me what
19 the request was.

20 THE WITNESS: Okay.

21 -- to satisfy his requests, we set aside an amount of
22 money we thought would accomplish the purpose of keeping Rusty
23 out of any of the conversations we were having with the City,
24 with any prospective tenants of any kind.

25 / / /

1 BY MR. BLUT:

2 Q And were there some grandiose plans for this TIC that
3 was between LiveWork and Forest City?

4 A Yes, quite --

5 Q Can you tell us what those plans were.

6 A Quite grandiose. There were two major items which
7 were, as I previously said, key to Forest City's entry into the
8 deal, and they were the Regional Transportation Commission
9 agreement to develop the Regional Transportation Center and the
10 City Hall development, which was very complex because it
11 involved the existing City Hall and a parcel which was part of
12 the Symphony Park Assembly that was being traded with us to
13 build City Hall and that City Hall would be rented from us, and
14 they had the option to take title by -- they were going to sell
15 City Hall to Zappos, and it was like a three-way, a very
16 complicated three-way deal.

17 And I'm not sure I can competently give all of the
18 details except that that part of the deal which was negotiated
19 significantly by Forest City, particularly the swap part of it,
20 was essential for their final decision to participate with us
21 in the development.

22 In addition to those two major items, being the
23 Regional Transportation Center and the City Hall, we had the
24 opportunity to develop three other blocks between them. And
25 there were no specific plans for those.

JD Reporting, Inc.

1 Q Okay. And as part of the TIC, were there capital
2 calls?

3 A In I think it was 2008 there was in the fall there
4 was a capital call for \$2,800,000, and I provided those funds.

5 Q Okay. How many capital calls was the LiveWork side
6 able to make?

7 A That was it. Things right after that and the economy
8 and the real estate market in particular became very difficult,
9 and those -- and the holdings here and the holdings that I have
10 around the country.

11 Q Okay. And do you recall how much the capital call
12 was that was made on the LiveWork side in 2008?

13 A Beyond the two million eight, there was another -- I
14 don't know exact dates, but there was another about \$21 million
15 I believe that was -- I believe that's the amount that was
16 called that we couldn't make.

17 Q Okay. And then as a result of that, was there an
18 adjustment or a restructure of the Forest City/LiveWork
19 entities?

20 A Yes, is the answer.

21 Q Okay. I'm going to show you on the screen
22 Exhibit 12, which is admitted.

23 A Oh, yeah. Okay.

24 Q Okay. Do you remember seeing this before?

25 A Yes.

1 Q And then on page 2, under the distributions, under F.

2 A Yes.

3 Q Okay. Is this the \$21 million that you were
4 referring to?

5 A Yes.

6 Q All right. Let me ask you about something else.
7 We've heard a bunch of testimony from Mr. Rich about this
8 305 Second Avenue transaction. You were present for all that
9 testimony?

10 A I was in the room --

11 Q I'm just saying were you -- you were here?

12 A I was here.

13 Q You were here.

14 A I was here.

15 Q Okay. There was a lease entered into, a lease option
16 between Charleston Casino Partners and 305 Las Vegas; right?

17 A Yes.

18 Q Okay. And what plan did Charleston Casino Partners,
19 Inc., have for that property?

20 A Okay. That property was not in the original -- was
21 on the Forest City transaction. They didn't want anything
22 residential. So David and I wanted to develop that as a
23 residential property. We think it's uniquely situated in the
24 Arts District, and we pursued the entitlements for and were
25 awarded the -- oh, I won't call it awarded, granted the

1 entitlements for 1100 apartments at that site.

2 Q And were you able to develop the 1100 apartments on
3 there?

4 A Once again, the real estate market was not in our
5 favor for financing. A number of the institutions that we were
6 talking with folded, a number of the banking institutions. So
7 it was a very hard time. And we put in a lot of work and a lot
8 of creative work, not only the money, but there was a lot of
9 energy, and we worked very hard to do that.

10 Q Okay. Are you familiar with the entity Casino
11 Coolidge, LLC?

12 A Yes.

13 Q What is that?

14 A That's an entity that owns the 937. It's known as
15 South Casino Center Boulevard, which is a 200 by 140-foot site
16 at the corner of Coolidge and South Casino Center Boulevard.

17 Q Okay. And who owns Casino Coolidge, LLC?

18 A I do.

19 Q Okay. And when was that entity formed?

20 A Oh, gosh. Everything gets compressed. 2014 or '15 I
21 think it was.

22 Q Okay. Take a look at the screen. This is Exhibit 33
23 which is admitted. This is the settlement statement.

24 THE COURT: No, it's not.

25 MR. BLUT: It's not on there?

1 THE COURT: No. We have a Courtroom 3E sign on the
2 screen; right?

3 THE WITNESS: Yes.

4 THE COURT: You see what we got up there.

5 THE WITNESS: There it is.

6 THE COURT: There it goes. Good job.

7 MR. BLUT: Thank you.

8 THE WITNESS: Okay. All right.

9 MR. BLUT: I'm not the IT guy.

10 BY MR. BLUT:

11 Q Okay. Do you see this here?

12 A Yes.

13 Q Okay. And there was a purchase price of \$1 million?

14 A Yes.

15 Q And was this property listed with a broker?

16 A Yes.

17 Q Who was that broker?

18 A The broker was -- it was Glenda Shaw of I think it's
19 Northcap [phonetic] -- Northcap Real Estate I guess you could
20 call it.

21 Q Okay. And why was Ms. Shaw listing this property for
22 sale in 2014?

23 A It was time to liquidate and get whatever cash we
24 could, and then we weren't getting offers I thought were
25 significant enough, and she got a number of offers. I think

1 the best offer she got was close to \$800,000.

2 MR. MUIJE: Objection. Hearsay.

3 THE COURT: Overruled.

4 BY MR. BLUT:

5 Q Okay. And how is it that a million dollars was
6 determined to be the purchase price?

7 A David and I, you know, argued, negotiated and settled
8 at that price.

9 Q And the property was -- Casino Coolidge, LLC, bought
10 the property from Leah, LLC; right?

11 A Yes.

12 Q Okay. And Leah originally bought this property, and
13 it contained more parcels than just what Casino Coolidge
14 purchased in 2014; is that right?

15 A I think originally it had the block from -- all the
16 way to Third Street. I think that's the next block over. So
17 the total site would have been 300 by 200.

18 Q And Casino Coolidge, does it have its own bank
19 account?

20 A Yes, it does.

21 Q Okay. Have you paid your personal expenses from that
22 bank account?

23 A No, I haven't.

24 Q What about the Las Vegas Land Partners bank account?
25 You ever pay your personal expenses from that account?

1 A No, I haven't.

2 Q Is your car or cell phone paid by Casino Coolidge,
3 LLC?

4 A No. I own my car free and clear, and my cell phone
5 is paid by me personally.

6 Q Okay. Do you file personal tax returns, meaning
7 Barnet Liberman and maybe your wife?

8 A Yes. We file a joint return.

9 Q Okay. Do you have personal bank accounts?

10 A Yes.

11 Q Remember there was some testimony about a Signature
12 Bank loan?

13 A Yes.

14 Q Okay. And the statements come in your name and
15 Mr. Mitchell's name.

16 A Yes.

17 Q Do you recall that?

18 And at the time in 2010 -- or is that -- I guess I
19 should ask. Is that a loan that was taken out in 2010?

20 A There about.

21 Q Okay. And why was it taken out in your own name and
22 not in the name of one of these entities?

23 A The bank wouldn't make a loan to these entities.
24 They are a New York City bank, unfamiliar with the values here.
25 David and I each had a relationship with the bank, and they

1 extended to us basically a line of credit which we drew down to
2 its full extent.

3 Q Okay. And what --

4 A And we then took that money and invested it in
5 developing the properties here, notably the 1100 apartments,
6 doing all the architectural engineering and Phase 1 studies and
7 everything that's required for getting ready to finance and
8 build a property.

9 Q Okay. So were all of the funds of the signature loan
10 utilized by Las Vegas Land Partners?

11 A Yes.

12 MR. BLUT: Nothing further, Your Honor.

13 THE COURT: Mr. Muije.

14 MR. MUIJE: Yes, Your Honor.

15 CROSS-EXAMINATION

16 BY MR. MUIJE:

17 Q First of all, Mr. Liberman --

18 MR. MUIJE: And maybe counsel can help me. Do we
19 have an exhibit number for that 2010 Signature Bank loan?

20 MR. BLUT: That is a very good question, the first
21 time I'm stumped.

22 THE COURT: You mean the line of credit that he just
23 testified about?

24 MR. MUIJE: Line of credit, the one that he just
25 testified about.

1 THE COURT: Okay. The one he said was personal?

2 MR. MUIJE: Correct.

3 (Pause in the proceedings.)

4 THE COURT: Just for the record, line of credit is L,
5 slash, C. I don't know if any of you know that, but you won't
6 be getting my notes hopefully. So.

7 MR. BLUT: Looks like if you go down to 5028 (sic),
8 222 -- actually, that's just one page.

9 THE COURT: One page is a start.

10 MR. MUIJE: At 5028 (sic). Okay. Is that admitted
11 or?

12 MR. BLUT: That's Mark Rich's original report with
13 the exhibits.

14 MR. MUIJE: Oh, okay.

15 MR. BOSCHEE: So I'm going to go ahead and say, yeah.

16 MR. MUIJE: At page 22.

17 MR. BLUT: And I think 122 -- 222.

18 MR. BOSCHEE: 222.

19 MR. MUIJE: 222. Okay. I'm sorry.

20 BY MR. MUIJE:

21 Q And this appears on its face that it is admitted. So
22 it appears on its face to be a statement of account to yourself
23 and Mr. Mitchell; is that correct?

24 A Well, that's what it says, yes.

25 Q Okay. And I believe your testimony was it originated

1 in approximately 2010?

2 A I think -- I didn't make it -- I'm sure I didn't make
3 a definite statement. I'm definitely sure I didn't make a
4 definite statement.

5 Q Do you have any idea when that loan was first taken
6 out, that line of credit?

7 A I believe it was around 2010 or '11.

8 Q Okay.

9 A But I'm not certain.

10 Q And I believe your testimony was you and David used
11 the proceeds for development at the 305 property?

12 A 300 Charleston, yes.

13 Q Okay. Who owned the property at 300 Charleston at
14 that time?

15 A At that time 305 Second Avenue Associates Las Vegas
16 owned it, but we controlled it under a lease.

17 Q Okay. "We" being yourself and Mr. Mitchell?

18 A Yes.

19 Q Did that lease contemplate further development of the
20 property as opposed to just operation and management?

21 A Yes.

22 Q Okay. Let's look at that lease if we can. I believe
23 it's at 40 -- 40027. It has not been admitted into evidence I
24 do not think.

25 MR. MUIJE: May we pull it up, Your Honor, or --

1 THE COURT: Has it been admitted?

2 MR. MUIJE: It has not. That's --

3 THE COURT: Then no, you can't pull it up.

4 MR. MUIJE: Can you darken your screen or -- so I can
5 refer him to it?

6 THE COURT RECORDER: I'll do it, Judge.

7 MR. MUIJE: Thank you, Jill.

8 THE COURT: We'll try to do with the other way.

9 THE COURT RECORDER: Is yours off?

10 THE COURT: I don't know. There's nothing on my
11 screen.

12 MR. MUIJE: I didn't want to pull it up.

13 THE COURT: Is their stuff on everybody else's
14 screen?

15 MR. MUIJE: Not yet.

16 UNIDENTIFIED SPEAKER: Yes, now there is.

17 MR. MUIJE: Okay.

18 BY MR. MUIJE:

19 Q If we could initially at page 44 of that document,
20 sir. Do you see that?

21 A Yes.

22 Q Whose signatures are that on page 34?

23 A Myself and Win Chamberlain.

24 Q Okay. And do you recognize Mr. Chamberlain's
25 signature from past dealings?

1 A Yes.

2 Q And you're sure that was him?

3 A Yes.

4 Q Okay. Go to page 35. And again these appear to be
5 duplicate signature pages. They're even numbered the same
6 although there's different signatures. Whose signature is that
7 on page 35 of the document?

