

IN THE SUPREME COURT OF THE STATE OF NEVADA

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

Petitioners,

vs.

THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF CLARK; AND THE HONORABLE CONNIE J. STEINHEIMER,

Respondents,

and

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

Real Party in Interest.

Case No. Electronically Filed
Dec 03 2020 01:35 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

PETITIONERS' APPENDIX,
VOLUME 45
(Nos. 7667-7893)

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| Reply in Support of Countermotion for Sanctions and to Compel Resetting of 30(b)(6) Deposition of Hodgson Russ LLP (filed 08/09/2017) | | Vol. 11, 1735–1740 |
| Minutes of August 10, 2017 hearing on Motion to Quash Subpoena, or, in the Alternative, for a Protective Order Precluding Trustee from Seeking Discovery from Hodgson Russ LLP, and Opposition to Motion for Sanctions (filed 08/11/2017) | | Vol. 11, 1741–1742 |
| Recommendation for Order RE: <i>Defendants’ Motion to Quash Subpoena, or, in the Alternative, for a Protective Order Precluding Trustee from Seeking Discovery from Hodgson Russ LLP</i> , filed on July 18, 2017 (filed 08/17/2017) | | Vol. 11, 1743–1753 |
| Motion for Partial Summary Judgment (filed 08/17/2017) | | Vol. 11, 1754–1796 |
| Statement of Undisputed Facts in Support of Motion for Partial Summary Judgment (filed 08/17/2017) | | Vol. 11, 1797–1825 |
| Exhibits to Statement of Undisputed Facts in Support of Motion for Partial Summary Judgment | | |
| Exhibit | Document Description | |
| 1 | Declaration of Timothy P. Herbst in Support of Separate Statement of Undisputed Facts in Support of Motion for Partial Summary Judgment | Vol. 12, 1826–1829 |
| 2 | Findings of Fact, Conclusions of Law, and Judgment in <i>Consolidated Nevada Corp., et al v. JH. et al.</i> ; Case No. CV07-02764 (filed 10/12/2010) | Vol. 12, 1830–1846 |
| 3 | Judgment in <i>Consolidated Nevada Corp., et al v. JH. et al.</i> ; Case No. CV07-02764 (filed 08/23/2011) | Vol. 12, 1847–1849 |

| <u>DOCUMENT DESCRIPTION</u> | | <u>LOCATION</u> |
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| Exhibits to Statement of Undisputed Facts (cont.) | | |
| 4 | Excerpted Transcript of July 12, 2017 Deposition of Garry M. Graber | Vol. 12, 1850–1852 |
| 5 | September 15, 2015 email from Yalamanchili RE: Follow Up Thoughts | Vol. 12, 1853–1854 |
| 6 | September 23, 2010 email between Garry M. Graber and P. Morabito | Vol. 12, 1855–1857 |
| 7 | September 20, 2010 email between Yalamanchili and Eileen Crotty RE: Morabito Wire | Vol. 12, 1858–1861 |
| 8 | September 20, 2010 email between Yalamanchili and Garry M. Graber RE: All Mortgage Balances as of 9/20/2010 | Vol. 12, 1862–1863 |
| 9 | September 20, 2010 email from Garry M. Graber RE: Call | Vol. 12, 1864–1867 |
| 10 | September 20, 2010 email from P. Morabito to Dennis and Yalamanchili RE: Attorney client privileged communication | Vol. 12, 1868–1870 |
| 11 | September 20, 2010 email string RE: Attorney client privileged communication | Vol. 12, 1871–1875 |
| 12 | Appraisal of Real Property: 370 Los Olivos, Laguna Beach, CA, as of Sept. 24, 2010 | Vol. 12, 1876–1903 |
| 13 | Excerpted Transcript of March 21, 2016 Deposition of P. Morabito | Vol. 12, 1904–1919 |
| 14 | P. Morabito Redacted Investment and Bank Report from Sept. 1 to Sept. 30, 2010 | Vol. 12, 1920–1922 |
| 15 | Excerpted Transcript of June 25, 2015 Deposition of 341 Meeting of Creditors | Vol. 12, 1923–1927 |
| 16 | Excerpted Transcript of December 5, 2015 Deposition of P. Morabito | Vol. 12, 1928–1952 |

| <u>DOCUMENT DESCRIPTION</u> | | <u>LOCATION</u> |
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| Exhibits to Statement of Undisputed Facts (cont.) | | |
| 17 | Purchase and Sale Agreement between Arcadia Trust and Bayuk Trust entered effective as of Sept. 27, 2010 | Vol. 12, 1953–1961 |
| 18 | First Amendment to Purchase and Sale Agreement between Arcadia Trust and Bayuk Trust entered effective as of Sept. 28, 2010 | Vol. 12, 1962–1964 |
| 19 | Appraisal Report providing market value estimate of real property located at 8355 Panorama Drive, Reno, NV as of Dec. 7, 2011 | Vol. 12, 1965–1995 |
| 20 | An Appraisal of a vacant .977± Acre Parcel of Industrial Land Located at 49 Clayton Place West of the Pyramid Highway (State Route 445) Sparks, Washoe County, Nevada and a single-family residence located at 8355 Panorama Drive Reno, Washoe County, Nevada 89511 as of October 1, 2010 a retrospective date | Vol. 13, 1996–2073 |
| 21 | APN: 040-620-09 Declaration of Value (dated 12/31/2012) | Vol. 14, 2074–2075 |
| 22 | Sellers Closing Statement for real property located at 8355 Panorama Drive, Reno, NV 89511 | Vol. 14, 2076–2077 |
| 23 | Bill of Sale for real property located at 8355 Panorama Drive, Reno, NV 89511 | Vol. 14, 2078–2082 |
| 24 | Operating Agreement of Baruk Properties LLC | Vol. 14, 2083–2093 |
| 25 | Edward Bayuk, as trustee of the Edward William Bayuk Living Trust's Answer to Plaintiff's First Set of Interrogatories (dated 09/14/2014) | Vol. 14, 2094–2104 |
| 26 | Summary Appraisal Report of real property located at 1461 Glenneyre Street, Laguna Beach, CA 92651, as of Sept. 25, 2010 | Vol. 14, 2105–2155 |

| <u>DOCUMENT DESCRIPTION</u> | | <u>LOCATION</u> |
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| Exhibits to Statement of Undisputed Facts (cont.) | | |
| 27 | Appraisal of Real Property as of Sept. 23, 2010: 1254 Mary Fleming Circle, Palm Springs, CA 92262 | Vol. 15, 2156–2185 |
| 28 | Appraisal of Real Property as of Sept. 23, 2010: 1254 Mary Fleming Circle, Palm Springs, CA 92262 | Vol. 15, 2186–2216 |
| 29 | Membership Interest Transfer Agreement between Arcadia Trust and Bayuk Trust entered effective as of Oct. 1, 2010 | Vol. 15, 2217–2224 |
| 30 | PROMISSORY NOTE [Edward William Bayuk Living Trust (“Borrower”) promises to pay Arcadia Living Trust (“Lender”) the principal sum of \$1,617,050.00, plus applicable interest] (dated 10/01/2010) | Vol. 15, 2225–2228 |
| 31 | Certificate of Merger dated Oct. 4, 2010 | Vol. 15, 2229–2230 |
| 32 | Articles of Merger Document No. 20100746864-78 (recorded date 10/04/2010) | Vol. 15, 2231–2241 |
| 33 | Excerpted Transcript of September 28, 2015 Deposition of Edward William Bayuk | Vol. 15, 2242–2256 |
| 34 | Grant Deed for real property 1254 Mary Fleming Circle, Palm Springs, CA 92262; APN: 507-520-015 (recorded 11/04/2010) | Vol. 15, 2257–2258 |
| 35 | General Conveyance made as of Oct. 31, 2010 between Woodland Heights Limited (“Vendor”) and Arcadia Living Trust (“Purchaser”) | Vol. 15, 2259–2265 |
| 36 | Appraisal of Real Property as of Sept. 24, 2010: 371 El Camino Del Mar, Laguna Beach, CA 92651 | Vol. 15, 2266–2292 |

| <u>DOCUMENT DESCRIPTION</u> | | <u>LOCATION</u> |
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| Exhibits to Statement of Undisputed Facts (cont.) | | |
| 37 | Excerpted Transcript of December 6, 2016 Deposition of P. Morabito | Vol. 15, 2293–2295 |
| 38 | Page intentionally left blank | Vol. 15, 2296–2297 |
| 39 | Ledger of Edward Bayuk to P. Morabito | Vol. 15, 2298–2300 |
| 40 | Loan Calculator: Payment Amount (Standard Loan Amortization) | Vol. 15, 2301–2304 |
| 41 | Payment Schedule of Edward Bayuk Note in Favor of P. Morabito | Vol. 15, 2305–2308 |
| 42 | November 10, 2011 email from Vacco RE: Baruk Properties, LLC/P. Morabito/Bank of America, N.A. | Vol. 15, 2309–2312 |
| 43 | May 23, 2012 email from Vacco to Steve Peek RE: Formal Settlement Proposal to resolve the Morabito matter | Vol. 15, 2313–2319 |
| 44 | Excerpted Transcript of March 12, 2015 Deposition of 341 Meeting of Creditors | Vol. 15, 2320–2326 |
| 45 | Shareholder Interest Purchase Agreement between P. Morabito and Snowshoe Petroleum, Inc. (dated 09/30/2010) | Vol. 15, 2327–2332 |
| 46 | P. Morabito Statement of Assets & Liabilities as of May 5, 2009 | Vol. 15, 2333–2334 |
| 47 | March 10, 2010 email from Naz Afshar, CPA to Darren Takemoto, CPA RE: Current Personal Financial Statement | Vol. 15, 2335–2337 |
| 48 | March 10, 2010 email from P. Morabito to Jon RE: ExxonMobil CIM for Florida and associated maps | Vol. 15, 2338–2339 |

| <u>DOCUMENT DESCRIPTION</u> | | <u>LOCATION</u> |
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| Exhibits to Statement of Undisputed Facts (cont.) | | |
| 49 | March 20, 2010 email from P. Morabito to Vacco RE: proceed with placing binding bid on June 22nd with ExxonMobil | Vol. 15, 2340–2341 |
| 50 | P. Morabito Statement of Assets & Liabilities as of May 30, 2010 | Vol. 15, 2342–2343 |
| 51 | June 28, 2010 email from P. Morabito to George R. Garner RE: ExxonMobil Chicago Market Business Plan Review | Vol. 15, 2344–2345 |
| 52 | Plan of Merger of Consolidated Western Corp. with and into Superpumper, Inc. (dated 09/28/2010) | Vol. 15, 2346–2364 |
| 53 | Page intentionally left blank | Vol. 15, 2365–2366 |
| 54 | BBVA Compass Proposed Request on behalf of Superpumper, Inc. (dated 12/15/2010) | Vol. 15, 2367–2397 |
| 55 | Business Valuation Agreement between Matrix Capital Markets Group, Inc. and Superpumper, Inc. (dated 09/30/2010) | Vol. 15, 2398–2434 |
| 56 | Expert report of James L. McGovern, CPA/CFF, CVA (dated 01/25/2016) | Vol. 16, 2435–2509 |
| 57 | June 18, 2014 email from Sam Morabito to Michael Vanek RE: SPI Analysis | Vol. 17, 2510–2511 |
| 58 | Declaration of P. Morabito in Support of Opposition to Motion of JH, Inc., Jerry Herbst, and Berry-Hinckley Industries for Order Prohibiting Debtor from Using, Acquiring, or Disposing of or Transferring Assets Pursuant to 11 U.S.C. §§ 105 and 303(f) Pending Appointment of Trustee; Case No. BK-N-13-51237 (filed 07/01/2013) | Vol. 17, 2512–2516 |

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

| <u>DOCUMENT DESCRIPTION</u> | | <u>LOCATION</u> |
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| Exhibits to Statement of Undisputed Facts (cont.) | | |
| 69 | Excerpted Transcript of July 10, 2017 Deposition of Dennis C. Vacco | Vol. 17, 2573–2579 |
| 70 | April 15, 2011 email from P. Morabito to Christian Lovelace; Gregory Ivancic; Vacco RE: \$65 million loan offer from Cerberus | Vol. 17, 2580–2582 |
| 71 | Email from Vacco to P. Morabito RE: \$2 million second mortgage on the Reno house | Vol. 17, 2583–2584 |
| 72 | Email from Vacco to P. Morabito RE: Tim Haves | Vol. 17, 2585–2586 |
| 73 | Settlement Agreement, Loan Agreement Modification & Release dated as of Sept. 7, 2012, entered into by Bank of America and P. Morabito | Vol. 17, 2587–2595 |
| 74 | Page intentionally left blank | Vol. 17, 2596–2597 |
| 75 | February 10, 2012 email from Vacco to Paul Wells and Timothy Haves RE: 1461 Glenneyre Street, Laguna Beach – Sale | Vol. 17, 2598–2602 |
| 76 | May 8, 2012 email from P. Morabito to Vacco RE: Proceed with the corporate set-up with Ray, Edward and P. Morabito | Vol. 17, 2603–2604 |
| 77 | September 4, 2012 email from Vacco to Edward Bayuk RE: Second Deed of Trust documents | Vol. 17, 2605–2606 |
| 78 | September 18, 2012 email from P. Morabito to Edward Bayuk RE: Deed of Trust | Vol. 17, 2607–2611 |
| 79 | October 3, 2012 email from Vacco to P. Morabito RE: Term Sheet on both real estate deal and option | Vol. 17, 2612–2614 |
| 80 | March 14, 2013 email from P. Morabito to Vacco RE: BHI Hinckley | Vol. 17, 2615–2616 |
| 81 | Page intentionally left blank | Vol. 17, 2617–2618 |

| <u>DOCUMENT DESCRIPTION</u> | | <u>LOCATION</u> |
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| Exhibits to Statement of Undisputed Facts (cont.) | | |
| 82 | November 11, 2011 email from Vacco to P. Morabito RE: Trevor's commitment to sign | Vol. 17, 2619–2620 |
| 83 | November 28, 2011 email string RE: Wiring \$560,000 to Lippes Mathias | Vol. 17, 2621–2623 |
| 84 | Page intentionally left blank | Vol. 17, 2624–2625 |
| 85 | Page intentionally left blank | Vol. 17, 2626–2627 |
| 86 | Order for Relief Under Chapter 7; Case No. BK-N-13-51236 (filed 12/22/2014) | Vol. 17, 2628–2634 |
| 87 | Report of Undisputed Election (11 U.S.C § 702); Case No. BK-N-13-51237 (filed 01/23/2015) | Vol. 17, 2635–2637 |
| 88 | Amended Stipulation and Order to Substitute a Party to NRCP 17(a) (filed 06/11/2015) | Vol. 17, 2638–2642 |
| 89 | Membership Interest Purchase Agreement, entered into as of Oct. 6, 2010 between P. Morabito and Edward Bayuk | Vol. 17, 2643–2648 |
| 90 | Complaint; Case No. BK-N-13-51237 (filed 10/15/2015) | Vol. 17, 2649–2686 |
| 91 | Fifth Amendment and Restatement of the Trust Agreement for the Arcadia Living Trust (dated 09/30/2010) | Vol. 17, 2687–2726 |
| Objection to Recommendation for Order filed August 17, 2017 (filed 08/28/2017) | | Vol. 18, 2727–2734 |
| Exhibit to Objection to Recommendation for Order | | |
| Exhibit | Document Description | |
| 1 | Plaintiff's counsel's Jan. 24, 2017, email memorializing the discovery dispute agreement | Vol. 18, 2735–2736 |

| <u>DOCUMENT DESCRIPTION</u> | | <u>LOCATION</u> |
|---|--|------------------------|
| Opposition to Objection to Recommendation for Order filed August 17, 2017 (filed 09/05/2017) | | Vol. 18, 2737–2748 |
| Exhibit to Opposition to Objection to Recommendation for Order | | |
| Exhibit | Document Description | |
| A | Declaration of Teresa M. Pilatowicz, Esq., in Support of Opposition to Objection to Recommendation for Order (filed 09/05/2017) | Vol. 18, 2749–2752 |
| Reply to Opposition to Objection to Recommendation for Order filed August 17, 2017 (dated 09/15/2017) | | Vol. 18, 2753–2758 |
| Defendants’ Opposition to Plaintiff’s Motion for Partial Summary Judgment (filed 09/22/2017) | | Vol. 18, 2759–2774 |
| Defendants’ Separate Statement of Disputed Facts in Support of Opposition to Plaintiff’s Motion for Partial Summary Judgment (filed 09/22/2017) | | Vol. 18, 2775–2790 |
| Exhibits to Defendants’ Separate Statement of Disputed Facts in Support of Opposition to Plaintiff’s Motion for Partial Summary Judgment | | |
| Exhibit | Document Description | |
| 1 | Judgment in <i>Consolidated Nevada Corp., et al v. JH. et al.</i> ; Case No. CV07-02764 (filed 08/23/2011) | Vol. 18, 2791–2793 |
| 2 | Excerpted Transcript of October 20, 2015 Deposition of Dennis C. Vacco | Vol. 18, 2794–2810 |
| 3 | Order Denying Motion to Dismiss Involuntary Chapter 7 Petition and Suspending Proceedings Pursuant to 11 U.S.C §305(a)(1); Case No. BK-N-13-51237 (filed 12/17/2013) | Vol. 18, 2811–2814 |

| <u>DOCUMENT DESCRIPTION</u> | | <u>LOCATION</u> |
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| Exhibits to Defendants' Separate Statement of Disputed Facts (cont.) | | |
| 4 | Excerpted Transcript of March 21, 2016 Deposition of P. Morabito | Vol. 18, 2815–2826 |
| 5 | Excerpted Transcript of September 28, 2015 Deposition of Edward William Bayuk | Vol. 18, 2827–2857 |
| 6 | Appraisal | Vol. 18, 2858–2859 |
| 7 | Budget Summary as of Jan. 7, 2016 | Vol. 18, 2860–2862 |
| 8 | Excerpted Transcript of March 24, 2016 Deposition of Dennis Banks | Vol. 18, 2863–2871 |
| 9 | Excerpted Transcript of March 22, 2016 Deposition of Michael Sewitz | Vol. 18, 2872–2879 |
| 10 | Excerpted Transcript of April 27, 2011 Deposition of Darryl Noble | Vol. 18, 2880–2883 |
| 11 | Copies of cancelled checks from Edward Bayuk made payable to P. Morabito | Vol. 18, 2884–2892 |
| 12 | CBRE Appraisal of 14th Street Card Lock Facility (dated 02/26/2010) | Vol. 18, 2893–2906 |
| 13 | Bank of America wire transfer from P. Morabito to Salvatore Morabito in the amount of \$146,127.00; and a wire transfer from P. Morabito to Lippes for \$25.00 (date 10/01/2010) | Vol. 18, 2907–2908 |
| 14 | Excerpted Transcript of October 21, 2015 Deposition of Christian Mark Lovelace | Vol. 18, 2909–2918 |
| 15 | June 18, 2014 email from Sam Morabito to Michael Vanek RE: Analysis of the Superpumper transaction in 2010 | Vol. 18, 2919–2920 |
| 16 | Excerpted Transcript of October 21, 2015 Deposition of Salvatore R. Morabito | Vol. 18, 2921–2929 |

| <u>DOCUMENT DESCRIPTION</u> | | <u>LOCATION</u> |
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| Exhibits to Defendants' Separate Statement of Disputed Facts (cont.) | | |
| 17 | PROMISSORY NOTE [Snowshoe Petroleum ("Maker") promises to pay P. Morabito ("Holder") the principal sum of \$1,462,213.00] (dated 11/01/2010) | Vol. 18, 2930–2932 |
| 18 | TERM NOTE [P. Morabito ("Borrower") promises to pay Consolidated Western Corp. ("Lender") the principal sum of \$939,000.00, plus interest] (dated 09/01/2010) | Vol. 18, 2933–2934 |
| 19 | SUCCESSOR PROMISSORY NOTE [Snowshoe Petroleum ("Maker") promises to pay P. Morabito ("Holder") the principal sum of \$492,937.30, plus interest] (dated 02/01/2011) | Vol. 18, 2935–2937 |
| 20 | Edward Bayuk's wire transfer to Lippes in the amount of \$517,547.20 (dated 09/29/2010) | Vol. 18, 2938–2940 |
| 21 | Salvatore Morabito Bank of Montreal September 2011 Wire Transfer | Vol. 18, 2941–2942 |
| 22 | Declaration of Salvatore Morabito (dated 09/21/2017) | Vol. 18, 2943–2944 |
| 23 | Edward Bayuk bank wire transfer to Superpumper, Inc., in the amount of \$659,000.00 (dated 09/30/2010) | Vol. 18, 2945–2947 |
| 24 | Edward Bayuk checking account statements between 2010 and 2011 funding the company with transfers totaling \$500,000 | Vol. 18, 2948–2953 |
| 25 | Salvatore Morabito's wire transfer statement between 2010 and 2011, funding the company with \$750,000 | Vol. 18, 2954–2957 |
| 26 | Payment Schedule of Edward Bayuk Note in Favor of P. Morabito | Vol. 18, 2958–2961 |

| <u>DOCUMENT DESCRIPTION</u> | | <u>LOCATION</u> |
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| Exhibits to Defendants' Separate Statement of Disputed Facts (cont.) | | |
| 27 | September 15, 2010 email from Vacco to Yalamanchili and P. Morabito RE: Follow Up Thoughts | Vol. 18, 2962–2964 |
| Reply in Support of Motion for Partial Summary Judgment (dated 10/10/2017) | | Vol. 19, 2965–2973 |
| Order Regarding Discovery Commissioner's Recommendation for Order dated August 17, 2017 (filed 12/07/2017) | | Vol. 19, 2974–2981 |
| Order Denying Motion for Partial Summary Judgment (filed 12/11/2017) | | Vol. 19, 2982–2997 |
| Defendants' Motions in Limine (filed 09/12/2018) | | Vol. 19, 2998–3006 |
| Exhibits to Defendants' Motions in Limine | | |
| Exhibit | Document Description | |
| 1 | Plaintiff's Second Supplement to Amended Disclosures Pursuant to NRCP 16.1(A)(1) (dated 04/28/2016) | Vol. 19, 3007–3016 |
| 2 | Excerpted Transcript of March 25, 2016 Deposition of William A. Leonard | Vol. 19, 3017–3023 |
| 3 | Plaintiff, Jerry Herbst's Responses to Defendant Snowshoe Petroleum, Inc.'s Set of Interrogatories (dated 02/11/2015); and Plaintiff, Jerry Herbst's Responses to Defendant, Salvatore Morabito's Set of Interrogatories (dated 02/12/2015) | Vol. 19, 3024–3044 |
| Motion in Limine to Exclude Testimony of Jan Friederich (filed 09/20/2018) | | Vol. 19, 3045–3056 |

| <u>DOCUMENT DESCRIPTION</u> | | <u>LOCATION</u> |
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| Exhibits to Motion in Limine to Exclude Testimony of Jan Friederich | | |
| Exhibit | Document Description | |
| 1 | Defendants' Rebuttal Expert Witness Disclosure (dated 02/29/2016) | Vol. 19, 3057–3071 |
| 2 | Condensed Transcript of March 29, 2016 Deposition of Jan Friederich | Vol. 19, 3072–3086 |
| Opposition to Defendants' Motions in Limine (filed 09/28/2018) | | Vol. 19, 3087–3102 |
| Exhibits to Opposition to Defendants' Motions in Limine | | |
| Exhibit | Document Description | |
| A | Declaration of Teresa M. Pilatowicz, Esq. in Support of Opposition to Defendants' Motions in Limine (filed 09/28/2018) | Vol. 19, 3103–3107 |
| A-1 | Plaintiff's February 19, 2016, Amended Disclosures Pursuant to NRCP 16.1(A)(1) | Vol. 19, 3108–3115 |
| A-2 | Plaintiff's January 26, 2016, Expert Witnesses Disclosures (without exhibits) | Vol. 19, 3116–3122 |
| A-3 | Defendants' January 26, 2016, and February 29, 2016, Expert Witness Disclosures (without exhibits) | Vol. 19, 3123–3131 |
| A-4 | Plaintiff's August 17, 2017, Motion for Partial Summary Judgment (without exhibits) | Vol. 19, 3132–3175 |
| A-5 | Plaintiff's August 17, 2017, Statement of Undisputed Facts in Support of his Motion for Partial Summary Judgment (without exhibits) | Vol. 19, 3176–3205 |
| Defendants' Reply in Support of Motions in Limine (filed 10/08/2018) | | Vol. 20, 3206–3217 |

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

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

| <u>DOCUMENT DESCRIPTION</u> | | <u>LOCATION</u> |
|---|---|------------------------|
| Exhibits to Clerk's Trial Exhibit List (cont.) | | |
| 8 | Order Denying Motion to Dismiss Involuntary Chapter 7 Petition and Suspending Proceedings, Case 13-51237. ECF No. 94, (filed 12/17/2013) | Vol. 22, 3623–3625 |
| 19 | Report of Undisputed Election– Appointment of Trustee, Case No. 13-51237, ECF No. 220 | Vol. 22, 3626–3627 |
| 20 | Stipulation and Order to Substitute a Party Pursuant to NRCPP 17(a), Case No. CV13-02663, May 15, 2015 | Vol. 22, 3628–3632 |
| 21 | Non-Dischargeable Judgment Regarding Plaintiff's First and Second Causes of Action, Case No. 15-05019-GWZ, ECF No. 123, April 30, 2018 | Vol. 22, 3633–3634 |
| 22 | Memorandum & Decision; Case No. 15-05019-GWZ, ECF No. 124, April 30, 2018 | Vol. 22, 3635–3654 |
| 23 | Amended Findings of Fact, Conclusions of Law in Support of Judgment Regarding Plaintiff's First and Second Causes of Action; Case 15-05019-GWZ, ECF No. 122, April 30, 2018 | Vol. 22, 3655–3679 |
| 25 | September 15, 2010 email from Yalamanchili to Vacco and P. Morabito RE: Follow Up Thoughts | Vol. 22, 3680–3681 |
| 26 | September 18, 2010 email from P. Morabito to Vacco | Vol. 22, 3682–3683 |
| 27 | September 20, 2010 email from Vacco to P. Morabito RE: Spirit | Vol. 22, 3684–3684 |
| 28 | September 20, 2010 email between Yalamanchili and Crotty RE: Morabito -Wire | Vol. 22, 3685–3687 |
| 29 | September 20, 2010 email from Yalamanchili to Graber RE: Attorney Client Privileged Communication | Vol. 22, 3688–3689 |

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| 30 | September 21, 2010 email from P. Morabito to Vacco and Cross RE: Attorney Client Privileged Communication | Vol. 22, 3690–3692 |
| 31 | September 23, 2010 email chain between Graber and P. Morabito RE: Change of Primary Residence from Reno to Laguna Beach | Vol. 22, 3693–3694 |
| 32 | September 23, 2010 email from Yalamanchili to Graber RE: Change of Primary Residence from Reno to Laguna Beach | Vol. 22, 3695–3696 |
| 33 | September 24, 2010 email from P. Morabito to Vacco RE: Superpumper, Inc. | Vol. 22, 3697–3697 |
| 34 | September 26, 2010 email from Vacco to P. Morabito RE: Judgment for a fixed debt | Vol. 22, 3698–3698 |
| 35 | September 27, 2010 email from P. Morabito to Vacco RE: First Amendment to Residential Lease executed 9/27/2010 | Vol. 22, 3699–3701 |
| 36 | November 7, 2012 emails between Vacco, P. Morabito, C. Lovelace RE: Attorney Client Privileged Communication | Vol. 22, 3702–3703 |
| 37 | Morabito BMO Bank Statement – September 2010 | Vol. 22, 3704–3710 |
| 38 | Lippes Mathias Trust Ledger History | Vol. 23, 3711–3716 |
| 39 | Fifth Amendment & Restatement of the Trust Agreement for the Arcadia Living Trust dated September 30, 2010 | Vol. 23, 3717–3755 |
| 42 | P. Morabito Statement of Assets & Liabilities as of May 5, 2009 | Vol. 23, 3756–3756 |

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| 43 | March 10, 2010 email chain between Afshar and Takemoto RE: Current Personal Financial Statement | Vol. 23, 3757–3758 |
| 44 | Salazar Net Worth Report (dated 03/15/2011) | Vol. 23, 3759–3772 |
| 45 | Purchase and Sale Agreement | Vol. 23, 3773–3780 |
| 46 | First Amendment to Purchase and Sale Agreement | Vol. 23, 3781–3782 |
| 47 | Panorama – Estimated Settlement Statement | Vol. 23, 3783–3792 |
| 48 | El Camino – Final Settlement Statement | Vol. 23, 3793–3793 |
| 49 | Los Olivos – Final Settlement Statement | Vol. 23, 3794–3794 |
| 50 | Deed for Transfer of Panorama Property | Vol. 23, 3795–3804 |
| 51 | Deed for Transfer for Los Olivos | Vol. 23, 3805–3806 |
| 52 | Deed for Transfer of El Camino | Vol. 23, 3807–3808 |
| 53 | Kimmel Appraisal Report for Panorama and Clayton | Vol. 23, 3809–3886 |
| 54 | Bill of Sale – Panorama | Vol. 23, 3887–3890 |
| 55 | Bill of Sale – Mary Fleming | Vol. 23, 3891–3894 |
| 56 | Bill of Sale – El Camino | Vol. 23, 3895–3898 |
| 57 | Bill of Sale – Los Olivos | Vol. 23, 3899–3902 |
| 58 | Declaration of Value and Transfer Deed of 8355 Panorama (recorded 12/31/2012) | Vol. 23, 3903–3904 |
| 60 | Baruk Properties Operating Agreement | Vol. 23, 3905–3914 |
| 61 | Baruk Membership Transfer Agreement | Vol. 24, 3915–3921 |
| 62 | Promissory Note for \$1,617,050 (dated 10/01/2010) | Vol. 24, 3922–3924 |

