

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

SPANISH HEIGHTS ACQUISITION  
COMPANY, LLC; SJC VENTURES  
HOLDING COMPANY, LLC,

Appellants

vs.

CBC PARTNERS I, LLC; CBC  
PARTNERS, LLC; 5148 SPANISH  
HEIGHTS, LLC; KENNETH ANTOS  
AND SHEILA NEUMAN-ANTOS;  
DACIA, LLC

Respondents.

Case No. 82868

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Elizabeth A. Brown  
Clerk of Supreme Court

APPEAL

from a decision in favor of Respondent  
entered by the Eighth Judicial District Court, Clark County, Nevada  
The Honorable Elizabeth Gonzalez, District Court Judge  
District Court Case No. A-20-813439-B

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**APPELLANTS' APPENDIX VOLUME XVII**

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	Michael R. Mushkin on Behalf of 5148 Spanish Heights, LLC		
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## **CERTIFICATE OF SERVICE**

I certify that on the 10th day of November, 2021, this document was electronically filed with the Nevada Supreme Court. Electronic service of the foregoing: **APPELLANTS' OPENING BRIEF** and **VOLUMES I – XIX** of the **APPENDIX** shall be made in accordance with the Master Service List as follows:

Michael R. Mushkin, Esq.  
MUSHKIN & COPPEDGE  
6070 S. Eastern Avenue, Suite 270  
Las Vegas, Nevada 89119  
*Attorney for Respondents*

DATED this 10th day of November, 2021.

/s/ Natalie Vazquez

An Employee of MAIER GUTIERREZ & ASSOCITES



1 MR. GUTIERREZ: Yeah. I've got both of them.

2 THE COURT: Thank you. You are on top of it.

3 MR. GUTIERREZ: Thank you, Judge.

4 THE COURT: And because I know what's going to  
5 happen, Mr. Bloom, I am handing you, but not getting close to  
6 you, binder clips.

7 THE WITNESS: Thank you, Your Honor.

8 THE COURT: Thank you for helping us with the social  
9 distancing except within your own teams, which I can't really  
10 control.

11 All right. Where do you want him to go?

12 The depos I and II are both published, the electronic  
13 versions. So do what you need to do now.

14 BY MR. MUSHKIN:

15 Q Are you ready, Mr. Bloom?

16 A Yes.

17 Q I asked you what was the source of funds for SJCV  
18 making the advances on behalf of SHAC. Do you recall that  
19 question?

20 A Can you point me to the page you're on in the --

21 Q Well, first I'm asking you if you recall the  
22 question.

23 A Vaguely.

24 Q Okay. And do you know what your answer was?

25 A I don't recall.

1 Q I'll read you your answer, and you can read along at  
2 page 9 of your deposition if you'd like.

3 A Which half?

4 Q Volume I, page 9.

5 A Okay. Okay.

6 Q And you see your answer,

7 SJC holds various business interests  
8 from which it generates income.

9 Do you see that?

10 A I do.

11 Q And what are those various business interests?

12 Do you see that?

13 A I do.

14 Q And what was your answer?

15 A I questioned the relevance of the question.

16 Q You made an objection, didn't you, sir?

17 A I did.

18 Q Your attorney didn't, did she?

19 A No, I did.

20 Q Thank you. And you were here as a 30(b)(6); is that  
21 correct?

22 A Correct.

23 Q Are you an attorney?

24 A I am not.

25 Q Are you aware that under the rules of 30(b)(6) a

1 corporation cannot represent itself?

2 A I am.

3 Q Okay. Yet you still made objections throughout the  
4 deposition?

5 A I did.

6 Q Thank you.

7 And so you objected, and then the question was, the  
8 next question was, You still have to answer the question,  
9 Mr. Bloom.

10 And do you know what your answer was at the time --  
11 well, before you read it, do you know what your answer was at  
12 the time?

13 A I have it in front of me, and I've read it.

14 Q Okay. And so is that still your testimony?

15 A Yes.

16 Q Well, the Judge just told you had to answer. So  
17 that's not your testimony today, is it?

18 A That was my testimony up until the Judge's decision  
19 that the objection was overruled.

20 Q So is it your testimony that any time you object you  
21 don't have to answer a question?

22 MR. GUTIERREZ: Object, Your Honor.

23 BY MR. MUSHKIN:

24 Q Until a Judge rules?

25 MR. GUTIERREZ: Objection. Argumentative.

1 THE COURT: Overruled.

2 You can answer.

3 THE WITNESS: That's my understanding until the Judge  
4 or the discovery commissioner rules as to the legitimacy of the  
5 question or the applicability of the question or the  
6 appropriateness of the question.