8 A David Mitchell.

9 Q Okay. And if you go back all the way to the top of
10 page 1, it indicates -- it shows a date of May 2nd, 2007. Do
11 you see that, sir?

12 A Yes.

13 Q And 305 Las Vegas, LLC, a Delaware limited liability
14 company with offices care of ORB Management, Ltd., 421 Hudson
15 Street, as a lessor. Am I reading that correctly?

16 A That's what it says.

17 Q Who is ORB Management?

18 THE COURT: So let's not read it.

19 MR. MUIJE: Okay.

20 THE COURT: Thanks.

21 BY MR. MUIJE:

22 Q Let me ask you who ORB Management is.

23 A ORB Management is a real estate management company.

24 Q And who owns it?

25 A Winthrop Chamberlain and myself.

1 Q Okay. And who is defined as the lessee?

2 MR. BLUT: Well, isn't this the same as reading it,
3 Your Honor?

4 THE COURT: Nope.

5 MR. BLUT: Oh. No?

6 THE COURT: Who is the lessee?

7 THE WITNESS: Charleston -- it says Charleston Casino
8 Partners, LLC.

9 BY MR. MUIJE:

10 Q Okay. And where is the lessee's address?

11 A It says here 41 East 60th Street --

12 THE COURT: I don't want you to tell me what it says
13 there. I want you to tell me where their addresses.

14 THE WITNESS: So 41 East 60th Street.

15 BY MR. MUIJE:

16 Q Okay. And does it indicate whose address that is?

17 A Mitchell Holdings.

18 Q Okay. And do you recognize the document and what it
19 purports to be?

20 A Actually no, but --

21 THE COURT: That's okay. You don't recognize the
22 document?

23 THE WITNESS: It's been a while.

24 BY MR. MUIJE:

25 Q If you would look at paragraph 1.01, and it may

1 refresh your recollection, sir.

2 A Okay. Let's see.

3 Yes.

4 Q Does that refresh your recollection?

5 A (No audible response.)

6 Q Does it identify the property involved --

7 A It identifies the property, yeah.

8 Q And what property is that, sir?

9 A That's the property on Charleston Street between 4th
10 and Casino.

11 Q Okay. And in the preamble paragraph, it --

12 MR. BOSCHÉE: Judge, we'll stipulate to the exhibit
13 now that he's already identified his --

14 THE COURT: Be admitted. Yes. It's admitted.

15 MR. BOSCHÉE: His signature and read from it.

16 THE COURT: He hasn't read from it. He's --

17 MR. BOSCHÉE: He has too read from it.

18 THE COURT: He's referred to it to refresh his
19 recollection and then tell me the answer. I can't tell if he
20 looked up though.

21 MR. BOSCHÉE: It's fine.

22 THE COURT: Yeah. All right. It's admitted.

23 (Plaintiffs' Exhibit Number(s) 40027 admitted.)

24 THE COURT: All right. You can go on, Mr. Muije.

25 MR. MUIJE: Very good, Judge.

1 THE COURT: There we go.

2 BY MR. MUIJE:

3 Q And in that document, Exhibit 40027, towards the end
4 there's a schedule of lease payments. Is that correct, sir?
5 Starting at page -- I want to say Schedule I starting at
6 page 36.

7 Do you see that, sir?

8 A No.

9 MR. MUIJE: Let's make sure we get it pulled up
10 there.

11 THE WITNESS: You'll have to make it bigger, please.

12 BY MR. MUIJE:

13 Q And that's the top half. Okay.

14 A Okay.

15 Q Do you recognize schedule Roman numeral I starting at
16 page 36?

17 A What do you mean by recognize?

18 Q Have you ever seen it before?

19 A Not that I recall.

20 Q Okay. Does it call for the amount of rent that
21 the -- does it set forth the amount of annual payments under
22 this lease to the best of your understanding?

23 A Yes.

24 Q And it shows a 49 year term with a 17 year
25 amortization; is that correct?

1 A That's what it says.

2 Q Okay. To your knowledge, were any of the rents
3 called for under this agreement ever paid to 305?

4 A I'm not sure. I don't think so.

5 Q And, in fact, in the later years of the term, still
6 looking at that Schedule I, once you get out to 49 years, which
7 would put us in about 2056, I believe, what's the annual amount
8 of rental called for in Schedule I?

9 A The last payment called for here is 10 million,
10 seven, and ten thousand, seven, seventy-nine.

11 Q Okay.

12 MR. MUIJE: Court's indulgence one second, Judge.

13 BY MR. MUIJE:

14 Q Let's switch topics at this point for a moment. You
15 had indicated that Mr. Nype was involved in the discussions
16 with Forest City. Do you know when Mr. Nype's involvement with
17 the development projects or your activities in your Las Vegas
18 commenced?

19 A I can't recall.

20 Q As I recall your testimony when that started, it was
21 pursuant to a company called First Wall Street; is that right?

22 A Yes.

23 Q And do you recall the terms of the arrangement with
24 First Wall Street?

25 A No.

1 Q You don't dispute that there was an arrangement;
2 correct?

3 A There was an arrangement with First Wall Street, yes.

4 MR. MUIJE: Okay. And, Your Honor, the exhibit has
5 not been admitted. So.

6 THE COURT: What's its number?

7 MR. MUIJE: 6001 -- or 60 --

8 THE COURT: Any objection?

9 MR. BLUT: Let me see what that is.

10 THE COURT: It should be an agreement with First Wall
11 Street.

12 MR. BLUT: I don't know if he can lay the foundation
13 with this witness.

14 THE COURT: Okay.

15 MR. BOSCHEE: I'm guessing he can't. So we're not
16 going to --

17 THE COURT: So they didn't stipulate.

18 BY MR. MUIJE:

19 Q Who else had the authority to bind Las Vegas Land
20 Partners?

21 A David Mitchell.

22 Q Other than yourself?

23 A Sorry?

24 Q Who had the authority to bind Las Vegas Land Partners
25 other than yourself?

1 A David Mitchell.

2 Q Anybody else other than the two of you?

3 A I can't imagine, no, no one else.

4 Q Okay. And would you recognize Mr. Mitchell's
5 signature if you saw it?

6 A Sure.

7 Q Let's look at page 5 of this document.

8 THE COURT: And my monitor is off.

9 BY MR. MUIJE:

10 Q Page 4.

11 MR. MUIJE: Thank you, Your Honor.

12 THE COURT: I was looking --

13 THE COURT RECORDER: It is on.

14 THE COURT: Now it is.

15 (Pause in the proceedings.)

16 BY MR. MUIJE:

17 Q Do you recognize that signature, sir?

18 A Yes.

19 Q Okay. And do you recognize the name above it?

20 A Las Vegas Land Partners, LLC.

21 Q Well, but the signature block above it purports to be
22 on behalf of First Wall Street, and it identifies an
23 individual. Are you familiar with that individual?

24 A I have a vague recollection, yes.

25 Q Okay. And the date on the very first page, does that

1 comport with your recollection as to when LVLP may have entered
2 into a deal with First Wall Street?

3 MR. BOSCHEE: Objection. Asked and answered. He
4 doesn't have a recollection as to when.

5 THE COURT: Overruled.

6 Please don't make speaking objections.

7 THE WITNESS: Sorry. So I should answer?

8 THE COURT: Yes, please.

9 THE WITNESS: Well, the question again was?

10 BY MR. MUIJE:

11 Q Looking at page 1 of the document and the date
12 contained on that, does that refresh your recollection as to
13 when you may have commenced an arrangement with First Wall
14 Street?

15 A It says here January 25th --

16 THE COURT: We don't want you to tell us what it
17 says. We want to know if it helps you remember.

18 THE WITNESS: I don't actually remember.

19 THE COURT: Okay.

20 BY MR. MUIJE:

21 Q Okay. Do you have any doubt in your mind that on
22 behalf of LVLP Mr. Mitchell did enter into an agreement on
23 behalf of your company and First Wall Street regarding
24 promoting and developing property, five city blocks located in
25 Vegas?

1 A The question again was do I have any?

2 Q Do you have any doubt that that deal was entered into
3 between LVLP and First Wall Street?

4 A No, I have no reason to doubt that.

5 Q Okay. And do you recall the payment terms that were
6 called for under that agreement?

7 A No.

8 Q Looking at the bottom of page 1, does that refresh
9 your recollection in the least?

10 A I can't read it.

11 MR. MUIJE: If we could blow it up.

12 THE WITNESS: Okay.

13 (Pause in the proceedings.)

14 THE WITNESS: I can read it. Yes.

15 What's the question.

16 BY MR. MUIJE:

17 Q Have you been able to refresh your recollection as to
18 the financial payment terms called for in the agreement with
19 First Wall Street?

20 A No, but they're clear right here.

21 Q Okay. And do you have any doubt that this proposed
22 exhibit, that this document correctly reflects the payment
23 terms that were agreed upon?

24 MR. H. JOHNSON: Objection. It hasn't been admitted.

25 THE COURT: Is this your witness or his witness?

1 MR. H. JOHNSON: Oh, okay.

2 THE COURT: Mr. Edwards?

3 MR. EDWARDS: Same objection.

4 THE COURT: Sustained.

5 BY MR. MUIJE:

6 Q You had testified further that by the time the Forest
7 City deal closed First Wall Street was no longer in the
8 picture; is that correct?

9 A That's my recollection.

10 Q And you had testified that some payment had been made
11 to First Wall Street; is that correct?

12 A Yes.

13 Q Is it your testimony that the payment was made prior
14 to the closing of the deal with Forest City?

15 A I don't recall. I don't think so, but I can't be
16 positive.

17 Q Okay. Did you participate in negotiating and
18 consummating a settlement between First Wall Street and LVLP?

19 A Could you refresh, somehow give me some more
20 information on that?

21 Q You know, let me --

22 A I remember delivering some \$15 payment that they
23 wanted in addition to some arrangement, to some other payment
24 that we had made, and I delivered it in cash.

25 THE COURT: \$15?

1 THE WITNESS: \$15, yeah.

2 THE COURT: Okay.

3 THE WITNESS: That was really being difficult. I
4 remember that. It was a very difficult personality, and I went
5 down and delivered the cash, but I don't remember what the
6 overall settlement was.

7 BY MR. MUIJE:

8 Q Well, we have a copy of that agreement. So give us
9 just a moment. I don't know whether it's admitted or not as we
10 sit here.

11 It is not. Let me suggest that we take a look at
12 Proposed Exhibit 50038.

13 THE COURT: If there's a stipulation, please let me
14 know; otherwise, Mr. Muije will try and lay a foundation.

15 (Pause in the proceedings.)

16 MR. MUIJE: I'll represent it appears to obtain --
17 contain multiple signatures that purport to be Barnet Liberman
18 on page 12.

19 (Pause in the proceedings.)

20 THE COURT: Is it stipulated to?

21 MR. EDWARDS: Well, we can only -- we've seen the
22 blank page, and we've seen the --

23 UNIDENTIFIED SPEAKER: The signature page.

24 THE COURT: I can't see any of it. So you all figure
25 it out.

1 MR. EDWARDS: I'm this much ahead of you.

2 (Indiscernible.)

3 (Pause in the proceedings.)

4 MR. EDWARDS: Your Honor, I think we can stipulate to
5 this.

6 MR. BLUT: As long as he signed it. I mean, he
7 could've already laid the foundation.

8 THE COURT: Mr. Liberman, does that contain your
9 signature?

10 Can you show him the page that might have his
11 signature on it.

12 MR. BOSCHEE: He was looking at it.

13 THE WITNESS: I was -- that I recognized as my
14 signature.

15 MR. BOSCHEE: Okay.

16 THE COURT: There appears to be a stipulation to its
17 admission then.

18 (Plaintiffs' Exhibit Number(s) 50038 admitted.)

19 MR. MUIJE: Very good. Thank you, Your Honor.

20 BY MR. MUIJE:

21 Q And let's look at the dates on that again if we
22 could, Mr. Liberman.

23 A I can't read those.

24 Q I think that goes back to page 2. It suggests
25 January 2010, but the actual date is not filled in. Does that

1 sound about right?