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| 63 | Baruk Properties/Snowshoe Properties, Certificate of Merger (filed 10/04/2010) | Vol. 24, 3925–3926 |
| 64 | Baruk Properties/Snowshoe Properties, Articles of Merger | Vol. 24, 3927–3937 |
| 65 | Grant Deed from Snowshoe to Bayuk Living Trust; Doc No. 2010-0531071 (recorded 11/04/2010) | Vol. 24, 3938–3939 |
| 66 | Grant Deed – 1461 Glenneyre; Doc No. 2010000511045 (recorded 10/08/2010) | Vol. 24, 3940–3941 |
| 67 | Grant Deed – 570 Glenneyre; Doc No. 2010000508587 (recorded 10/08/2010) | Vol. 24, 3942–3944 |
| 68 | Attorney File re: Conveyance between Woodland Heights and Arcadia Living Trust | Vol. 24, 3945–3980 |
| 69 | October 24, 2011 email from P. Morabito to Vacco RE: Attorney Client Privileged Communication | Vol. 24, 3981–3982 |
| 70 | November 10, 2011 email chain between Vacco and P. Morabito RE: Baruk Properties, LLC/Paul Morabito/Bank of America, N.A. | Vol. 24, 3983–3985 |
| 71 | Bayuk First Ledger | Vol. 24, 3986–3987 |
| 72 | Amortization Schedule | Vol. 24, 3988–3990 |
| 73 | Bayuk Second Ledger | Vol. 24, 3991–3993 |
| 74 | Opposition to Motion for Summary Judgment and Declaration of Edward Bayuk; Case No. 13-51237, ECF No. 146 (filed 10/03/2014) | Vol. 24, 3994–4053 |
| 75 | March 30, 2012 email from Vacco to Bayuk RE: Letter to BOA | Vol. 24, 4054–4055 |

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| Exhibits to Clerk's Trial Exhibit List (cont.) | | |
| 76 | March 10, 2010 email chain between P. Morabito and jon@aim13.com RE: Strictly Confidential | Vol. 24, 4056–4056 |
| 77 | May 20, 2010 email chain between P. Morabito, Vacco and Michael Pace RE: Proceed with placing a Binding Bid on June 22nd with ExxonMobil | Vol. 24, 4057–4057 |
| 78 | Morabito Personal Financial Statement May 2010 | Vol. 24, 4058–4059 |
| 79 | June 28, 2010 email from P. Morabito to George Garner RE: ExxonMobil Chicago Market Business Plan Review | Vol. 24, 4060–4066 |
| 80 | Shareholder Interest Purchase Agreement | Vol. 24, 4067–4071 |
| 81 | Plan of Merger of Consolidated Western Corporation with and Into Superpumper, Inc. | Vol. 24, 4072–4075 |
| 82 | Articles of Merger of Consolidated Western Corporation with and Into Superpumper, Inc. | Vol. 24, 4076–4077 |
| 83 | Unanimous Written Consent of the Board of Directors and Sole Shareholder of Superpumper, Inc. | Vol. 24, 4078–4080 |
| 84 | Unanimous Written Consent of the Directors and Shareholders of Consolidated Western Corporation | Vol. 24, 4081–4083 |
| 85 | Arizona Corporation Commission Letter dated October 21, 2010 | Vol. 24, 4084–4091 |
| 86 | Nevada Articles of Merger | Vol. 24, 4092–4098 |
| 87 | New York Creation of Snowshoe | Vol. 24, 4099–4103 |
| 88 | April 26, 2012 email from Vacco to Afshar RE: Ownership Structure of SPI | Vol. 24, 4104–4106 |
| 90 | September 30, 2010 Matrix Retention Agreement | Vol. 24, 4107–4110 |

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| 91 | McGovern Expert Report | Vol. 25, 4111–4189 |
| 92 | Appendix B to McGovern Report – Source 4 – Budgets | Vol. 25, 4190–4191 |
| 103 | Superpumper Note in the amount of \$1,462,213.00 (dated 11/01/2010) | Vol. 25, 4192–4193 |
| 104 | Superpumper Successor Note in the amount of \$492,937.30 (dated 02/01/2011) | Vol. 25, 4194–4195 |
| 105 | Superpumper Successor Note in the amount of \$939,000 (dated 02/01/2011) | Vol. 25, 4196–4197 |
| 106 | Superpumper Stock Power transfers to S. Morabito and Bayuk (dated 01/01/2011) | Vol. 25, 4198–4199 |
| 107 | <i>Declaration of P. Morabito in Support of Opposition to Motion of JH, Inc., Jerry Herbst, and Berry- Hinckley Industries for Order Prohibiting Debtor from Using, Acquiring or Transferring Assets Pursuant to 11 U.S.C. §§ 105 and 303(f) Pending Appointment of Trustee, Case 13-51237, ECF No. 22 (filed 07/01/2013)</i> | Vol. 25, 4200–4203 |
| 108 | October 12, 2012 email between P. Morabito and Bernstein RE: 2011 Return | Vol. 25, 4204–4204 |
| 109 | Compass Term Loan (dated 12/21/2016) | Vol. 25, 4205–4213 |
| 110 | P. Morabito – Term Note in the amount of \$939,000.000 (dated 09/01/2010) | Vol. 25, 4214–4214 |
| 111 | Loan Agreement between Compass Bank and Superpumper (dated 12/21/2016) | Vol. 25, 4215–4244 |
| 112 | Consent Agreement (dated 12/28/2010) | Vol. 25, 4245–4249 |
| 113 | Superpumper Financial Statement (dated 12/31/2007) | Vol. 25, 4250–4263 |

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| 114 | Superpumper Financial Statement (dated 12/31/2009) | Vol. 25, 4264–4276 |
| 115 | Notes Receivable Interest Income Calculation (dated 12/31/2009) | Vol. 25, 4277–4278 |
| 116 | Superpumper Inc. Audit Conclusions Memo (dated 12/31/2010) | Vol. 25, 4279–4284 |
| 117 | Superpumper 2010 YTD Income Statement and Balance Sheets | Vol. 25, 4285–4299 |
| 118 | March 12, 2010 Management Letter | Vol. 25, 4300–4302 |
| 119 | Superpumper Unaudited August 2010 Balance Sheet | Vol. 25, 4303–4307 |
| 120 | Superpumper Financial Statements (dated 12/31/2010) | Vol. 25, 4308–4322 |
| 121 | Notes Receivable Balance as of September 30, 2010 | Vol. 26, 4323 |
| 122 | Salvatore Morabito Term Note \$2,563,542.00 as of December 31, 2010 | Vol. 26, 4324–4325 |
| 123 | Edward Bayuk Term Note \$2,580,500.00 as of December 31, 2010 | Vol. 26, 4326–4327 |
| 125 | April 21, 2011 Management letter | Vol. 26, 4328–4330 |
| 126 | Bayuk and S. Morabito Statements of Assets & Liabilities as of February 1, 2011 | Vol. 26, 4331–4332 |
| 127 | January 6, 2012 email from Bayuk to Lovelace RE: Letter of Credit | Vol. 26, 4333–4335 |
| 128 | January 6, 2012 email from Vacco to Bernstein | Vol. 26, 4336–4338 |
| 129 | January 7, 2012 email from Bernstein to Lovelace | Vol. 26, 4339–4343 |
| 130 | March 18, 2012 email from P. Morabito to Vacco | Vol. 26, 4344–4344 |

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| 131 | April 21, 2011 Proposed Acquisition of Nella Oil | Vol. 26, 4345–4351 |
| 132 | April 15, 2011 email chain between P. Morabito and Vacco | Vol. 26, 4352 |
| 133 | April 5, 2011 email from P. Morabito to Vacco | Vol. 26, 4353 |
| 134 | April 16, 2012 email from Vacco to Morabito | Vol. 26, 4354–4359 |
| 135 | August 7, 2011 email exchange between Vacco and P. Morabito | Vol. 26, 4360 |
| 136 | August 2011 Lovelace letter to Timothy Halves | Vol. 26, 4361–4365 |
| 137 | August 24, 2011 email from Vacco to P. Morabito RE: Tim Haves | Vol. 26, 4366 |
| 138 | November 11, 2011 email from Vacco to P. Morabito RE: Getting Trevor's commitment to sign | Vol. 26, 4367 |
| 139 | November 16, 2011 email from P. Morabito to Vacco RE: Vacco's litigation letter | Vol. 26, 4368 |
| 140 | November 28, 2011 email chain between Vacco, S. Morabito, and P. Morabito RE: \$560,000 wire to Lippes Mathias | Vol. 26, 4369–4370 |
| 141 | December 7, 2011 email from Vacco to P. Morabito RE: Moreno | Vol. 26, 4371 |
| 142 | February 10, 2012 email chain between P. Morabito Wells, and Vacco RE: 1461 Glenneyre Street - Sale | Vol. 26, 4372–4375 |
| 143 | April 20, 2012 email from P. Morabito to Bayuk RE: BofA | Vol. 26, 4376 |
| 144 | April 24, 2012 email from P. Morabito to Vacco RE: SPI Loan Detail | Vol. 26, 4377–4378 |

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| 145 | September 4, 2012 email chain between Vacco and Bayuk RE: Second Deed of Trust documents | Vol. 26, 4379–4418 |
| 147 | September 4, 2012 email from P. Morabito to Vacco RE: Wire | Vol. 26, 4419–4422 |
| 148 | September 4, 2012 email from Bayuk to Vacco RE: Wire | Vol. 26, 4423–4426 |
| 149 | December 6, 2012 email from Vacco to P. Morabito RE: BOA and the path of money | Vol. 26, 4427–4428 |
| 150 | September 18, 2012 email chain between P. Morabito and Bayuk | Vol. 26, 4429–4432 |
| 151 | October 3, 2012 email chain between Vacco and P. Morabito RE: Snowshoe Properties, LLC | Vol. 26, 4433–4434 |
| 152 | September 3, 2012 email from P. Morabito to Vacco RE: Wire | Vol. 26, 4435 |
| 153 | March 14, 2013 email chain between P. Morabito and Vacco RE: BHI Hinckley | Vol. 26, 4436 |
| 154 | Paul Morabito 2009 Tax Return | Vol. 26, 4437–4463 |
| 155 | Superpumper Form 8879-S tax year ended December 31, 2010 | Vol. 26, 4464–4484 |
| 156 | 2010 U.S. S Corporation Tax Return for Consolidated Western Corporation | Vol. 27, 4485–4556 |
| 157 | Snowshoe form 8879-S for year ended December 31, 2010 | Vol. 27, 4557–4577 |
| 158 | Snowshoe Form 1120S 2011 Amended Tax Return | Vol. 27, 4578–4655 |
| 159 | September 14, 2012 email from Vacco to P. Morabito | Vol. 27, 4656–4657 |

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| 160 | October 1, 2012 email from P. Morabito to Vacco RE: Monday work for Dennis and Christian | Vol. 27, 4658 |
| 161 | December 18, 2012 email from Vacco to P. Morabito RE: Attorney Client Privileged Communication | Vol. 27, 4659 |
| 162 | April 24, 2013 email from P. Morabito to Vacco RE: BHI Trust | Vol. 27, 4660 |
| 163 | Membership Interest Purchases, Agreement – Watch My Block (dated 10/06/2010) | Vol. 27, 4661–4665 |
| 164 | Watch My Block organizational documents | Vol. 27, 4666–4669 |
| 174 | October 15, 2015 Certificate of Service of copy of Lippes Mathias Wexler Friedman's Response to Subpoena | Vol. 27, 4670 |
| 175 | Order Granting Motion to Compel Responses to Deposition Questions ECF No. 502; Case No. 13- 51237-gwz (filed 02/03/2016) | Vol. 27, 4671–4675 |
| 179 | Gursey Schneider LLP Subpoena | Vol. 28, 4676–4697 |
| 180 | Summary Appraisal of 570 Glenneyre | Vol. 28, 4698–4728 |
| 181 | Appraisal of 1461 Glenneyre Street | Vol. 28, 4729–4777 |
| 182 | Appraisal of 370 Los Olivos | Vol. 28, 4778–4804 |
| 183 | Appraisal of 371 El Camino Del Mar | Vol. 28, 4805–4830 |
| 184 | Appraisal of 1254 Mary Fleming Circle | Vol. 28, 4831–4859 |
| 185 | Mortgage – Panorama | Vol. 28, 4860–4860 |
| 186 | Mortgage – El Camino | Vol. 28, 4861 |
| 187 | Mortgage – Los Olivos | Vol. 28, 4862 |
| 188 | Mortgage – Glenneyre | Vol. 28, 4863 |

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| 189 | Mortgage – Mary Fleming | Vol. 28, 4864 |
| 190 | Settlement Statement – 371 El Camino Del Mar | Vol. 28, 4865 |
| 191 | Settlement Statement – 370 Los Olivos | Vol. 28, 4866 |
| 192 | 2010 Declaration of Value of 8355 Panorama Dr | Vol. 28, 4867–4868 |
| 193 | Mortgage – 8355 Panorama Drive | Vol. 28, 4869–4870 |
| 194 | Compass – Certificate of Custodian of Records (dated 12/21/2016) | Vol. 28, 4871–4871 |
| 196 | June 6, 2014 Declaration of Sam Morabito – Exhibit 1 to Snowshoe Reply in Support of Motion to Dismiss Complaint for Lack of Personal Jurisdiction – filed in Case No. CV13-02663 | Vol. 28, 4872–4874 |
| 197 | June 19, 2014 Declaration of Sam Morabito – Exhibit 1 to Superpumper Motion to Dismiss Complaint for Lack of Personal Jurisdiction – filed in Case No. CV13-02663 | Vol. 28, 4875–4877 |
| 198 | September 22, 2017 Declaration of Sam Morabito – Exhibit 22 to Defendants' SSOF in Support of Opposition to Plaintiff's MSJ – filed in Case No. CV13-02663 | Vol. 28, 4878–4879 |
| 222 | Kimmel – January 21, 2016, Comment on Alves Appraisal | Vol. 28, 4880–4883 |
| 223 | September 20, 2010 email from Yalamanchili to Morabito | Vol. 28, 4884 |
| 224 | March 24, 2011 email from Naz Afshar RE: telephone call regarding CWC | Vol. 28, 4885–4886 |
| 225 | Bank of America Records for Edward Bayuk (dated 09/05/2012) | Vol. 28, 4887–4897 |

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| 226 | June 11, 2007 Wholesale Marketer Agreement | Vol. 29, 4898–4921 |
| 227 | May 25, 2006 Wholesale Marketer Facility Development Incentive Program Agreement | Vol. 29, 4922–4928 |
| 228 | June 2007 Master Lease Agreement – Spirit SPE Portfolio and Superpumper, Inc. | Vol. 29, 4929–4983 |
| 229 | Superpumper Inc 2008 Financial Statement (dated 12/31/2008) | Vol. 29, 4984–4996 |
| 230 | November 9, 2009 email from P. Morabito to Bernstein, Yalaman RE: Jan Friederich – entered into Consulting Agreement | Vol. 29, 4997 |
| 231 | September 30, 2010, Letter from Compass to Superpumper, Morabito, CWC RE: reducing face amount of the revolving note | Vol. 29, 4998–5001 |
| 232 | October 15, 2010, letter from Quarles & Brady to Vacco RE: Revolving Loan Documents and Term Loan Documents between Superpumper and Compass Bank | Vol. 29, 5002–5006 |
| 233 | BMO Account Tracker Banking Report October 1 to October 31, 2010 | Vol. 29, 5007–5013 |
| 235 | August 31, 2010 Superpumper Inc., Valuation of 100 percent of the common equity in Superpumper, Inc on a controlling marketable basis | Vol. 29, 5014–5059 |
| 236 | June 18, 2014 email from S. Morabito to Vanek (WF) RE: Analysis of Superpumper Acquisition in 2010 | Vol. 29, 5060–5061 |
| 241 | Superpumper March 2010 YTD Income Statement | Vol. 29, 5062–5076 |

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| Exhibits to Clerk's Trial Exhibit List (cont.) | | |
| 244 | Assignment Agreement for \$939,000 Morabito Note | Vol. 29, 5077–5079 |
| 247 | July 1, 2011 Third Amendment to Forbearance Agreement Superpumper and Compass Bank | Vol. 29, 5080–5088 |
| 248 | Superpumper Cash Contributions January 2010 thru September 2015 – Bayuk and S. Morabito | Vol. 29, 5089–5096 |
| 252 | October 15, 2010 Letter from Quarles & Brady to Vacco RE: Revolving Loan documents and Term Loan documents between Superpumper Prop. and Compass Bank | Vol. 29, 5097–5099 |
| 254 | Bank of America – S. Morabito SP Properties Sale, SP Purchase Balance | Vol. 29, 5100 |
| 255 | Superpumper Prop. Final Closing Statement for 920 Mountain City Hwy, Elko, NV | Vol. 29, 5101 |
| 256 | September 30, 2010 Raffles Insurance Limited Member Summary | Vol. 29, 5102 |
| 257 | Equalization Spreadsheet | Vol. 30, 5103 |
| 258 | November 9, 2005 Grant, Bargain and Sale Deed; Doc #3306300 for Property Washoe County | Vol. 30, 5104–5105 |
| 260 | January 7, 2016 Budget Summary – Panorama Drive | Vol. 30, 5106–5107 |
| 261 | Mary 22, 2006 Compilation of Quotes and Invoices Quote of Valley Drapery | Vol. 30, 5108–5116 |
| 262 | Photos of 8355 Panorama Home | Vol. 30, 5117–5151 |
| 263 | Water Rights Deed (Document #4190152) between P. Morabito, E. Bayuk, Grantors, RCA Trust One Grantee (recorded 12/31/2012) | Vol. 30, 5152–5155 |

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| 265 | October 1, 2010 Bank of America Wire Transfer –Bayuk – Morabito \$60,117 | Vol. 30, 5156 |
| 266 | October 1, 2010 Check #2354 from Bayuk to P. Morabito for \$29,383 for 8355 Panorama funding | Vol. 30, 5157–5158 |
| 268 | October 1, 2010 Check #2356 from Bayuk to P. Morabito for \$12,763 for 370 Los Olivos Funding | Vol. 30, 5159–5160 |
| 269 | October 1, 2010 Check #2357 from Bayuk to P. Morabito for \$31,284 for 371 El Camino Del Mar Funding | Vol. 30, 5161–5162 |
| 270 | Bayuk Payment Ledger Support Documents Checks and Bank Statements | Vol. 31, 5163–5352 |
| 271 | Bayuk Superpumper Contributions | Vol. 31, 5353–5358 |
| 272 | May 14, 2012 email string between P. Morabito, Vacco, Bayuk, and S. Bernstein RE: Info for Laguna purchase | Vol. 31, 5359–5363 |
| 276 | September 21, 2010 Appraisal of 8355 Panorama Drive Reno, NV by Alves Appraisal | Vol. 32, 5364–5400 |
| 277 | Assessor's Map/Home Comparisons for 8355 Panorama Drive, Reno, NV | Vol. 32, 5401–5437 |
| 278 | December 3, 2007 Case Docket for CV07-02764 | Vol. 32, 5438–5564 |
| 280 | May 25, 2011 Stipulation Regarding the Imposition of Punitive Damages; Case No. CV07-02764 (filed 05/25/2011) | Vol. 33, 5565–5570 |
| 281 | Work File for September 24, 2010 Appraisal of 8355 Panorama Drive, Reno, NV | Vol. 33, 5571–5628 |
| 283 | January 25, 2016 Expert Witness Report Leonard v. Superpumper Snowshoe | Vol. 33, 5629–5652 |

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| 284 | February 29, 2016 Defendants' Rebuttal Expert Witness Disclosure | Vol. 33, 5653–5666 |
| 294 | October 5, 2010 Lippes, Mathias Wexler Friedman, LLP, Invoices to P. Morabito | Vol. 33, 5667–5680 |
| 295 | P. Morabito 2010 Tax Return (dated 10/16/2011) | Vol. 33, 5681–5739 |
| 296 | December 31, 2010 Superpumper Inc. Note to Financial Statements | Vol. 33, 5740–5743 |
| 297 | December 31, 2010 Superpumper Consultations | Vol. 33, 5744 |
| 300 | September 20, 2010 email chain between Yalmanchili and Graber RE: Attorney Client Privileged Communication | Vol. 33, 5745–5748 |
| 301 | September 15, 2010 email from Vacco to P. Morabito RE: Tomorrow | Vol. 33, 5749–5752 |
| 303 | Bankruptcy Court District of Nevada Claims Register Case No. 13-51237 | Vol. 33, 5753–5755 |
| 304 | April 14, 2018 email from Allen to Krausz RE: Superpumper | Vol. 33, 5756–5757 |
| 305 | Subpoena in a Case Under the Bankruptcy Code to Robison, Sharp, Sullivan & Brust issued in Case No. BK-N-13-51237-GWZ | Vol. 33, 5758–5768 |
| 306 | August 30, 2018 letter to Mark Weisenmiller, Esq., from Frank Gilmore, Esq., | Vol. 34, 5769 |
| 307 | Order Granting Motion to Compel Compliance with the Subpoena to Robison, Sharp, Sullivan & Brust filed in Case No. BK-N-13-51237-GWZ | Vol. 34, 5770–5772 |
| 308 | Response of Robison, Sharp, Sullivan & Brust's to Subpoena filed in Case No. BK-N-13-51237-GWZ | Vol. 34, 5773–5797 |

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| 309 | Declaration of Frank C. Gilmore in support of Robison, Sharp, Sullivan & Brust's Opposition to Motion for Order Holding Robison in Contempt filed in Case No. BK-N-13-51237-GWZ | Vol. 34, 5798–5801 |
| Minutes of October 29, 2018, Non-Jury Trial, Day 1 (filed 11/08/2018) | | Vol. 35, 5802–6041 |
| Transcript of October 29, 2018, Non-Jury Trial, Day 1 | | Vol. 35, 6042–6045 |
| Minutes of October 30, 2018, Non-Jury Trial, Day 2 (filed 11/08/2018) | | Vol. 36, 6046–6283 |
| Transcript of October 30, 2018, Non-Jury Trial, Day 2 | | Vol. 36, 6284–6286 |
| Minutes of October 31, 2018, Non-Jury Trial, Day 3 (filed 11/08/2018) | | Vol. 37, 6287–6548 |
| Transcript of October 31, 2018, Non-Jury Trial, Day 3 | | Vol. 37, 6549–6552 |
| Minutes of November 1, 2018, Non-Jury Trial, Day 4 (filed 11/08/2018) | | Vol. 38, 6553–6814 |
| Transcript of November 1, 2018, Non-Jury Trial, Day 4 | | Vol. 38, 6815–6817 |
| Minutes of November 2, 2018, Non-Jury Trial, Day 5 (filed 11/08/2018) | | Vol. 39, 6818–7007 |
| Transcript of November 2, 2018, Non-Jury Trial, Day 5 | | Vol. 39, 7008–7011 |
| Minutes of November 5, 2018, Non-Jury Trial, Day 6 (filed 11/08/2018) | | Vol. 40, 7012–7167 |
| Transcript of November 5, 2018, Non-Jury Trial, Day 6 | | Vol. 40, 7168–7169 |

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| Minutes of November 6, 2018, Non-Jury Trial, Day 7 (filed 11/08/2018) | | Vol. 41, 7170–7269 |
| Transcript of November 6, 2018, Non-Jury Trial, Day 7 | | Vol. 41, 7270–7272 Vol. 42, 7273–7474 |
| Minutes of November 7, 2018, Non-Jury Trial, Day 8 (filed 11/08/2018) | | Vol. 43, 7475–7476 |
| Transcript of November 7, 2018, Non-Jury Trial, Day 8 | | Vol. 43, 7477–7615 |
| Minutes of November 26, 2018, Non-Jury Trial, Day 9 (filed 11/26/2018) | | Vol. 44, 7616 |
| Transcript of November 26, 2018, Non-Jury Trial – Closing Arguments, Day 9 | | Vol. 44, 7617–7666 Vol. 45, 7667–7893 |
| Plaintiff’s Motion to Reopen Evidence (filed 01/30/2019) | | Vol. 46, 7894–7908 |
| Exhibits to Plaintiff’s Motion to Reopen Evidence | | |
| Exhibit | Document Description | |
| 1 | Declaration of Gabrielle A. Hamm, Esq. in Support of Plaintiff’s Motion to Reopen | Vol. 46, 7909–7913 |
| 1-A | September 21, 2017 Declaration of Salvatore Morabito | Vol. 46, 7914–7916 |
| 1-B | Defendants’ Proposed Findings of Fact, Conclusions of Law, and Judgment (Nov. 26, 2018) | Vol. 46, 7917–7957 |
| 1-C | Judgment on the First and Second Causes of Action; Case No. 15-05019-GWZ (Bankr. D. Nev.), ECF No. 123 (April 30, 2018) | Vol. 46, 7958–7962 |

| <u>DOCUMENT DESCRIPTION</u> | | <u>LOCATION</u> |
|---|--|------------------------|
| Exhibits to Plaintiff's Motion to Reopen Evidence (cont.) | | |
| 1-D | Amended Findings of Fact and Conclusions of Law in Support of Judgment Regarding Plaintiffs' First and Second Causes of Action; Case No. 15-05019-GWZ (Bankr. D. Nev.), ECF No. 126 (April 30, 2018) | Vol. 46, 7963–7994 |
| 1-E | Motion to Compel Compliance with the Subpoena to Robison Sharp Sullivan Brust; Case No. 15-05019-GWZ (Bankr. D. Nev.), ECF No. 191 (Sept. 10, 2018) | Vol. 46, 7995–8035 |
| 1-F | Order Granting Motion to Compel Compliance with the Subpoena to Robison Sharp Sullivan Brust; Case No. 15-05019-GWZ (Bankr. D. Nev.), ECF No. 229 (Jan. 3, 2019) | Vol. 46, 8036–8039 |
| 1-G | Response of Robison, Sharp, Sullivan & Brust[] To Subpoena (including RSSB_000001 – RSSB_000031) (Jan. 18, 2019) | Vol. 46, 8040–8067 |
| 1-H | Excerpts of Deposition Transcript of Sam Morabito as PMK of Snowshoe Petroleum, Inc. (Oct. 1, 2015) | Vol. 46, 8068–8076 |
| Errata to: Plaintiff's Motion to Reopen Evidence (filed 01/30/2019) | | Vol. 47, 8077–8080 |
| Exhibit to Errata to: Plaintiff's Motion to Reopen Evidence | | |
| Exhibit | Document Description | |
| 1 | Plaintiff's Motion to Reopen Evidence | Vol. 47, 8081–8096 |

| <u>DOCUMENT DESCRIPTION</u> | | <u>LOCATION</u> |
|---|---|------------------------|
| Ex Parte Motion for Order Shortening Time on Plaintiff's Motion to Reopen Evidence and for Expedited Hearing (filed 01/31/2019) | | Vol. 47, 8097–8102 |
| Order Shortening Time on Plaintiff's Motion to Reopen Evidence and for Expedited Hearing (filed 02/04/2019) | | Vol. 47, 8103–8105 |
| Supplement to Plaintiff's Motion to Reopen Evidence (filed 02/04/2019) | | Vol. 47, 8106–8110 |
| Exhibits to Supplement to Plaintiff's Motion to Reopen Evidence | | |
| Exhibit | Document Description | |
| 1 | Supplemental Declaration of Gabrielle A. Hamm, Esq. in Support of Plaintiff's Motion to Reopen Evidence (filed 02/04/2019) | Vol. 47, 8111–8113 |
| 1-I | Declaration of Frank C. Gilmore in Support of Robison, Sharp Sullivan & Brust's Opposition to Motion for Order Holding Robison in Contempt; Case No. 15-05019-GWZ (Bankr. D. Nev.), ECF No. 259 (Jan. 30, 2019) | Vol. 47, 8114–8128 |
| Defendants' Response to Motion to Reopen Evidence (02/06/2019) | | Vol. 47, 8129–8135 |
| Plaintiff's Reply to Defendants' Response to Motion to Reopen Evidence (filed 02/07/2019) | | Vol. 47, 8136–8143 |
| Minutes of February 7, 2019 hearing on Motion to Reopen Evidence (filed 02/28/2019) | | Vol. 47, 8144 |
| Rough Draft Transcript of February 8, 2019 hearing on Motion to Reopen Evidence | | Vol. 47, 8145–8158 |

| <u>DOCUMENT DESCRIPTION</u> | | <u>LOCATION</u> |
|---|--|------------------------|
| [Plaintiff's Proposed] Findings of Fact, Conclusions of Law, and Judgment (filed 03/06/2019) | | Vol. 47, 8159–8224 |
| [Defendants' Proposed Amended] Findings of Fact, Conclusions of Law, and Judgment (filed 03/08/2019) | | Vol. 47, 8225–8268 |
| Minutes of February 26, 2019 hearing on Motion to Continue ongoing Non-Jury Trial (Telephonic) (filed 03/11/2019) | | Vol. 47, 8269 |
| Findings of Fact, Conclusions of Law, and Judgment (filed 03/29/2019) | | Vol. 48, 8270–8333 |
| Notice of Entry of Findings of Fact, Conclusions of Law, and Judgment (filed 03/29/2019) | | Vol. 48, 8334–8340 |
| Memorandum of Costs and Disbursements (filed 04/11/2019) | | Vol. 48, 8341–8347 |
| Exhibit to Memorandum of Costs and Disbursements | | |
| Exhibit | Document Description | |
| 1 | Ledger of Costs | Vol. 48, 8348–8370 |
| Application for Attorneys' Fees and Costs Pursuant to NRCP 68 (filed 04/12/2019) | | Vol. 48, 8371–8384 |
| Exhibits to Application for Attorneys' Fees and Costs Pursuant to NRCP 68 | | |
| Exhibit | Document Description | |
| 1 | Declaration of Teresa M. Pilatowicz In Support of Plaintiff's Application for Attorney's Fees and Costs Pursuant to NRCP 68 (filed 04/12/2019) | Vol. 48, 8385–8390 |
| 2 | Plaintiff's Offer of Judgment to Defendants (dated 05/31/2016) | Vol. 48, 8391–8397 |

| <u>DOCUMENT DESCRIPTION</u> | | <u>LOCATION</u> |
|---|--|------------------------|
| 3 | Defendant's Rejection of Offer of Judgment by Plaintiff (dated 06/15/2016) | Vol. 48, 8398–8399 |
| 4 | Log of time entries from June 1, 2016 to March 28, 2019 | Vol. 48, 8400–8456 |
| 5 | Plaintiff's Memorandum of Costs and Disbursements (filed 04/11/2019) | Vol. 48, 8457–8487 |
| Motion to Retax Costs (filed 04/15/2019) | | Vol. 49, 8488–8495 |
| Plaintiff's Opposition to Motion to Retax Costs (filed 04/17/2019) | | Vol. 49, 8496–8507 |
| Exhibits to Plaintiff's Opposition to Motion to Retax Costs | | |
| Exhibit | Document Description | |
| 1 | Declaration of Teresa M. Pilatowicz In Support of Opposition to Motion to Retax Costs (filed 04/17/2019) | Vol. 49, 8508–8510 |
| 2 | Summary of Photocopy Charges | Vol. 49, 8511–8523 |
| 3 | James L. McGovern Curriculum Vitae | Vol. 49, 8524–8530 |
| 4 | McGovern & Greene LLP Invoices | Vol. 49, 8531–8552 |
| 5 | Buss-Shelger Associates Invoices | Vol. 49, 8553–8555 |
| Reply in Support of Motion to Retax Costs (filed 04/22/2019) | | Vol. 49, 8556–8562 |
| Opposition to Application for Attorneys' Fees and Costs Pursuant to NRCPP 68 (filed 04/25/2019) | | Vol. 49, 8563–8578 |
| Exhibit to Opposition to Application for Attorneys' Fees and Costs Pursuant to NRCPP 68 | | |