7 BY MR. MUSHKIN:

8 Q And where did you learn this, sir?

9 A In my past I've been involved in litigations with  
10 other parties through various businesses.

11 Q And have you ever been before the discovery  
12 commissioner?

13 A I have prior to her being appointed to the -- or  
14 prior to her election to the Supreme Court -- or appointment --  
15 oh, no, she's on the appellate court.

16 Prior to her appointment to the appellate court.

17 THE COURT: And that would be Commissioner Bulla?

18 THE WITNESS: Yes.

19 THE COURT: Okay.

20 BY MR. MUSHKIN:

21 Q And did you learn at that hearing in front of Judge  
22 Bulla that somehow you didn't have to answer a question until a  
23 Judge or a commissioner ruled on an objection?

24 A That's my understanding.

25 Q So I asked you the question again, and your answer

1 is --

2 I'm going to ask the question again. What are the  
3 source of funds SJCV used to pay for SHAC's obligations to CBC?

4 Various sources of funds. There are various sources  
5 of funds. The documents speak for themselves. Your question  
6 is overly broad, and I'm not going to get into SJC's business  
7 outside its relevant to this matter.

8 Do you see that?

9 A I do.

10 Q And I asked the court reporter to certify the  
11 question; correct?

12 A You do.

13 THE COURT: Do you still certify questions?

14 (No audible response.)

15 THE COURT: Nevermind.

16 MR. MUSHKIN: The reporter didn't say no I don't do  
17 that anymore.

18 THE COURT: They tell me they just mark them.

19 MR. GUTIERREZ: Yeah.

20 BY MR. MUSHKIN:

21 Q So we had a rather lengthy discussion about your  
22 ability to object. Do you recall that, sir?

23 A You asked a lot of questions that day. I don't  
24 recall with specificity this one question.

25 Q I'm not sure that was responsive to my question, sir.

1 A I don't recall with specificity --

2 Q Would you like me to read back my question?

3 THE WITNESS: Please.

4 THE COURT: He says he doesn't remember.

5 BY MR. MUSHKIN:

6 Q I asked you, What representations that you made to  
7 CBC upon entering into the transaction?

8 Do you see that question?

9 A Which page and which line?

10 Q Page 10, line 16?

11 A I do.

12 Q And Ms. Barraza objects as to form. Do you see that?

13 A I do.

14 Q Now, I notice that you answered the question. So if  
15 your understanding is that you don't answer until somebody  
16 rules on it, why are you answering questions then, sir, after  
17 an objection?

18 MR. GUTIERREZ: Objection, Your Honor. Misstates the  
19 testimony. Relevance.

20 THE COURT: Overruled.

21 You can answer.

22 THE WITNESS: That's not what I said. I didn't say  
23 that you don't answer questions after an objection. I said  
24 that if you choose not to answer a question with an objection,  
25 you can -- my experience has been you can request a decision

1 from the discovery commissioner about whether an answer can be  
2 compelled.

3 BY MR. MUSHKIN:

4 Q Did your attorney seek any sort of protection for any  
5 of these questions, sir?

6 A I don't know that she did.

7 Q And then you answered the question, and you answered,  
8 The question is overly broad as well. Do you have a specific  
9 representation or representations to which you are referring?  
10 And do you see my response to you?

11 A Yes. Your response was, I'm asking the questions.  
12 You don't get to tell me whether my questions are overly broad.

13 Q Your lawyer can make that objection, but you don't  
14 get to object. Your (sic) answer my questions.

15 And then do you see your response?

16 A (No audible response.)

17 Q Mr. Mushkin, I get to enter objections as well, and I  
18 just did. So if you would like to make a more specific  
19 question, I'd be happy to address it.

20 Do you see that?

21 A Correct.

22 Q I'm asking you.

23 And then you answer, All representations over the  
24 last four or five years is overly broad, and I'm not able to  
25 answer.