2 A I see no reason why it wouldn't be, but I don't
3 recall specifically.

4 Q Okay. And I'm just flipping through seeing if
5 anybody dated it.

6 It also contains payment provisions starting on
7 page 3.

8 A This page I'm looking at?

9 THE COURT: Which paragraph do you want blown up,
10 Mr. Muije?

11 MR. MUIJE: Starting with paragraph 2, which is about
12 halfway down the page, Your Honor.

13 THE COURT: There you go.

14 THE WITNESS: All right. I've read that.

15 BY MR. MUIJE:

16 Q Okay. What is the total settlement between LVLP and
17 First Wall Street in terms of dollar amount?

18 A That looks like \$375,000; two, seventy-five plus a
19 hundred.

20 Q And the one hundred is supposed to be paid
21 immediately; correct?

22 A That's what it states here.

23 Q And the additional two, seventy-five, goes pursuant
24 to the terms of a promissory note. Let's go look at
25 Exhibit 2 down below, and that would take us to page 20. If

1 you would look at the first half of that page, sir.

2 A Okay.

3 Q And that allows payments over a relatively modest
4 term, the first payment on February 1st, I believe, if you
5 scroll down, and the second one on June 1st.

6 MR. BLUT: So object. It misstates the document,
7 Your Honor.

8 THE COURT: Overruled.

9 BY MR. MUIJE:

10 Q Looking at subparagraph A, do you see that, sir?

11 A Yes. Paragraph A. Yes.

12 Q And Mr. Blut was right. The first four installments
13 on a monthly basis for February, March, April and May for
14 50,000 each; is that correct?

15 A It sounds like -- actually that sounds like five
16 installments to me.

17 Q Okay. Five installments. That would total two,
18 fifty, and then one final payment of 25,000 on July 1st
19 according to paragraph B. Is that correct?

20 A I don't know is it correct. That's exactly what it
21 says.

22 Q Okay. To your knowledge, were those payments made?

23 A I presume so, but I'd like to see, you know, some
24 evidence.

25 Q Nothing stands out in your mind that you were sued

1 for default on this promissory note, were you?

2 A Not that I recall.

3 Q Okay. And, in fact, looking back at the top of
4 page 20 of this admitted Exhibit 5038 (sic), it's on behalf of
5 Las Vegas Land Partners, but also individually on behalf of you
6 and Mr. Mitchell; is that correct?

7 A Yes, that's what it says. I think it also said that
8 in the agreement as well, didn't it?

9 Q Yeah, I believe so.

10 Do you know who made those payments?

11 A I believe it was Las Vegas Land Partners, but.

12 Q You're not sure as you sit here?

13 A I'm not sure.

14 Q So back in 2007, in July, when the escrow with Forest
15 City closed, I believe you testified that the 400 and some odd
16 thousand dollars reserved in escrow for Mr. Nype was after
17 taking into account the money you paid to First Wall Street.
18 Did I mishear you on that, sir?

19 A I probably made an error, but I think that's what I
20 said.

21 Q Okay. And, in fact, at the time that escrow closed,
22 it wouldn't be until more than two years later that First Wall
23 Street would have actually paid a settlement amount; correct?

24 A Could you repeat that.

25 Q It wouldn't be until two years after the close of the

1 escrow with Forest City in July of 2007 that you actually had
2 to come up with cash and pay a settlement to First Wall Street;
3 correct?

4 A Yes. That's correct.

5 Q Does that in any way change your testimony about how
6 you determined the amount to reserve in escrow for Mr. Nype in
7 July of 2007?

8 A Honestly I can't tell.

9 Q Okay. Let's fast forward a little bit in time and
10 look at another document that has been admitted into evidence.

11 MR. MUIJE: I'd ask my assistant to pull up 40046.

12 THE COURT: Has that been admitted?

13 MR. MUIJE: It has been admitted, Your Honor.

14 THE COURT: All right.

15 MR. MUIJE: At the top.

16 BY MR. MUIJE:

17 Q If you would read the first paragraph to yourself,
18 Mr. Liberman, perhaps to refresh your recollection.

19 A Yes.

20 Q Does that refresh your recollection as to what this
21 document may be?

22 A It says the personal guarantee of lease of David
23 Mitchell and myself for the benefit of 305 Las Vegas and
24 Heartland -- as landlord and Heartland Bank, a federal savings
25 bank as bank.

1 Q Okay. And just to verify that we're on the right
2 page here, let's go down to page 8 of the document. Is that
3 your signature, sir?

4 A Yes, that's my signature.

5 Q And on page 9. Do you recognize that signature?

6 A Well, it's not mine.

7 Q What line does it purport to --

8 A It says it's David Mitchell.

9 Q And does it look like Mr. Mitchell's?

10 A I'm not an expert, but, yes, it does.

11 Q Okay. So if I understand correctly, this was where
12 you and Mr. Mitchell guaranteed to the bank and to 305 that all
13 of the obligations under the casino Charleston lease would be
14 paid; is that correct?

15 A That's what the first paragraph said.

16 Q Okay. Do you have any reason to doubt that I'm (sic)
17 mischaracterizing this document?

18 A I haven't seen the whole thing, but I have no reason
19 to doubt it. I mean, it's --

20 Q If you want to read through it, I'd rather you read
21 through it and be correct as opposed to misstate something.

22 THE COURT: Would you like to read the whole
23 document, sir? You can take it back to page 1 and blow it up
24 in sections for you.

25 THE WITNESS: How many pages is it?

1 MR. MUIJE: About seven single spaced pages.

2 THE WITNESS: I'll presume it's -- I'll presume it's
3 correct.

4 MR. MUIJE: Okay. That'll help all of us. Thank
5 you.

6 THE WITNESS: That was easy.

7 THE COURT: It's okay, Brian.

8 MR. BLUT: It's been admitted into evidence; right?

9 THE COURT: Yeah, it has, yeah.

10 MR. BLUT: It has.

11 MR. BOSCHEE: Oh.

12 MR. BLUT: Okay. Just wondering.

13 BY MR. MUIJE:

14 Q Let's go ahead to document 40047.

15 THE COURT: And that one's admitted too; right?

16 MR. MUIJE: That's also admitted. Thank you. Yes,
17 Your Honor.

18 BY MR. MUIJE:

19 Q Do you want to read the first paragraph to refresh
20 your recollection on this?

21 A Sure.

22 Is this different from that last one?

23 Q It is.

24 A Gosh, I don't see a difference.

25 Q Well, I'll suggest that it doesn't include the bank

1 or -- actually, my mistake, it is the same. Somehow we picked
2 up two.

3 So let's move on. My mistake and my apologies.

4 A Accepted.

5 Q The only difference is it appears that it doesn't
6 include Mr. Mitchell's signature page, but other than that it
7 looks identical.

8 A I'll read all of this -- no. Okay.

9 Q Did you ever pay cash money to 305 Las Vegas, LLC, in
10 honoring this personal guarantee?

11 A The only cash money transaction I remember with this
12 entire set of transactions is the \$15 I paid First Wall Street.

13 Q Okay.

14 A That's the only cash money I paid.

15 Q So you didn't -- you weren't called upon or you
16 didn't call upon yourself to pay the \$12 million and some in
17 rent arrears to 305 Las Vegas?

18 A I don't have that much cash lying around. You don't
19 mean cash. You meant check. I mean, you mean --

20 Q You're correct.

21 A You're saying cash.

22 Q I'll say check, wire transfer, small bills.

23 A Well, okay. Okay. Okay. Well, I mean, you confused
24 me, but you did say cash though.

25 Q I apologize.

1 A All right.

2 Q I come from the old country where cash and checks and
3 everything are all the same.

4 A Okay. All right.

5 THE COURT: And you're talking about liquid funds?

6 BY MR. MUIJE:

7 Q Liquid funds that you personally paid to 305 as a
8 consequence of this personal guarantee?

9 A Not that I recall.

10 Q Okay. We.

11 THE WITNESS: Can I ask the indulgence of the Court?

12 THE COURT: You may. Would you like a break?

13 THE WITNESS: Yes, just so --

14 THE COURT: Absolutely. Five minutes?

15 THE WITNESS: Not even.

16 THE COURT: We'll all get up and walk around.

17 THE WITNESS: Sorry. Five. Wrong answer. Wrong
18 answer. Five, yes.

19 (Pceedings recessed at 3:12 p.m. until 3:13 p.m.)

20 (Pause in the proceedings.)

21 THE COURT: You ready?

22 MR. MUIJE: I'm ready, Your Honor.

23 (Pause in the proceedings.)

24 THE COURT: Okay, guys. Ready?

25 We're still missing Brian.

1 (Pause in the proceedings.)

2 THE COURT: All right. You ready?

3 Keep going, Mr. Muije. I'm going to stand up because
4 my back is hurting again.

5 MR. MUIJE: I understand that fully, Your Honor.
6 These chairs are not the best suited to degenerative backs.

7 BY MR. MUIJE:

8 Q Anyway, Mr. Liberman, so we've established you
9 unconditionally guaranteed casino Charleston lease obligations,
10 and we also established that you didn't pay anything on those
11 obligations?

12 A I think I said I didn't recall.

13 Q I think that you did not recall paying any.

14 A Right.

15 THE COURT: Except the \$15.

16 THE WITNESS: Right.

17 BY MR. MUIJE:

18 Q But that was to First Wall Street?

19 A Yes. In cash.

20 MR. MUIJE: And in point of fact, if we look at the
21 next admitted exhibit, Your Honor, 90069.

22 BY MR. MUIJE:

23 Q If you want to look at the first paragraph of that,
24 sir, to refresh your recollection, it has been admitted.

25 (Pause in the proceedings.)

1 BY MR. MUIJE:

2 Q What is that document entitled, Mr. Liberman?

3 A It says Release of Lease Guarantee.

4 Q Okay. And what's the date on that?

5 A Well, the date over here says December 18th, 2014.

6 Q Okay. And if we go to page 4, do you recognize the
7 two signatures on page 4 on behalf of the landlord?

8 A Yes.

9 Q And those are yours and Mr. Chamberlain's?

10 A That's mine, and it appears to me to be
11 Mr. Chamberlain's.

12 Q Okay. And then below that there's an individual
13 signature for yourself as well; correct?

14 A Yes.

15 Q And on page 5 we have an individual signature for
16 Mr. Mitchell; is that correct?

17 A Yes.

18 Q And now the date that's stated in this document was
19 actually after the trial in Mr. Nype's case against LVLP before
20 Judge Israel; isn't that correct?

21 THE COURT: After the trial?

22 MR. MUIJE: After the trial.

23 THE WITNESS: I -- I have no idea.

24 BY MR. MUIJE:

25 Q Okay. Would you doubt my representation having just

1 looked at the records that the trial commenced in October 2014?

2 MR. BOSCHEE: Objection. Asked and answered.

3 THE COURT: Overruled.

4 THE WITNESS: Okay.

5 THE COURT: You do not have to take his word for it,
6 but your best recollection should be your guide.

7 THE WITNESS: I have no recollection other than a
8 statement made by Mr. Muije, but that's from the trial -- there
9 was a decision -- I really don't recall.

10 BY MR. MUIJE:

11 Q Okay. Now, we've established the guarantees, and
12 we've established the release of the guarantees. I believe you
13 testified that you did not sue yourself on behalf of 305; is
14 that correct?

15 A I don't recall.

16 Q Can you point me at any evidence that says 305 versus
17 Barnet Liberman? A complaint, a lawsuit, anything?

18 A You're asking me to produce something?

19 Q I'm asking you if you can point me at a document
20 where you sued yourself.

21 A Oh. No.

22 Q And didn't it benefit you personally not to have 305
23 suing you?

24 A Yes.

25 Q Did you ever report to the limited partners of 305

1 that you elected not to sue yourself for 12 million plus
2 dollars?

3 A I personally did not report -- I don't know what the
4 accountant's notes were on the financial statements, but I
5 didn't do it.