| <u>DOCUMENT DESCRIPTION</u> | | <u>LOCATION</u> |
|------------------------------------|---|------------------------|
| Exhibit | Document Description | |
| 1 | Plaintiff's Bill Dispute Ledger | Vol. 49, 8579–8637 |
| | Defendants, Salvatore Morabito, Snowshoe Petroleum, Inc., and Superpumper, Inc.'s Motion for New Trial and/or to Alter or Amend Judgment Pursuant to NRCP 52, 59, and 60 (filed 04/25/2019) | Vol. 49, 8638–8657 |
| | Defendant, Edward Bayuk's Motion for New Trial and/or to Alter or Amend Judgment Pursuant to NRCP 52, 59, and 60 (filed 04/26/2019) | Vol. 50, 8658–8676 |
| | Exhibits to Edward Bayuk's Motion for New Trial and/or to Alter or Amend Judgment Pursuant to NRCP 52, 59, and 60 | |
| Exhibit | Document Description | |
| 1 | February 27, 2019 email with attachments | Vol. 50, 8677–8768 |
| 2 | Declaration of Frank C. Gilmore in Support of Edward Bayuk's Motion for New Trial (filed 04/26/2019) | Vol. 50, 8769–8771 |
| 3 | February 27, 2019 email from Marcy Trabert | Vol. 50, 8772–8775 |
| 4 | February 27, 2019 email from Frank Gilmore to eturner@Gtg.legal RE: Friday Trial | Vol. 50, 8776–8777 |
| | Plaintiff's Reply in Support of Application of Attorneys' Fees and Costs Pursuant to NRCP 68 (filed 04/30/2019) | Vol. 50, 8778–8790 |
| | Exhibit to Plaintiff's Reply in Support of Application of Attorneys' Fees and Costs Pursuant to NRCP 68 | |
| Exhibit | Document Description | |
| 1 | Case No. BK-13-51237-GWZ, ECF Nos. 280, 282, and 321 | Vol. 50, 8791–8835 |

| <u>DOCUMENT DESCRIPTION</u> | | <u>LOCATION</u> |
|---|--|------------------------|
| Plaintiff's Opposition to Defendants' Motions for New Trial and/or to Alter or Amend Judgment (filed 05/07/2019) | | Vol. 51, 8836–8858 |
| Defendants, Salvatore Morabito, Snowshoe Petroleum, Inc., and Superpumper, Inc.'s Reply in Support of Motion for New Trial and/or to Alter or Amend Judgment Pursuant to NRCp 52, 59, and 60 (filed 05/14/2019) | | Vol. 51, 8859–8864 |
| Declaration of Edward Bayuk Claiming Exemption from Execution (filed 06/28/2019) | | Vol. 51, 8865–8870 |
| Exhibits to Declaration of Edward Bayuk Claiming Exemption from Execution | | |
| Exhibit | Document Description | |
| 1 | Copy of June 22, 2019 Notice of Execution and two Write of Executions | Vol. 51, 8871–8896 |
| 2 | Declaration of James Arthur Gibbons Regarding his Attestation, Witness and Certification on November 12, 2005 of the Spendthrift Trust Amendment to the Edward William Bayuk Living Trust (dated 06/25/2019) | Vol. 51, 8897–8942 |
| Notice of Claim of Exemption from Execution (filed 06/28/2019) | | Vol. 51, 8943–8949 |
| Edward Bayuk's Declaration of Salvatore Morabito Claiming Exemption from Execution (filed 07/02/2019) | | Vol. 51, 8950–8954 |
| Exhibits to Declaration of Salvatore Morabito Claiming Exemption from Execution | | |
| Exhibit | Document Description | |
| 1 | Las Vegas June 22, 2019 letter | Vol. 51, 8955–8956 |
| 2 | Writs of execution and the notice of execution | Vol. 51, 8957–8970 |

| <u>DOCUMENT DESCRIPTION</u> | | <u>LOCATION</u> |
|---|--|------------------------|
| Minutes of June 24, 2019 telephonic hearing on Decision on Submitted Motions (filed 07/02/2019) | | Vol. 51, 8971–8972 |
| Salvatore Morabito’s Notice of Claim of Exemption from Execution (filed 07/02/2019) | | Vol. 51, 8973–8976 |
| Edward Bayuk’s Third Party Claim to Property Levied Upon NRS 31.070 (filed 07/03/2019) | | Vol. 51, 8977–8982 |
| Order Granting Plaintiff’s Application for an Award of Attorneys’ Fees and Costs Pursuant to NRCP 68 (filed 07/10/2019) | | Vol. 51, 8983–8985 |
| Order Granting in part and Denying in part Motion to Retax Costs (filed 07/10/2019) | | Vol. 51, 8986–8988 |
| Plaintiff’s Objection to (1) Claim of Exemption from Execution and (2) Third Party Claim to Property Levied Upon, and Request for Hearing Pursuant to NRS 21.112 and 31.070(5) (filed 07/11/2019) | | Vol. 52, 8989–9003 |
| Exhibits to Plaintiff’s Objection to (1) Claim of Exemption from Execution and (2) Third Party Claim to Property Levied Upon, and Request for Hearing Pursuant to NRS 21.112 and 31.070(5) | | |
| Exhibit | Document Description | |
| 1 | Declaration of Gabrielle A. Hamm, Esq. | Vol. 52, 9004–9007 |
| 2 | 11/30/2011 Tolling Agreement – Edward Bayuk | Vol. 52, 9008–9023 |
| 3 | 11/30/2011 Tolling Agreement – Edward William Bayuk Living Trust | Vol. 52, 9024–9035 |
| 4 | Excerpts of 9/28/2015 Deposition of Edward Bayuk | Vol. 52, 9036–9041 |

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

| <u>DOCUMENT DESCRIPTION</u> | | <u>LOCATION</u> |
|---|---|------------------------|
| Exhibit to Notice of Entry of Order Denying Defendants' Motions for New Trial and/or to Alter or Amend Judgment | | |
| Exhibit | Document Description | |
| 1 | Order Denying Defendants' Motions for New Trial and/or to Alter or Amend Judgment (filed 07/10/2019) | Vol. 52, 9125–9127 |
| Notice of Entry of Order Granting Plaintiff's Application for an Award of Attorneys' Fees and Costs Pursuant to NRCP 68 (filed 07/16/2019) | | Vol. 52, 9128–9130 |
| Exhibit to Notice of Entry of Order Granting Plaintiff's Application for an Award of Attorneys' Fees and Costs Pursuant to NRCP 68 | | |
| Exhibit | Document Description | |
| 1 | Order Granting Plaintiff's Application for an Award of Attorneys' Fees and Costs Pursuant to NRCP 68 (filed 07/10/2019) | Vol. 52, 9131–9134 |
| Notice of Entry of Order Granting in Part and Denying in Part Motion to Retax Costs (filed 07/16/2019) | | Vol. 52, 9135–9137 |
| Exhibit to Notice of Entry of Order Granting in Part and Denying in Part Motion to Retax Costs | | |
| Exhibit | Document Description | |
| 1 | Order Granting in Part and Denying in Part Motion to Retax Costs (filed 07/10/2019) | Vol. 52, 9138–9141 |
| Plaintiff's Objection to Notice of Claim of Exemption from Execution Filed by Salvatore Morabito and Request for Hearing (filed 07/16/2019) | | Vol. 52, 9142–9146 |
| Reply to Objection to Claim of Exemption and Third Party Claim to Property Levied Upon (filed 07/17/2019) | | Vol. 52, 9147–9162 |

| <u>DOCUMENT DESCRIPTION</u> | | <u>LOCATION</u> |
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| Exhibits to Reply to Objection to Claim of Exemption and Third Party Claim to Property Levied Upon | | |
| Exhibit | Document Description | |
| 1 | March 3, 2011 Deposition Transcript of P. Morabito | Vol. 52, 9163–9174 |
| 2 | Mr. Bayuk’s September 23, 2014 responses to Plaintiff’s first set of requests for production | Vol. 52, 9175–9180 |
| 3 | September 28, 2015 Deposition Transcript of Edward Bayuk | Vol. 52, 9181–9190 |
| Reply to Plaintiff’s Objection to Notice of Claim of Exemption from Execution (filed 07/18/2019) | | Vol. 52, 9191–9194 |
| Declaration of Service of Till Tap, Notice of Attachment and Levy Upon Property (filed 07/29/2019) | | Vol. 52, 9195 |
| Notice of Submission of Disputed Order Denying Claim of Exemption and Third Party Claim (filed 08/01/2019) | | Vol. 52, 9196–9199 |
| Exhibits to Notice of Submission of Disputed Order Denying Claim of Exemption and Third Party Claim | | |
| Exhibit | Document Description | |
| 1 | Plaintiff’s Proposed Order Denying Claim of Exemption and Third-Party Claim | Vol. 52, 9200–9204 |
| 2 | Bayuk and the Bayuk Trust’s proposed Order Denying Claim of Exemption and Third-Party Claim | Vol. 52, 9205–9210 |
| 3 | July 30, 2019 email evidencing Bayuk, through counsel Jeffrey Hartman, Esq., requesting until noon on July 31, 2019 to provide comments. | Vol. 52, 9211–9212 |

| <u>DOCUMENT DESCRIPTION</u> | | <u>LOCATION</u> |
|---|--|------------------------|
| Exhibits to Notice of Submission of Disputed Order (cont.) | | |
| 4 | July 31, 2019 email from Teresa M. Pilatowicz, Esq. Bayuk failed to provide comments at noon on July 31, 2019, instead waiting until 1:43 p.m. to send a redline version with proposed changes after multiple follow ups from Plaintiff's counsel on July 31, 2019 | Vol. 52, 9213–9219 |
| 5 | A true and correct copy of the original Order and Bayuk Changes | Vol. 52, 9220–9224 |
| 6 | A true and correct copy of the redline run by Plaintiff accurately reflecting Bayuk's proposed changes | Vol. 52, 9225–9229 |
| 7 | Email evidencing that after review of the proposed revisions, Plaintiff advised Bayuk, through counsel, that Plaintiff agree to certain proposed revisions, but the majority of the changes were unacceptable as they did not reflect the Court's findings or evidence before the Court. | Vol. 52, 9230–9236 |
| Objection to Plaintiff's Proposed Order Denying Claim of Exemption and Third Party Claim (filed 08/01/2019) | | Vol. 53, 9237–9240 |
| Exhibits to Objection to Plaintiff's Proposed Order Denying Claim of Exemption and Third-Party Claim | | |
| Exhibit | Document Description | |
| 1 | Plaintiff's Proposed Order Denying Claim of Exemption and Third-Party Claim | Vol. 53, 9241–9245 |
| 2 | Defendant's comments on Findings of Fact | Vol. 53, 9246–9247 |
| 3 | Defendant's Proposed Order Denying Claim of Exemption and Third-Party Claim | Vol. 53, 9248–9252 |

| <u>DOCUMENT DESCRIPTION</u> | | <u>LOCATION</u> |
|---|---|------------------------|
| Minutes of July 22, 2019 hearing on Objection to Claim for Exemption (filed 08/02/2019) | | Vol. 53, 9253 |
| Order Denying Claim of Exemption (filed 08/02/2019) | | Vol. 53, 9254–9255 |
| Bayuk’s Case Appeal Statement (filed 08/05/2019) | | Vol. 53, 9256–9260 |
| Bayuk’s Notice of Appeal (filed 08/05/2019) | | Vol. 53, 9261–9263 |
| Defendants, Superpumper, Inc., Edward Bayuk, Salvatore Morabito; and Snowshoe Petroleum, Inc.’s, Case Appeal Statement (filed 08/05/2019) | | Vol. 53, 9264–9269 |
| Defendants, Superpumper, Inc., Edward Bayuk, Salvatore Morabito; and Snowshoe Petroleum, Inc.’s, Notice of Appeal (filed 08/05/2019) | | Vol. 53, 9270–9273 |
| Exhibits to Defendants, Superpumper, Inc., Edward Bayuk, Salvatore Morabito; and Snowshoe Petroleum, Inc.’s, Notice of Appeal | | |
| Exhibit | Document Description | |
| 1 | Findings of Fact, Conclusions of Law, and Judgment (filed 03/29/2019) | Vol. 53, 9274–9338 |
| 2 | Order Denying Defendants’ Motions for New Trial and/or to Alter or Amend Judgment (filed 07/10/2019) | Vol. 53, 9339–9341 |
| 3 | Order Granting in Part and Denying in Part Motion to Retax Costs (filed 07/10/2019) | Vol. 53, 9342–9345 |
| 4 | Order Granting Plaintiff’s Application for an Award of Attorneys’ Fees and Costs Pursuant to NRCF 68 (filed 07/10/2019) | Vol. 53, 9346–9349 |

| <u>DOCUMENT DESCRIPTION</u> | | <u>LOCATION</u> |
|---|---|------------------------|
| Plaintiff's Reply to Defendants' Objection to Plaintiff's Proposed Order Denying Claim of Exemption and Third-Party Claim | | Vol. 53, 9350–9356 |
| Order Denying Claim of Exemption and Third-Party Claim (08/09/2019) | | Vol. 53, 9357–9360 |
| Notice of Entry of Order Denying Claim of Exemption and Third-Party Claim (filed 08/09/2019) | | Vol. 53, 9361–9364 |
| Exhibit to Notice of Entry of Order Denying Claim of Exemption and Third-Party Claim | | |
| Exhibit | Document Description | |
| 1 | Order Denying Claim of Exemption and Third-Party Claim (08/09/2019) | Vol. 53, 9365–9369 |
| Notice of Entry of Order Denying Claim of Exemption (filed 08/12/2019) | | Vol. 53, 9370–9373 |
| Exhibit to Notice of Entry of Order Denying Claim of Exemption | | |
| Exhibit | Document Description | |
| 1 | Order Denying Claim of Exemption (08/02/2019) | Vol. 53, 9374–9376 |
| Motion to Make Amended or Additional Findings Under NRCP 52(b), or, in the Alternative, Motion for Reconsideration (filed 08/19/2019) | | Vol. 54, 9377–9401 |
| Exhibits to Motion to Make Amended or Additional Findings Under NRCP 52(b), or, in the Alternative, Motion for Reconsideration | | |
| Exhibit | Document Description | |
| 1 | Order Denying Claim of Exemption and Third Party Claim (filed 08/09/19) | Vol. 54, 9402–9406 |

| <u>DOCUMENT DESCRIPTION</u> | | <u>LOCATION</u> |
|---|--|------------------------|
| Exhibits to Motion to Make Amended (cont.) | | |
| 2 | Spendthrift Trust Amendment to the Edward William Bayuk Living Trust (dated 11/12/05) | Vol. 54, 9407–9447 |
| 3 | Spendthrift Trust Agreement for the Arcadia Living Trust (dated 10/14/05) | Vol. 54, 9448–9484 |
| 4 | Fifth Amendment and Restatement of the Trust Agreement for the Arcadia Living Trust (dated 09/30/10) | Vol. 54, 9485–9524 |
| 5 | P. Morabito's Supplement to NRCP 16.1 Disclosures (dated 03/01/11) | Vol. 54, 9525–9529 |
| 6 | Transcript of March 3, 2011 Deposition of P. Morabito | Vol. 55, 9530–9765 |
| 7 | Documents Conveying Real Property | Vol. 56, 9766–9774 |
| 8 | Transcript of July 22, 2019 Hearing | Vol. 56, 9775–9835 |
| 9 | Tolling Agreement JH and P. Morabito (partially executed 11/30/11) | Vol. 56, 9836–9840 |
| 10 | Tolling Agreement JH and Arcadia Living Trust (partially executed 11/30/11) | Vol. 56, 9841–9845 |
| 11 | Excerpted Pages 8–9 of Superpumper Judgment (filed 03/29/19) | Vol. 56, 9846–9848 |
| 12 | Petitioners' First Set of Interrogatories to Debtor (dated 08/13/13) | Vol. 56, 9849–9853 |
| 13 | Tolling Agreement JH and Edward Bayuk (partially executed 11/30/11) | Vol. 56, 9854–9858 |
| 14 | Tolling Agreement JH and Bayuk Trust (partially executed 11/30/11) | Vol. 56, 9859–9863 |
| 15 | Declaration of Mark E. Lehman, Esq. (dated 03/21/11) | Vol. 56, 9864–9867 |

| <u>DOCUMENT DESCRIPTION</u> | | <u>LOCATION</u> |
|---|--|------------------------|
| Exhibits to Motion to Make Amended (cont.) | | |
| 16 | Excerpted Transcript of October 20, 2015 Deposition of Dennis C. Vacco | Vol. 56, 9868–9871 |
| 17 | Assignment and Assumption Agreement (dated 07/03/07) | Vol. 56, 9872–9887 |
| 18 | Order Denying Morabito’s Claim of Exemption (filed 08/02/19) | Vol. 56, 9888–9890 |
| Errata to Motion to Make Amended or Additional Findings Under NRCP 52(b), or, in the Alternative, Motion for Reconsideration (filed 08/20/2019) | | Vol. 57, 9891–9893 |
| Plaintiff’s Opposition to Motion to Make Amended or Additional Findings Under NRCP 52(b), or, In the Alternative, Motion for Reconsideration, and Countermotion for Fees and Costs Pursuant to NRS 7.085 (filed 08/30/2019) | | Vol. 57, 9894–9910 |
| Errata to Plaintiff’s Opposition to Motion to Make Amended or Additional Findings Under NRCP 52(b), or, In the Alternative, Motion for Reconsideration, and Countermotion for Fees and Costs Pursuant to NRS 7.085 (filed 08/30/2019) | | Vol. 57, 9911–9914 |
| Exhibits to Errata to Plaintiff’s Opposition to Motion to Make Amended or Additional Findings Under NRCP 52(b), or, In the Alternative, Motion for Reconsideration, and Countermotion for Fees and Costs Pursuant to NRS 7.085 | | |
| Exhibit | Document Description | |
| 1 | Declaration of Gabrielle A. Hamm, Esq. | Vol. 57, 9915–9918 |
| 2 | Plaintiff’s Amended NRCP 16.1 Disclosures (February 19, 2016) | Vol. 57, 9919–9926 |

| <u>DOCUMENT DESCRIPTION</u> | | <u>LOCATION</u> |
|--|--|------------------------|
| Exhibits to Errata (cont.) | | |
| 3 | Plaintiff's Fourth Supplemental NRCP 16.1 Disclosures (November 15, 2016) | Vol. 57, 9927–9930 |
| 4 | Plaintiff's Fifth Supplemental NRCP 16.1 Disclosures (December 21, 2016) | Vol. 57, 9931–9934 |
| 5 | Plaintiff's Sixth Supplemental NRCP 16.1 Disclosures (March 20, 2017) | Vol. 57, 9935–9938 |
| Reply in Support of Motion to Make Amended or Additional Findings Under NRCP 52(b), or, In the Alternative, Motion for Reconsideration, and Countermotion for Fees and Costs (filed 09/04/2019) | | Vol. 57, 9939–9951 |
| Exhibits to Reply in Support of Motion to Make Amended or Additional Findings Under NRCP 52(b), or, In the Alternative, Motion for Reconsideration, and Countermotion for Fees and Costs | | |
| Exhibit | Document Description | |
| 19 | Notice of Submission of Disputed Order Denying Claim of Exemption and Third Party Claim (filed 08/01/19) | Vol. 57, 9952–9993 |
| 20 | Notice of Submission of Disputed Order Denying Claim of Exemption and Third Party Claim (filed 08/01/19) | Vol. 57, 9994–10010 |
| Order Denying Defendants' Motion to Make Amended or Additional Findings Under NRCP 52(b), or, in the Alternative, Motion for Reconsideration and Denying Plaintiff's Countermotion for Fees and Costs Pursuant to NRS 7.085 (filed 11/08/2019) | | Vol. 57, 10011–10019 |
| Bayuk's Case Appeal Statement (filed 12/06/2019) | | Vol. 57, 10020–10026 |

| <u>DOCUMENT DESCRIPTION</u> | | <u>LOCATION</u> |
|---|--|-------------------------|
| Bayuk's Notice of Appeal (filed 12/06/2019) | | Vol. 57, 10027–10030 |
| Exhibits to Bayuk's Notice of Appeal | | |
| Exhibit | Document Description | |
| 1 | Order Denying [Morabito's] Claim of Exemption (filed 08/02/19) | Vol. 57, 10031–10033 |
| 2 | Order Denying [Bayuk's] Claim of Exemption and Third Party Claim (filed 08/09/19) | Vol. 57, 10034–10038 |
| 3 | Order Denying Defendants' Motion to Make Amended or Additional Findings Under NRCP 52(b), or, in the Alternative, Motion for Reconsideration and Denying Plaintiff's Countermotion for Fees and Costs Pursuant to NRS 7.085 (filed 11/08/19) | Vol. 57, 10039–10048 |
| Notice of Entry of Order Denying Defendants' Motion to Make Amended or Additional Findings Under NRCP 52(b), or, in the Alternative, Motion for Reconsideration and Denying Plaintiff's Countermotion for Fees and Costs Pursuant to NRS 7.085 (filed 12/23/2019) | | Vol. 57, 10049–10052 |
| Exhibit to Notice of Entry of Order | | |
| Exhibit | Document Description | |
| A | Order Denying Defendants' Motion to Make Amended or Additional Findings Under NRCP 52(b), or, in the Alternative, Motion for Reconsideration and Denying Plaintiff's Countermotion for Fees and Costs Pursuant to NRS 7.085 (filed 11/08/19) | Vol. 57, 10053–10062 |

| <u>DOCUMENT DESCRIPTION</u> | | <u>LOCATION</u> |
|--|---|-------------------------|
| District Court Docket Case No. CV13-02663 | | Vol. 57, 10063–10111 |
| Notice of Claim of Exemption and Third-Party Claim to Property Levied Upon, Case No. CV13-02663 (filed 08/25/2020) | | Vol. 58, 10112–10121 |
| Exhibits to Notice of Claim of Exemption and Third-Party Claim to Property Levied Upon | | |
| Exhibit | Document Description | |
| 1 | Writ of Execution, Case No. CV13-02663 (filed 07/21/2020) | Vol. 58, 10123–10130 |
| 2 | Superior Court of California, Orange County Docket, Case No. 30-2019-01068591-CU-EN-CJC | Vol. 58, 10131–10139 |
| 3 | Spendthrift Trust Amendment to the Edward William Bayuk Living Trust (dated 11/12/2005) | Vol. 58, 10140–10190 |

1 saw this in effect in November of 2010. You had a
2 restatement of the amount of value that would be
3 conferred to Paul Morabito as a result of his
4 transfer of 80 percent of the equity of Superpumper
5 to Sam and Ed. And they said, Well, we'll restate
6 the amount so that the obligations from Paul
7 Morabito will now become the obligations of
8 Snowshoe.

9 And what that does as a practical matter is
10 it strips the value from Superpumper where Paul
11 Morabito gets a credit for the value that he took
12 out of Superpumper with the Compass loan and then
13 it's -- and then he double-dips with the provision
14 of these new note obligations on the books reducing
15 the value and not having anything tangible that can
16 go to the Herbsts.

17 THE COURT: This is probably a good place
18 to take a break.

19 MS. TURNER: Okay.

20 THE COURT: So we'll take a short recess
21 now. Court's in recess.

22 (Recess taken.)

23 THE COURT: Thank you. Please be seated.

24 Counsel, you may proceed.

1 MS. TURNER: Your Honor, I know we're going
2 through this in painstaking detail, but when our
3 burden is clear and convincing evidence, I do think
4 it's important to take the time on these factors and
5 I appreciate your patience. Hopefully, you got a
6 shot of coffee during the break.

7 When we left off, we were talking about the
8 valuation of the Superpumper equity and specifically
9 Mr. McGovern's valuation of the insider receivables
10 and inclusion of those receivables as part of his
11 \$13,050,000 opinion of value. Gurseay Schneider said
12 these are collectable. These are collectable
13 receivables in 2009. Paul Morabito verified that
14 signing the letter and he had certified his
15 financials in 2009 and 2010 showing that he was
16 capable of paying those receivables, and then you
17 had the merger in conjunction with the transfer on
18 September 30th, 2010. And despite the testimony
19 that the result of that merger was the receivables
20 were zeroed out by the operation of that
21 transaction, those insider receivables were restated
22 and reflected on the 2010 financials.

23 Now, Mr. McGovern was criticized by
24 Ms. Salazar for the discount rate that he used in

1 his valuation. It was the same rate, or
2 substantially the same rate, 14.2 percent, as that
3 used by Spencer Cavalier of Matrix. Although
4 Spencer called it an "LOI rate," it was essentially
5 a discount rate. He described the risk factors that
6 he considered in determining that rate. It is no
7 coincidence that Spencer Cavalier of Matrix and
8 James McGovern came to the same ultimate rate of
9 discount applied as well as the ultimate conclusion
10 of the value of the -- pardon me -- of the operating
11 assets at roughly \$6.5 million. That's what
12 experienced business evaluators do, is you would
13 expect independent people who were real evaluators
14 with extensive appearance, they get to the same
15 place.

16 The outlier is Ms. Salazar with her
17 criticism. She said they shouldn't have used that
18 14, 14.2 percent discount rate. It should have been
19 -- I believe it was 22 percent. It was
20 substantially more than 20 percent. When on
21 cross-examination we asked, Why? Why would you use
22 that higher rate, she kept referring to risk
23 factors. Risk factors. You have to have specific
24 company risk factors in addition to the general

1 market factors, except when you read Mr. McGovern's
2 report. And you can look at his testimony and he
3 describes the risk factors that he looked at. He
4 not only looked at the market, the specific
5 industry, but he looked at small companies and he
6 looked at this being a sale of 80 percent as opposed
7 to 100 percent of the interest in Superpumper and
8 whether or not that was a sufficient controlling
9 interest. He looked at the specific company and
10 there were at least three risk factors outlined in
11 the mechanic -- there was -- you input numbers and
12 there's a calculator. You heard testimony about the
13 printouts from that calculation specifically
14 referred to risk factors.

15 Ms. Salazar said, I'm not familiar with how
16 that process works, that mechanical, you input
17 numbers and they do the calculator, but she did rely
18 on the hard copy of this same Duff. It was called
19 "the Duff report." She couldn't substantiate
20 22 percent as opposed to a different number for use
21 as the discount rate. She said she added five
22 points for the specific company risk factors that
23 she thought Mr. McGovern and Mr. Cavalier missed.
24 When asked why that number she relied merely on,

1 Well, I have discretion and I thought that was
2 appropriate. No real basis was explained.

3 At the end of Ms. Salazar's
4 cross-examination I think it became clear she was
5 criticizing without any actual basis for concluding
6 that there was error by Mr. Cavalier in his analysis
7 or Mr. McGovern in his and, of course, she said that
8 there should be no inclusion of the 6.5 million in
9 non-operating assets or insider receivables because
10 there were no written notes that she saw. To
11 support those insider receivables, not only is that
12 inconsistent with the auditor saying these are fully
13 collectable and Paul Morabito verifying the same,
14 but in September 2010 you had the \$939,000 note from
15 Paul Morabito, written note, and you had the
16 subsequent restated notes from Sam Morabito and so
17 that criticism is a hollow one.

18 In addition to Mr. McGovern's valuation in
19 September of 2010, you have what the defendants
20 agreed to with Paul Morabito and at the time of the
21 transaction there was an agreement where Sam, Ed and
22 Paul said, All right, the new company Snowshoe
23 Petroleum, a New York company, will pay you \$1
24 million for your interest in Superpumper, Paul, and

1 that agreement was restated to add a \$1.4 million
2 promissory note -- \$1,462,000 promissory note and
3 that was further restated in early 2011 with the
4 successor notes and ultimately the only note payable
5 to Paul Morabito was for \$492,000.

6 Underlying the \$2.5 million, we'll call it,
7 the approximately \$2.5 million that is reflected by
8 the \$1 million to be paid in September 2010 at the
9 time of closing and then the \$1,462,000 note from
10 November 2010 is the analysis of Christian Lovelace,
11 counsel for defendants and Paul Morabito, concurrent
12 counsel. We have at Exhibit 236 the analysis of
13 Christian Lovelace, not a business evaluator, a
14 partner in the law firm representing Paul Morabito
15 as the seller and the defendants, Ed Bayuk, Sam
16 Morabito and Snowshoe Petroleum as the buyer. And
17 we have some real gymnastics here to get to the \$2.5
18 million. You have the Matrix-appraised value from
19 August of 2010 at \$6,484,000 less the Compass term
20 loan of \$1.6 million, which is, essentially, the
21 \$3 million less the \$939,000 that was paid to Paul
22 Morabito. This deduction of the \$1,682,000 ignores
23 Sam Morabito and Ed Bayuk's recapitalization of
24 Superpumper on September 30th with payment of

1 \$659,000 each. And then you have net value of 4.8
2 million, according to Mr. Lovelace, with a risk
3 discount of 35 percent applied. And that risk
4 discount of 35 percent has no analysis whatsoever to
5 accompany it, save and except Mr. Vacco testified
6 briefly that there was a risk discount that would
7 apply because of the Compass defaults and you can't
8 ignore that there was a default as a result of this
9 transaction, not only with Compass, but the leases.