1 Do you see that?

2 A Yes.

3 Q And then I go on to ask you, I'm asking about the  
4 representations that you made before you signed the agreements  
5 in question in this case. I'm asking about specific  
6 representations that you made to CBC. Do you recall any of  
7 them?

8 And what was your response, sir?

9 A Not off the top of my head. If you have a specific  
10 representation or representations you would like to ask me  
11 about, I'd be happy to address them.

12 Q And is it your testimony before this Court at the  
13 time of your deposition you didn't remember any of the  
14 representations that you made?

15 A Um...

16 Q Well, let's go through them, sir.

17 A Yeah, that would be --

18 Q There's a hundred thousand dollars in repairs. You  
19 didn't remember about the hundred thousand in repairs?

20 A No, I did not remember about the hundred thousand  
21 dollars in repairs.

22 Q There was a quiet title action --

23 A I'm sorry. I'm still answering the question.

24 THE COURT: You got to let him finish, Mr. Mushkin.  
25 You can finish, sir.



1 THE WITNESS: No, I did not remember any of the  
2 representation specifically in the context of the question. If  
3 you had asked me about the \$100,000, that would have refreshed  
4 my recollection, and I would've been able to answer it, and I  
5 can do so now.

6 BY MR. MUSHKIN:

7 Q So you didn't remember about the hundred thousand;  
8 correct?

9 A Not at the time you asked me the question.

10 Q And you didn't remember about the quiet-title action;  
11 correct?

12 A Not at the time you asked me the question during the  
13 deposition.

14 Q And you didn't remember about the balloon payment;  
15 correct?

16 A I knew that there was a balloon payment that was due,  
17 but I didn't think of it in terms of a representation.

18 Q And you --

19 A Which is why I was asking for clarification.

20 Q You didn't remember the...

21 A You can't remember?

22 Q No. I have a whole list. I'll deal with them in  
23 order.

24 You didn't remember any of them. Okay.

25 So then I asked you, Do you recall providing tax

1 returns?

2 Do you remember what you answered?

3 A Yes. I have it in front of -- I don't remember, but  
4 I'm reading the transcript. So I answered, I do not.

5 Q That's not true, is it?

6 A No, that's true.

7 Q Sir, you provided tax returns in this case in advance  
8 of the forbearance agreement. We've admitted them in evidence.  
9 Would like me to show them to you?

10 A Are you talking -- what tax returns? Because I  
11 understood this to be tax returns with respect to Spanish  
12 Heights Acquisition Company. So I --

13 Q I asked you if you provided tax returns. It doesn't  
14 say any party. I asked you if you provided tax returns?

15 A In the context of the question, I understood your  
16 question to be tax returns related to Spanish Heights  
17 Acquisition Company.

18 Q Okay. So then I direct your attention to 1041.  
19 And what do you say?

20 A So you said, Oh, no, I'm lying.  
21 And then I said, Certainly.

22 Q It's 1044.

23 A You said, It's 1044. We're going to pull it up to  
24 you.

25 And I said, Thank you.

1 Q And now I show you the federal tax returns; correct?

2 A (No response.)

3 Q Your 2014 --

4 A Yes.

5 Q -- federal U.S. individual income tax return to CBC.

6 Do you see that?

7 A I do.

8 Q And what was your answer?

9 A I said I'm not confirming or denying I provided my  
10 tax return. I just don't have a recollection.

11 Q So when you're provided the document, you still don't  
12 remember providing it, sir?

13 A I didn't at the time of the deposition. There were a  
14 lot of documents flying in a very short period of time.

15 Q Did you have counsel for the preparation and  
16 execution of the forbearance agreement?

17 A I don't remember having counsel. I don't think I  
18 used counsel for it.

19 MR. MUSHKIN: Court's indulgence one minute.

20 THE COURT: Okay.

21 (Pause in the proceedings.)

22 BY MR. MUSHKIN:

23 Q Mr. Bloom, can you see Exhibit 104, page 001801?

24 A I can. Yes.

25 Q And the subject is loan docs; correct?

1 A Correct.

2 Q And can you see who it's to?

3 A It's to me.

4 Q And who is that from?

5 A It's from Vernon Nelson, the attorney for CBC.

6 Q I don't think so. Look at the top of the page:

7 8/27/2017; 10:17 a.m.; from Jay Bloom to Vernon Nelson, Jay

8 Bloom --

9 A Hang on a second. The top of the page says from  
10 Vernon Nelson to Jay Bloom. I don't know if there's more above  
11 that.