6 Q Okay. Now, you did, as a general partner of 305 Las
7 Vegas choose to sue Mr. Mitchell; correct?

8 A I don't recall.

9 Q Did Mr. Mitchell ever pay monies directly to 305 Las
10 Vegas, LLC, based on his personal guarantee?

11 A Again, I'm sorry. I don't know.

12 Q Okay. But you did sign the document that released
13 Mr. Mitchell from his personal guarantee; correct?

14 A Isn't that what we just looked at here?

15 Q It's the same one we just looked at.

16 A Well, obviously I did, yes.

17 Q Okay. And he was your business partner at the time
18 that document was signed; correct? Mr. Mitchell was your
19 business partner in casino Charleston?

20 A Casino Charleston. I'm sorry. What are the dates
21 here?

22 Q This would be December 2014?

23 A In casino Charleston?

24 Q Correct.

25 A I'm not sure. There must be some document that

1 demonstrates --

2 Q No. Is there any doubt in your mind that the owners
3 of casino Charleston were yourself and Mr. Mitchell?

4 A Oh, there were no other owners other than David
5 Mitchell and myself of that partnership.

6 Q Okay.

7 A Of that limited liability company.

8 Q And so your decision not to enforce collection of the
9 personal guarantee against Mr. Mitchell, that lawsuit was
10 dismissed; right? You sued him, but you dismissed it when you
11 signed this release?

12 A I'm not -- I'm sorry. I'm a little confused. This
13 is all part of the -- it was one of the elements of the grand
14 settlement, wasn't it?

15 Q It was part of the settlement regarding the financial
16 difficulties that 305 and casino Charleston found themselves
17 in.

18 A Yeah. Okay. So now again in that context what was
19 your question? I'm sorry.

20 Q Well, again the question was he was your business
21 partner in casino Charleston at that time; correct?

22 A Yes.

23 Q And he was also your business partner in Las Vegas
24 Land Partners at that time; correct?

25 A Correct.

1 Q And so you were helping your business partner by not
2 enforcing a \$12 million personal guarantee against him;
3 correct?

4 MR. EDWARDS: Objection. Argumentative.

5 THE COURT: Overruled.

6 THE WITNESS: It's hard to give a one-word answer to
7 that. If I may.

8 THE COURT: We'll take a longer answer than one word
9 if you need it.

10 THE WITNESS: Okay. It was all part of the global
11 settlement where there were, you know, pluses and minuses for
12 all of the people who were a party to that settlement. To take
13 out one element and say here, well, either this or that is not
14 a fair way of looking at it.

15 BY MR. MUIJE:

16 Q What is the plus for the limited partners of 305 Las
17 Vegas?

18 A (No response.)

19 Q If they had enforced those personal guarantees, they
20 could have collected 12-point -- 12 million plus; right?

21 A And then they would have had a bankrupt general
22 partner, and the whole thing would have fallen apart. So the
23 plus is --

24 Q Are they --

25 A The plus is they continue to be part of -- keep in

1 mind this is -- I shouldn't be talking like that.

2 This is part of a larger limited partnership that has
3 Holdings beyond 305 Las Vegas.

4 Q In fact, the larger partnership 305 Associates in New
5 York has 30 plus million in assets; right?

6 A I'm not sure whether there was at this time.

7 Q Okay. And again, that document speaks for itself.
8 We have the audited financials.

9 Were the limited partners polled, or did they take a
10 vote on whether or not to release the personal guarantees?

11 A No.

12 Q Did you consult the limited partners on releasing the
13 personal guarantees?

14 A No.

15 Q When the deal started back in 2007, being a detail
16 man, you were aware that the Aquarius Plaza was only generating
17 approximately \$300,000 a year in rent; correct?

18 A I'm sorry. Being a what?

19 Q Being a savvy and sophisticated businessman, you must
20 have been aware that the Aquarius --

21 A You used some other term. What other term did you
22 use? I'm sorry. What was it?

23 Q Savvy, s-a-v-y (sic), and sophisticated businessman.

24 A No, before that. But nevermind.

25 I was aware that the rent obligation was less than

1 the rent being received. Was that the question?

2 Q That's where I'm going, but --

3 A Okay. All right.

4 Q -- the rent that was being received was about 300,000
5 a year at that time; correct?

6 A I believe so. I'm not certain.

7 Q Okay. And yet you signed a lease obligating
8 Charleston Casino Partners to pay \$2 million, 2 million plus a
9 year at that same time; correct?

10 A Yes.

11 Q So you must have known when that transaction occurred
12 that there was going to be \$1.7 million shortfall, at least in
13 the near term, if not in the long-term; correct?

14 A That's revealed by the numbers. So you can't --

15 Q And you wouldn't foolishly enter into a deal that was
16 losing \$1.7 million a year without open eyes; correct?

17 A That's correct.

18 Q Okay. So what was the purpose? To defraud Heartland
19 Bank?

20 MR. BLUT: Objection. Argumentative.

21 THE COURT: Overruled.

22 BY MR. MUIJE:

23 Q Is that what your purpose was, sir?

24 A I just said no.

25 Q Oh, okay. I didn't hear you. I'm sorry.

1 And I believe, I may have misheard, but I believe the
2 testimony was that Charleston Casino Partners never paid any
3 rent under this lease; is that correct?

4 MR. BLUT: Objection. Asked and answered.

5 THE WITNESS: I think my answer was --

6 THE COURT: Overruled.

7 THE WITNESS: -- I don't recall.

8 BY MR. MUIJE:

9 Q What was your answer again, sir?

10 A I don't recall.

11 THE COURT: He said I don't recall.

12 MR. MUIJE: Okay.

13 THE WITNESS: I'm sorry. Should I speak up louder.

14 Is that --

15 MR. MUIJE: If you could.

16 THE COURT: I think so.

17 THE WITNESS: I'm sorry.

18 THE COURT: It's all right, sir.

19 BY MR. MUIJE:

20 Q And you've owned lots of real property, not only
21 here, but in New York and other states as well; correct?

22 A Yes.

23 Q And along the many years have you ever had to evict a
24 tenant?

25 A Yes.

1 Q And that's a pretty quick summary process in most
2 states; correct, sir?

3 A Not in New York.

4 Q How long does it take?

5 A In excess of two years.

6 Q Okay. How about the other states where you've owned
7 the property, like Nevada? How --

8 A That's pretty quick.

9 Q Okay. Pretty quick, pretty cheap. You just produce
10 a sworn affidavit that they're not paying their rent, and the
11 Court takes them out; right?

12 A I don't know actually. Harry Marquis handles that
13 here for me.

14 Q Okay. Do you consider Mr. Marquis's bills for
15 evicting tenants excessive?

16 MR. BOSCHEE: Objection. Relevance.

17 THE COURT: Overruled.

18 THE WITNESS: No, I don't think they're excessive.

19 BY MR. MUIJE:

20 Q Approximately how much does he charge to --

21 A I can't recall.

22 Q Over \$10,000?

23 A I can't recall. That's my answer.

24 Q Do you ever recall paying him less than \$5,000 to
25 evict a tenant?

1 A Let me see if I can rephrase this: I don't recall.

2 Q Okay. But it's pretty quick; correct?

3 A I think I answered that.

4 Q I'm just verifying. I'm a little slow sometimes.

5 A Obviously.

6 Q And yet as a general partner of 305 Associates, which
7 was the owner and manager of 305 Las Vegas, you didn't make any
8 effort to evict Charleston Casino Partners for six years?

9 A No.

10 Q Okay. And the reason you didn't was because you
11 owned 50 percent of Charleston Casino Partners along with your
12 good friend Mr. Mitchell and had personally guaranteed the
13 rental obligations?

14 A I'm sorry. I didn't hear a question. Are you
15 waiting for me?

16 Q Yeah. I'm waiting for you.

17 Again, the reason you didn't choose to evict for over
18 six years was because you also owned 50 percent of the equity
19 in the tenant, and you had personally guaranteed all the rent
20 obligations; correct?

21 A Correct I guess is the question.

22 I'm not certain that was the entire reason, you know.

23 Q It was certainly part of the reason, wasn't it?

24 A Part of the reason was because I owned -- part of
25 it -- it was not solely up to me. So the partnership -- these

1 questions --

2 Q We can move along, sir. We can move along.

3 MR. MUIJE: I'd ask to let me verify whether it's
4 been admitted or not.

5 It has not, but it was offered by the Mitchell
6 defendants, and I would stipulate to its admission.

7 THE COURT: What's its number?

8 MR. MUIJE: 90054.

9 THE COURT: Any objection to 90054?

10 MR. EDWARDS: Can we see it?

11 (Pause in the proceedings.)

12 THE CLERK: I show that 90054 was admitted.

13 THE COURT: Everybody else thinks it's admitted.

14 MR. MUIJE: Very good.

15 UNIDENTIFIED SPEAKER: We'll stipulate again.

16 BY MR. MUIJE:

17 Q If we could look at the first page, the first
18 paragraph of that document, sir.

19 And who are the parties to this agreement?

20 A 305 Las Vegas, LLC, as landlord and Charleston Casino
21 Partners, LLC, as tenant.

22 Q Okay. And what is the document titled?

23 A Surrender and Termination Agreement.

24 Q Okay. And coming down to page 5, you signed in two
25 spots; isn't that correct?

1 A Yes.

2 Q Both as a landlord as well as a tenant; correct?

3 A Well, the landlord is 305 Las Vegas, and the tenant
4 is Charleston. And I signed as a member of both I guess.

5 Q Okay.

6 A Or a general partner of one and a member of the
7 other.

8 Q Okay.

9 A I'm not sure of my titles, but...

10 Q Sure. From the landlord side, your long-term friend
11 Mr. Chamberlain also signed; correct?

12 A Fifty years. Yes.

13 Q Okay. So you've known Mr. Chamberlain for 50 years?

14 A Uh-huh.

15 Q When did you first do a business deal with him?

16 A In 1968. '68.

17 UNIDENTIFIED SPEAKER: I thought it was '9, but it
18 was a long time ago.

19 THE WITNESS: November -- November of '68.

20 MR. BOSCHEE: You'll get your chance.

21 BY MR. MUIJE:

22 Q So your younger partner, on the tenant side,
23 Mr. Mitchell also signed this for the tenant; correct?

24 A Yes.

25 Q Okay.

1 THE WITNESS: '69, you're right.

2 BY MR. MUIJE:

3 Q And, in fact, not only does this agreement involve
4 the surrender of the possession of the property which
5 Mr. Marquis could have done through a summary eviction;
6 correct, but it also waives all future rent obligations; does
7 it not?

8 A I'm just looking at the first -- I mean --

9 Q Let's go back and look at paragraph 3, which I
10 believe is on page 2.

11 A I don't doubt you, but I can't attest to it.

12 Q Okay. On page 2 of paragraph 3.

13 A Yes.

14 Q Being a sophisticated property owner, there would
15 have been no defense on behalf of Charleston Casino Partners to
16 an eviction action; correct?

17 MR. BOSCHEE: Objection. Calls for a legal
18 conclusion.

19 THE COURT: Overruled. The owner can testify.

20 THE WITNESS: I'm sorry?

21 THE COURT: You can testify.

22 THE WITNESS: And the question was?

23 BY MR. MUIJE:

24 Q Charleston Casino Partners would have had no
25 fundamental defense to getting evicted if you had chosen to

1 evict them; correct?