10 Ultimately Paul Morabito reaffirmed his
11 guarantee of the leases, the Compass issue was
12 resolved and, in fact, you heard testimony from Mr.
13 Kraus that Compass was prepared to refinance
14 Superpumper as soon as they got audited financials
15 from 2010. There is no legitimate basis for a \$2.5
16 million valuation as of the date of transfer as
17 confirmed by the defendants themselves. Sam
18 Morabito and Ed Bayuk in February of 2011 estimated
19 their respective 50 percent interests in Snowshoe
20 Petroleum, Inc., the 100 percent owner of
21 Superpumper -- this is Exhibit 126 -- and each of
22 them said that 50 percent interest would be worth
23 four and a half million, that the total value was
24 nine, and that was a certification to the auditors

1 of Superpumper. At the same time that they
2 certified the value was \$9 million on the heels in
3 April of 2011, Snowshoe Petroleum, Ed Bayuk signing
4 on behalf of Snowshoe Petroleum, represented that
5 the ownership interest of Snowshoe Petroleum, Inc.
6 was worth \$10 million, valued at \$10 million. That
7 was Exhibit 131. And this was the Nella letter of
8 intent that was communicated to third-party Nella
9 where there was a valuation of \$10 million and you
10 saw related emails where this was a transaction that
11 was -- that involved Paul Morabito, but ultimately
12 Ed Bayuk was included on the communications and he
13 is the signer of the communication to the third
14 party.

15 And, your Honor, we noted in our findings
16 and conclusions -- and I'll note it again -- I do
17 not envy the Court who is being asked by the
18 defendants to believe them when they say that the
19 value is X amount and at the same time they are
20 communicating to third parties a different amount.
21 Ed Bayuk and Sam Morabito testified you can't
22 believe what Paul Morabito says to third parties
23 and, indeed, there was a fraud judgment against him
24 for that very issue. When he communicates with

1 third parties, he is not truthful. He is not
2 trustworthy. Well, there is a story about the
3 purpose of these transactions and the value
4 conferred to say that the debtor is not trustworthy
5 in certain respects but is trustworthy in others is
6 untenable and anything that Paul Morabito says that
7 is not contrary to his interest should be
8 disregarded.

9 I'm not saying that the value of
10 Superpumper was \$30 million or \$20 million, as Paul
11 Morabito said in April and May -- pardon me -- in
12 May of 2010. But certainly the defendants when they
13 are making the representations in April of
14 April 2011 and to the auditors themselves when
15 they're certifying the value themselves in February
16 of 2011, those values are -- should be considered
17 and should be considered to the detriment of the
18 defendants.

19 There was testimony this letter of intent
20 was prepared in conjunction with Paul Morabito so it
21 should be disregarded. I agree Paul Morabito's
22 statements should be disregarded, except Ed Bayuk
23 saw it, signed it, and provided it to a third party,
24 and he has to himself be responsible for his own

1 conduct whether in conjunction with Paul Morabito or
2 not. At the end of the day with the varying
3 descriptions of the value of the Superpumper equity,
4 whether it's \$9 million, \$10 million, \$6.5 million,
5 it is certainly not the \$2.5 million that was
6 ascribed by the defendants and Paul Morabito in
7 conjunction with Mr. Lovelace. It was not \$2.5
8 million. And I submit to you that Mr. McGovern's
9 \$13 million valuation that includes, not only the
10 operating assets, but the insider receivables, is
11 more in line with what the actual value was at the
12 time of the transfer.

13 Now, to just summarize the Superpumper
14 transfers, we had, Step 1, removing the equity from
15 Superpumper through the Compass loan distribution.
16 You had \$3 million in loan proceeds in the company
17 that were distributed out September 14th, the day
18 after the oral ruling. Assets -- or Raffles was
19 purportedly removed as an asset from CWC with a
20 value of \$2,234,175 and that was the explanation for
21 the payments of \$355,000 and \$420,000 to the
22 defendants. Step 3, merge CWC with Superpumper to
23 eliminate the non-operating assets from Superpumper.
24 Step 4, Paul Morabito sells his interest to Sam and

1 Ed Bayuk through Snowshoe Petroleum, a New York
2 company. And then, finally, we have a cash payment
3 of \$1,035,094, which was reduced to \$542,000 -- I'll
4 get to the reason for that -- and you have a sham
5 note of \$423,213. That was the value, the value
6 purportedly conferred to Paul Morabito in exchange
7 for his 80 percent ownership in Superpumper, was a
8 cash payment of \$1,035,094 that there's no question
9 was made in October of 2010. However, Paul Morabito
10 in July of 2013 at Exhibit 107 in the declaration
11 prepared in conjunction with his counsel, including
12 Mr. Gilmore who is representing the defendants, said
13 at paragraph 10, "I sold my interest in the company
14 Consolidated Western Corporation for cash payments
15 of approximately \$542,000 and a note of
16 approximately \$933,000.694, which I had received
17 partial payments on and the principal balance has
18 been subsequently canceled based on a post-closing
19 reevaluation of the significant decrease in the fair
20 market value of the business."

21 There was no evidence of post-closing
22 reevaluation, save and except when there was a
23 restatement of the one million and some-odd-thousand
24 dollar note to the successor notes and what Paul

1 Morabito is saying under penalty of perjury to the
2 bankruptcy court is he only received \$542,000. And
3 then there's the remaining note \$423,213 that was
4 the successor note that remained, and Mr. Morabito,
5 Paul Morabito said it was canceled. Sam Morabito
6 testified it was paid and that it was paid when he
7 paid Vacco \$560,000 in November of 2011. As he was
8 on the stand, I asked him to look for anything in
9 the financials, the income tax return, the financial
10 statements to indicate that the loan had been
11 satisfied. There was certainly no evidence
12 presented in the form of a written satisfaction or
13 any email writing, text, anything to indicate that
14 the payment from Sam Morabito to the Lippes law firm
15 of \$560,000 in November of 2011 was intended to
16 satisfy the obligation under the \$423,000 note or
17 that Snowshoe Petroleum reimbursed Sam Morabito,
18 gave him a credit on his capital account or
19 anything. We looked at the K-1s for 2011.

20 They were exactly the same for Ed Bayuk and
21 Sam Morabito, contradicting Sam Morabito's testimony
22 that when he paid the Lippes law firm his counsel,
23 as well as Paul Morabito, in November of 2011, that
24 that should be credited to Snowshoe Petroleum's

1 payment of the \$423,000 note obligation. In
2 addition, \$560,000 to the Lippes law firm, that
3 amount does not correlate in any way, shape or form
4 with the amount due and owing under the \$423,000
5 note. When we looked at the communication that
6 resulted in the payment of \$560,000 from Sam
7 Morabito in November of 2011 at Exhibit 140, we saw
8 Dennis Vacco, Paul Morabito and Sam Morabito
9 communicating about the need to send \$560,000 from
10 Sam to the Lippes firm. Nothing whatsoever about
11 the purpose being to satisfy this note obligation.
12 And it wasn't a Sam Morabito note obligation. It
13 was a Snowshoe Petroleum obligation. So we would
14 expect there to be some reflection on Sam Morabito's
15 capital account or otherwise in the financials of
16 Snowshoe Petroleum if the payment had been made on
17 behalf of Snowshoe Petroleum. It wasn't there.

18 Now, Sam Morabito was adamant in his
19 testimony, I didn't pay anything for the benefit of
20 Paul Morabito. I don't support his lifestyle. I
21 don't make payments to him. The very first thing we
22 heard from Paul Morabito in his testimony -- again
23 for whatever that's worth -- is, I've gotten money
24 from my brother since I was three years old. He

1 supports me in the lifestyle that I have. He and Ed
2 Bayuk. He was very upfront on the fact that these
3 two give him money whenever he wants it for whatever
4 he needs it for.

5 And there's documentary evidence to that
6 effect as well. In Exhibit 138 you have Paul
7 Morabito communicating to Dennis Vacco, "Dennis,
8 tell Sam he has to wire you a \$1 million by the
9 21st." Dennis Vacco responds, "Yes." This was the
10 way they conducted their internal affairs, was Ed
11 Bayuk, Sam Morabito, they paid at Paul's insistence
12 as he directed. Again, supporting somebody's
13 lifestyle, supporting a debtor's lifestyle does not
14 benefit a creditor and it is not value to be
15 considered by this Court in determining whether or
16 not there was reasonably equivalent value exchanged
17 for the transfer of Paul Morabito's interest in
18 Superpumper. In exchange for the \$13,050,000 value
19 of Superpumper, which 80 percent of that is the
20 \$10,440,000, according to Paul Morabito it was in
21 exchange for \$542,000. Now, we've gone through and
22 seen how much of the assets Paul Morabito had prior
23 to the oral ruling and how much had been
24 transferred. One thing he kept was the Reno home on

1 Panorama and Edward transferred his 30 percent
2 interest in the Panorama house to Paul Morabito as
3 part of these transfers. It was the swap for the
4 interest in the Laguna properties. And when I came
5 into this case one of the things I thought about is
6 why? Why keep the Reno house? That's kind of
7 inconsistent with moving everything else out of
8 Nevada and moving everything else away from the
9 Herbsts.

10 Well, in September of 2010 Paul Morabito
11 describes exactly why he kept the Panorama house.
12 And that was in conjunction with discussions of the
13 Nevada exemptions to execution, which Paul Morabito
14 describes and he certainly understood. He says, "I
15 should declare my residence with Edward in Laguna
16 Beach ASAP. I don't care about the \$550,000 Nevada
17 homestead exemption. I want to protect my household
18 assets," which we saw the documents and the
19 testimony that all the personal property in the
20 Panorama house were sold to Ed Bayuk. "My Nevada
21 house has a \$1.1-million mortgage and I'm going to
22 offer Bank of America a \$2 million second for my
23 line of credit." He's going to use equity he
24 thought he had in the Reno house to pay Bank of

1 America. Now, ultimately he didn't have sufficient
2 equity, which is why the Glenneyre property was used
3 for that deed of trust, but he had the purpose of
4 leveraging it up and using it to pay Bank of America.

5 Now, a summary of the assets for collection
6 before and after the transfers certainly illustrate
7 the fact there was no reasonably equivalent exchange
8 of value. You had the 80 percent interest in
9 Superpumper valued at \$10,440,000 excluding the
10 Raffles asset. That's not considering that. In
11 exchange for the \$1 million in cash reduced to
12 \$542,000 and the sham successor note that was never
13 paid. 50 percent interest in Baruk LLC in exchange
14 for a \$1,617,000 sham Baruk note and that was the
15 Baruk note that was assigned to the Canadian
16 Woodland Heights company and then the payor denied
17 the existence of the assignment and instead tried to
18 apply various payments he had made for the benefit
19 of his Los Olivos property and other amounts to
20 support Paul Morabito's lifestyle. Purported
21 satisfaction of that note, that is not value
22 conferred for the purpose of determining reasonably
23 equivalent value because it is not value to the
24 creditor.

1 Ed had a 75 percent in the El Camino
2 property, 50 percent in the Los Olivos property, and
3 that was the swap for the 70 percent interest in --
4 that's actually 30 percent. Paul Morabito resulted
5 in 100 percent interest in the Panorama property
6 which only had a value of \$971,136 plus he did
7 receive cash of \$60,000. So you had \$14 million in
8 assets at issue here. That doesn't include the
9 cash, Watch My Block, and the substantial other
10 assets that were transferred. But here these
11 subject transfers, the Baruk Properties LLC
12 interest, Superpumper, and then the residence swap,
13 you had 14 million in value with Paul Morabito
14 before the transfer, subsequent to the transfer of
15 \$1.5 million -- \$1,573,253. That is not reasonably
16 equivalent value.

17 Now, with respect to the sham notes,
18 there's a Ninth Circuit case that's been cited to
19 throughout the circuit. The Sateriale case that
20 describes when a note is sham. "A promise is
21 illusory when it imposes an actual enforceable
22 obligation -- that should be "no actual enforceable
23 obligation at all on the promisor, who says, in
24 effect, I will if I want to." That is the

1 circumstance that we have here. With the notes that
2 were executed to purportedly provide value to Paul
3 Morabito, the promise was illusory because whether
4 it was Snowshoe Petroleum or Ed Bayuk, you had them
5 take the position I will if I want to. There was
6 not one payment that matched the schedule of the
7 notes, not one payment with a memo or a financial
8 statement that reflected satisfaction of the note.

9 And, instead, it was an I-will-if-I-want-to
10 and, effectively, Mr. Bayuk was supporting Mr.
11 Morabito's lifestyle. Sam Morabito was paying the
12 counsel fees for Paul Morabito and they were
13 ascribing that value as purported satisfaction of
14 the notes. Unreasonable equivalence, the bankruptcy
15 courts deal with reasonable equivalence and these
16 issues of fraudulent transfer on a more frequent
17 basis than the Nevada courts, at least, as reflected
18 in the Nevada Supreme Court case law and so just
19 looking at other courts including the bankruptcy
20 courts that applied their versions of the Uniform
21 Fraudulent Transfer Act, they have defined what
22 reasonable equivalence factors that are relevant to
23 determining reasonable equivalence and that includes
24 whether value of what was transferred is equal to

1 the value of what was received. I think that's the
2 common sense application that we have argued here,
3 the market value of what was transferred and
4 received. That would be the opinions of the
5 experts. Whether the transaction took place at
6 arm's length, that is a factor that is clear by the
7 evidence as earlier discussed. No transaction here
8 was at arm's length. There was no listing, sale,
9 exposure to the market, marketing that you would see
10 in an arm's-length transaction. There was no
11 negotiation, no representation by separate counsel.
12 These were not arm's-length transactions. These
13 were transactions with insiders.

14 And you must have a good-faith transferee
15 as part of the analysis on reasonable equivalence
16 and, of course, as earlier indicated, "Reasonable
17 equivalence must be determined from the standpoint
18 of the creditor. If the transferor leave creditors
19 in substantially the same position then
20 consideration is reasonably equivalent."

21 Transferring a right to payment to an
22 entity in Canada is not reasonably equivalent
23 because the creditor here is hindered, delayed in
24 collection against that asset, if there is even a

1 capability of collecting on that asset. And here
2 when you have the payor saying that the obligation
3 was satisfied at the same time the payee is saying
4 that the obligation was transferred, it would be
5 impossible to find reasonable equivalence under the
6 definition I just provided.

7 Again, it was NRS 112.250 -- I think I said
8 "150" earlier. It's my error -- that says Nevada
9 Chapter 112 must be complied and construed to
10 effectuate its general purpose to make uniform the
11 law with respect to the subject of this chapter
12 among states enacting it. It's important when we do
13 not have law that we look to the other states who
14 are construing and enforcing the act. The act's
15 purpose is to protect creditors. The act's purpose
16 is to, one, protect the defendant so that if a
17 debtor actually defrauds them and transfers an asset
18 beyond their reach, the creditor is protected. At
19 the same time you have protection for good-faith
20 transferees, so Skip Avansino, who has no
21 relationship with Paul Morabito, when he purchases
22 the Panorama house and he provides value, he
23 negotiates and provides value and he's not an
24 insider, he has an arm's-length relationship, the

1 creditor doesn't have any redress with Mr. Avansino.
2 He's protected. Insiders such as the defendants who
3 do not have good-faith intentions, they do not have
4 that same defense. And what do I mean by "they do
5 not have good faith"? That is an objective
6 standard.

7 Once the Court finds that the plaintiff has
8 met its burden on showing that the badges of fraud,
9 the factors outlined in the SportsCo case and NRS
10 112.180, we've met our burden, then the burden
11 shifts to the defendants and they have an
12 affirmative burden to say, despite that, they met
13 their burden and showed actual fraud and that these
14 -- or constructive fraud and these transactions
15 should be avoided or are voidable, we have a
16 good-faith defense; that is, that they took in good
17 faith and for reasonably equivalent value.

18 We've already talked about the failure to
19 show reasonable equivalent value. "Good faith
20 cannot be proved when there is some knowing
21 participation by the transferee in a transaction
22 that directs assets to transferees at the expense of
23 creditor recoveries." That's the Hall v. World
24 Savings and Loan Association case from Arizona.

1 "Actual knowledge of the debtor's fraud is not
2 required so long as the transferee has knowledge of
3 sufficient facts to put him on inquiry notice that
4 the transfer might be voidable for fraud he does not
5 take in good faith." And there's multiple cases we
6 cite to in our proposed findings and conclusions on
7 that, that point.

8 When there is a requirement to show
9 objective good faith, these insiders who are the
10 defendants cannot meet that burden, not in these
11 circumstances. One, counsel who represented Paul
12 Morabito in these transactions where he was
13 intentionally delaying, hindering or preventing
14 collection from the Herbst parties was the same
15 counsel representing the defendants. You had
16 concurrent representation by the Vacco firm with
17 respect to the transfers and subsequent to those
18 transfers. And, your Honor, at Exhibit 294 you have
19 the Lippes law firm billings that went to Paul
20 Morabito, that went to Paul Morabito for September,
21 October 2010, and Sam Morabito said, But those are
22 Paul's obligations and the Vacco firm was acting on
23 behalf of Paul Morabito trying to distance himself
24 from those transactions contemplated and effectuated

1 as described in the billing records of the Vacco
2 firm, as otherwise described in the email
3 communications. He was trying to distance himself
4 but at the same time he and Ed Bayuk acknowledged
5 and participated in the transactions to the benefit
6 of Paul Morabito. They didn't negotiate these
7 agreements. They didn't have their own separate
8 counsel. They lock, stock and barrel did what Paul
9 Morabito and the Lippes firm directed them to do.
10 You saw Sam Morabito executing documents to
11 effectuate the Snowshoe Petroleum, establishing that
12 entity, and facilitating the transfer of Paul
13 Morabito's interest in CWC to Snowshoe Petroleum.
14 Sam Morabito executed documents, Ed Bayuk executed
15 documents, and at all times the Vacco firm was
16 acting with respect to both sides. How can -- not
17 only was there inquiry notice on the purpose of
18 these transfers with respect to the defendants as a
19 result of the way that these transactions were
20 effectuated with the Lippes firm, but they had
21 actual notice. Paul Morabito's intentions were
22 imputed through this concurrent counsel.

23 So they had inquiry notice as well as
24 actual notice that would defeat objective good

1 faith. Now, there can be no question from Paul
2 Morabito's own statements the timing of the
3 transaction and all the other badges of fraud that
4 the ultimate goal of these transactions that were in
5 the days following the oral ruling was to hinder,
6 delay and defraud the collection activities of the
7 Herbsts.

8 You had on September 20th, 2010, in an
9 email from Paul Morabito to counsel, Dennis Vacco,
10 as well as Sujatha Yalamanchili -- sorry to the
11 court reporter -- Exhibit 29, "The Herbsts no longer
12 have home court, good ol' boy advantage." That was
13 Paul Morabito's own words, "The Herbsts no longer
14 have home court, go ol' boy advantage," and that was
15 on the heels of describing Judge Adams's oral ruling
16 and the transfers that they were planning to follow.
17 That was the goal and that was the successful goal.
18 Because, in fact, the Herbsts were hindered,
19 delayed, and prevented as a result from their
20 collection on the judgment entered eventually as a
21 result of these transfers.

22 Now, Paul Morabito on September 20th
23 says, I have no doubt it will be challenged in court
24 and they may try to come up with their own

1 appraisals but in the end the underlying selling for
2 value will be allowed." Again, Paul Morabito taking
3 the position that, so long as some value is promised
4 or conferred or there's some valuation that was
5 done, that he was justified or would be justified in
6 these transactions. Reasonable equivalent value is
7 but one badge of fraud and it is no defense without
8 good faith, no defense without good faith and if
9 under the present circumstances the defendants can't
10 get there. When Judge Adams on September 13th said
11 "There's simplicity which lies beyond complexity,"
12 that is so true in this case. It was in the
13 underlying Herbst litigation, apparently, that's why
14 he cited to it, but it's what we have here. We had
15 sophisticated counsel and parties doing a multitude
16 of transfers with valuations being done and they are
17 coming to court and saying as a result of that
18 sophistication and the fact that there were
19 valuations that we could not have fraudulent
20 transfer.

21 But at the end of the day their story
22 doesn't jibe. It doesn't jibe because of the timing
23 of the transactions. On the heels of the oral
24 ruling, that was the only time that they took action

1 to transfer Paul Morabito's assets away from his
2 title and this story that it was so that the assets
3 that remained with Paul could stand alone and be
4 used by the Herbsts, that doesn't jibe with Paul
5 Morabito transferring that \$6 million. It doesn't.
6 \$6 million was transferred the day after the
7 judgment. That is inconsistent with that story.

8 The Watch My Block, everything was moved to
9 New York, to Canada, to California, outside of
10 Nevada so that the Herbst parties when a judgment
11 was ultimately entered into October of 2010 there
12 was nothing to attach here in Nevada except for the
13 Panorama house. Ultimately they did collect from
14 the sale to Skip Avansino. It wasn't much, because
15 it had a \$2.5 million sale price, not the \$4.3
16 million value. But that was despite Paul Morabito's
17 intention to lever it up so that the Herbst parties
18 could not even get that. He had the intention to
19 lever it up. And that was the only reason he kept
20 that in Nevada. Everything else was gone by the
21 time a written judgment as entered.

22 The oral ruling has been called "the oral
23 judgment" in this case. It was no judgment at all
24 that could be executed upon. There was nothing that

1 the Herbst parties could have done prior to the
2 ultimate judgment. And you had written findings,
3 conclusions and judgment following the actual
4 damages portion of the trial in October 2010, the
5 final judgment wasn't entered until August 2011.

6 And we know that as a result of the
7 transfers in September of 2010 the Herbst parties
8 have an unsatisfied judgment. There's been nothing
9 else. Ms. Salazar does the analysis of Paul
10 Morabito's assets and says, but for the judgment,
11 then Paul Morabito would be solvent. Because of the
12 judgment, he's not. Now, if we compare the
13 financial statements from 2010 to Michelle Salazar's
14 report in 2011, other than the judgment, there's no
15 other change in Paul Morabito's status except for
16 the September 2010 transfers that resulted in
17 nothing left for the Herbsts to attach except for
18 the interest in the Panorama house.

19 Now, Ed and Sam testified, But we didn't
20 know what Paul did, we didn't know what his purpose
21 was. Our purpose was just to stand alone and be
22 free from the Herbsts because we had been
23 exonerated. Paul Morabito's own words in
24 November 16th, 2010, to Dennis Vacco, "Edward has an

1 intense need to protect me as well as himself and
2 things that get done without his input or approval
3 that affects both of us drive him nuts."

4 It is to say that Ed Bayuk is the most
5 central person in Paul Morabito's life at the time
6 of the transfers and subsequent and he didn't know
7 that these transfers were being done to avoid the
8 Herbsts, that's not credible, not given the
9 undisputed evidence that Ed Bayuk and Paul Morabito
10 had an ongoing very close relationship, not only at
11 the time of transfers, but subsequent.

12 So what are the remedies to Plaintiff for
13 fraudulent transfer? For constructive or actual
14 fraud, which we're asking for a determination of
15 both, avoidance of the transfer is a statutory
16 remedy, avoidance of the transfer to the extent
17 necessary to satisfy the creditor's claim. In
18 addition to that, an injunction against further
19 disposition of the asset transferred or of other
20 property any other relief the circumstances may
21 require.

22 In addition, as a separate remedy for
23 actual fraud, judgment against the transferee of the
24 asset or for the person for whose benefit the

1 transfer was made for the value of the asset
2 transferred at the time of the transfer subject to
3 adjustment as the equities may require." Those are
4 the plaintiff's remedies.

5 "The Uniform Fraudulent Transfer Act is
6 intended to prevent debtors from defrauding
7 creditors by moving assets out of reach. The focus
8 in crafting the remedy is to ensure the satisfaction
9 of a creditor's claim when the elements of
10 fraudulent transfer are proven." Here avoidance is
11 insufficient. Avoidance is an attribute of the
12 transfer, not the party, and so the transferred
13 asset goes back to the plaintiff -- pardon me -- it
14 does not get conferred to Plaintiff. It goes back
15 to Paul Morabito.

16 Now, we're in a special circumstance here
17 because the plaintiff is now the trustee of the
18 bankruptcy estate for Paul Morabito. So if an asset
19 -- or a transfer is avoided, it goes back to Paul
20 Morabito in the bankruptcy estate. It does not come
21 to the Herbsts or any other creditor but for Judge
22 Zive making a distribution there and it would be
23 subject to execution by the Herbsts or subject to
24 execution by the other creditors. It would be in a

1 bankruptcy context. So we are in a unique position
2 here. It is an independent remedy avoidance for
3 money damages.

4 We had testimony from Yon Friedrick that on
5 the day after his deposition he took a subsequent
6 transfer of the equity in Superpumper so an
7 avoidance of the transfer of Paul Morabito's
8 interest to Snowshoe Petroleum would not be enough.
9 It would not be enough. The plaintiff would then
10 have to sue Yon Friedrick to avoid as a subsequent
11 transferee with knowledge of the claim and so we
12 have asked with respect to Snowshoe, that transfer
13 of Paul Morabito's 80 percent equity interest, for
14 avoidance of Paul Morabito's transfer, which means
15 the plaintiff would then have to have a subsequent
16 action, as well as money damages, and specifically
17 avoid the transfer of 80 percent and award the
18 plaintiff the value of 80 percent equity in
19 Superpumper, \$10,440,000, minus the \$542,000 that
20 Paul Morabito has acknowledged as value conferred to
21 him, which is a total damages amount of \$9,898,000.
22 We outlined this in the findings of fact and
23 conclusions of law.

24 Then with respect to the Bayuk Properties

1 transfer -- Baruk Properties -- sorry -- where you
2 had Paul Morabito transferring his 50 percent
3 interest in Baruk Properties LLC, the ownership was
4 subsequently transferred to Snowshoe Properties LLC,
5 a New York company, and then we learned for the
6 first time from Mr. Bayuk in his testimony he's
7 subsequently transferred Snowshoe Properties, the
8 New York company, to a Delaware company, so we have
9 subsequent transfer again.

10 Mary Fleming was also subsequently
11 transferred out of Snowshoe Properties to the Ed
12 Bayuk trust. Ultimately Ed Bayuk and Bayuk trust
13 were the beneficiaries of the transfer, so we ask
14 for avoidance of the transfer of Paul Morabito's
15 50 percent interest in Baruk Properties LLC to the
16 Baruk trust as well as an award to the plaintiff of
17 50 percent of Baruk Properties LLC, which is a value
18 of \$1,654,550. That's the amount outlined in the
19 Baruk note, the \$1,617,000 plus 50 percent of the
20 value of the Clayton property. It represents a
21 50 percent interest to the Clayton property that was
22 not included in the \$1,617,000 note.

23 With respect to the Laguna properties, we
24 ask for avoidance of the transfer of Paul Morabito's

1 interest in the Laguna properties as well as an
2 award to Plaintiff for the value of Paul Morabito's
3 interest in the Laguna properties subject to credit
4 for the amount of value conferred to Paul Morabito
5 in exchange, which is 30 percent of \$2 million, the
6 30 percent of the \$2 million fair market value of
7 Panorama as well as the \$60,117. That totals
8 \$248,601.95.

9 In addition to those avoidances as well as
10 monetary awards that we're asking for --

11 THE COURT: You're asking for those
12 alternatively, correct?

13 MS. TURNER: We are not. So they're
14 independent remedies but they're subject to equity.
15 So that's why we're asking for -- and I'll use the
16 example of the value that was conferred in exchange
17 would be credited against the monetary amount and on
18 the avoidance as just how it's applied. If there is
19 collection as a result of avoidance, that would be
20 credited against a judgment against the defendants.

21 THE COURT: Well, just look at the Laguna
22 properties. You're asking for the avoidance and
23 you're also asking for \$248,601 in damages --

24 MS. TURNER: Right.

1 THE COURT: -- monetary damages.

2 MS. TURNER: Right.

3 THE COURT: Does that mean, in effect, that
4 the avoidance could be resolved with the payment of
5 \$248,601?

6 MS. TURNER: Yes. We would only be
7 entitled to --

8 THE COURT: One?

9 MS. TURNER: Yes.

10 THE COURT: Okay. That's where I thought
11 we were going.

12 MS. TURNER: Yes. We would only be
13 entitled to the amount of the damages awarded. The
14 avoidance just assists in getting us there. Because
15 if we collect as a result of the avoidance, that's
16 offset. Yes, we're not trying to double dip here.

17 In addition to those transfers being
18 avoided, though, to facilitate collection of the
19 monetary damages, we also have the cash transferred.
20 And this is part of the subject action, the \$355,000
21 and the \$420,000 that were paid to Sam and Ed Bayuk
22 in September 2010 purportedly in exchange for the
23 Raffles asset. The Raffles asset was not valued as
24 part of the Superpumper transfer, not in any of the

1 valuations, not by McGovern, Matrix, and not by Mr.
2 Lovelace. There's email that outlines the fact it
3 was not considered an asset of CWC at the time of
4 the transfer for whatever reason. Because it was on
5 the financial statement as an asset of Paul Morabito
6 in May of 2010, May of 2009, prior to
7 September 2010, we don't think that it was a CWC
8 asset; however, it was certificated in the name of
9 CWC. In either event, the value, if it had been a
10 purchase, that the cash paid should come to the
11 creditor. If it was just cash transferred without
12 any exchange of value, which I think the evidence
13 more strongly supports that, since there was not a
14 document, a piece of paper, anything to reflect the
15 \$750,000 paid in September 2010 was, in fact, in
16 exchange for the Raffles asset, we ask for the
17 damages equal to the value transferred. There is no
18 offset.

19 In addition to the monetary damages and the
20 avoidance, given that there have been
21 post-litigation transfers, subsequent transfers and
22 obligations incurred by Mr. Bayuk in particular,
23 we'd ask for a permanent injunction as permitted
24 under NRS Section 112.210, a permanent injunction

1 restraining Mr. Bayuk and the Bayuk trust from
2 transferring their interests or incurring an
3 obligation secured by their assets without first
4 obtaining a determination of reasonably equivalent
5 value by stipulation or further court order. On the
6 subject of avoidance -- properties. So the Laguna
7 properties and those interests that were transferred
8 as a result of the Baruk Properties transfer, we ask
9 that any further transfers being restrained and
10 finally post-judgment and prejudgment interest,
11 we've asked for that.

12 We believe the evidence is clear and
13 convincing to support the badges of fraud and
14 finding of actual fraud and certainly constructive
15 fraud. Once a judgment is entered -- and you do
16 have broad, broad, discretion, equities are applied,
17 but this is our suggestion of what a judgment should
18 look like -- then, the value conferred as a result
19 of the judgment benefits the creditors of Paul
20 Morabito. When this case commenced the Herbst
21 parties were the plaintiffs. They were the only
22 creditors that pursued these claims at that time.
23 And certainly the transfers were to address the
24 Herbst parties because it was on the heels of the

1 oral ruling and I believe everybody has acknowledged
2 that on the defense side that it was in response to
3 the oral ruling that these transfers were made. But
4 a judgment would be to the benefit of all creditors.
5 At Exhibit 303 is the claims register for the Paul
6 Morabito bankruptcy estate. As Mr. Leonard
7 indicated, there is no bar date so additional
8 creditors can file claims. But as of the time of
9 trial the claims register, not only included the
10 Herbst claim under the confessed judgment, but also
11 you have four others inclusive of substantial
12 obligations for taxes, the Franchise Tax Board out
13 of California, and other creditors, insurance
14 companies and the like. So it would benefit
15 everybody at that point in time.