2 A Actually, being a sophisticated real estate
3 owner-operator, the lawyers could always come up with
4 something.

5 Q And what would that buy them, three weeks?

6 A I have no idea. That's why they get paid as much as
7 they do.

8 Q But basically it's a foregone conclusion you would
9 have had the property relatively quickly; correct?

10 MR. EDWARDS: Calls for speculation.

11 THE COURT: Overruled.

12 THE WITNESS: I can't conclude that. I can't make
13 any conclusion.

14 BY MR. MUIJE:

15 Q So the decision to wrap up the deal and write off
16 this obligation benefited you personally; correct?

17 A (No response.)

18 Q In other words, you walked away from \$12.6 million,
19 which you had guaranteed?

20 A Yes. We had --

21 Q Okay. And --

22 A Was it something else we went over that was
23 different? Didn't we go over that already?

24 Q It was in a slightly different context.

25 A Oh, all right. Okay. Yes.

1 Q And same thing for Mr. Mitchell; he came out smelling
2 like a rose, so to speak, personally?

3 A I mean, for myself I obviously don't -- no longer had
4 that obligation.

5 Q And this occurred, again, let's look at the date in
6 the first paragraph.

7 A It was right there, September 15th. In that
8 paragraph. Let's see.

9 Q In mid-December of 2014; correct?

10 A It just said as of September 14th. Okay. I guess
11 this is the agreement, different than the calculation that --
12 okay.

13 Q And that was approximately two months after your
14 trial with Mr. Nype; correct?

15 A I don't recall the dates of the trial with Mr. Nype.

16 Q Okay. And did you inform the limited partners of
17 this resolution?

18 A Not that I recall, although it could have been in the
19 notes of the financial statement.

20 Q Okay. And there's another general partner of 305, is
21 there not?

22 A Yes, there is.

23 Q And between you and --

24 That's Mr. Chamberlain; correct?

25 A Yes, that is.

1 Q And between the two of you, you own 65 percent of
2 Second Avenue Associates -- 305 Second Avenue Associates?

3 A Approximately.

4 Q Okay. And he signed all these documents too, didn't
5 he?

6 The ones we've looked at we've had his signature on
7 virtually all of them. I'm not saying every document we looked
8 at today but the ones that involved this 305 settlement and the
9 305 lease?

10 A Yeah, we just looked at all that --

11 Q Okay. So I'm just confirming that your other general
12 partner was aware of these ongoings and acknowledged and agreed
13 to them and participated in them; correct?

14 A He executed them.

15 Q So it's pretty clear that you exercise domination,
16 control and influence over 305; correct?

17 MR. BOSCHEE: Objection. Calls for a legal
18 conclusion.

19 MR. EDWARDS: Objection. Calls for a legal
20 conclusion.

21 THE COURT: Sustained.

22 You guys were pretty fast too.

23 MR. MUIJE: And they were in harmony, Your Honor.

24 THE COURT: Yeah.

25 MR. BOSCHEE: We're part of a barbershop quartet too.

1 BY MR. MUIJE:

2 Q Were you aware that your counsel Mr. Blut had filed a
3 trial brief in this matter?

4 A I'm not familiar with the term. I wouldn't doubt it,
5 but, you know, I can't recall it at the moment. So I can't
6 confirm it.

7 Q Does he provide you copies of his filings when he
8 makes court filings?

9 MR. BLUT: Objection.

10 THE COURT: Overruled.

11 MR. BLUT: Calls for attorney-client privilege.

12 THE COURT: We don't want to know anything that your
13 attorney actually told you, but the fact of the conversation is
14 something that is not privileged.

15 So did you have conversations with your attorney, but
16 not the content?

17 THE WITNESS: I have conversations with my attorney.

18 BY MR. MUIJE:

19 Q And does he also provide you copies of publicly filed
20 court documents that he prepares on your behalf?

21 A I'm not sure of the question. Prepares them on
22 behalf -- is my signature on there?

23 Q No. No. He files with the court something called,
24 and I'll read the caption of it, Defendant Barnet Liberman and
25 Casino Coolidge, LLC's, trial brief.

1 Did he provide you a copy of that?

2 A The last time I had a trial was I think in 1975, and
3 I'm not really familiar with the term trial brief, but I am
4 sure that if it was something that -- I'm sure he would've sent
5 it to me. I don't remember the specific document, but I'm sure
6 he would've sent it to me.

7 Q Okay. And turning to page 8 of that trial brief --

8 THE COURT: No. We are not talking about the trial
9 brief with a witness.

10 MR. MUIJE: Okay.

11 THE COURT: That's a filing by counsel. Witnesses
12 aren't subject to examination on it.

13 Let's go.

14 THE WITNESS: Thank you.

15 BY MR. MUIJE:

16 Q Do you understand --

17 THE COURT: You don't have to thank me. I do it for
18 every witness.

19 Keep going.

20 BY MR. MUIJE:

21 Q How much was 305 Las Vegas, LLC, provided in terms of
22 initial capital?

23 A I can't recall.

24 Q Let's look at Exhibit 4029 (sic).

25 MR. MUIJE: Let me make sure that's admitted.

1 It is, Your Honor.

2 BY MR. MUIJE:

3 Q Have you had a chance to read the beginning of that
4 document, sir?

5 A Yes. I read what's on the screen.

6 Q Great. And if we could go to page 5, can you have a
7 quick glance at that, sir.

8 THE COURT: Do you need him to blow up parts of it,
9 sir?

10 THE WITNESS: No.

11 What do you want me to tell you?

12 BY MR. MUIJE:

13 Q Is that your signature?

14 A Yes.

15 Q And Mr. Chamberlain's?

16 A It looks like it.

17 Q Okay. And, in fact, they purport to be notarized
18 paragraphs by I believe it's the same notary as both you and
19 Mr. Chamberlain; is that correct?

20 A That's what it says here.

21 Q Okay. And so this was the promissory note that was
22 part of the deal when 305 bought the Charleston property from
23 LiveWork; is that correct?

24 A I believe so.

25 Q And, in fact, it purports to be a deed of trust note.

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1 So what does that mean to you? Does it mean that it's secured
2 by the real property?

3 A This deed of trust is like a western term. It's like
4 a mortgage.

5 Q Right.

6 A And so it's secured by the property.

7 Q Okay. And that was the same day, was it not --
8 actually, it was two days earlier, but it reflects the date of
9 May 2nd. It was signed on April 30th.

10 The May 2nd date is the same date that you signed
11 the lease on behalf of 305 and on behalf of casino Charleston
12 partners; correct?

13 A I don't recall, but if that's what it said on the
14 document that I just said was on my signature, I'm not going to
15 doubt it, but --

16 Q Good. That's what it says.

17 A -- why I'd be called upon. All right.

18 Q Now, going back to page 1 of this document, what are
19 the --

20 THE COURT: Is the highlighting from somebody who is
21 testifying?

22 MR. MUIJE: Highlighting paragraph Roman numeral I to
23 help us focus on it.

24 MR. BOSCHEE: No. The highlighting that's on the --

25 MR. MUIJE: I have no idea who put the highlighting

1 on the document. I couldn't care less about that.

2 THE COURT: Okay.

3 BY MR. MUIJE:

4 Q Does that refresh your recollection as to the amount
5 of the monthly payments required under the promissory note to
6 LiveWork?

7 A I actually don't recall, but that's what it says.

8 Q Okay. And ignoring the highlighting, does
9 paragraph 2 at the bottom of page 1 set forth an interest rate
10 on the amounts owed under the note?

11 A I'm sorry. What's the question?

12 Q Does it set forward an interest rate?

13 A Yes. That's what it says right here. It says it
14 right here, yeah.

15 Q And what is that interest rate?

16 A It says here 14.7 percent per annum.

17 Q Okay. Now, other than the \$700,000 payment made at
18 the time of closing, were any other amounts -- did you ever
19 cause 305 Vegas, LLC, to pay any other amounts against this
20 note?

21 A Not that I recall.

22 Q Did you ever foreclose on the subject real estate?

23 A I thought we did -- not that I recall.

24 Q Did 305 Las Vegas, LLC, have the money available to
25 pay its obligations under this note?

1 A I'm not certain.

2 Q If it had, would you have fulfilled its
3 obligations --

4 MR. BOSCHEE: Objection.

5 BY MR. MUIJE:

6 Q -- to make \$181,000 per month payments?

7 MR. BOSCHEE: Objection. Calls for speculation.

8 MR. BLUT: Join.

9 MR. EDWARDS: Join.

10 THE COURT: Overruled.

11 You can answer.

12 THE WITNESS: And the question again is?

13 BY MR. MUIJE:

14 Q Assuming that 305 Las Vegas, LLC, had the money in
15 the bank or access to the funds available, would you have
16 caused 305 Las Vegas, LLC, as its general partner, to pay its
17 obligations under the promissory note?

18 A So if we had the money available, would I -- I'm not
19 sure.

20 Q Okay. I will represent to you that based on the
21 books that we've seen of 305 Las Vegas, LLC, no payments were
22 made commencing in the summer of 2007 through 2013. Do you
23 have any reason to doubt that?

24 A I have no reason to doubt that.

25 Q Okay. In fact, in the summer of 2013 or early summer

1 or late spring --

2 Let me make sure the next exhibit has been admitted.

3 It has, 5004 -- I'm looking at the front page of
4 Admitted Exhibit 5004 (sic), and in the first half of the page
5 up there, we see a court case number and a caption which
6 indicates LiveWork, LLC, plaintiff, versus 305 Las Vegas, LLC,
7 defendant. Do you see that, sir?

8 A Yes.

9 Q And as a manager of Las Vegas Land Partners and
10 its --

11 THE COURT: It's 50004.

12 BY MR. MUIJE:

13 Q -- and its subsidiary LiveWork, LLC, did you guys
14 hire the law firm of Poley and Laball [phonetic] to file this
15 lawsuit on or about May 31st, 2013?

16 A You know, I really don't recall.

17 Q Okay.

18 A It's possible, but, I mean, it looks like it, but I
19 just don't have any recollection.

20 Q Okay. Let's go to page 3 if we can. And if we could
21 highlight and look at paragraph 14, go ahead and read that
22 carefully to yourself, sir.

23 Have you had a chance to read that?

24 A Hold on.

25 (Pause in the proceedings.)

1 THE WITNESS: Yes, okay.

2 BY MR. MUIJE:

3 Q Okay. So as of the date this lawsuit is filed, you
4 acting as a manager of LiveWork are seeking almost 10.4 million
5 from 305 Las Vegas, LLC, where you are a general partner of the
6 manager; correct?

7 A Yes.

8 Q Okay. And, in fact, it recites that interest
9 continues to accrue at \$2,942.04 a day. Do you see that, sir?

10 A Yes.

11 Q If we look back up at paragraph 12 very briefly, that
12 reflects the maturity date on the original note; correct?

13 A That's what it says here. It says that May 2nd,
14 2010, was the maturity date.

15 Q Now, in your many real estate endeavors over the
16 years, have you ever had to foreclose on a note?

17 A I don't think so.

18 Q Okay. Are you aware, as a real estate investor, that
19 when an obligor or a mortgage maker defaults on their
20 obligations under the note that foreclosure is one of the
21 remedies available to you?

22 A Under the mortgage?

23 Q Under the mortgage.

24 A Yeah, that's one of the remedies, yes.

25 Q Okay. Did you do anything as a general manager of

JD Reporting, Inc.

1 305 -- strike that -- as a manager of LiveWork to commence
2 foreclosure against 305?

3 A You're asking if LiveWork did anything?

4 Q Yes, started foreclosure against 305.

5 A Foreclosure?

6 Q Foreclosure as opposed to a lawsuit.

7 A I think that there's this funny law in the state of
8 Nevada where you can't do both. I think this one would've been
9 instead of. Is that right, instead of a --

10 Q No, I don't want to comment on a law, but I will say
11 prior to May 31st, 2013, you had 5 years, 11 months and a
12 couple of days to start foreclosure. Is there a reason you
13 chose not to?

14 MR. BOSCHEE: Objection. Calls for a legal
15 conclusion and misstates the law.

16 THE COURT: Overruled.

17 Can you tell us why you didn't start foreclosure?

18 THE WITNESS: Can I tell you why I didn't start
19 foreclosure... Well, why -- why LiveWork did not begin
20 foreclosure against 305?

21 I can't put all the pieces together to give you a
22 conclusive answer on that.

23 BY MR. MUIJE:

24 Q Okay. Is the reason that you didn't do that because
25 yourself and your business partner Mr. Mitchell had interests

1 in 305 on the one hand and casino Charleston on the other?