16 And, your Honor, with that, unless you have
17 any questions, I will pass to Mr. Gilmore.

18 THE COURT: Okay. No questions. But I
19 think it's time for lunch. So we will come back at
20 1:30 and, Mr. Gilmore, it will be your turn at that
21 time.

22 (Lunch recess taken at 12:12 p.m.)

23 THE COURT: Thank you. Please be seated.
24 Mr. Gilmore.

1 MR. GILMORE: Thank you, your Honor. Your
2 Honor, before I begin, I would like to give my
3 heartfelt thanks to the Court's staff for the
4 professionalism they have shown throughout this
5 trial and they quite always show. And
6 congratulations to counsel for the professionalism
7 with which they put on this case today and, of
8 course, thank you, your Honor, for your attention
9 and putting up with us during this two weeks of
10 difficulty.

11 In my opening statement I explained that
12 the plaintiff's case would be built upon the
13 quintessential elements of the fraudulent transfer,
14 the fraudulent transfer with the facts that would be
15 most likely to accompany the fraudulent transfer
16 statute or, as we've been calling it, the UFTA. And
17 I think my prediction was true. They, Plaintiff,
18 presented their case by the UFTA playbook going
19 through by measuring the badges of fraud that are
20 spelled out in the statute and using the traditional
21 and classical ways that a bankruptcy practice might
22 prove fraudulent transfer against an adversary
23 defendant.

24 With all due respect to the plaintiff's

1 case, I think they completely got it wrong and
2 here's why: No. 1, as I said in my opening
3 statement, the classic fraudulent transfer involves
4 a situation where the transferor's intent is to
5 divest himself or herself of their assets and the
6 transferee then receives the asset without any
7 reasonable basis for the transferee's receipt of the
8 asset or desire to receive the asset or rationale
9 for receiving it. This case immediately sets apart
10 the traditional facts in an UFTA case from this
11 case. The facts are undisputed in this regard.
12 Mr. Bayuk, Mr. Sam Morabito, and Paul Morabito were
13 not strangers. They were co-owners of the assets in
14 question. That differentiates them right away from
15 the classic transferee. As I said in my opening
16 statement, the Ferrari in the garage. Hey, Uncle,
17 will you take my Ferrari so my creditors won't get
18 it. We can title it in your name but I'll be
19 driving it and I'll keep the keys in my pocket. The
20 uncle cannot explain why he's driving the nephew's
21 Ferrari. That is a quintessential element. In this
22 case that element is not present.

23 The testimony was undisputed. Mr. Bayuk
24 and Mr. Sam Morabito each had their own individual

1 reasons why they chose to purchase and not receive
2 gratuitously and not to purchase the assets that
3 they had no previous interest in, the assets that
4 were previously owned, and that is an important
5 distinction.

6 One of the badges of fraud that typically
7 carries the day in a traditional UFTA case in the
8 bankruptcy court is the timing of the transfers
9 relative to the judgment. In this case I would
10 submit that that particular badge is not relevant
11 because it is stipulated that the impetus behind the
12 transfer was the judgment. There was no reason for
13 Sam and Ed to buy the assets they already co-owned
14 with Paul except for the judgment.

15 So the real question is, Why did the
16 transfers occur? And I would submit, your Honor,
17 that the badges of fraud as set forth in the UFTA
18 don't get us to why these transfers occurred. Were
19 the transfers purchased by the defendants for the
20 purpose of delaying, defrauding or hindering the
21 Herbst creditors or was there some other legitimate
22 purpose? In this case the evidence showed and the
23 testimony from all of the witnesses with knowledge
24 was that defendants had good cause for separating

1 their assets. The testimony was they could have the
2 option of doing nothing or they had the option of
3 doing something.

4 And I think the evidence in this case, your
5 Honor, showed that doing nothing certainly would
6 have embroiled the defendants in the Paul Morabito
7 v. Jerry Herbst and Company -- what I can only
8 characterize as fight to the death, and I think that
9 this trial evidenced that. This trial evidenced the
10 ferocity with which the Herbsts intended to bring
11 Mr. Morabito down and anybody associated with him.
12 This case was not about Mr. Bayuk and Sam Morabito.
13 This case was clearly about Paul Morabito and the
14 desire that the trustee has, the desire that the
15 people to whom he answers, primarily the Herbst
16 parties, what their intention was.

17 What did Mr. Leonard say? Well, No. 1, he
18 testified that he was handpicked by the Herbsts.
19 It's undisputed. It's undisputed that he met with
20 the Herbsts after already deciding to take the case
21 against my clients. Of course, he admitted he met
22 with them but he conveniently forgot everything they
23 talked about but, assuredly, they talked about
24 nothing other than prosecution of this case. It's

1 undisputed that he was appointed with the single
2 vote of the Herbsts. This was not, as the
3 plaintiffs are now suggesting, for the benefit of
4 the creditors at large. That's not the case. There
5 was one creditor and there was one creditor that
6 elected the trustee and there was one creditor that
7 essentially put Mr. Morabito in involuntary
8 bankruptcy. Mr. Leonard testified that, although he
9 knew nothing about the facts of this case,
10 everything he learned about the facts of this case
11 he learned from Mr. Murtha, which is another one of
12 his lawyers being paid for by the Herbsts. Before
13 he knew a single relevant fact of this case, he
14 decided to take the case and he had already
15 testified he wanted to put my clients in jail.

16 What is that indicative of? It's not
17 relevant and, perhaps, maybe to the underlying
18 material claims it's not, but it's relevant to
19 establish that when my clients decided at the day of
20 the judgment or the oral ruling -- I've been calling
21 it "the oral judgment" -- when the defendants had
22 the option to do something or do nothing, they knew
23 what this Court knows now, and that is, had they
24 done nothing, they almost assuredly would have been

1 swooped into the Herbst dragnet and been involved
2 along with Mr. Morabito in defending against the
3 Herbsts' ferocious attacks. It was the testimony of
4 Mr. Bayuk and Sam Morabito between their two options
5 of doing nothing or something, doing nothing and
6 being swept into the dragnet was not acceptable.

7 We heard testimony about Mr. Leonard's
8 personal beliefs as to Mr. Morabito and his
9 character even though that testimony is related to
10 events that occurred six or seven years after the
11 transfer. It is easy to see why the defendants
12 simply wanted no part of being involved in the
13 Herbsts after the trial which they were forced to
14 endure. It's worth mentioning that Mr. Bayuk and
15 Mr. Sam Morabito were originally sued in the Herbst
16 action, not as original plaintiffs. They were not
17 involved. They were sued as counter-defendants and
18 they were sued for unjust enrichment. Certainly a
19 bogus theory. They were not part of the original
20 case. They were dragged into it and they were
21 rightfully, as Mr. Bayuk put and Mr. Vacco put it,
22 exonerated by Judge Adams. They had no business in
23 that lawsuit and they had no business entangling --
24 further entangling their assets with the Herbsts'.

1 The problem, of course, was their assets
2 were co-owned with Paul Morabito's assets and that
3 goes to, as I said, the initial one of the primary
4 elements of the fraudulent transfer --
5 quintessential fraudulent transfer, which is that
6 the transferees had no business owning the assets
7 after the transfer. And in this case they already
8 owned the assets. And in hindsight, your Honor,
9 their decision to do whatever they could to avoid
10 getting entangled between the Herbsts and Paul
11 Morabito, in hindsight that decision was correct.
12 In light of those options that they had available to
13 them, doing nothing was simply not an option.

14 In deciding to do something, the testimony
15 as to what the defendants intended, indeed what Paul
16 Morabito intended, was consistent as to all of the
17 witnesses, all of them. Mr. Vacco, the architect of
18 the transfer, said this transfer was consummated and
19 completed for the purpose of extricating Mr. Bayuk
20 from the Herbsts. Mr. Vacco testified that Edward
21 called him and said, I don't want to be involved in
22 the Herbst efforts to chase Paul and his assets and
23 I want to be released from that. That was
24 Mr. Vacco's uncontroverted testimony. Sam Morabito

1 testified that his sole and only goal was to protect
2 the Superpumper business that he had spent a
3 considerable number of years building. Although he
4 was only a minority owner, he worked on the
5 Superpumper business day to day and he received a
6 salary and he had an interest in preserving it.
7 That testimony was uncontroverted. Your Honor, it's
8 important to note that the plaintiff would, in fact,
9 in their filings and even in their finding of fact
10 and conclusions of law they submitted, they referred
11 to the defendants collectively in almost every
12 instance. "They," Sam Morabito and Mr. Ed Bayuk.
13 It's they, they, they.

14 Well, the law requires that each defendant
15 be given their own trial based on, not only Paul
16 Morabito's intent with respect to actual fraud, but
17 their intent with respect to the good-faith defense.
18 So I think, although the plaintiffs' desire would be
19 that this court simply lump all of the bad guys in
20 together and impute to each one their own separate
21 intent, I don't think the law permits this court to
22 do that. This court has to, even though the
23 defendants are here together and are jointly
24 represented, the court has to evaluate the intent of

1 each defendant in deciding whether or not they
2 deserve the good-faith defense, No. 1, and, No. 2,
3 whether or not Paul Morabito's alleged intent should
4 be imputed to them. I think that's an important
5 distinction.

6 Sam Morabito testified his only interest
7 was to protect Superpumper. He had no reason to
8 care about them, and that was his testimony and it
9 was uncontroverted. Sujatha Yalamanchili, who was
10 the lawyer that Paul Morabito retained in -- to
11 obtain advice related to the options available to
12 Paul, it's important to note that Sujatha
13 Yalamanchili and Gary Graber both testified that
14 they did not have attorney-client relationships with
15 the defendants. The Hodgson Russ firm represented
16 Paul Morabito only with respect to the transfers at
17 issue. And that's important because when plaintiff
18 points to this court -- points this court to the
19 emails between Paul Morabito and Sujatha, Edward
20 Bayuk and Sam Morabito are not even copied or
21 discussed or involved. And the idea that because
22 Paul Morabito is having conversations with his
23 lawyers at Hodgson Russ that what he says and what
24 he does should be imputed to my clients is simply

1 wrong, I think.

2 Sujatha Yalamanchili in her testimony made
3 an important distinction and I think bears repeating
4 and emphasis; that is, the law provides a permissive
5 method for judgment debtors to protect their assets.
6 We have statutes that have been on the books in this
7 state -- in fact, on the books in every state as far
8 as I'm aware -- that provide judgment debtors the
9 ability to ensure that their judgment creditors do
10 not seize and execute upon all of their assets and
11 put them in the little or metaphorical debtor's
12 prison.

13 So the idea that simply because somebody
14 wants to maximize their ability to protect their
15 assets against the creditors is not, per se,
16 fraudulent transfer under the statute. Nor is it,
17 per se, fraudulent intent. Yet that's exactly the
18 shortcut the plaintiff wants this court to make. Is
19 it simply because there's an adverse judgment
20 against Paul Morabito, the first thing he does is
21 contacts his lawyers and says, Let's circle the
22 wagons, what can we do about this. The insinuation
23 by the plaintiffs is as soon as he's done that, he's
24 already formulated a fraudulent intent. Well,

1 that's not borne out by the facts in this case or by
2 the law.

3 The defendant judgment debtor has the right
4 to take advantage of all of the permissive methods
5 by which they can protect their assets in the result
6 unfortunate adverse judgment, and Plaintiff gives no
7 weight to that statutory protection. In fact, they
8 argue just the opposite, which is, as soon as Paul
9 Morabito calls his lawyers and says, What can I do
10 to help me protect my assets, he's all of a sudden
11 guilty of a fraudulent actual intent, and I think
12 that that's not borne out by the law or facts in
13 this case.

14 When I asked Sujatha Yalamanchili, Did you
15 believe in dealing with Paul Morabito that his
16 intent was to seek the permissive or nonpermissive
17 version of asset protection, she said permissive,
18 and even though Gary Graber, who testified he didn't
19 like Paul very much, he testified that he never
20 witnessed Paul doing anything except -- Gary
21 Graber's own words -- attempting to evade his
22 creditors. And when I asked him, Well, you realize
23 'evade' has a bit of a negative connotation to it,
24 he said, If I'm driving through an intersection and

1 a car tries to hit me and I swerve and I evade,
2 that's the context with which I mean. The idea that
3 having a desire to protect your assets permissibly
4 from your judgment creditors, there is a permissive
5 and nonpermissive way.

6 The way the plaintiff presented their case
7 is that anybody who even pursues the permissive
8 method of protecting their assets has already taken
9 the first large step toward the fraudulent transfer.
10 And that simply can't be the case, otherwise,
11 bankruptcy counsel in assisting judgment debtors,
12 giving advice would be facilitating a fraud.
13 Sujatha said that didn't happen. In support of that
14 it's been established definitively that
15 approximately 10,000 pages of emails between Paul
16 Morabito and Hodgson Russ were produced and
17 approximately 114,000 pages of emails between Paul
18 Morabito and his lawyers in New York, Dennis Vacco
19 and company. And in none of those emails was the
20 smoking gun that one might expect if a client was
21 using his lawyers to facilitate an outright fraud.
22 We would expect to have seen that. Paul Morabito
23 saying, I want to make sure that the Herbsts get
24 nothing and that I'm protected, whether it's

1 permissive or nonpermissive, well, they don't have
2 that.

3 The best email that they have that the
4 plaintiff presented actually when read in context
5 and when read completely establishes exactly what
6 Ms. Yalamanchili said, which is that Paul desired to
7 ensure a permissive method of protecting his assets
8 but, more importantly, protecting the assets of the
9 innocent parties here, which were Sam and Ed Bayuk.
10 One would think as bad a guy as Paul Morabito has
11 been made out to be by Mr. Leonard, by, apparently,
12 Judge Adams and, apparently, Judge Zive, that not
13 one email they could present which would be anything
14 other than attenuated circumstantial evidence of
15 actual fraud. They don't have one. And that's
16 particularly striking in light of the fact it is
17 obvious, your Honor, when you read these emails
18 between Paul and his lawyers that Paul has no
19 expectation that these emails would ever be produced
20 and would ever be read in open court.

21 So, ironically, although Plaintiff would
22 tell you nothing Paul Morabito says can ever be
23 considered at face value, I would submit if there is
24 a time in which the Court can believe what Paul

1 Morabito is saying, it would be in those emails to
2 his lawyers where he has no expectation that they
3 would ever be made public and used against him. At
4 that backdrop, not a single email directly
5 corroborates Plaintiff's theories. I'll go through
6 some of them and explain in context why I believe
7 the emails that Plaintiff relies most heavily upon
8 are actually indicative of his genuine intent, which
9 was to ensure that Sam and Ed were protected, even
10 if it was at Paul's own expense.

11 Those emails start at Exhibit 29. If
12 Plaintiff had a smoking gun email, they would say it
13 would be this one. This is an email between Paul
14 Morabito, Mr. Vacco, and Sujatha Yalamanchili,
15 September 20th, so approximately a week after the
16 oral judgment and around about the time that Paul
17 has made a decision that he's going to sell a
18 portion of his assets -- sell some of his assets to
19 Sam and Ed and Sam and Ed are going to buy a portion
20 of his. Paul Morabito here is speaking, not to the
21 court. He's not signing a declaration to somebody
22 that he knows is going to be read and perhaps
23 scrutinized. This is an email he's writing to his
24 private counsel at 10:00 at night and he's

1 responding because Gary, who testified he doesn't
2 like Paul very much, and the testimony was that they
3 had had a little bit of what I can characterize as a
4 tiff on the phone, Paul's saying to Sujatha to
5 Dennis Vacco, Gary asked me what my rationale was to
6 do this and that I would be asked. Well, here it
7 is. Here's Paul's rationale. And he's not giving
8 this with the expectation the Court will ever read
9 this. He's giving this to his lawyers, which is, by
10 the way, consistent entirely with what Sujatha
11 Yalamanchili testified to.

12 Judge Adams specifically exonerated Edward
13 and Sam. They hold assets together. They agreed
14 amongst themselves that Paul was best standing alone
15 with his assets and so on the advice of counsel they
16 found a way to do that. And the way that counsel
17 had advised them to do that to ensure that Sam and
18 Ed could extricate themselves from the Herbst mess,
19 while also standing the best chance of avoiding the
20 appearance of impropriety, that they could have them
21 valued and transferred, not transferred to some
22 random third-party uncle, but purchased by the
23 people who already own the assets and in some cases
24 actually lived in these houses. Context is very

1 important. The context of this email is not that
2 Paul's plan all along, because he says, you know,
3 he's dissatisfied with the Herbsts or he doesn't
4 like what he perceived to be the Herbsts' home court
5 advantage in Department 6, that that's indicative of
6 what his intent was. His intent is clear and it's
7 right here. That is to protect Sam and Ed.

8 So when it comes to intent, as Plaintiff
9 suggests, there were several transfers. Each one of
10 these transfers in order to be determined to be
11 fraudulent and subject to avoidance, this Court has
12 to determine that each of these transfers were
13 fraudulent, either actually fraudulent as to Paul
14 Morabito's intent, or constructively fraudulent
15 because they were not exchanged for a reasonably
16 equivalent value.

17 What was the testimony related to the
18 intent of Superpumper? Well, I believe that that
19 testimony was uncontroverted. The testimony was
20 that Superpumper, its assets were held in a Nevada
21 corporation now. Although the Nevada corporation
22 owned the assets, these were not Nevada assets and
23 the insinuation that's been made throughout this
24 trial is that Paul took some effort to remove Nevada

1 assets from Nevada. Well, what are the assets
2 exactly that the plaintiff's referring to? This is
3 their summary of the assets that were allegedly
4 transferred beyond the reach of the creditor. I'll
5 address that in detail. What were they? Well, CWC
6 Superpumper. Yes, Consolidated Western is a Nevada
7 corporation but there are no assets in Nevada.
8 Baruk Properties LLC is a Nevada LLC, true, but none
9 of the assets are located in Nevada and none were
10 with the exception of the Clayton place, which the
11 parties admitted that they hadn't even considered
12 because it was insignificant to them.

13 The next two properties, El Camino and Los
14 Olivos, those are residential properties in Laguna
15 Beach, California. No Nevada asset there. The only
16 Nevada asset that these parties ever co-owned for
17 which these plaintiffs are complaining is the
18 Panorama property. There was no removal of assets
19 from the state of Nevada. That's simply a false
20 assertion.

21 The testimony was, and it was
22 uncontroverted, that the judgment rendered against
23 Paul resulted in a default under both the lease and
24 loan agreement. Now, Plaintiff in her closing

1 argument -- counsel in her closing argument
2 suggested that it was something other than that, but
3 she suggested that without evidence to back it up.
4 The evidence was uncontroverted. Much of the
5 evidence is uncontroverted. What's not
6 uncontroverted is the spin that is attempted to be
7 put on it by counsel. There were no fewer than four
8 default letters delivered to, not just Superpumper
9 Inc., but Superpumper Properties as well in which
10 BBVA Compass and their lawyers confirmed that one of
11 the primary basis for the default was the
12 \$75 million judgment rendered against the guarantor.
13 I'm looking, of course, at Exhibit 231, page two.
14 This isn't that hard to understand, your Honor. A
15 guarantor who has liquidity provisions in the lease
16 and the loan agreements now has a \$75 million
17 judgment against him and the testimony was
18 uncontroverted that that was the primary event in
19 default.

20 So whatever plaintiff's counsel attempts to
21 suggest without evidence to support it, that there
22 was some other cause for the default which could
23 have been cured, is simply unsupported by the
24 evidence. It was undisputed that BBVA Compass did

1 call the note and those exhibits evidence that they
2 called the note, and then they said, We may agree to
3 forbear if you're willing to meet our forbearance
4 conditions. And Sam Morabito testified that for the
5 next 11 months he spent hours working with the bank
6 and with spirit to obtain the forbearance to ensure
7 Superpumper's survival. The testimony was
8 uncontroverted without those efforts Superpumper
9 would not have survived.

10 It's interesting that plaintiff's counsel
11 raised the exhibit related to the claims register in
12 the bankruptcy. The first claims register is the
13 Hartford Insurance Company. The Hartford Insurance
14 Company claim arises from the failed Big Wheel
15 transaction when Paul Morabito got his judgment
16 against him and could no longer serve the debt
17 associated with the Big Wheel. Big Wheel failed and
18 that's what the Hartford claim is. They were the
19 surety on the performance bond.

20 What did happen to the Big Wheel project
21 out in Fernley is exactly what would have happened
22 to Superpumper had Sam not decided to step in, take
23 over, and do everything that was necessary in order
24 to get the forbearance from Spirit and from Compass.

1 Testimony was uncontroverted that, had Sam done
2 nothing, Superpumper would have gone the same way
3 Big Wheel did, which was defunct and foreclosed upon
4 in a matter of months. Sam's testimony was genuine.
5 He cared about Superpumper. He had moved to
6 Scottsdale to take over control in day-to-day
7 operations of the company. He had a real reason for
8 buying Superpumper, not a pretext. And that's -- in
9 the classic quintessential transfer it's always
10 about the pretext. What did the transferee say was
11 the reason for the transfer and what was the actual
12 reason. In this case the actual reason was
13 consistent with what Sam Morabito said, not pretext.

14 Additionally, it was uncontroverted that
15 when Sam and Edward bought Superpumper they put
16 millions of dollars of their own money to shore it
17 up. This was not money that was Paul's. This was
18 not money that was proceeds. With the exception of
19 the \$659,000, which was the immediate repayment of
20 the term loan from Compass, this money was all money
21 that Sam and Ed personally contributed to shore up
22 the capital requirements of Superpumper.

23 THE COURT: Which exhibit is this?

24 MR. GILMORE: I'm sorry, your Honor. This

1 is 248.

2 THE COURT: Thank you.

3 MR. GILMORE: In the quintessential
4 fraudulent transfer you wouldn't have this. You
5 wouldn't have Sam and Ed -- you wouldn't have Sam
6 move to Scottsdale become the 24-hour-a-day operator
7 of these 11 gas stations and then put -- if you do
8 the math between -- not including the 659, if you do
9 all the math from this Exhibit 248, 250, and 251,
10 you'll see that Sam Morabito put a million and a
11 half of his own dollars, not including the Compass
12 proceeds, in order to shore up this business.

13 Now, in the quintessential fraudulent
14 transfer you wouldn't have that. You wouldn't have
15 the transferee take personal ownership of the asset.
16 No. The quintessential fraudulent transfer is the
17 transferee takes it and holds it as a shell for the
18 transferor so that the transferor can benefit and
19 there's no genuine and honest exchange. In this
20 case the facts are uncontroverted. Sam and Ed had
21 put in their own money to shore up Superpumper
22 because they genuinely desired to purchase it and
23 had their own reasons for doing so. It had nothing
24 to do with the Herbsts.

1 The testimony was consistent with respect
2 to the Raffles. The testimony was uncontroverted.
3 Raffles was a pre-Herbst asset. It was an excluded
4 asset as part of the sale and when it was -- when
5 BHI was sold, it was an asset without a home. It
6 was an insurance captive that needed to be held in a
7 like-kind business. There were no premiums paid
8 after the BHI sale. It was simply a pool that, if
9 circumstances favored them with respect to the
10 amount of claims, Raffles insurance pool would pay
11 out to the benefit of the captive owners. This was
12 nothing but the potential for a dividend
13 distribution, dividend payment to the owners of CWC.

14 At the time of the oral judgment the
15 evidence was uncontroverted. The parties decided
16 what they wanted and Paul said he was willing to
17 take the risk with respect to the value of the
18 Raffles asset and he paid Sam and Edward for their
19 respective shares. It was shown in Plaintiff's
20 closing. This is uncontroverted. The testimony was
21 Edward Bayuk owned 25 percent of BHI so he received
22 25 percent of the Raffles and Sam Morabito owned
23 20 percent and he had received 20 percent of the
24 proceeds. Plaintiff's counsel showed the exhibit,

1 which was the September 30th Raffles valuation, and
2 argued that this was the document that Plaintiff --
3 or that Edward Bayuk used to value Raffles. Well,
4 that wasn't the evidence at all. The evidence was
5 that Mr. Bayuk called Kensington at Raffles and
6 asked him to send him the June statement and that by
7 going through the June statement and determining
8 what they believed the value was as of the end of
9 September, Mr. Bayuk's testimony was it was 1.8
10 million. He testified that the spreadsheet showing
11 the value of the Raffles was not received until some
12 months later but that it was indicative of the
13 ballpark area. It was also uncontroverted that the
14 value of Raffles fluctuates based on the extent of
15 the claims made or not made during the policy
16 periods. The testimony was uncontroverted that the
17 letter of credit retirement held at the Royal Bank
18 of Canada was Paul's money, not CWC's. Therefore,
19 all of the emails that Plaintiff showed the Court
20 related to the desire to get the letter of credit
21 released has nothing to do with Mr. Bayuk, nothing
22 to do with CWC, has nothing to do with Snowshoe, and
23 has everything to do with Paul Morabito's desire to
24 get the cash collateral that he had on deposit at

1 Bank of America released that was securing the RBC
2 letter of credit. It had nothing whatsoever to do
3 with CWC or nothing to do with Superpumper. It was
4 simply going through the motions to ensure that Paul
5 could get his cash on deposit at Bank of America
6 released so that he could use that to satisfy his
7 own obligations.

8 Remember, the testimony was that Paul
9 Morabito had a personal line of credit with Bank of
10 America, which neither Mr. Bayuk nor Sam Morabito
11 knew anything about. When the Bank of America sued
12 Paul Morabito to recover from that line of credit,
13 Paul Morabito said to the effect, Well, you've got a
14 million-three on deposit in your bank, Bank of
15 America. Why don't you just seize that 1.3 and
16 offset it from the amount that is owed to you. And
17 the Bank of America said, as Mr. Bayuk testified, We
18 can't do that because that money is pledged to
19 secure a letter of credit that we've issued to Royal
20 Bank of Canada to secure the buy-in of the Raffles.

21 And so there were emails that Plaintiff's
22 counsel showed you about conversations related to
23 where is it certificated, where is it not
24 certificated all taken out of context. Those

1 conversations were limited to one purpose and that
2 is finding a way to get Bank of America to release
3 the deposit that was on -- the cash on deposit at
4 Bank of America so that it could be used to satisfy
5 Paul's personal account. It had nothing to do with
6 Raffles, nothing to do with CWC and everything to do
7 with reducing the letter of credit requirements so
8 that Paul could use his own money to pay the Bank of
9 America lawsuit. Uncontroverted evidence.

10 Plaintiff's counsel argued Paul received no
11 benefit. And, by the way, Paul didn't receive any
12 benefit from the Raffles so, therefore, it was a
13 scam. Well, not according to the tax returns that
14 were filed by CWC. CWC tax returns establish that
15 Paul Morabito received \$680,000 from Raffles --
16 that's Exhibit 158, your Honor -- which was
17 discussed at length in the trial evidence. Raffles
18 was carried on the books of CWC because it had to
19 be, but it was always a Paul Morabito asset and he
20 received the benefit of it. Uncontroverted
21 evidence. Exhibit 272 established through the
22 accountants that Paul received approximately
23 \$658,000 in 2011 from the Raffles distribution and
24 he was 1099'd for it. The reason why the Herbsts

1 never executed upon that will be addressed later,
2 but it was for the same reason that none of these
3 assets were executed upon and it had nothing to do
4 with these defendants. The testimony with respect
5 to Baruk Properties was that it was a Nevada LLC
6 owned by Mr. Bayuk and Mr. Morabito's trust and that
7 there were four pieces of property owned by Baruk,
8 the Glenneyre commercial properties in Laguna Beach,
9 the Mary Fleming property, residential property in
10 Palm Springs and the Clayton Place. The testimony
11 was uncontroverted that Mr. Bayuk decided after the
12 oral judgment that he was going to leave Nevada and
13 resume his residence in Orange County, right down
14 the street from the Glenneyre properties, and that
15 Paul's intent was to live in L.A.

16 The testimony was that Edward Bayuk did not
17 have the ability, the liquidity to write a check to
18 Paul for the \$1.6 million and so he did so through a
19 note. The reason he didn't have the liquidity, as
20 Mr. Bayuk testified, was because his obligations he
21 had undertaken with respect to Superpumper
22 forbearance required him to have a certain amount of
23 cash on hand, which he was not able to maintain
24 simultaneously the cash on hand and also to pay Paul

1 the \$1.6 million. That testimony was
2 uncontroverted.

3 It was uncontroverted that after Mr. Bayuk
4 acquired the Baruk Properties he created a holding
5 company to own and operate them exclusively on his
6 own. There's no nefarious intent that can be
7 inferred from Mr. Bayuk's desire to create a new
8 holding company to hold those assets. It's
9 uncontroverted that those transfers were not secret
10 and underhanded. Those transfers were done by way
11 of recorded deeds. Anybody in the world with an
12 internet connection can spend five minutes and pull
13 the records and see all the property that Mr. Bayuk
14 owns or his companies own. There was nothing
15 secretive or secluded about that transfer. It was
16 open and notorious.

17 There was commentary about the Woodland
18 Heights transfer. During the trial, your Honor, I
19 objected to the presentation of that evidence
20 because my argument was there was no foundation and
21 I believe the way in which the plaintiff has argued
22 it in closing argument evidences the fact that there
23 was no foundation. Nobody was here testify what
24 Woodland Heights was or did. No one was here to

1 testify whether there was a conveyance, whether that
2 conveyance was unwound or not. So we can look at
3 the exhibit and read the words on the page, but
4 without any testimony supporting what Woodland
5 Heights was, I would submit this Court has no
6 ability to infer anything with respect to what
7 Woodland Heights was or was not as it related to
8 Mr. Bayuk or Sam Morabito. All we have is a lawyer
9 file that was provided without any context and
10 without any testimony, so I would submit that
11 Woodland Heights is a red herring.

12 The testimony with respect to the Laguna
13 houses was that those properties were co-owned.
14 They were co-owned as tenants in common and that
15 because Paul was going to live in L.A. and Edward
16 was going to live in Orange County, it made sense
17 that Edward would take the Laguna houses in exchange
18 for the Panorama house. As with the other
19 properties, they were appraised by certified
20 appraisers. The values came in and the exchanges
21 were made.