2 A I don't think that statement is true.

3 Q You owned 37 -- 42 and a half percent approximately
4 of Second Avenue Associates; right? 305 Second --

5 A Yes.

6 Q And Mr. Mitchell owned 50 percent, as did you in
7 casino Charleston; correct?

8 A Oh, I thought you had said that both Mr. Mitchell and
9 I owned parts of both.

10 Q No.

11 A I believe that's what you said, but that was not what
12 you meant.

13 Q If I misspoke, I apologize.

14 A Okay. All right. Okay. So you're asking is that
15 the reason, and I just said before I can't --

16 Q And I thought I might refresh your recollection --

17 A -- with the bank and the guarantee to the bank, I'm
18 not, you know -- for a lot of -- there were a lot of moving
19 pieces. I'm not sure of all of the reasoning at this point.

20 Q And when you take out a commercial loan with a bank
21 like Heartland --

22 You're familiar with multimillion dollar real estate
23 loans; correct?

24 A Yes.

25 Q Isn't usually one of the covenants that you are in

1 default if some other party starts foreclosure against the
2 mortgager or the borrower with the bank?

3 A Yeah, there's usually language like that.

4 Q Okay. And, in fact, both you and Mr. Mitchell had
5 personally guaranteed the obligations to Heartland; is that
6 correct?

7 A Yes, up until the point where we were released.

8 Q So enforcing LiveWork's rights against 305 would've
9 put you personally as well as 305 in default of its obligations
10 to Heartland; is that correct?

11 A Extending your -- your thesis, yes.

12 Q Okay. And was that one of the factors or reasons why
13 you didn't enforce --

14 A I think that might have been one -- that could have
15 been one of them.

16 Q And ultimately even despite filing this lawsuit that
17 we're looking at here, 305 never received a dime -- strike
18 that, LiveWork never received a dime as a result of that
19 promissory note after the initial \$700,000 downstroke in the
20 original escrow; is that correct?

21 A I believe that's correct.

22 Q And LiveWork never signed the settlement
23 documentation with Heartland Bank, did it?

24 A I don't know.

25 Q Can you show me any document where it did?

1 A No.

2 Q And couldn't you have used your role as a secured
3 lender on behalf of LiveWork to obtain an assignment of the
4 personal guarantee rights against yourself and against
5 Mr. Mitchell to assure that LiveWork would receive the money it
6 bargained for?

7 A I really don't understand the question.

8 Q In other words, instead of foreclosing, you could
9 have settled with 305 by accepting an assignment of the
10 personal guarantees. In other words, 305 says, we're out of
11 money; we can't afford at; but here's the guarantors; go after
12 them?

13 A I don't know what the legal constraints would be for
14 that. You know --

15 Q But if that were the case, that would in fact --

16 THE COURT: You've got to let him finish.

17 MR. MUIJE: I'm sorry.

18 THE COURT: Sir, were you done with your answer?

19 THE WITNESS: Yes. I'm not competent to answer
20 without, you know, advice of counsel as to what the
21 restrictions are or were in those documents to any of these
22 proposed actions that Mr. Muije has presented. I mean, there's
23 a lot of ifs, and I don't know what the constraints are or
24 were.

25 THE COURT: Okay. Thank you.

1 Mr. Muije, you're up.

2 BY MR. MUIJE:

3 Q Assuming you had done that, however, on behalf of
4 LiveWork, that would've been a significant negative impact on
5 both yourself and Mr. Mitchell; is that correct?

6 A I believe so. It seems as if that would be the case.

7 Q In fact, when you finally wrote off -- had LiveWork
8 write off on the books of 305, et cetera, write off the
9 obligation -- and remember that was part of the Heartland
10 settlement deal even though LiveWork did not consent, that was
11 about the time, in fact, two months after your trial wherein
12 Mr. Nype ultimately obtained a judgment against LVLP; correct?

13 A He didn't receive a judgment till way after that.

14 Q LVLP?

15 A And I don't want to -- as I said, I don't remember
16 the dates of the trial, but I know the judgment was like years
17 after that.

18 Q The judgment was entered in early April of 2015,
19 three and a half months later.

20 A How many months?

21 Q Pardon me? What's that?

22 A How many months later?

23 Q Three and a half months later, but the trial was in
24 October, 2014.

25 A 2014. Okay. So that's the first time you've

1 revealed that to me. 2014. And this is -- let me see when
2 this is.

3 Q The settlement is in December 2014.

4 A The settlement with Heartland?

5 Q Correct.

6 A That's December 2014, and this is --

7 Q The lawsuit, which had to be dismissed as a result of
8 the settlement with Heartland started in May 2013, this lawsuit
9 that we're looking at on the screen right now.

10 A (Indiscernible) by the lawsuit. For the -- Mr. Nype.
11 You're not referring to that?

12 Q No, I'm not.

13 A Okay.

14 Q Although that started in December of 2007; correct?

15 A Okay. That's what I thought. Okay. All right.

16 Q And, in fact, Mr. Nype countersued LVLP also in
17 December 2007; isn't that correct?

18 A I'm really not familiar with that date.

19 Q Okay. But the fact of the matter is LiveWork writes
20 off and walks away from this promissory note of which,
21 according to your own attorneys, \$10.8 million is owed for no
22 consideration two months after the trial of Mr. Nype's claims
23 against you?

24 MR. BLUT: Objection. Calls for a legal opinion on
25 consideration.

1 THE COURT: Overruled.

2 You can answer.

3 THE WITNESS: I'm too confused.

4 BY MR. MUIJE:

5 Q Okay. LiveWork walks away and --

6 A You said in 2007, and this is 2015, and you're saying
7 it's two months after?

8 Q The trial occurred in October 2014.

9 A Which trial?

10 Q Mr. Nype's trial against you.

11 A Oh, okay.

12 Q LVLP.

13 A But the suit began in '07.

14 Q Correct.

15 A Okay.

16 Q But I'm not talking, per se, about that lawsuit other
17 than to set the frame of reference that the trial occurred in
18 October 2014, and the settlement with Heartland and LiveWork
19 walking away and dismissing this lawsuit occurred two months
20 after your trial with Mr. Nype; correct?

21 A Well, you're just giving me those facts. So I'm
22 presuming you're giving correct facts.

23 Q I have every reason to believe they are correct.

24 A All right. So then...

25 Q Okay.

1 A I don't see how they're relevant, but...

2 Q Now, back on the original five blocks, you were
3 testifying in response to your counsel's questions about
4 acquiring this Las Vegas property, making deals with Forest
5 City.

6 Most of that property was not held in the name of
7 LVLP, was it?

8 A We -- no, most of it was not.

9 Q Okay. And let me check one thing here.

10 And in that context, the Forest City transaction
11 closed in July of 2007. Are we in agreement on that?

12 A June. I think it's June.

13 Q July 3rd.

14 A July 3rd?

15 Q Correct.

16 A Why is June 8th in my mind? All right. Whatever.
17 Okay.

18 Q The summer of 2007?

19 A Yes. Yes. Yes. Yes.

20 Q And LVLP decided to sue Mr. Nype in Las Vegas in
21 December of 2007; is that correct?

22 A I presume it is if you have the copies of the papers.
23 I mean, I'm not doubting the date. I think we had that up on
24 the screen.

25 Q No, what we have on the screen is --

1 A No, we had it. Didn't we have it?

2 Q I don't believe we ever had it.

3 A All right. Okay.

4 Q But I can pull it up if you want to look at it.

5 A All right. Well, whenever we filed the suit we filed
6 the suit; did we not.

7 Q Okay. Why did you choose to file suit against
8 Mr. Nype when he had not already filed suit against you?

9 A I think it was because the -- I'm not certain about
10 that. I think it had something to do with the Wall Street, but
11 there's obviously some friction between -- at some point being
12 obvious that there was some friction between Nype and Wall
13 Street, and I think to clarify things was one of the reasons we
14 filed that suit.

15 Q Let's look at Exhibit 33 again if we could, and let's
16 look at the bottom of page 1. I'll represent to you that this
17 is the Chicago Title Insurance settlement statement regarding
18 Casino Coolidge. Do you recall looking at that earlier when
19 Mr. Blut was asking you some questions about it?

20 A Yes. I looked at it earlier. I can't remember.

21 Q Okay. Now, at the bottom of the page, out of this
22 million dollar sale from Leah to Casino Coolidge, there's two
23 entries down there on the lower left. Could you read those
24 into the record, please.

25 A Amount due David Mitchell, \$250,000. Amount due

1 Barnet Liberman 91,000, 9, 34, 47.

2 Q Okay. So both you and Mr. Mitchell got personal
3 checks from escrow when the Casino Coolidge transaction went
4 down; is that correct?

5 A Correct. Well, that's what it says here.

6 Q You have no reason to doubt that escrow fulfilled its
7 obligations and issued those checks, do you?

8 A No.

9 MR. MUIJE: I have no further questions at this time,
10 Judge.

11 THE COURT: I have a couple of questions.

12 So, sir, can you tell me why a decision was made to
13 set aside a portion of the proceeds from the transaction with
14 Forest City for payment to Mr. Nype?

15 See, I'm asking you a big open-ended general question
16 so you can explain.

17 THE WITNESS: Well, the last time I tried to say it
18 was hearsay.

19 THE COURT: Don't tell me what other people told you.
20 Just tell me why you did it.

21 THE WITNESS: Okay. To remove Mr. Nype from any
22 further involvement in any of the transactions involving Forest
23 City, either as the marketing or consultant or broker in
24 anything that they had to do in Las Vegas.

25 THE COURT: And how was reserving a portion of the

1 funds from that escrow going to accomplish that?

2 THE WITNESS: We thought that was a -- [inaudible]
3 question -- we thought that was a fair amount, you know, to
4 satisfy him and allow us to move forward in our relationship
5 with Forest City.

6 THE COURT: Did you discuss with Mr. Nype whether
7 that was a fair amount?

8 THE WITNESS: Actually, I didn't.

9 THE COURT: Okay. Did Mr. Mitchell?

10 THE WITNESS: I believe so.

11 THE COURT: What did Mr. Mitchell tell you?

12 THE WITNESS: What did he tell me? Rusty, Mr. Nype
13 was a persistent, difficult personality, and I think we -- I
14 think. I can't be certain. I believe that it was our thought
15 that we were going to be able to get rid of him for that amount
16 of money.

17 THE COURT: What was his demand made before you chose
18 that amount?

19 THE WITNESS: I don't recall.

20 THE COURT: It was more than the \$400,000 you set
21 aside; right?

22 THE WITNESS: Most likely.

23 THE COURT: And you thought or at least someone
24 thought that that would be a satisfactory amount for him to go
25 away?

1 THE WITNESS: Yeah. It was -- yes.

2 THE COURT: Can you tell me why you thought that.

3 THE WITNESS: This was the whole litigation we had as
4 to whether he was due anything at all, which --

5 THE COURT: That doesn't matter to me.

6 THE WITNESS: I know.

7 THE COURT: There's a judgment. The Supreme Court
8 has affirmed it.

9 THE WITNESS: Right. It's there.

10 THE COURT: It's there.

11 THE WITNESS: Right. And I know. You asked me what
12 I -- you asked me what I felt.

13 THE COURT: I just want to know how you guys thought
14 400,000 was going to do it.

15 THE WITNESS: We, you know, it's the number we came
16 up with. I mean, it was -- he didn't -- (indiscernible) -- I
17 can't go into the whole other case because that's already
18 decided, but it wasn't decided then, and that's -- we felt
19 represented at that point a fair compensation for the work that
20 he had done.

21 THE COURT: Okay. So knowing that you have what I'll
22 call a contingent claim by Mr. Nype that could be very large
23 that wasn't going to be resolved soon, you set aside that
24 amount of money; right?

25 THE WITNESS: We actually didn't feel it wasn't going

1 to be resolved. So we thought that after a period of time he
2 would understand the wisdom of taking the money and being happy
3 with it. We did not -- we did not anticipate a long -- you
4 know, we didn't anticipate a lawsuit at that point.

5 THE COURT: Okay.

6 THE WITNESS: We anticipated some further
7 conversations perhaps.

8 THE COURT: So knowing there was that dispute with
9 Mr. Nype --

10 THE WITNESS: Yes.

11 THE COURT: -- and that you were setting aside a
12 small portion of what he was demanding, why did you --

13 THE WITNESS: I'm not sure of the number he was
14 demanding at that point.

15 THE COURT: Okay.

16 -- why did you decide it was a good idea to make a
17 distribution to yourself out of escrow of about \$10 million?

18 THE WITNESS: At that point?

19 THE COURT: Uh-huh.

20 THE WITNESS: So we could pay some of the obligations
21 we incurred in spending all the money to assemble all those
22 properties.

23 THE COURT: Okay. Tell me what those obligations
24 were. Because it was a personal distribution, correct, not a
25 business distribution?

1 THE WITNESS: Right. But we had, as I said, we had
2 borrowed from personal lines of credit from a number of banks
3 to enable us to generate the funds to assemble all those
4 properties.

5 THE COURT: Okay. Skip ahead with me to when
6 Heartland and (indiscernible) sued you in Missouri, and you've
7 got a couple of pieces of pending litigation here in Nevada.

8 THE WITNESS: Uh-huh.

9 THE COURT: Why did you decide to settle the case
10 with Heartland?

11 THE WITNESS: I'm not sure we decided uniquely to
12 settle it with Heartland. It was like a global settlement of
13 all of this, all those obligations. The market had crashed.
14 We had all gone. And as real estate developers, we're always
15 optimistic. We thought that the value would increase; we'd be
16 able to refinance and pay everything off. It didn't happen.
17 Everything crashed. And so there were all these different
18 elements which we could bring together at one point and have a
19 settlement among all the parties.

20 THE COURT: Was part of the litigation with Heartland
21 and the global settlement that was reached a refinance of the
22 Heartland obligation?

23 THE WITNESS: Yes. They -- we put up -- the parties
24 put up I think about almost \$3 million, and Heartland
25 reduced -- paid it off -- paid that out, and Heartland reduced

1 their mortgage to some extent beyond that.

2 THE COURT: They did a principal reduction?

3 THE WITNESS: Yes.

4 THE COURT: Okay. And as part of that resolution,
5 they made you release the lease and any lease guarantees and
6 all of the associated litigation with that; is that correct?

7 THE WITNESS: I'm not certain of the -- who demanded
8 what from whom in all that settlement, but that was a -- a
9 consequence of the global settlement was just what you said,
10 all those things. All those things occurred.

11 THE COURT: Well, a consequence of getting the loan
12 was having the lease with the lease guarantees; right?

13 THE WITNESS: The original loan?

14 THE COURT: Yes, with Heartland.

15 THE WITNESS: Yes. Yes.

16 THE COURT: Okay. And if you didn't have that lease
17 with the lease -- a long-term lease with the lease guarantees,
18 they weren't going to lend to you?

19 THE WITNESS: Most likely not, no. It was a
20 condition, I believe, yeah.

21 THE COURT: Right. Okay. Why did you make a
22 personal contribution in order to resolve the Heartland
23 litigation?

24 THE WITNESS: I think that was part of the
25 consideration for removing me from the guarantee to Heartland.

1 THE COURT: From the lease guarantee?

2 THE WITNESS: No, I think the note guarantee.

3 THE COURT: The note guarantee?

4 THE WITNESS: I believe, yes.

5 THE COURT: Okay.

6 THE WITNESS: To Heartland.

7 THE COURT: At some point in time Mr. Mitchell sent
8 an email that told someone, and I can't remember who it was
9 because it's been a lot of litigation here --

10 THE WITNESS: Yeah.

11 THE COURT: -- to no longer make deposits into the
12 signature account but instead to make deposits into the 305
13 account.

14 When was the first time you learned of his direction
15 on that?

16 THE WITNESS: Actually, I believe it was this week.

17 THE COURT: Okay. Then I won't ask you any more
18 questions about that.

19 All right. Thank you, sir.

20 THE WITNESS: Thank you.

21 THE COURT: Mr. Edwards.

22 MR. EDWARDS: Very quickly, Your Honor.

23 THE COURT: Maybe. It's 4:30.

24 MR. EDWARDS: Yes, that's true, Your Honor.

25 / / /

1 / / /

2 CROSS-EXAMINATION

3 BY MR. EDWARDS:

4 Q The --

5 MR. EDWARDS: I haven't started off very quickly here
6 (indiscernible).

7 THE COURT: And then you pause.

8 BY MR. EDWARDS:

9 Q The \$400,000 that you set aside in the escrow for
10 Mr. Nype, did that have any -- was there any tie between that
11 amount and the percentage that you would normally pay for your
12 net money that you made out of that deal?

13 A The amount that we had made on that deal, I can't
14 recall if that was the basis for it or not. I really don't
15 recall.

16 Q You netted \$10 million on the deal; is that correct?

17 A Yes.

18 Q And 400,000 would be 4 percent of the deal?

19 A Yes.

20 Q Is that a reasonable commission? In your experience
21 as a real estate developer --

22 A Yes.

23 Q -- would that be a reasonable --

24 A Yes. That probably was the basis for that number. I
25 couldn't figure it out when I was asked before, but now that

JD Reporting, Inc.

1 you refresh my memory, it was -- I believe that was the basis
2 of it, 4 percent. David thought that was a good number to
3 offer because it was what a commission would be on the
4 \$10 million. Right.

5 Q Was any of the -- we've talked, and I'm just going to
6 lump these things together if I'm allowed just to speed this
7 along, but were any of the lease forgiveness, the -- any of
8 your transactions on either the 305 property or the Casino
9 Coolidge property done in an effort to defraud Mr. Nype in any
10 way?

11 MR. MUIJE: Objection.

12 THE WITNESS: Absolutely not.

13 MR. MUIJE: Leading.

14 THE COURT: Overruled.

15 THE WITNESS: Absolutely not.

16 MR. EDWARDS: Thank you, Your Honor. That's all I
17 have.

18 THE COURT: Mr. Boschee.

19 MR. BOSCHEE: I have a little more than that. Let's
20 see if I can get this to work.

21 CROSS-EXAMINATION

22 BY MR. BOSCHEE:

23 Q We have -- you've been in court. We've been talking
24 about this settlement agreement a fair amount. Let me see if I
25 can pull it up.

1 There we go. Pretty big print. Can you see that?

2 A Yes.

3 Q All right.

4 MR. MUIJE: What's the document number on that?

5 MR. BOSCHEE: 8033.

6 MR. MUIJE: 8033.

7 MR. BOSCHEE: 80033. Sorry.

8 MR. MUIJE: Thank you.

9 BY MR. BOSCHEE:

10 Q And I will represent this is the settlement agreement
11 between Heartland Bank, yourself, Mitchell, 305 Second Avenue
12 Associates. Do you recognize this document, at least the
13 beginning of it?

14 A Yes.

15 Q Okay. And we can go to the end of it, but do you
16 recall signing this document?

17 A Yes.

18 Q Okay. Do you see at the top there August 29th,
19 2014?

20 A Yes.

21 Q In most years, does the month of August occur before
22 the month of October?

23 A (No response.)

24 Q To the best of your knowledge?

25 A To the best of my knowledge, yes.

1 Q Okay. The Judge asked you some specific questions as
2 to how this settlement agreement came about. Do you recall
3 that a few minutes ago?

4 A Yes.

5 Q Okay. To the best of your recollection, was anything
6 in this settlement done with the intent to defraud or hide
7 assets from Mr. Nype?

8 MR. MUIJE: Objection. Leading.

9 THE COURT: Overruled.

10 THE WITNESS: That was the last thing on my mind at
11 the time that we had to settle all of these matters.

12 MR. BOSCHEE: Okay.

13 THE WITNESS: Nothing was done with the intention of
14 hiding anything from Mr. Nype.

15 BY MR. BOSCHEE:

16 Q Did Mr. Nype have anything to do with the
17 305 purchase agreement with LiveWork back in 2007?

18 A No.

19 Q Okay. Now, we talked about this a little bit, and I
20 don't need to pull it up necessarily unless I have to, but the
21 Charleston Casino Partners deal with 305, it wasn't just a
22 straight tenancy, was it?

23 A No. It was a development.

24 Q Right. Well, what was -- let me ask you, what was
25 Charleston Casino going to do on that property, the best of

1 your recollection?

2 A Okay. Well, we were working very hard toward
3 constructing 1100 apartments, rental apartments on
4 Charleston -- at least Charleston Boulevard, and we had
5 architectural, structural engineering, soil, test wells,
6 Phase 1. We were going to develop, as I said briefly, the idea
7 being that we would increase the value with the development and
8 refinance and take out the obligations under the lease.

9 Q Okay. Was the development -- the development portion
10 of that agreement and all of this other -- all of the other
11 work you were describing, was that the reason that the lease
12 payments were so much larger than the 300,000?

13 A Yeah. Because that was -- exactly. It was an
14 investment in the development, not -- we weren't spending
15 \$2 million a month to collect \$30,000 a month. That wasn't our
16 business decision.

17 Q Okay.

18 A The business was to control the property, develop the
19 property and refinance the property to pay off all the
20 obligations.

21 Q Okay. Let me ask the \$64,000 question: Why didn't
22 Charleston Casino Partners ever pay rent to 305 Las Vegas?
23 If -- to the best of your recollection.

24 A Why didn't Charleston Casino -- because it didn't
25 generate the funds to do it. It didn't have the money to do

1 it.

2 Q Okay. And why didn't it have the funds to do it?
3 Why wasn't it able to do that?

4 A Well, we had not been successful in securing
5 financing to do the development. We had been successful in
6 getting the entitlements, but then the market fell apart. I
7 mean, it just -- the development market in Las Vegas was a
8 disaster, and we couldn't move forward.

9 Q Okay.

10 A We couldn't get investors to help cover those
11 obligations, and we couldn't get debt financing to help cover
12 those obligations.

13 Q Okay. You testified earlier that you personally took
14 out a line of credit -- the Judge made a note of it, L, slash,
15 C, in her notes -- personally to help with the development of
16 this Charleston Casino endeavor. Do you recall that?

17 A Yes.

18 Q Okay. And how much did you draw on that line of
19 credit? I don't think that ever came out.

20 A I believe we drew down a million and a half dollars.

21 Q Okay. And what was that million and a half dollars
22 used for?

23 A As I said, it was for the development of that
24 project.

25 Q Okay. It didn't pay any 305 obligations though, did

1 it? It didn't pay Heartland Bank or any personal Barnett
2 Liberman obligations, did it?

3 A No.

4 Q Okay. It was solely for Charleston Casino Partners's
5 obligations under that development lease agreement; right?

6 A Obligations -- the development of the property wasn't
7 a lease obligation.

8 Q Right. I understand.

9 A Okay. But it was for that property.

10 Q It was for the development --

11 A Right.

12 Q -- portion of the agreement; correct?

13 A Right.

14 Q Okay. You testified earlier, Mr. Muije asked you
15 what the benefit of the settlement agreement that's on your
16 screen was for the limited partners of 305. Do you remember
17 that?

18 A Yes. It held the world together.

19 Q Aside from that, 305, prior to this agreement, had
20 approximately between the LiveWork note and the Heartland Bank
21 note \$15 million of debt, didn't it?

22 A On those two items, yes.

23 Q Okay. And after this agreement it had four; right?

24 A It was reduced to four, yes.

25 Q So that's \$11 million less of debt. Would that be a

1 benefit to the limited partners of 305 Second Avenue
2 Associates?

3 A For sure.

4 Q Okay. Now, there was also a lot of questioning by
5 Mr. Muije of you of decisions that you made on behalf of 305
6 Second Avenue Associates. Do you recall that?

7 A Yes.

8 Q Okay. Did you solely make any decisions on behalf of
9 305 Second Avenue Associates?

10 A No.

11 Q Okay. Did you make -- in fact, were those decisions
12 at best made in conjunction with Mr. Chamberlain?

13 A Yes.

14 Q And, in fact, during this period of time, given your
15 relationship with all these entities, wasn't it -- isn't it
16 true that Mr. Chamberlain was actually directing most of the
17 activities of 305 Second Avenue Associates with respect to 305?