22 Plaintiff has not contended that the values
23 attributed to the Laguna houses or to any of the
24 properties at Baruk to the Laguna houses or the

1 Baruk properties were valued incorrectly as part of
2 this exchange. Again, as Plaintiff contended in --
3 Plaintiff Counsel contended in her closing argument,
4 reasonably equivalent value is a big issue when it
5 comes to, not only the badges of fraud, but also
6 it's a required element in constructive fraud.
7 Plaintiff has not contested the values that were
8 assessed to the transfers with two exceptions: They
9 had no evidence to suggest the values of Raffles
10 were incorrect or evidence to suggest Watch My Block
11 was incorrect or no evidence to subject that
12 Superpumper properties, which was the card locks,
13 was incorrect -- or over or understated is a better
14 way, perhaps, of arguing it. There was no evidence
15 that the Laguna houses were valued incorrectly. No
16 evidence that the Baruk properties were valued
17 incorrectly. So when it comes to reasonably
18 equivalent value for the exchange, all of the
19 assets, save two, are undisputed. That badge of
20 fraud assuredly goes in favor of the defendants.

21 As with the Glenneyre properties and the
22 Mary Fleming property, the Laguna houses were
23 appraised. They were recorded by way of deed and
24 that transaction was not secretive. There was some

1 testimony and argument about the lease at Panorama
2 -- I'm sorry -- the lease at Doheny Road that I
3 think deserves treatment because I believe there was
4 mischaracterization in the argument as to exactly
5 what happened. The argument was not consistent with
6 the testimony. This is Exhibit 35. It's the email
7 between Mr. Layman and Paul Morabito and Ed Bayuk
8 related to first amendment to the residential lease
9 at Doheny. Plaintiff's counsel insinuated that the
10 Doheny Road condo was evidence that Paul and Edward
11 had decided that, even though they testified at
12 trial, they were no longer residing together after
13 the oral judgment, but they actually were. And that
14 insinuation is not supported by the language of this
15 document and it's not supported by any of the
16 uncontroverted evidence.

17 The uncontroverted evidence in this case
18 was July 31, 2010, on Exhibit 35, so predating the
19 oral judgment by several months before Paul or
20 Edward had any expectation that an adverse judgment
21 would be rendered against them, Paul Morabito
22 obtained a residential lease at Doheny Road, which
23 is a very upscale apartment building in West
24 Hollywood owned by celebrities, Elton John, amongst

1 others and that Paul Morabito was living at Doheny
2 Road July 31st, 2010, with his new boyfriend in Los
3 Angeles. That was the evidence.

4 The evidence was that the purpose for this
5 first amendment was simply to add Mr. Bayuk as a
6 co-tenant, not to live there. The testimony was
7 uncontroverted. Mr. Bayuk never lived at Doheny
8 Road. He may have stayed there a few nights
9 occasionally with Paul and his other boyfriend, but
10 he did not live there. And he testified and it was
11 uncontroverted that the reason why this amendment
12 was made was that at Mr. Bayuk's request and that
13 was so that he could ensure that, if Paul Morabito
14 needed assistance as a result of his physical
15 condition, Mr. Bayuk could provide it. That was the
16 reason for this first amendment to the residential
17 lease. The spin that plaintiff's counsel put on
18 this document and with respect to Mr. Bayuk and Mr.
19 Morabito's living situation is simply not borne out
20 by the evidence. Another mischaracterization based
21 on undisputed evidence.

22 THE COURT: So I don't think I heard
23 testimony that Elton John lived there.

24 MR. GILMORE: Was that not part of it? But

1 he did live there. I do know that.

2 THE COURT: I was wondering was I sleeping
3 during that part? I thought I'd remember that.

4 MR. GILMORE: I thought it came out but
5 it's immaterial to the case but, yes, Elton John has
6 a place at Doheny Road.

7 Plaintiff's counsel raised the issue of
8 Watch My Block at trial, not for the idea that they
9 can present any evidence that Watch My Block was a
10 fraudulent transfer in and of itself because, of
11 course, Plaintiff has no valuation expert to support
12 that. Even though it stands to reason that, had
13 they been able to obtain a valuation expert to
14 support that they certainly would have, they did
15 not. Instead, they bring Watch My Block up only as
16 part of this big-picture conspiracy argument that
17 everything of value that Paul Morabito owned he
18 found a way to divest himself of. Watch My Block is
19 important because, like many of the other assets
20 that were transferred or purchased by Sam and Ed,
21 these had no future value and would have provided no
22 benefit whatsoever to any subsequent creditor.

23 There was no dispute as to value and
24 there's no evidence that Paul was divesting himself

1 of anything that a creditor could have seized upon
2 and there's no evidence that Paul Morabito had
3 anything to do with Watch My Block the day after he
4 transferred it to Edward Bayuk for a nominal sum.
5 The only evidence that was provided at trial was
6 that Edward Bayuk liked the idea, he had the time
7 and temperament to, perhaps, pursue it and that Paul
8 Morabito did not. The testimony, of course, is
9 that, although Edward liked the idea, it never
10 became of anything other than the idea. The primary
11 thrust of defendant's case is what I contended in my
12 opening statement would be.

13 The second primary theme of the
14 quintessential transfer, and, that is, that the
15 assets being transferred were removed beyond the
16 reach of the creditor. And that comes from the case
17 law interpreting UFTA, that Paul Morabito did
18 something transferring these assets beyond the reach
19 of the creditor. And I provided the summary that
20 Plaintiff used as part of their Power Point closing
21 and I'd like to go through that to establish how
22 false this accusation is.

23 Plaintiff contends that it would have been
24 entitled to at the date of the judgment 80 percent

1 interest in CWC Superpumper at a value. Now, we,
2 obviously, contest that value but for purposes of
3 this line of argument, this is not about the value.
4 It's about the idea and the argument that as of the
5 day of the judgment, absent these transfers, that
6 Plaintiff would have been able to recover anything
7 from CWC. Well, they take it for granted. They
8 say, Well, we would have been able to collect,
9 Herbst creditors could have executed upon CWC to the
10 tune of \$10 million and change. That's their
11 valuation. By our valuation it would be something
12 in the 2.5 range.

13 But that's not the point. The point is
14 Consolidated Western Corporation is a Nevada
15 corporation which has built-in statutory protections
16 in situations just like this where a shareholder
17 gets an adverse judgment against him or her and then
18 the creditor seeks to charge against that judgment
19 debtor's assets. It is undisputed Nevada law
20 protects shareholders of Nevada corporations from
21 execution upon their assets. There's no ability as
22 of the date of the judgment for the Herbst creditors
23 to do anything with respect to CWC except obtain a
24 charging order. And we know exactly what a charging

1 order entitles a judgment creditor to do, ensure
2 that any economic benefit associated with that
3 shareholder ownership would be provided then to the
4 judgment creditor. Well, where was the evidence
5 that even a charging order would have been
6 beneficial in any way to the plaintiffs? There
7 wasn't any. They had completely ignored that entire
8 line of argument. Plaintiff in this case entirely
9 avoided the reality that there's no possibility that
10 Herbst could have ever executed upon CWC and taken
11 anything from the assets of the corporation.

12 Same thing with respect to Baruk Properties
13 LLC. That's a Nevada limited-liability company.
14 Nevada statute provides that individual members of a
15 Nevada LLC, their membership interest in the LLC
16 cannot be executed upon. It can in California.
17 Perhaps it can in Arizona. Cannot here. So the
18 judgment creditors cannot take and seize Paul
19 Morabito's interest in Baruk Properties LLC and
20 foreclose upon it to the tune of \$1.6 million. They
21 simply could not do that by operation of law.
22 Plaintiff completely, completely ignored that
23 reality. It's undisputed.

24 Indeed, the testimony was that Baruk

1 Properties LLC was not even cash flow positive, so
2 even if Plaintiff had come into this case and argued
3 that there was a charging order that had some value
4 to the plaintiff, the facts don't support that
5 contention. Baruk Properties LLC was cash flow
6 negative at the time of the transfer and it was for
7 nearly a year and a half after the fact. Herbst
8 would have been able to obtain nothing from Baruk
9 Properties LLC and certainly not a 50 percent
10 interest.

11 The rest of the three personal properties
12 were all held tenants in common. Plaintiff
13 presented no argument overcoming the testimony that
14 tenant in common means any tenant in common gets to
15 own the property 100 percent right to possess and
16 own and use just with -- just as well as all of the
17 other tenants in common do. California law -- and
18 this is presented in my brief -- California law for
19 the California properties and Nevada law for the
20 Nevada properties do not let a judgment creditor of
21 a tenant in common seize and foreclose upon and sell
22 a membership interest. It's undisputed. The only
23 thing California or Nevada law permits the judgment
24 creditor to do in this case is co-own but does not

1 have the ability to foreclose.

2 So \$808,000 was not available to the
3 creditor, \$427,000 was not available to the
4 creditor, and \$679,000 was not available to the
5 creditor. This is Plaintiff's own spreadsheet.
6 There's not a dollar on this spreadsheet that
7 Plaintiff could have achieved by way of execution
8 even if they tried. And I'll explain in a minute
9 why the evidence was uncontroverted that they did
10 not. But even had they tried to execute, they could
11 not have obtained anything associated with their
12 before-and-after spreadsheet.

13 Plaintiff ignored that entirely. So how
14 can there be as a matter of law a delay, a hindrance
15 or a defrauding? As plaintiff's counsel said
16 several times, the question of value is value to the
17 creditor, not value to the transferor or transferee,
18 value to the creditor. If the value to the creditor
19 of these assets is nothing more than a
20 tenancy-in-common interest or a charging order, then
21 how do these transfers remove these assets beyond
22 the reach of the creditor? They were never within
23 the reach of the creditor to begin with. In fact, I
24 think verbatim Plaintiff's counsel argument was,

1 Without the transfers, the Herbsts could have
2 executed. Not true. They could not have. They
3 could not have. The law did not permit the Herbsts
4 to execute upon any of these assets without the help
5 of Paul Morabito and Ed Bayuk. Ironically, as
6 Dennis Vacco testified at length, they understood --
7 Dennis Vacco testified he had studied and evaluated
8 Nevada law and he understood what the options were.
9 And in light of these options, which was as standing
10 these properties and assets were not subject to
11 execution, that they decided, Paul Morabito --
12 Dennis Vacco, Edward and Sam all decided they were
13 better off dismantling their asset protections in
14 order to put Paul on an island and, hopefully,
15 protect Sam and Ed's preexisting interest in these
16 assets and that it would, therefore, subject Paul to
17 have execution, whereas, before he was not subject
18 to.

19 The transfers provided the Herbsts the
20 ability to execute upon Paul's interest in Panorama.
21 Before the transfers they could not have done that.
22 They would not have been able to do that. That's
23 not an insignificant fact. That is a matter of law
24 issue. Secondly, with respect to the

1 beyond-the-reach-of-the-Herbsts-or-the-creditors
2 argument, there's this argument that's not borne out
3 by the facts that these transfers left Paul with
4 nothing upon which the Herbsts could have executed,
5 and that's not true. In fact, it's just the
6 opposite. They could not have executed upon these
7 assets before the transfers, but what was stopping
8 them from executing after the transfers? The
9 testimony was that Paul received \$1,035,000 in cash
10 from the downstroke of the Superpumper sale. That
11 cash, as was shown by the exhibit, went straight
12 into Mr. Morabito's bank account.

13 What was preventing the plaintiffs from
14 seizing that cash as a result of the sale from
15 Superpumper? It was the transfer that provided the
16 availability for the Herbsts to seize that cash, had
17 they desired. We don't know why they didn't do what
18 they didn't do but they could have done. The
19 Superpumper note of \$1.4 million was expressly
20 assignable to the creditors. That was
21 uncontroverted evidence. What evidence did
22 Plaintiff present as to why they could not have
23 executed upon that note that Paul received as part
24 payment for the Superpumper sale? Plaintiff

1 presented no evidence as to why they could not have
2 executed upon Paul's 1099 he received from Raffles
3 in late 2011. They provided no testimony as to why
4 they could not have seized the proceeds from the
5 Card Locks that Paul sold in late 2011 after he
6 acquired the Superpumper properties from Sam and
7 Edward.

8 Lastly, Plaintiff presented no evidence as
9 to why they could not have executed upon Paul's
10 beneficial interest in the \$1.6 million Baruk note.
11 They presented no evidence. The only thing they've
12 argued is that these transfers prevented the Herbsts
13 from ever being able to collect and then they argue
14 that because in 2017 Herbsts still have an
15 outstanding judgment, that everything that was done
16 as part of these transfers frustrated the Herbsts'
17 ability to collect. That's not supported by the
18 evidence at all. This evidence was also
19 uncontroverted. The judgment, not the oral ruling,
20 but the actual judgment was delivered in October of
21 2011. Nevada statutes provide that, even before the
22 judgment, a judgment creditor can -- and this is NRS
23 Chapter 21 -- that a judgment creditor can request
24 of the court an order for a writ of attachment

1 post-judgment. Actually be done prejudgment but it
2 can definitely be done post-judgment. In fact,
3 Nevada statute says, if a judgment debtor owns
4 property outside the state, you can get it without
5 even noticing a hearing. You just have to apply for
6 it. Well, the judgment was delivered in October of
7 2011. What did the Herbsts do? Well, I asked their
8 witness and he said, Well, we have really smart
9 lawyers. I'm sure they did everything they could.
10 They did nothing. Exhibit 278 shows they never did
11 a single thing to execute upon their judgment. They
12 didn't domesticate -- well, let me back up.

13 If you were a judgment creditor who really
14 had intent to execute upon your judgment, when you
15 get your judgment the first thing a reasonable
16 judgment creditor would do is you would go and get a
17 writ of execution, a writ of execution and then you
18 would go and domesticate that judgment in every
19 county in which the judgment debtor owned property.
20 I don't think it takes a judgment collection expert
21 to testify to that. That's what somebody would do.

22 The Herbsts had a year between the entry of
23 the judgment and the settlement in which they could
24 have done a number of things. They could have

1 domesticated the judgment, they could have done
2 judgment debtor interrogatories, they could have
3 done debtor requests for production, they could have
4 obtained a writ of attachment and done a number of
5 things available easily, very easy to do once you
6 have a judgment in your favor. They did none of it.

7 So they did nothing and now seven years
8 later they're complaining that these transfers,
9 which although with respect to all of these
10 properties but two, the value was equivalent, that's
11 undisputed. It's undisputed the value that Paul
12 Morabito received for all transfers except two was
13 reasonably equivalent value, that now they were
14 frustrated or delayed or hindered as a result of
15 these transfers.

16 I would submit, your Honor, that's not how
17 it happened. The Herbsts had some alternative plan.
18 In fact, what the finding was is obvious because it
19 bore out a couple years later, which is the day
20 after they recorded the confession of judgment, they
21 filed a petition for involuntary bankruptcy. Why?
22 Because they wanted the trustee to do their
23 collection work. They didn't want to utilize the
24 statutory availability under Nevada and California

1 law to actually collect their judgment. They wanted
2 the trustee to do it. How do we know that? Well,
3 because Judge Zive actually said that. In Exhibit 8
4 when Judge Zive was trying to figure out what to do
5 with the two-party creditor action, he said,
6 Exhibits 8, paragraph 6, "The Court has not been
7 presented evidence that the alleged debtor has any
8 significant creditors other than the petitioning
9 creditors," which were the Herbsts, "and that this
10 is, essentially, a two-party collection action.
11 This Court is not the proper forum for petitioning
12 creditors to seek to collect on their judgment
13 against the alleged debtor and the bankruptcy code
14 was not intended for such purposes."

15 Now, Judge Zive entered that ruling in
16 response to the motion that Paul's bankruptcy
17 lawyers filed saying this is a two-party collection
18 action. Why don't you go to state court and collect
19 your judgment there. And the Herbsts said, No, we
20 would prefer to have the bankruptcy court do it and
21 the trustee court and the bankruptcy court says, at
22 least initially, No, go collect your judgment in
23 state court. In fact, that's what Judge Zive said.
24 He said in his order, I'm going to stay the

1 bankruptcy case so that you can go to state court
2 and try to execute, like you should have done before
3 you filed. It was the plaintiff's own failures when
4 they had obtained the judgment that now provides the
5 alleged injury. They had a year. They could have
6 taken efforts. They did not. It was not the
7 defendant's fault that the plaintiffs sat on their
8 rights. More importantly -- and this is the most
9 important part of this case -- is that after the
10 transfers, Paul Morabito retained the same value in
11 assets that he had before the transfers. With
12 respect to all of the assets except two, that's
13 undisputed. They did not challenge the value.

14 The third element of a quintessential
15 fraudulent transfer is the idea that the transferor
16 retains control and/or ownership of the asset even
17 after the transfer. The plaintiff's counsel show
18 the court several emails where Paul Morabito, after
19 the transfers, was trying to put together deals with
20 Cerberus or with Nella, or whoever. And their
21 argument was, even though they had 125,000 pages of
22 emails and all of Mr. Vacco's files, the best they
23 could do is show this Court three or four emails
24 where Paul Morabito said, Hey, I'm trying to put a

1 deal together between his new company, Snowshoe
2 Capital, and Sam and Ed's company called Snowshoe
3 Petroleum. And there's two or three emails where
4 Paul is saying, I'm trying to put a deal together
5 with Nella, and that's all the evidence they have of
6 control. That's it. The only evidence Plaintiff
7 presented in this case of Paul's continued control
8 over Superpumper was two or three emails like
9 Exhibit 30 where Paul is trying to put together a
10 deal with Nella Oil. That's it. Sam Morabito
11 testified that Paul had no involvement in the
12 day-to-day operations of Superpumper. In fact, Yon
13 Friedrich testified that even before the sale Paul
14 had no involvement in the day-to-day operations of
15 Superpumper. Yon Friedrich testified that after the
16 sale Paul was gone and Yon dealt with him -- did not
17 deal with him at all. He testified the only time --
18 Yon Friedrich testified the only time he dealt with
19 Paul Morabito at all was when Paul was trying to put
20 together a deal with Nella Oil.

21 So there was no evidence that Paul had
22 actual control. Sure, it's easy to stay up late at
23 night and send emails to your friends and lawyers
24 saying, I'm going to put together a \$160 million

1 deal of a company that's already in default, which
2 Dennis Vacco said, quote, has no basis in reality,"
3 this deal that Paul was trying to put together.

4 But that's all the evidence Plaintiff could
5 muster suggesting that Paul had control of
6 Superpumper after the sale. He received no
7 payments, he received no dividends or distributions.
8 He received no salary and he had no involvement in
9 the day-to-day affairs of the company. Well, I
10 would submit to the Court that real control that's
11 contemplated in the badges of fraud is not the
12 ability to write some emails to lawyers and friends
13 saying, Let's put together a \$160 million deal.
14 That's not control. That's not ownership.

15 Edward Bayuk's testimony was, Sure, if Paul
16 wants to continue to put together deals, I'll
17 listen. If he wants to go and try to put anything
18 together, if it's got value and the ability to make
19 us money, I'll listen. But that's not the same
20 thing as having control and ownership of
21 Superpumper. The evidence with respect to control
22 and ownership was uncontroverted. Exhibit 30,
23 Plaintiff tries to get a lot of traction from this
24 line, that "Paul explained that he would no longer

1 be actively seeking to accumulate assets in
2 companies that I'm a shareholder in." Plaintiff's
3 argument was, Well, there you go. There's Paul
4 Morabito saying the week after the judgment that his
5 intent is to defraud the Herbsts by disposing of
6 assets. Well, that's not what it says at all.

7 There is no authority to support
8 Plaintiff's position, your Honor, that a judgment
9 creditor as soon as they've received an adverse
10 judgment against them has any obligation to continue
11 to do anything which they think may or may not
12 benefit their judgment creditor. There's no
13 obligation. Plaintiff plays the morality game, that
14 as soon as Paul Morabito has a judgment against him,
15 the first thing he should do is call the Herbsts and
16 say, Here's what I'm going to do. I'm going to work
17 as hard as I can to ensure you get whatever you
18 think you're entitled to. That would be the first,
19 in my experience, of any judgment creditor ever
20 doing that with respect to a judgment debtor. And
21 the plaintiff comes from that angle with the
22 morality game that Paul Morabito now owes a duty to
23 ensure that he doesn't do anything that the law
24 allows him to do or that there is no duty that

1 prohibits him from doing. All he says in that email
2 is, You know what, now that I have a big judgment
3 against me, maybe I don't think I need to work so
4 hard. Maybe I don't need to go out to Fernley and
5 guarantee all of these projects in order to try to
6 make money, because doing so might just cause more
7 problems for me or will be ineffectual anyway
8 because the Herbsts might be able to obtain it.

9 There's nothing improper, certainly nothing
10 illegal or immoral about doing that. All Paul says
11 here is, I don't have an obligation to continue
12 working in light of my judgment status. And there's
13 been no cases provided by Plaintiff which suggest
14 that a judgment creditor has a moral obligation to
15 continue to work or do whatever they were doing
16 before the judgment in order to benefit their
17 judgment creditor.

18 When I asked Gary Graber in his deposition,
19 he said, I agree, asset protection is not a morality
20 construct. There's permissive ways to do it and
21 nonpermissive ways to do it, but I provide my
22 clients with all the advice and options available to
23 them and let them choose, but it's not morality.
24 Yet, what's implicit in Plaintiff's argument is it

1 was immoral for Paul to say, Hey, I just decided I
2 don't want to continue to amass -- continue to work
3 in properties which might be subject to execution.
4 There's nothing immoral about that.

5 Plaintiff presented Exhibit 143 and then
6 misconstrued all of the evidence that surrounded the
7 context of this email. Plaintiff's argument with
8 respect to this was that Paul Morabito has all this
9 control over the Glenneyre properties and he's
10 telling Edward what to do. Well, that ignored all
11 the evidence with respect to this email. Mr. Bayuk
12 testified exactly what the context of this email
13 was. April 20th, 2012, Edward has just found out
14 that Paul Morabito's been sued by Bank of America on
15 Paul's \$2 million line of credit, which Edward knew
16 nothing about and was not associated with anything
17 that they co-owned. It was simply a personal line
18 of credit. Well, Edward testified that David
19 Mayerella of Bank of America contacted him -- well,
20 he was contacted by David Mayerella by a different
21 department of B and A and asked for an appraisal.
22 He testified he thought that was weird because David
23 Mayerella is not his banker. David Mayerella is the
24 plaintiff in the Bank of America case. He's the

1 person running the Bank of America lawsuit against
2 Paul Morabito in April of 2012. And we established
3 that, for example, he was the one that was copied on
4 the letter between Bank of America and Raffles to
5 release the letter of credit. So Edward is saying
6 to his lawyer, Mr. Vacco, I find it strange that
7 David Mayerella is coming to my property and asking
8 for information like tenant improvement expenses, a
9 lease agreement, drawings, and here is the thrust of
10 the email. I'm very reluctant to give him all this
11 information at this point in time.

12 And Edward was right to be suspicious. Why
13 is Dave Mayerella coming to Glenneyre and asking for
14 all this information related to his property when
15 he's learned that David Mayerella is running the
16 lawsuit with Paul Morabito. So Edward's question is
17 not indicative of Paul Morabito having any control.
18 This is Edward Bayuk saying I want to know if I
19 should give this information or should I have Bank
20 of America give me a call, and Paul says, No, no,
21 no, no. Paul's involved in a lawsuit with Bank of
22 America. Why would he want Edward to give Bank of
23 America information that Bank of America could use
24 against both of them? This email has nothing to do

1 with control of Glenneyre but has everything to do
2 with the lawsuit that Bank of America filed against
3 Paul taken out of context.

4 Another email with no context, nobody to
5 testify to it, what it means or what it doesn't mean
6 is Exhibit 138. It was offered in closing argument
7 to support the contention that whatever Paul says to
8 his lawyers or anybody else is what Sam and Edward
9 do. We don't know why Paul is saying to his lawyer,
10 Tell Sam to wire you \$1 million. Nobody was here to
11 testify as to that. And Dennis basically says okay.
12 But what we do know is Sam Morabito said, If Paul
13 asked him to send a \$1 million, I definitely didn't
14 get that request and I sure as heck didn't send \$1
15 million. And the plaintiff knows he didn't send a
16 \$1 million because the plaintiff has every single
17 bank statement of Paul Morabito's from 2005 to the
18 present. They know this didn't happen. It's taken
19 out of context. It doesn't say what the plaintiff
20 says it does. We know it didn't happen. We don't
21 know why Paul is asking for it. We have no clue.
22 It's irrelevant.

23 These are the emails I was referring to
24 that the plaintiff uses to suggest Paul Morabito had

1 all the control of Snowshoe Petroleum and the other
2 assets. This is Exhibit 131 and 132 and 133, for
3 that matter, where it was uncontroverted at trial
4 that Paul Morabito was attempting to put together a
5 deal between Nella, funded by a company called
6 Cerberus that involved the combination of factors
7 including all of these things that evidence
8 suggested could have never, ever come to fruition, a
9 \$160 million deal that involved \$100 million in cash
10 at closing. Nobody was here to testify as to where
11 this \$100 million in cash would come from, but
12 Dennis Vacco said when he was asked about this email
13 that this project has very little basis in reality.

14 So two emails out of 125,000 that were
15 available to the plaintiffs, that's what they've
16 given us. Paul Morabito trying to put together a
17 deal is evidence of continued ownership or control.
18 Simply does not support the allegation, certainly
19 not to the standard as required. There was the
20 argument that, in addition to the control that Paul
21 Morabito enjoyed over these assets after the
22 transfers, that he retained a benefit. Well, the
23 evidence didn't support that either. The evidence
24 was uncontroverted. At the time of the transfers,

1 Baruk Properties was cash flow negative and
2 Superpumper was a failing business. We've discussed
3 that Superpumper required several million dollars in
4 capital infusions just to survive through the
5 forbearance but the testimony was also
6 uncontroverted that Baruk Properties, of the four
7 assets it owned, two were not income producing.
8 They were only liabilities and that, of course, is
9 Mary Fleming and Clayton Place. And that two
10 Glenneyre properties were not cash flow positive
11 either because as Mr. Bayuk testified under oath and
12 it's uncontroverted, he had no tenant in 570 for
13 about 12 to 16 months after the transfer. He had to
14 do a big capital improvement and the tenant that he
15 had in 1460 was under market.

16 So even by Mr. Bayuk's calculation it was
17 not -- it was at least 16 months before Baruk
18 Properties started to see any cash flow positive.
19 So under the traditional theories, what's the
20 benefit to Paul Morabito of transferring 50 percent
21 of his interest in an entity that has no cash flow
22 positive? It was undisputed that Superpumper was a
23 failing business. Yon Friedrick said it was a
24 failing business and that he was hired specifically

1 to address the issues that it was a failing business
2 and that was a year before the judgment, no
3 relationship to the judgment and had a relationship
4 to the fact that the Superpumper owners realized it
5 was failing and they needed to fix it.

6 So what's the claim with respect to
7 Superpumper that the plaintiff's put forward? That
8 they believe by Paul Morabito selling a failing
9 business that didn't turn a profit for almost four
10 years after the transfer that somehow an asset that
11 they were never going to be able to execute upon
12 because of its structure, that somehow they were
13 defrauded by Paul Morabito selling to the existing
14 owners an asset that had no continued positive
15 value? What could the creditors possibly have
16 obtained, even if they had the ability to pierce the
17 statutory protections, what would they have been
18 able obtain? A losing asset. Well, maybe the Court
19 knows this, but when the trustee takes over from an
20 estate, the trustee has the ability to abandon
21 assets that are losers for the estate, either not
22 administer or abandon them. There's, I guess, two
23 different ways to do that.

24 What's the argument here? That because

1 Superpumper was a losing business when Sam and Ed
2 bought it and put \$2 million in of their own money
3 that the Herbsts would have pursued that? That's
4 the insinuation. That doesn't make any sense. So
5 they say, Give us a value for this -- give us a
6 judgment for the value that we believe we can prove
7 even though Superpumper was a failing business.
8 They didn't present any evidence it was not a
9 failing business. They didn't present any evidence
10 that, other than their valuation -- which I'll get
11 to in a minute -- they didn't say, No, it's not.
12 This is a business that would have immediately
13 provided cash flow to the judgment creditor.

14 Not true. It was a liability. And it goes
15 without saying but it bears mentioning that just
16 because something has a positive value, positive
17 market fair market value like Superpumper had a
18 positive fair market value, that's not the same
19 thing as saying that buying it requires significant
20 capital infusion in order to maximize that ability.
21 That's true of businesses all across this country
22 all the time. Entity enterprise has value, but if
23 you're going to buy it, you have to know that you're
24 going to come out of pocket to make capital

1 contributions to keep it active and surviving. So
2 even though this Superpumper had positive fair
3 market value, the testimony was uncontroverted that
4 it required significant capital infusion to maintain
5 it, particularly to obtain forbearance by the bank
6 and by the lessor.

7 So, legally speaking, as a matter of law,
8 if there's no upside to the creditor by virtue of
9 the transfer, then can Plaintiff legitimately claim
10 that it was harmed as a result of the transfer? I
11 would say as a matter of law, no. If the transferor
12 judgment debtor divests themselves of an asset which
13 has fair market value but which requires significant
14 capital infusion to maintain, is the creditor really
15 losing there? I would suggest as a matter of law,
16 no.

17 And that brings us to the idea of value.
18 Now, plaintiff's counsel brought in and showed to
19 the Court a number of extra jurisdictional
20 definitions of what value is or isn't, but we don't
21 need to look at extra jurisdictional resources. We
22 have a statute that tells us what reasonably
23 equivalent value is and means and that's NRS
24 112.170, and it's not that complicated. Value is

1 given for a transfer or an obligation if, in
2 exchange for the transfer or obligation property is
3 transferred or an antecedent debt is secured.
4 That's it. If property is transferred, then it can
5 constitute value. What is property as defined in
6 UFTA? Property includes -- an asset means property
7 of a debtor, anything that is susceptible of
8 ownership. So we don't need extra jurisdictional
9 explanations as to what reasonably equivalent value
10 means. We know what it means in this state. And we
11 don't need extra jurisdictional cases to tell us how
12 reasonably equivalent value is applied in the terms
13 of UFTA. We have a case on that and that case is
14 the Matusik case, that which I provided in my brief,
15 the reasonably equivalent standard in Nevada is not
16 what these other states are. It's different. It's
17 the quote, shock-the-conscience standard. In Nevada
18 reasonably equivalent value is exchanged unless the
19 disparity of the value is such that it shocks the
20 conscience that, as the case puts it, that strikes
21 the belief that the transfer could not have been
22 legitimate. That's what reasonably equivalent value
23 in this state means. The plaintiff has to prove by
24 their burden that the value differential between the

1 assets that Paul Morabito acquired and the assets he
2 divested himself of shocked the conscience to make
3 the objective observer of that transaction say to
4 themselves, This simply cannot be legitimate.