18 A Once that -- once that became -- yes.

19 Q Okay. There was also a line of questioning by
20 Mr. Muije about why there wasn't any effort undertaken by 305
21 to enforce the rental obligations of Charleston Casino. Do you
22 remember that?

23 A Yes.

24 Q Okay. And in part you've testified that one of the
25 reasons for that is because there wasn't any money available

1 because you weren't able to develop because of the economy;
2 correct?

3 A Exactly.

4 Q Okay. But isn't it also true that if Win Chamberlain
5 on behalf of 305 Second Avenue Associates enforces that and
6 puts the hammer down on you in part, doesn't that put a lot of
7 other obligations in New York City with your limited partners
8 and yourself in jeopardy?

9 MR. MUIJE: Objection. Calls for speculation.

10 THE COURT: Overruled.

11 You can answer.

12 THE WITNESS: Indeed, yes. The chaos -- it would
13 have been catastrophic for the partners, all of our other
14 properties. The defaulting under, you know, the general
15 partner, it would have been disastrous.

16 BY MR. BOSCHEE:

17 Q Okay. And as a result of all of that, the
18 negotiation starts with Heartland Bank. There's an obligation.
19 There's a rental obligation over here. There's a note
20 obligation over here with Las Vegas Land Partners, and all of
21 that goes away as a part of this settlement agreement; correct?

22 A Yes.

23 Q Okay. And that benefits not only Las Vegas Land
24 Partners, but also 305 Second Avenue Associates and all of its
25 limited partners, doesn't it?

1 A And Heartland Bank.

2 Q Correct.

3 MR. BOSCHEE: Nothing further, Your Honor -- let
4 me -- actually, hold on. Let me get this off before I do
5 something stupid like put my desktop back up there.

6 All right.

7 THE COURT: You okay now?

8 MR. BOSCHEE: Thank you.

9 MR. BLUT: Nothing further, Your Honor.

10 THE COURT: All right. Thank you.

11 MR. MUIJE: Your Honor, I have a couple of recross.

12 THE COURT: Okay. Quickly.

13 RE CROSS-EXAMINATION

14 BY MR. MUIJE:

15 Q We looked at that --

16 THE COURT: He's following -- he could be following
17 up on my questions. You never know.

18 MR. EDWARDS: Fair enough, Your Honor.

19 BY MR. MUIJE:

20 Q First and foremost, we looked at that proposed
21 settlement agreement. In fact, I have it up on my screen.
22 It's document 80033. I will represent to you that it is
23 unsigned by anybody, and it says Draft 8/19/2014.

24 In fact, that settlement agreement wasn't consummated
25 until November and December after the trial; correct?

1 A After which trial?

2 Q After Mr. Nype's trial against LVLP.

3 MR. BOSCHEE: I'm going to object to the question,
4 and then I'm looking at the signatures on page 23 right now.

5 MR. MUIJE: Okay.

6 THE COURT: The objection is sustained.

7 MR. MUIJE: Let me find those signatures because the
8 document -- okay. I see one from Mr. Mitchell. I was looking
9 at the attachments, Your Honor.

10 I stand corrected.

11 BY MR. MUIJE:

12 Q So it took a couple of months to consummate and
13 complete your obligations under the settlement agreement. Is
14 that a fair statement, sir?

15 A Yeah. There was a lot of, particularly with the
16 dissolution parts of it, there was a lot of going back and
17 forth.

18 Q Okay.

19 A But basically this is what was done except the
20 lawyers made a lot of money formalizing this.

21 Nothing personal.

22 Q Okay. Now, we also talked about -- Mr. Boschee asked
23 you about those personal promissory notes, back to Signature
24 Bank, and you said that was about 1.5 million that you took out
25 for developing the Charleston Casino Partners's property?

1 A I believe, yes.

2 Q Why was that run through LVLP if it was Charleston
3 Casino Partners's property?

4 A I'm not certain.

5 Q You also talked about the theoretical benefit to the
6 limited partners in renegotiating the Heartland loans, but my
7 recollection is you didn't consult the limited partners when
8 you did that deal. Am I wrong?

9 A No. You're correct, but I think you may want to look
10 at the partnership agreement then what the limited partners are
11 consulted about and to maintain their limited liability what
12 they should have a say about.

13 Q I didn't suggest they have a say. I suggested they
14 had a right to know, but you didn't let them know, did you?

15 A I believe in the financial statements there were
16 notes that informed them of all of it.

17 Q Didn't talk about the Heartland Bank?

18 A I don't know.

19 Q Now, again, it was suggested that Mr. Chamberlain was
20 a material part in all of these deals. How come he didn't
21 guarantee the Heartland Bank note or the Charleston Casino
22 Partners's lease obligation?

23 MR. BOSCHEE: Objection. Calls for speculation.

24 THE COURT: Sustained.

25 BY MR. MUIJE:

1 Q Were you ever told why nobody wanted
2 Mr. Chamberlain's personal guarantee on those documents?

3 MR. BOSCHEE: Objection. Calls for speculation and
4 hearsay.

5 THE COURT: Sustained as to hearsay.

6 BY MR. MUIJE:

7 Q Did you and Mr. Mitchell ever discuss getting
8 Mr. Chamberlain involved in those guarantees?

9 A No.

10 Q So the immediate personal benefit went to you and
11 Mr. Mitchell; correct? The personal benefit of signing the
12 guarantees?

13 A Yeah, of paying a modest amount to get out of
14 \$12 million guarantees.

15 MR. EDWARDS: Object to the form of the question.

16 THE COURT: Overruled.

17 BY MR. MUIJE:

18 Q How much did you pay towards the Heartland settlement
19 personally?

20 THE COURT: Not including attorney's fees.

21 THE WITNESS: Oh, thanks. I believe \$750,000.

22 BY MR. MUIJE:

23 Q Okay. But when we looked at financial statements for
24 305, residual lease obligation was 12, 3, wasn't it? That you
25 had personally guaranteed?

1 A The lease obligations, not the obligations to
2 Heartland; right?

3 Q No. You had guaranteed that the rents would be paid
4 by casino Charleston partners, and that was a joint guarantee
5 running in favor of 305 and Heartland.

6 A And Heartland, I'm confused.

7 Q I'm just --

8 A Heartland released us from -- I thought they only
9 released us from the obligation to pay on the personal
10 guarantee on that note, not the rent.

11 Q No. There was a release on the rent.

12 A The release was for the rent as well?

13 Q Yeah. We looked at that release previously.

14 A All right. So I'm sorry. What was the question?

15 Q So you paid \$750,000 to get off the \$12.3 million
16 personal guarantee; is that correct?

17 A Yeah, in the context of a global settlement of all of
18 it, yes. You know, yeah. You know, you are picking out one
19 piece of it. Yes.

20 Q But couldn't you have made a deal with Heartland
21 perhaps for a smaller reduction, and then 305 could have sued
22 you and gotten the rest of the money, and your limited partners
23 would have benefited --

24 A Well, didn't we all --

25 MR. BOSCHEE: Objection. Calls for speculation.

1 MR. BLUT: Objection --

2 MR. EDWARDS: Objection --

3 THE COURT: One at a time.

4 Sir, you've got to let Mr. Muije finish. And then
5 I've got to have objections, and then I'll let you answer.

6 Mr. Muije, could you finish.

7 MR. MUIJE: Let me rephrase it.

8 BY MR. MUIJE:

9 Q Wouldn't it have been possible to make a deal with
10 Heartland, maybe for a little less immediate benefit, and still
11 sue yourself and Mr. Mitchell with a greater net benefit to
12 305?

13 MR. BOSCHEE: Objection. Well, calls for speculation
14 on three fronts.

15 MR. BLUT: Join.

16 MR. EDWARDS: Join.

17 THE COURT: Overruled.

18 Sir, you were involved in the negotiations. So I'm
19 going to let you answer the question.

20 THE WITNESS: I don't think so.

21 MR. MUIJE: Now, the last recross, Your Honor. Let's
22 see if I can pull up 4007 (sic) again.

23 THE COURT: And then we're breaking.

24 MR. MUIJE: Understood. That's why I tried to keep
25 it quick.

1 / / /

2 BY MR. MUIJE:

3 Q If we could look down at the bottom of the second
4 page there -- the bottom of the third page, my apologies. And
5 look at the line that says, Funds held. Would you read that to
6 the Court.

7 A Funds held?

8 Q Right.

9 A Funds held.

10 Q Okay. The next line.

11 A Funds -- sorry?

12 Q Read the next line under funds.

13 A Funds held. N-Y-P-E withhold four months after close
14 of escrow.

15 Q Okay. And what's the amount?

16 A It says four, thirty, sixty-eight.

17 Q Okay. Now, Mr. Boschee elicited a hypothetical as to
18 how that was calculated. Wasn't the deal with First Wall
19 Street 4 percent of the total transaction, not 4 percent of the
20 net transaction?

21 A There were different -- if I recall, First Wall
22 Street had a percentage for that and a percentage for equity.

23 Q Okay. But it would've been a lot more than 430,000;
24 correct?

25 A I'm not sure.

1 Q Okay. And isn't it true that you guys were made
2 aware that Mr. Nype was looking for north of \$5 million after
3 the Forest City deal closed?

4 A No.

5 Q Mr. Mitchell --

6 A Oh, after?

7 Q Yeah.

8 A At some point, yes, when we began this lawsuit, but
9 not, nowhere around this time was a number of that nature ever,
10 to my knowledge, ever presented.

11 Q Is it possible that Mr. Nype presented those kind of
12 numbers to Mr. Mitchell?

13 MR. BLUT: Calls for speculation.

14 MR. EDWARDS: Calls for speculation.

15 THE COURT: Sustained.

16 BY MR. MUIJE:

17 Q Did Mr. Nype, to your knowledge, present a \$5 million
18 number to Mr. Mitchell?

19 A Not that I recall.

20 Q Nothing he told you about; correct?

21 A That's what I said. Not that I recall.

22 MR. MUIJE: Okay. Nothing further, Judge.

23 THE COURT: Anybody had else have anything --

24 MR. BOSCHEE: Nope.

25 MR. BLUT: No.

1 THE COURT: -- or does he need to come back on the
2 witness stand?

3 Then, sir, you are released from your testimony
4 (sic). You can appear tomorrow to sit in a more comfortable
5 chair down next to your counsel.

6 THE WITNESS: Yeah, this is uncomfortable, this
7 really is.

8 THE COURT: All right.

9 THE WITNESS: I've got sympathy for --

10 THE COURT: What's the plan for tomorrow?

11 MR. BOSCHEE: What time are we starting?

12 THE COURT: 9:00.

13 MR. BOSCHEE: Okay. Are you sure?

14 MR. MUIJE: I'm assuming --

15 THE COURT: But only if you show up.

16 MR. BOSCHEE: That's right, Your Honor. I knew that
17 was coming.

18 MR. MUIJE: I'm assuming -- Mr. Chamberlain I think
19 had to get back tomorrow night.

20 MR. BOSCHEE: No, it's Mr. Mitchell, and then
21 Mr. Chamberlain is Saturday morning.

22 MR. MUIJE: Is it Mr. Mitchell?

23 MR. BOSCHEE: We've got to get them both done
24 tomorrow.

25 MR. MUIJE: Whichever one leaves first I'd to say we

1 should go first in case there's any glitches in the --

2 THE COURT: Okay. I've still got to break at
3 4:45 tomorrow. I do have an 11:45, but it will be short. So
4 we can start probably at 1:00 o'clock because I don't think we
5 have a conference call at 1:00 tomorrow. Okay?

6 MR. BOSCHEE: Cool.

7 THE COURT: Have a good night.

8 ATTORNEYS: Very good. Thank you, Your Honor.

9 THE COURT: Have a nice evening.

10 (Proceedings concluded for the evening at 4:47 p.m.)

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I AFFIRM THAT THIS TRANSCRIPT DOES NOT CONTAIN THE SOCIAL
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DANA L. WILLIAMS, TRANSCRIBER

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