5 Nevada law requires, of course, that
6 although some of the badges of fraud can have the
7 burden shifted to the defendant when a prime fascia
8 case is showing, Nevada law says, with respect to
9 insolvency and reasonable equivalent value, the
10 plaintiff always bears that burden. It's never
11 transferred to the defendant. The citations are in
12 my brief.

13 THE COURT: So we should probably take a
14 break.

15 MR. GILMORE: Perfect timing, yes.

16 THE COURT: Okay. Are you going to want to
17 do a rebuttal argument?

18 MS. TURNER: Certainly, your Honor, but
19 brief.

20 THE COURT: Okay.

21 MS. TURNER: I will be brief, and I'll work
22 on the break to make it briefer.

23 THE COURT: I'm just looking at the time.
24 We did slip our jury trial from today but we do

1 start it tomorrow morning at 9:30.

2 MR. GILMORE: Understood.

3 THE COURT: Court's in recess.

4 (Recess taken.)

5 THE COURT: Please be seated. Go ahead,
6 counsel.

7 MR. GILMORE: On the point of reasonably
8 equivalent value, as plaintiff's counsel argued, it
9 shows up in two contexts that are important for this
10 trial. No. 1, it's a badge of fraud which can be
11 used to show that a transfer was fraudulent as to
12 the judgment debtor's creditors when the transfer
13 was given for anything less than reasonably
14 equivalent value. And the second obvious context
15 here is for constructive fraud. And in Nevada there
16 cannot be constructive fraud where reasonably
17 equivalent value is exchanged. NRS 112.180, 1 sub B
18 that deals with constructive fraud says "Without
19 receiving a reasonably equivalent value in exchange
20 for the transfer and the debtor either was engaged
21 in a transaction for which the remaining assets were
22 unreasonably small or the debtor was intended to
23 incur or believed reasonably incur debts beyond his
24 ability to pay as they become few," which, as we

1 know, is the definition of insolvency for purposes
2 of the statute.

3 So, your Honor, it's important in this
4 context. You cannot have constructive fraud where
5 the transfers are for reasonably equivalent value
6 under the statute. The prerequisite is reasonably
7 equivalent value. So it's important, not only in
8 the badge of fraud context with respect to what the
9 intent of the parties were, but it's also a
10 prerequisite to construct a fraud. This Court can
11 decide that if there is no actual intent to defraud,
12 delay or hinder the creditors. This Court can then
13 determine that reasonably equivalent value was
14 exchanged, even if the Court were to accept the
15 valuation proposals of the plaintiffs in Superpumper
16 and Panorama. It's undisputed that reasonably
17 equivalent value was exchanged with respect to the
18 other assets.

19 Plaintiff attempted to argue in closing
20 argument that Paul Morabito was not paid the
21 \$1,035,000 downstroke on the Superpumper sale and
22 they used a declaration that was prepared by Mr.
23 Morabito's Los Angeles bankruptcy counsel to
24 challenge undisputed fact right here that Mr.

1 Morabito received an incoming wire of \$1,035,000 and
2 the testimony was undisputed that that \$1,035,000
3 consisted of two identical payments by Mr. Bayuk and
4 Mr. Morabito, Mr. Sam Morabito, in the amount of
5 \$517,000, and that's corroborated by Exhibit 234.

6 So Paul Morabito can say what he likes.
7 Paul Morabito is not the defendant in this case,
8 although he's on trial in some respects. Sam
9 Morabito and Edward Bayuk paid Paul \$1,035,000 and
10 it went to his bank account, and all arguments,
11 insinuations to the contrary are not supported by
12 the undisputed evidence. Plaintiff's counsel
13 conceded that Mr. McGovern's valuation of
14 Superpumper was within \$40,000 of Matrix's valuation
15 of Superpumper and that's not surprising for two
16 reasons. No. 1, Spencer Cavalier of Matrix knows
17 what he's doing and is actually a gas station
18 evaluator. That's what he does for a living;
19 whereas, Mr. McGovern testified that he's never
20 valid valued a gas station and doesn't understand
21 the nuances of doing so. But, more importantly,
22 what Mr. McGovern used to calculate his discounted
23 cash flows were not projected budgets but were the
24 actuals, so it's not surprising. So, in fact, what

1 Mr. McGovern did in his discounted cash flow
2 analysis, the idea of projecting future incomes and
3 then reducing to present values, there were no
4 projections. He used the actuals, which does
5 nothing except confirm by actual numbers four or
6 five years after Matrix's appraisal how spot on.
7 Matrix's appraisal was borne out, not only by
8 Mr. McGovern's use of the actual numbers in
9 determining fair market value, but also by Michelle
10 Salazar's after-the-fact assessment that
11 Mr. Cavalier of Matrix knew what he was doing,
12 although she disputed his discount rate -- his
13 capitalization rate, I should say -- there's no
14 contention genuinely that Spencer Cavalier of Matrix
15 did not get the valuation right on the number.

16 So, really, what are we talking about?
17 Well, Plaintiff spent several hours of trial and
18 several minutes in closing argument arguing a point
19 which is immaterial and irrelevant and that is the
20 collectability or viability of these due-from
21 affiliates. It's a total red herring. And it's a
22 total red herring because it's the only thing
23 Plaintiff can do to support McGovern's decision to
24 add \$6 million to the operating asset value of this

1 enterprise.

2 And when plaintiff's counsel was arguing in
3 closing argument, she said, Well, McGovern testified
4 that these assets were important assets to a buyer
5 of this enterprise. Wrong. He did not say that.
6 In fact, he couldn't say that. He said just the
7 opposite. When I asked Mr. McGovern point blank,
8 We're you using the fair market value standard of
9 value, which always has to assume a rationale buyer,
10 a rationale seller with knowledge of the relevant
11 information and not under a compulsion to buy or
12 sell. So in order to determine fair market value,
13 we have to imagine what the hypothetical buyer is
14 actually considering when potentially making an
15 acquisition of the assets in question. I asked
16 Mr. McGovern, I said, Why would a rational buyer in
17 the gas station marketplace -- remember, your Honor,
18 people buying Superpumper that helped determine what
19 the fair market value of a Superpumper-type business
20 is, these people are not receivables factoring,
21 these people are not speculators. These people are
22 buying gas-station-operating businesses for the
23 purpose of securing that income.

24 So if we know that's what the rational

1 buyer is doing, I asked Mr. McGovern, Why would a
2 rational buyer pay \$6.5 million for operating assets
3 of Superpumper, which is another way of saying, the
4 necessary assets that Superpumper owns in order to
5 do its job, why would a gas station buyer in the
6 fair market value context pay another \$6 million to
7 acquire shareholder notes that have been carried on
8 the books of Superpumper for years, which the
9 auditors have determined to be noncurrent?

10 Plaintiff's counsel said McGovern said
11 that's what buyers would do. That's not what he
12 said. I asked him, Why would somebody do that, and
13 he said -- I said, "Is it your opinion based on fair
14 -- I'm reading from page 184 of Mr. McGovern's
15 transcript, the trial transcript -- "Is it your
16 opinion based on the fair market value standard of
17 value that a gas station buyer would be interested
18 in buying at face value a note from Paul Morabito as
19 of September 28th, 2010, in the face value of
20 \$623,000?" And he said, "Well, I think it is likely
21 if somebody wanted to just buy the gas station, they
22 would just buy the gas station."

23 So, your Honor, it's not whether or not the
24 due-from affiliates were collectable or whether or

1 not they were viable or whether or not there were
2 notes in existence. I mean, all of those things can
3 be considered. But only if we don't get over the
4 initial hurdle the plaintiff has to prove, and that
5 is why would the rational buyer pay \$13 million for
6 an enterprise when over half of the value is made up
7 of due-from affiliates notes receivable that have
8 been carried on the books of Superpumper for years,
9 which are predominantly made by what Plaintiff now
10 argues is an insolvent obligor? That makes no sense
11 in the real world. A gas station buyer -- and
12 Spencer Cavalier knew this. He doesn't have to give
13 it treatment in his report because it's so obvious.
14 If 54 percent of the book value of the company
15 consists of due-from affiliates, he knows what Yon
16 Friedrick knows, which is what Michelle Salazar
17 knows, which is nobody in the real world would buy
18 \$6.5 million of unsecured notes at face value when
19 you're just trying to buy a gas station business.
20 That's what McGovern said. Well, probably not. If
21 you just want to buy gas stations, you'll just buy
22 the operating assets. You're not going to buy \$6.5
23 million of confusing notes receivable made by people
24 who either no longer exist, like Big Wheel, or by

1 somebody like Paul Morabito who now has a \$75
2 million judgment against him. The concept is a
3 buyer in the -- a rational buyer in the marketplace
4 would pay to acquire a note made by Paul Morabito at
5 face value with no security. It's insane. No buyer
6 would do that. So it cannot be included. It cannot
7 be included in the fair market valuation of this
8 enterprise.

9 Moreover, beyond the obvious flaw in
10 McGovern's reasoning, he did two things. One, he
11 inexplicably converted these noncurrent assets to
12 current, and they've been current since 2007. The
13 financial statements of the company showed that
14 these due-from affiliates which grew from \$3 million
15 to \$9 million between the time Paul Morabito owned
16 it and the time he sold it were never current
17 assets. They were never used in the business. They
18 were never relied upon as accounts receivable for
19 the purpose of operating this business.

20 Mr. McGovern, when I asked him, Why did you
21 do that, he said, Well, I assumed they were
22 collectable and I switched them from noncurrent to
23 current. That was his first mistake. The second
24 mistake was proven by Michelle Salazar, and, that

1 is, even if you want to address the issue of book
2 value, which is essentially the balance sheet value,
3 not the fair market value, but the book value, which
4 is what Mr. McGovern testified he was going after,
5 in order to ensure that these non-operating assets
6 should be included in the book value of the company,
7 you have to have evidence of the notes and evidence
8 of the intent to repay. That's what Mr. McGovern
9 testified to and that's what Gary Krause, the
10 auditor, testified to and that's what Michelle
11 Salazar testified to.

12 The evidence showed in the 2009 year-end
13 financials, so ten months before the Superpumper
14 sale, all of the due-from affiliates were on-demand
15 notes which Mr. McGovern said was the reason why he
16 converted them from current to noncurrent, because
17 they were on demand. The problem with that
18 reasoning, as Ms. Salazar explained, if they're on
19 demand it means there's no repayment terms. So if a
20 note is on demand, it's indicated as on demand
21 because there's no promissory note explaining what
22 the terms are. The terms, of course, are the
23 maturity date and interest rate.

24 It was only year-end 2010 that for the

1 first time the financial statements showed anything
2 other than on-demand notes. So McGovern was wrong
3 twice. He was wrong on the assumption that he can
4 simply convert it from noncurrent to current, even
5 though the auditors had not done that in the
6 previous six years and, No. 2, he said, I simply
7 assumed they were collectible. When I asked him,
8 Did you do any investigation? He said, I did none
9 of my own investigation.

10 Well, Ms. Salazar did her investigation.
11 She said she contacted Cavalier, she contacted
12 Bernstein and contacted Mr. Sam Morabito and said,
13 I'm looking for evidence of these notes. And the
14 responses that she got from Mr. Bernstein, according
15 to her testimony, is there were no notes in
16 existence as of the sale date and any notes that
17 were created were created after the sale date. So
18 she opined that, if there are no notes in existence
19 and a year-end 2009 financial showed that they were
20 all on demand, then no auditor could conclude they
21 were current assets sufficient to buoy up the book
22 value of the company. That was her conclusion,
23 Michelle Salazar's independent conclusion, and it
24 corroborated what Mr. Cavalier provided in his

1 report. Although it was not expressly stated, it
2 was implicit. He simply adjusted the due-from
3 affiliates off the balance sheet. He looked at the
4 balance sheet and said, There's \$9 million in
5 due-from affiliates. That makes up about 54 percent
6 of the book value of this whole enterprise. No
7 buyer will want that and he just struck it. He
8 doesn't need to explain the obvious.

9 Exhibit 236 is a critical exhibit in the
10 analysis of Superpumper. It's critical for a number
11 of reasons but, most importantly, your Honor, this
12 number, the risk discount of 35 percent. There's no
13 dispute that Matrix without using the due-from
14 affiliates of the Matrix valuation was a fair value.
15 Plaintiff's counsel says, Well, there's a lot of
16 confusion about whether or not they included the
17 term loan or whether they didn't include the term
18 loan. And what Plaintiff's counsel said was this
19 number represents 3 million minus \$939,000. That's
20 what she said. Well, that's because Plaintiff still
21 after two weeks of trial doesn't understand what
22 these numbers reflect. 3 million minus \$939,000 is
23 not 1.6 million.

24 When Matrix did their valuation, they

1 included the line of credit, which was maxed out at
2 3 million. That was the working capital line. So
3 the working capital line was included in the Matrix
4 valuation, and then you can see that right in the
5 report. What Matrix did not include was the
6 outstanding obligation of the term loan. The date
7 of the valuation, the Compass term loan was not \$3
8 million, because as the evidence established, both
9 Edward and Sam contributed \$659,000 each to pay down
10 the Compass term loan such that as of the date of
11 valuation, the remaining balance owed on the term
12 loan was 3 million minus \$659,000 minus \$659,000.
13 That's where this number 1.682 comes from.

14 So as of the date of valuation this is the
15 obligation that Superpumper owes to Compass. And if
16 this is an obligation -- and I asked Mr. McGovern.
17 I said, Well, if you have that obligation, don't you
18 have to account for it? Well, yeah, I did. Because
19 this is an obligation of the company. It's an
20 obligation that the buyers are inheriting. It's not
21 an excluded liability. So that comes off of the
22 value. It results in the net value, which is just
23 math, 6.4 minus 1.6, and this is the important part
24 here, the risk discount.

1 Mr. McGovern, I asked him, Did you perform
2 a discount? Marketability, lack of control, any of
3 those discounts? He said no, he did not perform a
4 discount. Ms. Salazar said in a situation where
5 you're talking about a fair market value of an
6 enterprise, you have to consider the marketability
7 and you have to consider the lack of control. And
8 the marketability discount is derived from the fact
9 that you cannot take a closely held corporation to
10 market immediately. It takes time to liquidate and
11 there's risks associated with doing that.

12 Both Ms. Salazar and Christian Lovelace,
13 who, by the way, is a mergers and acquisitions
14 expert, testified that a risk discount should have
15 been applied. Now, Plaintiff takes issue with the
16 amount of the discount, but that's expert territory.
17 If they wanted to challenge the amount of the
18 discount as being disproportionate to the actual
19 risk, that requires technical specialized training
20 for which an expert should have come in here and
21 told this Court that the risk discount applied by
22 Mr. Lovelace was not appropriate. There was no
23 evidence addressing whether or not the risk discount
24 in this case based on the company-specific risk was

1 appropriate or inappropriate.

2 The only thing you're going to get on that
3 score is argument, which is not evidence, which does
4 not supplement the record. Simply coming up here
5 and saying Mr. Lovelace's got this wrong because he
6 was a lawyer for Snowshoe Petroleum is not evidence
7 to refute the undisputed testimony that this company
8 had risk. And it wasn't just Mr. Vacco that said it
9 was the risk. Mr. Vacco said when asked, What does
10 this risk discount consist of, he said, Well, Mr.
11 Lovelace primarily handled that but I'll tell you
12 what I think the risk is. The risk that we'll
13 actually be sitting here. The risk that the owners
14 of this company might actually get sued and have to
15 defend the fact that they bought this company.
16 That's what Mr. Vacco said and he didn't offer much
17 else.

18 But Mr. Lovelace offered a lot. Mr.
19 Lovelace said, Well, for one, you have a situation
20 where Superpumper owns no real property. It's just
21 an income stream and has nothing but the gas in the
22 ground and the snacks on the shelves. So if
23 something were to happen to Superpumper's working
24 line of credit, it would be out of business in a

1 week. And he said, By the way, we're talking about
2 a company that's already in default, where the
3 letters by the bank's lawyers have already called
4 the note and said, We don't have an obligation to
5 work with you. That was undisputed. So Plaintiff
6 wants to take issue with this 35 percent risk
7 discount but they don't have any evidence to do so.
8 It's just argument. And that's not enough. Then
9 it's just math. If you take the discounted net
10 value and an 80 percent acquisition value, which was
11 Mr. Paul Morabito's ownership, less the gas paid,
12 you find where the \$1.4 million comes from.

13 Now, there was a lot of confusion on the
14 successor notes. It's not that complicated. If the
15 original balance owed was \$1.46 million and, as Sam
16 testified, after this transaction had been
17 consummated they realized Paul was not willing to
18 return the \$939,000. Had he done so, he would have
19 been given credit under the term loan, but he didn't
20 so that obligation remained with Superpumper and had
21 to be repaid. They demanded that he execute a note
22 evidencing his willingness to repay. Well, it makes
23 no sense to have two offsetting payments, so the
24 \$1.4 million was reduced to offset the \$939,000 and

1 then there was an assignment agreement that ensured
2 that between the three of them it was trued up.

3 It's not that complicated. The testimony
4 was that Paul Morabito was paid the remaining
5 balance of the Superpumper purchase and that Sam
6 Morabito wired it to Dennis Vacco's office after the
7 forbearance had been completed. Sam's testimony,
8 which was uncontroverted, by the way, was that he
9 told Paul and told Dennis Vacco that he was not
10 willing to make the final payment on Superpumper
11 until he was assured that it was not going to be
12 defaulted. He testified that in November the
13 forbearance agreement was finally reached --
14 actually, it was the fourth forbearance agreement
15 they attempted was finally resolved and new loan
16 terms were provided by BBVA Compass in November.
17 And after Sam had been satisfied that he was no
18 longer in default and he wasn't going to lose his
19 investment in Superpumper, he was willing to make
20 the payment and he said in November he made the
21 payment and he wired it.

22 He then testified that although -- that the
23 payment he made to Mr. Vacco's office from his
24 personal account was reflected in a capital account

1 adjustment in the tax returns in the years that
2 followed. That was his testimony and it's
3 uncontroverted. I showed Mr. McGovern Exhibit 1115
4 and said to him, according to the 2009 year-end
5 notes to financial statements, these were the
6 obligor's. This is the best information as to who
7 the obligors were from the due-from affiliates at
8 the time of the sale. We know "BWH" is Big Wheel
9 Hospitality, which was defunct, had no ability to
10 repay, so the argument posed by Mr. McGovern that a
11 buyer would acquire \$443,000 of notes receivable
12 from Big Wheel Hospitality that was defunct belies
13 the definition of a fair market buyer.

14 The next is Paul Morabito, \$623,000 by the
15 date of the sale Paul Morabito, according to the
16 plaintiffs, was insolvent. And then the remaining
17 two CWC and Pam-As, as was explained by Stan
18 Bernstein and Gary Krause, those notes are
19 shareholder, parent subsidiary notes and in a merger
20 they wash. So, again, what rational buyer with full
21 knowledge of the relevant facts would buy
22 Superpumper for \$13 million?

23 This is an important distinction. When
24 Plaintiff filed this lawsuit, they contended in

1 their allegations that Paul Morabito's stock basis
2 in Superpumper was 5-point-something-million dollars
3 and because Paul Morabito sold his interest in
4 Superpumper for \$2.5 million and his stock basis was
5 \$5.8 million, there was a \$4 million question as to
6 whether or not reasonably equivalent value had been
7 exchanged.

8 And I asked Christian Lovelace what's the
9 relationship between book value and fair market
10 value and he laughed and he said, They're apples and
11 oranges. Then I asked Stan Bernstein what's the
12 correlation between fair market value and book value
13 and he said there is no correlation. Although
14 sometimes they can be the same, there is no
15 correlation in that context. And then I asked the
16 same of Michelle Salazar and she said book value is
17 an accounting concept and fair market value is a
18 valuation concept. They're not related.

19 But you heard plaintiff's counsel argue,
20 argue, argue that somehow something related to these
21 -- the merger associated with Snowshoe Petroleum and
22 Superpumper, as she put it, pulls equity off the
23 table. That's confusing apples and oranges. The
24 book value that's attributed to notes like the \$2.5

1 million by Sam Morabito and Edward Bayuk, those are
2 to assist with the book value of the enterprise but
3 they have no affiliation and no relationship with
4 fair market value. The idea that these receivables
5 that get merged out in a parent subsidiary merger
6 somehow devalues the fair market value of the
7 company is simply incredible concept that has no
8 basis in reality.

9 What drives fair market value, as
10 Mr. McGovern said, is what is the income stream of
11 this business projected forward. It has nothing to
12 do with book value notes. Has nothing to do with
13 related-party transactions unless the fair market
14 buyer is actually looking at investing in acquiring
15 these notes for the purpose of benefiting from their
16 income stream. And based on the rational buyer,
17 there's simply no possibility any rational buyer
18 would look at this and say, Yeah, I want to pay \$8
19 million to acquire all of these notes, half of which
20 are made by people who are allegedly defunct or
21 insolvent.

22 The emails that Plaintiff's counsel argued,
23 which there was a spreadsheet that showed, you know,
24 Paul Morabito said Superpumper was worth \$20 million

1 or \$30 million or \$10 million, there's been no
2 argument that that was intended to be competent
3 evidence of fair market value as of the transfer
4 date. They don't even argue that, nor could they,
5 because it's not. Plaintiff has all but conceded
6 that the fair market value of Superpumper as of the
7 transfer date was either \$6 million or it was \$13
8 million depending on how the Court comes down on the
9 due-from affiliates. But it was not \$30, it was not
10 \$20 or \$10 million. What Plaintiff uses to
11 substantiate the argument that the value was
12 something other than what the experts provided was
13 in Exhibit 126. Exhibit 126 is the two statement of
14 assets and liabilities by Sam Morabito and Edward
15 Bayuk that postdated the transfer. And the
16 plaintiff makes a big deal about how Edward and Sam
17 had indicated that their share of Superpumper was
18 \$4.5 million each, which reflects \$9 million. It's
19 not that complicated. We just looked at the \$2.5
20 million book value notes that Sam and Ed had put on
21 the books of Superpumper. And the testimony was
22 that, I asked Gary Krause in his deposition, I said,
23 Can you think of a reason why Sam and Ed would
24 inherit a liability they didn't need to inherit as

1 part of this merger? He said, Sure. Because this
2 company has to have \$6 million of stockholder
3 equity, which is a synonym for book value, and in
4 order to do that they had to inherit the liabilities
5 that were merged out in the merger.

6 So if you take \$5 million of the book value
7 of the \$2.5 million notes that Sam and Ed included,
8 then you get exactly what Spencer Cavalier provided,
9 which is \$4 million with the risk discount plus the
10 \$5 million of book value based on those notes.
11 What's missing here, obviously, is the liability.
12 This is an unremarkable document, if Sam Morabito
13 and Ed Bayuk had included the \$2.5 million liability
14 that was on the book of Superpumper, as we showed in
15 Exhibit 120. The books of Superpumper show that Sam
16 and Edward owed \$2.5 million to the company and
17 their K-1s of that same year show that they were
18 being taxed on the interest. They were paying on
19 the interest. So the existence of that obligation
20 is not undisputed. The fact is it doesn't show up
21 on this personal financial statement and it should
22 have. Had it been on there, this would have be an
23 unremarkable document because the \$2.5 million that
24 makes up the 4.5 here would be offset by the

1 liability resulting in Edward Bayuk and Sam
2 Morabito's contention that Superpumper was only
3 worth \$4 million, not \$9 million. It was never
4 worth \$9 million.

5 Lastly, with respect to value -- and then I
6 have one more point and then I will rest my case --
7 the Panorama property, the dispute between Mr. Noble
8 and Mr. Kimmel can be boiled down to two positions.
9 The first position is, as Mr. Kimmel puts it, Well,
10 there were no properties in Reno as of the transfer
11 date which were sold for that amount, and he uses
12 that -- of course he did not include that in his
13 report but he testified to that, but he uses that to
14 support his conclusion that, Okay, even if I wasn't
15 given access to the property to determine what the
16 actual quality was, it doesn't matter. I could have
17 given you a valuation around \$2 million simply based
18 on my knowledge that no house in Reno had sold for
19 that in amount in 2010.

20 Well, that's not surprising because Mr.
21 Kimmel testified when I asked him, people who own
22 houses at Montreux or the top of Eagle's Nest or
23 Lake Tahoe, when you're at the doldrums of a market,
24 you don't sell. People with those kinds of houses

1 have the ability to avoid selling
2 multimillion-dollar properties at the bottom of the
3 market. I said, Isn't that true? He said, Yes.
4 People who own a \$10 million home don't have to sell
5 when they don't want to. They wait. What Mr.
6 Kimmel did not say, your Honor -- and this is
7 critical -- that there weren't houses in Reno that
8 could -- that were worth that. He didn't say that.
9 He didn't say there's no houses in Reno or Montreux
10 or Arrowcreek that don't have a \$4 million value.
11 What he said was people that own houses of that
12 value at that time were not selling. Why does that
13 matter? Because fair market value and the rational
14 buyer and rational seller. It's not that there were
15 not houses in Reno that were worth that. It's just
16 that at that time people were not selling. That's
17 not the same thing as saying there were no \$4
18 million houses in Reno. Of course there were.

19 Secondarily, Mr. Kimmel attempted to
20 backfill in cross-examination with respect to this
21 idea of functional obsolescence, the idea that
22 somebody could build the Taj Mahal in Reno that
23 nobody would want to buy. That's not included in
24 his report. In fact, his report said nothing about

1 it, and I asked him, You didn't give any treatment
2 to this idea of functional obsolescence in your
3 report and he said no. In fact, it's clear, the
4 only thing that Mr. Kimmel included in his report
5 with respect to telling us why he gave the value he
6 did was because of the condition of the property,
7 nothing else.

8 Here's his commentary, your Honor, Exhibit
9 53. When he says, These are the comparables that I
10 evaluated and here's why I believe these comparables
11 are superior to the subject property. He didn't
12 say, Well, my estimation was that the Panorama
13 property was functional obsolete. He didn't say
14 that. He says only one thing. These properties
15 were in better condition. He says with respect to
16 sale one, similar size, similar location; however,
17 it's my opinion that it was not in as good a
18 quality. Outside inspection appears to be better
19 condition. This is the only factor he gives us to
20 differentiate these comps from the subject property.

21 Same with Subject 2. Good condition, and
22 the Panorama property, according to him, was in bad
23 condition. Number 3, the same. So Mr. Kimmel tried
24 to rehabilitate himself by saying, Well, quality

1 doesn't really matter. It's really a function of
2 what does somebody want to buy and there's this
3 concept of functional obsolescence but that's not
4 his report. His report is he made a determination
5 that Panorama was not of the same quality as the
6 comparables and, therefore, not worthy of the same
7 value a square foot. That was his opinion.

8 So what did Mr. Noble say? No. 1,
9 Plaintiff's counsel said Mr. Noble didn't give any
10 treatment to the idea that we were in a down market.
11 Well, that's not true. He did and I asked him if he
12 did and he said he did. Page 15 of his report,
13 Exhibit 276, he talks about the bubble and he talks
14 about the bubble collapsing and then he talks about
15 the ongoing national housing crisis. Plaintiff's
16 counsel was wrong. He didn't ignore those things.
17 He considered them. And then Plaintiff's counsel
18 said, well, the reason why his number came so high
19 was he relied primarily on the cost approach. Well,
20 that's not true either. His cost approach
21 determination was 4.36 million. And I asked him,
22 Did you rely on that? He said, No. I relied on the
23 comparable sales. I just did this to give you an
24 idea. His ultimate conclusion of value was

1 comparables, not cost approach, as Plaintiff's
2 counsel said. Take a look at this comparable, which
3 for unexplained reasons Mr. Kimmel didn't use. The
4 only thing that really matters for purposes of
5 valuation, and this Court knows that, is how do we
6 get to the square footage of a comparable property.
7 And Mr. Noble said based on this Boulder Glen Way
8 sale that commanded \$686 a square foot, his judgment
9 was that Panorama was at least as good a quality and
10 could command at least a square footage of Boulder
11 Glen and the square footage he attributed to
12 Panorama was \$681, which was below the square
13 footage of the Boulder Glen Way property. He didn't
14 just pick a number out of thin air. He said -- and
15 his testimony was -- he picked the price per square
16 foot at the high end of the range, which goes from
17 \$386 to \$686 and he determined based on his
18 assessment of the quality of the Panorama property
19 that it was the high end.

20 So does Mr. Noble's testimony shock the
21 conscience into making this Court believe that the
22 Panorama sale was a fluke -- not a fluke, that it
23 clearly could not be legitimate, that what Mr. Noble
24 did, his report and testimony, lead the Court to

1 believe that it was so out of whack that it shocks
2 the conscience into believing that what Mr. Bayuk
3 and what Mr. Morabito were trying to do was clearly
4 not legitimate in trying to determine the value. It
5 doesn't make sense. It's important to note the
6 initial allegation against Mr. Bayuk and Mr.
7 Morabito was that all the properties were
8 intentionally altered, either overstated or
9 understated in value, in order to maximize their
10 scheme.

11 Well, they abandoned that theory when they
12 realized that all of the other properties that
13 defendants valued were spot on. So if all of the
14 other properties they valued with these appraisers
15 are not subject to being contested, then why would
16 Panorama be any different? Well, the argument was
17 -- and I don't think it was very compelling but the
18 argument was, well, it had to do what they needed to
19 marry up the value of Panorama so that it would
20 match the value of the Laguna properties. Well, the
21 purchase and sale agreement doesn't bear that out.
22 Because if Plaintiffs' argument was correct, the
23 purchase and sale agreement would be different. In
24 the original purchase and sale agreement -- this is

1 Exhibit 45 -- and this is a critical point to refute
2 what Plaintiff is contesting without evidence. In
3 the original purchase and sale agreement the value
4 of Panorama was decided first so they already knew
5 that Panorama was 4.3 million. So in the initial
6 purchase and sale agreement Mr. Bayuk and Paul
7 Morabito did not have the appraisals from El Camino
8 or Los Olivos at that point. So what they did was
9 they imputed \$2.5 million to each subject to
10 correction when the appraisals came in.

11 Now, if Plaintiff's theory on this was
12 true, it would be the other way around and that is
13 Los Olivos and El Camino would be decided and then
14 Panorama would be backfilled to make sure that
15 they're square. That's not what happened. Panorama
16 is already valued and they imputed these values to
17 Los Olivos and El Camino subject to a true-up. The
18 very next Exhibit 46 trues it up and determines that
19 the fair market value of El Camino is not 2.5, it's
20 1.9, and the fair value of Los Olivos is not 2.5,
21 but 1.9. So the plaintiff's theory that this was
22 all one big scheme to make sure it equaled out does
23 not match their evidence. Panorama was valued first
24 and then Los Olivos and El Camino were valued second

1 and Plaintiff does not contest the value of Los
2 Olivos or El Camino, so their theory that this was
3 just some match-up falls flat.

4 Mr. Kimmel admitted he doesn't know what
5 the literature is on retrospective appraisals and so
6 because he didn't know what the literature requires
7 of retrospective appraisals, he violated basically
8 every rule that's required in the literature for
9 retrospective appraisals, which is you cannot
10 consider events that occurred after the fact unless
11 the parties would have been able to accurately
12 predict them. So he did a whole bunch of things
13 that made no sense in light of that requirement. He
14 considered the quality of the property as it existed
15 four years after the valuation date as though
16 somehow that's relevant to anything.

17 He considered the testimony of Skip
18 Avansino, who had a beef with Mr. Bayuk because
19 Mr. Bayuk wouldn't agree to decorate the property
20 for them, which makes no sense. It makes no sense
21 that, as Mr. Avansino says, the house was trashed if
22 immediately upon Skip Avansino taking possession of
23 the property his wife calls their broker and asks
24 the broker to ask Ed Bayuk to decorate the house for

1 them. If it was really trashed, why would they call
2 Ed Bayuk to come back to decorate the place a couple
3 years later. So Skip Avansino was mad. He told Mr.
4 Kimmel, I'm not letting you in my house, which he
5 could have done but he didn't. Number 2, they stood
6 at the gate and Skip told him all the things that
7 was wrong with the property, which was not supported
8 by any evidence. The only evidence in this case was
9 that when Mr. Bayuk vacated it, it was in flawless
10 condition. That's the only evidence here. It was
11 not trashed by the date of valuation. It was
12 flawless.

13 Your Honor, lastly, the idea of insolvency.
14 Plaintiff's counsel focused a lot of attention on
15 this report from Michelle Salazar that showed that
16 Paul Morabito was insolvent as of April 2011. Well,
17 that ignores a couple of key facts. First, Tim
18 Herbst testified that he was aware that Herbst had
19 retained Craig Green in April of 2011 to do a net
20 worth evaluation of Paul Morabito for the purposes
21 of determining punitive damages. And Tim Herbst
22 testified that Craig Green determined as of spring
23 of 2011 that Paul Morabito's net worth was \$90
24 million after the transfers. That's the Herbsts'

1 own expert. And the Herbsts' own expert relied on
2 that report and the Herbsts relied on that report in
3 order to obtain a punitive damages assessment
4 against Paul Morabito of \$15 million. That's
5 undisputed. So there's an inconsistency in
6 plaintiff's position. Well, was Paul Morabito
7 insolvent or not, because in 2011 when it suited the
8 Herbsts to take the position that Paul Morabito had
9 a massive net worth, the report from Mr. Green, as
10 Mr. Tim Herbst testified to, showed that Paul
11 Morabito had a net worth of 90 million. He was not
12 insolvent. So that was the position the Herbsts
13 took when it suited them at the time. Well, the
14 position they're taking now is that he was insolvent
15 and rendered insolvent because he transferred, at
16 least by their valuation, \$14 million of assets.

17 You can't have it both ways, an insolvent
18 debtor who also has a punitive damages award against
19 him of \$15 million based on a \$90 million net value
20 report. He can't be insolvent and have \$90 million
21 at the same time depending on when it suits the
22 Herbsts. I would submit, your Honor, that the
23 Herbsts have to take it the way that they argued it,
24 which is that Paul Morabito after the transfers had

1 \$90 million in assets and it was those \$90 million
2 in assets that resulted in a punitive damages award
3 of \$15 million. You can't argue he's both insolvent
4 and subject to punitive damages out of the same side
5 of your mouth. They should be judicially estopped
6 from taking positions contrary to those that they
7 had taken in prior actions. Mr. Herbst testified
8 that the punitive damages award that was stipulated
9 to was based on and resulted from Craig Green's
10 report that Paul Morabito had a net worth of \$90
11 million.

12 And, lastly, your Honor, even if he was
13 insolvent by virtue of the judgment, consideration
14 for insolvency still is whether or not after the
15 transfers Paul Morabito maintained a net neutral
16 result. In other words, the statute says was he
17 rendered insolvent by virtue of the transfer. Is it
18 the actual transfer of these assets that renders him
19 insolvent so he can go to his creditors and say,
20 Sorry, I have nothing to give you. Well, in this
21 case, no. Because if they transferred all those
22 properties at a reasonably equivalent value, then
23 what Paul received in exchange for what he gave is
24 the same and there is no net delta on Paul's

1 insolvency. Either way. No matter whose version of
2 net worth you want to accept, if he receives exactly
3 what he gave, then it's a net neutral result for
4 purposes of insolvency.

5 To summarize, none of these assets were
6 available for collection at the time of the
7 judgment. There's nothing Herbst could have done to
8 seize or execute upon any of these values. It was
9 only by virtue of the fact that they made the
10 decision to do something and transfer their assets
11 that they dismantled the statutory protections in
12 place and it was only by virtue of those transfers
13 that resulted in the Herbsts getting anything.

14 The Herbsts would not have gotten the
15 Panorama house had they done nothing. Yeah, the
16 Herbsts maybe could have gotten a key to the door
17 but not liquidated it. Nevada law would not have
18 allowed it. So the transfers did not prevent or
19 frustrate or hinder the creditors. Statutory
20 protections were already in place that prevented the
21 Herbsts from getting what they wanted. It was only
22 after the transfers that they had access to any of
23 these things. And that's why Dennis Vacco says it's
24 ironic that the position that Herbst was in at the

1 time was worse than the position they're in today
2 because had nothing been done -- granted, there
3 would be charging orders and tenancy-in-common
4 issues and all those kinds of things, but the
5 Herbsts wouldn't have the ability to execute upon
6 anything those except charging orders.

7 So the irony, as Mr. Vacco puts it, the
8 fact that we did it this way and attempted to be
9 transparent about the way we did it actually
10 provided the Herbsts something they could have never
11 gotten and ironically exposed his clients and my
12 clients to the liability they wouldn't have faced.
13 So, lastly, with two sets of lawyers and accountants
14 assisting in this process, which fraudster with
15 fraud on their mind would elect to take the position
16 that dismantles their statutory creditor protections
17 in order to facilitate the Herbsts getting anything
18 if really what they were trying to do was defraud
19 the Herbsts? Makes no sense. All the badges of
20 fraud put together, the purpose is to try to
21 determine why the transferor did what he did, and to
22 a lesser extent for good-faith purposes, why the
23 defendants did what they did. And it simply makes
24 no sense to argue that the defendants would have

1 dismantled all of the statutory protections
2 available to them in order to then just defraud the
3 creditors. It simply makes no sense and there's no
4 reason why it would be done that way. And Mr. Vacco
5 testified it wasn't done that way. Sujatha
6 testified it wasn't done that way. Gary Graber
7 testified it wasn't done that way. And, of course,
8 the defendants testified it wasn't done that way.

9 Your Honor, my clients have testified as to
10 why they did these transfers and their intent was
11 not to frustrate, to hinder or delay. There was no
12 testimony suggesting that my clients participated in
13 any way in any of the activities which the
14 plaintiffs have contested were proof of actual
15 intent. This state provides a good-faith defense
16 for people who deserve it. The badges of fraud are
17 not all-inclusive. This court can consider all of
18 the facts and circumstances surrounding why these
19 people did what they did. In light of the fact that
20 they had the statutory protections in place, in
21 light of the fact they had received good counsel on
22 what their options were and that they decided to
23 dismantle their protections in order to separate
24 their assets and, hopefully, extricate themselves

1 from the Herbsts, it makes no sense that my clients
2 would have done that and harbored anything other
3 than a good-faith intent to simply buy what was
4 theirs and leave Paul exposed to his own devices.

5 Your Honor, my client's request that this
6 Court give due consideration to those arguments and
7 these facts and that this Court render a verdict in
8 favor of the defendants on all counts.

9 THE COURT: Thank you.

10 MS. TURNER: I will be as quick as I can
11 and, certainly, I'm giving myself a 20-minute
12 window. It might be 30.

13 First, we're working backwards a bit,
14 addressing the insolvency, it's a badge of fraud, as
15 well as an element of constructive fraud that the
16 plaintiff show insolvency of Paul Morabito. There
17 was argument that Tim Herbst relied on Paul
18 Morabito's expert -- or Craig Green to say that Paul
19 Morabito was worth \$90 million post-judgment. And
20 your Honor, the testimony, if you review the
21 transcript, does not correlate with the arguments
22 that is being made.

23 There was certainly an indication of \$90
24 million in value with Paul Morabito. That's the May

1 2010 -- the certification from Paul Morabito of what
2 his assets were worth. Now, Tim Herbst is certainly
3 not an expert on the assets of Paul Morabito.
4 Michelle Salazar in Exhibit 44 discusses the
5 insolvency by virtue of the judgment as well as the
6 condition that Mr. Morabito was in post-transfer
7 after the transfer of his assets in September 2010.

8 But we can also go to the sworn testimony
9 of Paul Morabito and in his declaration that counsel
10 now wants to distance himself from that's set forth
11 at Exhibit 107, a sworn declaration that was filed
12 with the bankruptcy court, page three, Sections 11
13 and 12, after describing the transactions that are
14 the subject of this litigation, Mr. Paul Morabito
15 says, "The cash from these transactions and notes
16 has been used to pay my living expenses and make
17 payments to Herbst as set forth above. My sole
18 remaining assets consist of the following: Cash of
19 less than \$10,000. Approximately \$10,000 in two
20 bank accounts. Ownership of CNC value of less than
21 zero. Ownership of commercial property through
22 Nevada LLC value of approximately \$150,000 and
23 personal effects, clothing, and home furnishings."

24 That was insufficient what is described by

1 Paul Morabito and, again, he doesn't describe any
2 supervening event, anything other than the judgment
3 and transfers at issue in this case to come to the
4 conclusion that he had basically \$170,000.
5 Certainly insufficient to pay the Herbsts what they
6 were due. In addition to this testimony of Paul
7 Morabito in the bankruptcy under penalty of perjury,
8 at page 222 of his deposition transcript, which we
9 had the video play, he confirms the matters that are
10 set forth in his sworn declaration including that he
11 received \$542,000, not \$1 million, in exchange for
12 his interest in Superpumper. Whether or not there
13 was some payment of \$1 million is really not
14 relevant to whether that value was in exchange for
15 his interest in Superpumper.

16 In deposition and in his sworn testimony to
17 the bankruptcy court, Paul Morabito said, In
18 exchange for my interest in Superpumper, I received
19 cash payments of approximately \$542,000 and the rest
20 was canceled. Now, to listen to argument of
21 defendants, all the material evidence was
22 uncontroverted or misconstrued. In our proposed
23 findings and conclusions, 63 pages, half of that is
24 reference to the record. This morning I touched on

1 three hours' worth of exhibits and testimony, and
2 when taken together, the circumstantial evidence put
3 together of the badges of fraud show that Paul
4 Morabito had the actual intent to delay or hinder or
5 defraud, its conjunctive. It's "or delay, hinder or
6 defraud the Herbst in their collection."

7 Now, it is our role as officers of this
8 court to provide a roadmap to the relief that we are
9 requesting as well as any defense that is being
10 propounded. Counsel in his argument and in his
11 proposed findings cites to the wrong standard for
12 fraudulent transfer and for reasonably equivalent
13 value.

14 He is trying to sell this court on the
15 Matusik holding, a 1969 case from the Nevada Supreme
16 Court that was prior to Nevada's enactment of UFTA.
17 It was prior to enactment of the Uniform Fraudulent
18 Transfer Act and it discusses NRS Chapter 112
19 specifically with regard to 112.050, a repealed
20 statute. So, your Honor, at the time of the Matusik
21 case there was no reasonably equivalent value
22 standard that we have here today. Nor is there any
23 good cause defense, whether there was a good cause
24 for making a transfer. Rather, we have the badges

1 of fraud that we apply and, your Honor, the debtor's
2 intent does not have to be to defraud the creditor
3 to find actual fraud. It is here but it doesn't
4 have to. The intent element is satisfied with
5 hindrance or delay as the intended consequence of
6 the transfers.

7 When you review the email exchanges with
8 counsel and Paul Morabito, the testimony of Paul
9 Morabito, the testimony of Ed Bayuk, Sam Morabito,
10 they all indicate the reason for the transfers was
11 to react to the oral ruling and the determination
12 that the Herbst parties would be a creditor to Paul
13 Morabito to the tune of \$85 million. These
14 transfers would not have gone forward but for that
15 oral ruling. There was no plan in effect prior to
16 the oral ruling and the purpose was to hinder or
17 delay collection and, in fact, that's what happened.

18 It is odd that there is an argument that
19 the Herbsts are aggressive in their pursuit of a
20 right to their wrong, the right to Paul Morabito's
21 wrong, I should say. And at the same argument
22 there's this position taken, Well, the Herbsts
23 didn't do anything. They sat on their rights. The
24 Herbsts didn't do anything so they couldn't have

1 been hindered and they couldn't have been delayed.

2 Well, the Herbsts have spent \$10 million to
3 address the fraud from Paul Morabito and the
4 Fraudulent Transfer Act is remedial to address that
5 further conduct for the purpose of delaying,
6 hindering and defrauding them. \$10 million, and
7 though Tim Herbst didn't know the detail, he
8 certainly knew how much it cost his family in
9 pursuing them. When we look at the timeline of the
10 transactions at play, September 13th, 2010, being
11 the day of the oral ruling, you have the next day
12 the transfer of \$6 million, a week later the
13 transfer of \$355,000 to Sam Morabito,
14 September 23rd, \$420,000 to Ed Bayuk. On
15 September 27th there's a transfer of the interest in
16 the real properties, the residences, the Laguna
17 properties in exchange for the Panorama property.

18 And then you have the CWC and Superpumper
19 merge and Paul transfers his interest in
20 Superpumper, not to CWC, not to Ed Bayuk and Sam
21 Morabito, but the valuable interest in Superpumper
22 gets transferred to a New York corporation. What we
23 don't have is an explanation, a rational explanation
24 of why the transfer of Paul's interest was to a New

1 York corporation, except when we look at the email
2 from Paul Morabito of September 20th where he says
3 the Herbsts will no longer have the home court
4 advantage. It was to move the interest out of
5 Nevada.

6 October 1st Paul Morabito transfers his
7 50 percent interest in Baruk Properties and
8 transfers his 50 percent interest in that and it is
9 promptly transferred to Snowshoe Properties LLC, a
10 New York entity. No purpose whatsoever. There's no
11 reason why Ed Bayuk couldn't have purchased Paul
12 Morabito's 50 percent interest in the name of the
13 Nevada LLC, Baruk Properties. It was to get the
14 interest out of Nevada.

15 And by October 1st, 2010, all subject
16 transfers were substantially complete. With the
17 judgment being entered October 12th, 2010, the
18 Herbsts had no right of collection prior to
19 October 12th, 2010. And, your Honor, the final
20 judgment was not entered into until August 23rd,
21 2011. There were motions to amend, there was the
22 punitive damages phase. The final judgment was a
23 year -- almost a year later.

24 By October 12th, 2010, the transfers were

1 complete, save and except that we had the subsequent
2 transfer of the \$1,617,000 note in exchange for
3 Baruk Properties that went to Woodland Heights in
4 October of 2010. Counsel says they should have
5 gotten a prejudgment writ. They had an obligation
6 to get a prejudgment writ. They didn't do it. They
7 sat on their rights. It is not good faith. It is
8 not good faith to say that a creditor has a right to
9 get a prejudgment writ of attachment or beware, the
10 property can be gone. That's an unreasonable
11 position to take.

12 Now, he bolsters that argument by saying,
13 you know, they didn't have any rights in these
14 interests before the transfers, so the fact that
15 they didn't have any rights after the transfers is
16 -- it's wash. Well, certainly upon a judgment being
17 entered, the Herbst parties were entitled to a
18 charging order. Mr. Gilmore acknowledges that. And
19 with a charging order they would be entitled to
20 50 percent of a sale of any property owned by Baruk
21 Properties LLC. They were denied that right of
22 collection because the interest was transferred to a
23 non-debtor and not for reasonably equivalent value.
24 It was for a \$1,617,000 note that was transferred to

1 Woodland Heights.

2 Now, Mr. Gilmore said the Woodland Heights
3 conveyance is a red herring. It's not a red
4 herring. When you review it, you'll see it's
5 conclusive evidence of Paul Morabito's actual intent
6 to delay and hinder collection by promptly conveying
7 his right to repayment under that note to a Canadian
8 company with execution of an allonge that was never
9 released, never set aside. You never saw any
10 testimony saying that -- or any evidence indicating
11 that it wasn't in full force and effect or he hadn't
12 taken that position otherwise.

13 And Mr. Gilmore said but nobody provided
14 testimony why it was conveyed to Woodland Heights or
15 the details of it and it wasn't discussed with
16 anybody else. Exhibit 44, Paul Morabito's expert,
17 Michelle Salazar, discusses her conversation with
18 Paul Morabito where he told her that the
19 \$1.67 million note had been conveyed to Woodland
20 Heights and March of 2011 was the date of that
21 report and his interest in Woodland Heights pursuant
22 to that conveyance is outlined in his asset list.
23 He provided that to his expert and his expert used
24 it in the underlying Herbst litigation in the

1 punitive damage phase.

2 THE COURT: Counsel, I'm just going to stop
3 you there. I don't want to use up your time, but
4 part of the argument of Mr. Gilmore was that you had
5 all of this at the punitive damage hearing and you
6 represented to Judge Adams or you argued to Judge
7 Adams that Paul Morabito was not insolvent. He had
8 90 million in assets.

9 Do you have any comment on that?

10 MS. TURNER: Well, when there is \$90
11 million in assets being reported and there hasn't
12 been discovery of the extent of these transfers,
13 what we had were notes that you didn't have reason
14 to believe on their face that they weren't valid.
15 It's subsequently learned that there's a conveyance,
16 da, da, da.

17 The punitive damages were ultimately set
18 aside by stipulation resulting in the confessed
19 judgment, so there is a whole lot of history there
20 on the stipulated punitive damages and the
21 stipulated and confessed judgment. The timeline is
22 this. You had the punitive damages phase, the final
23 judgment August 23rd, 2011, the settlement
24 agreement was entered in November of 2011, really on

1 the heels of the final judgment where the punitive
2 damages became a nonissue because the confessed
3 judgment is \$85 million. We went back to the \$85
4 million.

5 THE COURT: For some reason I thought you
6 talked this morning about learning -- or maybe it
7 was Mr. Gilmore -- learning of some of these
8 transfers from Ms. Salazar when she was preparing --
9 when discovery was being done with regard to the
10 punitive damage phase.

11 MS. TURNER: In her report she describes
12 the \$1,617,000 note. That was March of 2011. So
13 that was much -- the point being it wasn't at the
14 time of the transfer. It was not like we could go
15 in and collect on the note, the \$1,617,000 note.
16 The note itself wasn't known until that punitive
17 damages -- known to exist until the punitive damage
18 phase of that trial.

19 THE COURT: Okay.

20 MS. TURNER: So on the concealment badge of
21 fraud there's no question that the transfers were
22 discovered in the punitive damages phase inclusive
23 of Michelle Salazar's report that's set forth in
24 Exhibit 44. And that there was a belief, hope,

1 dream that Paul Morabito's \$90 million that he had
2 in May of 2010 was still available to satisfy this
3 judgment.

4 As you saw in the sworn testimony of Paul
5 Morabito in the bankruptcy, it wasn't the case. He
6 didn't have the assets for the Herbsts to attach
7 that they believed were available. Part and parcel
8 of the reason for the involuntary bankruptcy, you
9 heard Mr. Herbst's testimony on that, was to try to
10 capture assets for the benefit of the creditors,
11 which include the Herbsts. Now, speaking of which,
12 Mr. Gilmore read from an order that this was a
13 two-party dispute. And we know that there are
14 multiple claimants and, in fact, it was a result of
15 the discovery multiple claimants against Paul
16 Morabito that there was an order for relief entered.

17 He's an adjudicated bankrupt debtor. Not
18 that you have to be insolvent to be bankrupt, but
19 when you provide sworn testimony the bankruptcy
20 court just setting forth how you're unable to pay
21 your living expenses going forward, that it was kind
22 of surprising that there was an argument against
23 insolvency. We still have close to \$80 million that
24 remains outstanding on the confessed judgment and it

1 isn't for a lack of trying, as Mr. Herbst described.

2 Now, when we go through the badges of
3 fraud -- which, if multiple badges of fraud are
4 proven, that is conclusive evidence of actual
5 fraud -- a lot of these went, really -- they weren't
6 addressed by evidence or argument by the defendants
7 that the transfers were to insiders. The fact that
8 the defendants are statutory insiders and Mr. Bayuk
9 is otherwise a non-statutory insider with respect to
10 his personal relationship with Paul Morabito, that's
11 been established. The debtor retained possession or
12 control of the property transferred.

13 The fact that Paul Morabito retained
14 control or possession of the Los Olivos property is
15 not in dispute. There's testimony he lives there.
16 With respect to possession or a control of the Baruk
17 Properties, the commercial properties in Laguna
18 Beach, no question he used those properties to
19 address his issues for his exclusive benefit
20 including resolving his dispute with Bank of
21 America. And the \$5 million in loan that was
22 obtained and secured by the properties, that was for
23 his benefit. He continued to receive that
24 beneficial interest in those properties. And with

1 respect to Superpumper we had multiple examples of
2 how he was communicating with third parties saying
3 that he had an interest or implying that he had an
4 ongoing interest in Superpumper. He remained on
5 emails with auditors and counsel with respect to
6 Superpumper's business.

7 And all in all, there is the additional
8 factor that the Nevada Supreme Court in the SportsCo
9 case said that, even in addition to possession or
10 control of the property transferred, is retaining a
11 beneficial interest. And that's what Paul Morabito
12 did here with respect to all of the transferred
13 assets. The debtor removed or concealed assets.
14 Again, the fact that these were ultimately
15 discovered is not really the issue. It's whether or
16 not they were concealed at the time. And reasonably
17 equivalent value, this is something that Mr. Gilmore
18 spent some time on, is whether or not there was
19 reasonably equivalent value on Superpumper. He said
20 Matrix had it right but for the cap rate.
21 Mr. Cavalier had it right with the \$6.5 million
22 roughly valuation.

23 Michelle Salazar challenged the cap rate
24 that was used but there wasn't a rational basis for

1 her challenge. If you review the report and you
2 listen to the testimony of Spencer Cavalier, he did
3 consider risk factors. When you listen to the
4 testimony of Mr. McGovern and you look at his
5 report, there were risk factors considered. Both of
6 them concluded that there was no marketability
7 factor here that was necessary in addition to the
8 other risk factors. And Mr. McGovern described this
9 is a controlling interest and you don't have that
10 same issue that you would have if it was a minority
11 interest. Mr. Lovelace is not an expert. He is not
12 an expert on business valuation and certainly wasn't
13 an expert here. He is counsel for the defendants
14 and Paul Morabito and he has an interest in the
15 outcome of the action. He cannot provide a rational
16 basis for the value that would be reliable and, in
17 fact, the \$2.5 million number that he created was
18 not reliable. You can't ignore the insider
19 receivables that have been deemed collectable by the
20 auditors. And they weren't written off subsequent
21 to Gursej Schneider saying they were collectable.
22 Rather, they restated them and went one further, put
23 them in writing and they restated them with new
24 equity signing off on the obligation, Ed Bayuk and

1 Sam Morabito. If the business was sold to a
2 third-party -- and I'll use Yon Friedrick as an
3 example and those notes are on the books of
4 Superpumper, then he can pursue them. And we note
5 from the testimony of Gary Kraus that they were
6 collectable when Paul Morabito signed the
7 certification outlining his assets subsequent to the
8 transfer, subsequent to the judgment against Paul
9 Morabito, Sam Morabito, and Ed Bayuk executed the
10 notes. Was that a discount on the value that was
11 paid by -- paid by Yon Friedrick? We don't know
12 because that was done during litigation when
13 discovery had finished.

14 But certainly to say that those should be
15 ignored is -- there's no rational basis for that.
16 There's no auditor who said these are not
17 collectable and, therefore, they should have been
18 written off and they were, in fact, not written off.

19 Now, even the \$5 million value, which would
20 be roughly 80 percent of the 6.5 million, even that
21 wasn't conferred on Paul Morabito, not even the \$2.5
22 was actually conferred. As we otherwise discussed,
23 it was only \$542,000 that was exchanged for Paul's
24 80 percent interest. That is not a net-net value.

1 And when we look at the Laguna properties, when we
2 look at the Baruk property transfer, you do not have
3 a net-net value and certainly not net-net from the
4 standpoint of a creditor.

5 If you have a sale of the Panorama property
6 to Skip Avansino in exchange for \$2.5 million, that
7 is a reasonably equivalent value exchange. That is
8 the perfect example, which is why Skip Avansino is
9 not a defendant to any action. He paid \$2.5 million
10 and he took the transfer of the Panorama property in
11 good faith.

12 That is not what we have here. Once the
13 Court finds that there's been actual fraud, it is
14 only then that the good-faith defense is examined.
15 And it's two factors. It's that reasonably
16 equivalent value has been conferred. There's been
17 net-net exchange of value and you took in good
18 faith. And an innocent party should be protected
19 from the remedial effect of the UFTA but that's
20 because they're good-faith transferees. They're
21 arm's length and they paid reasonably equivalent
22 value that would stand in the shoes of the asset
23 transfer for the benefit of the transferor's
24 creditors. Here these insiders, who are not acting

1 arm's length, are acting in a rush to finalize these
2 transfers before judgment is entered. They have
3 joint representations. It was on the heel of the
4 oral rulings establishing liability without
5 disclosure to the creditor, with removal of the
6 assets outside of Nevada and otherwise beyond the
7 reach of the Herbsts, and it was when there was a
8 reservation of benefits to Paul Morabito. As he
9 represented to Kevin Cross, he stayed on as an
10 adviser to Superpumper and he had the benefit of the
11 other properties that he levered up to his exclusive
12 benefit.

13 When determining good faith, you have to
14 look at whether or not it's objective good faith and
15 whether the defendants had actual or inquiry notice
16 of Paul Morabito's intent to delay, hinder or
17 defraud the Herbsts. We have that here. I'm not
18 going to belabor it because we went over it this
19 morning, but with joint representation and the
20 agreement amongst them, an admitted agreement that
21 they would do these transfers to address the
22 impending Herbst judgment, that is reason enough to
23 determine this is not a good-faith defense case.

24 Now, the Raffles asset that is for the

1 benefit of Paul Morabito but in the name of CFC, it
2 is included on the May 2009-May 2010 financial
3 statements for Paul Morabito, still that was the
4 excuse for the cash that was transferred out of his
5 account on the heels of the oral ruling, was, I was
6 buying an interest in Raffles. We don't have any
7 rational basis for the \$355,000 to Sam Morabito or
8 the 420,000 to Ed Bayuk in settlement of 2010. And
9 so that certainly -- we still don't have a rational
10 basis. That needs to be clawed back and rendered a
11 part of the judgment.

12 Your Honor, a distribution pursuant to a
13 charging order, that is something. And if, really,
14 the Herbsts couldn't collect against these assets,
15 then the reason provided for the transfers, the
16 reason stated by Sam Morabito and Ed Bayuk, Dennis
17 Vacco makes no sense, which is, Well, we were trying
18 to help the Herbsts. We were trying to protect the
19 defendants from having to deal with the Herbsts and
20 we were going to set these assets aside for the
21 benefit of the Herbsts.

22 Well, the Herbsts didn't receive the
23 benefit of the assets and they only acted, the
24 transfers, to prevent those execution tools, the use

1 of those tools in the state of Nevada as the Herbsts
2 parties would have been entitled to do with Baruk
3 Properties LLC, a Nevada LLC and CWC, a Nevada
4 corporation.

5 So in closing, your Honor, a travesty
6 existed in September 2010 as a result of Paul
7 Morabito's fraud directed to the Herbsts and that
8 travesty was exacerbated with these transfers. And
9 the requested judgment will not right all of Paul
10 Morabito's wrongs but it's a start consistent with
11 the remedial purpose of the statute. We do not have
12 innocent transferees here and to the extent there
13 was any actual value conferred, our proposed
14 judgment provides an offset.

15 With that, your Honor, thank you.

16 THE COURT: Okay. Thank you. Counsel, I'm
17 going to take this under submission. I appreciate
18 your arguments and I appreciate the efforts everyone
19 has put through for the trial. I'm not ready to
20 rule on it today but I will as quickly as I can.
21 You know that the rest of this week is a jury trial.
22 Currently we have jury trials set every Monday until
23 Christmas, but we hope to get through this. I'm
24 hoping maybe one trial will be taken by another

1 judge so we'll see and we'll get it to you as
2 quickly as we can. Court's in recess.

3 (End of proceedings at 4:48 p.m.)

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1 STATE OF NEVADA)
) SS.
2 COUNTY OF WASHOE)

3 I, CHRISTINA MARIE AMUNDSON, official reporter
4 of the Second Judicial District Court of the State
5 of Nevada, in and for the County of Washoe, do
6 hereby certify:

7 That as such reporter, I was present in
8 Department No. 4 of the above court on November 26,
9 2018, at the hour of 9:15 a.m. of said day, and I
10 then and there took verbatim stenotype notes of the
11 proceedings had and testimony given therein in the
12 case of William Leonard, Trustee, Plaintiff, v.
13 Superpumper, et al., Defendants, Case No.
14 CV13-02663.

15 That the foregoing transcript is a true and
16 correct transcript of my said stenotype notes so
17 taken as aforesaid, and is a true and correct
18 statement of the proceedings had and testimony given
19 in the above-entitled action to the best of my
20 knowledge, skill and ability.

21
22 DATED: At Reno, Nevada, this 3rd day of February
2019.

23 /S/ Christina Marie Amundson, CCR #641

24 Christina Marie Amundson, CCR #641

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