12 Q Sir, 1801.

13 THE COURT: He may have --

14 MR. GUTIERREZ: Your Honor, I just object.

15 THE COURT: -- not all of the document's showing on  
16 the Elmo. Thank you.

17 MR. MUSHKIN: Oops.

18 THE COURT: It's all right. We'll help you.

19 MR. MUSHKIN: Thank you, Judge.

20 MR. GUTIERREZ: I was (indiscernible) confusing --

21 MR. MUSHKIN: I said I know how to use the Elmo.

22 MR. GUTIERREZ: I thought you knew how to use that.

23 MR. MUSHKIN: Obviously not.

24 Sorry, Mr. Bloom.

25 / / /

1 BY MR. MUSHKIN:

2 Q Now, let's take a look at it.

3 From Jay Bloom to Vernon Nelson. Copy Alan Hallberg,  
4 Joseph Gutierrez. Regarding loan docs,

5 I have copied my counsel Joe Gutierrez  
6 on my comments as well so we can conduct  
7 parallel discussions with our respective  
8 attorneys. Please see below and attached.

9 Do you see that, sir?

10 A I do.

11 Q Does that refresh your recollection as to who your  
12 attorney was for this transaction?

13 A So Mr. Gutierrez was the attorney for First 100. He  
14 was copied because First 100 had to sign off on -- and his firm  
15 had to sign off on the assignment under the judgment to CBC.

16 THE COURT: So you're saying "my counsel" didn't mean  
17 "my counsel." It meant First 100's counsel?

18 THE WITNESS: Yeah. I've used that --

19 THE COURT: Okay. It's all right. I'm just asking  
20 if that's what your testimony is.

21 THE WITNESS: Yeah. In this -- yes.

22 THE COURT: Okay.

23 MR. MUSHKIN: There's no question before you,  
24 Mr. Bloom.

25 THE WITNESS: There was a question from --

1 BY MR. MUSHKIN:

2 Q Now, let's go a little farther.

3 THE COURT: Same document?

4 BY MR. MUSHKIN:

5 Q It's the prior email from Vernon Nelson to you,  
6 Mr. Bloom. Do you see that?

7 A I do.

8 Q And here's a draft of the loan document. Do you see  
9 that?

10 A I do.

11 Q Do you see the deal points?

12 A (No response.)

13 Q Why don't you take a minute and look at that.

14 A I'm reading it now.

15 I think, if you're asking me about --

16 Q I'm not asking you yet, sir. I'm just asking you to  
17 take a look at it. When you're ready, I'll start asking  
18 questions.

19 A Okay. When you say take a look at it, you were  
20 referencing the deal points. The deal points seemed to go off  
21 the bottom of the page on the Elmo.

22 Q They do. When you're down at the bottom, I'll give  
23 you the next page. Just let me know.

24 A Okay. I'm down at the bottom.

25 Q Have you gotten all the way through paragraph 4?

1 THE COURT: He couldn't because it wasn't all on the  
2 screen.

3 Okay. And if you could move it over to the left a  
4 little bit. There you go. Stop.

5 Mr. Bloom, can you --

6 You got to push it up just a tad.

7 Mr. Bloom, can you read the whole thing now, the rest  
8 of 4?

9 THE WITNESS: Yes.

10 THE COURT: Okay. Let us know when you're done.

11 MS. FOLEY: Michael, can you move your finger. Thank  
12 you.

13 THE WITNESS: Okay.

14 THE COURT: Is there more on the next portion of the  
15 email?

16 MR. MUSHKIN: Yes.

17 BY MR. MUSHKIN:

18 Q Are you done?

19 A Yes.

20 MS. FOLEY: Scoot it to the left a little.

21 THE WITNESS: Do you want to -- I'm done with what's  
22 on the screen if you want to slide it down it more.

23 MR. MUSHKIN: Okay.

24 THE WITNESS: Well, I haven't seen the rest of the  
25 document.

1 MR. MUSHKIN: No. We're going to get to the rest of  
2 it.

3 BY MR. MUSHKIN:

4 Q Do you see that, sir, where it says concurrent with  
5 the attorneys and CBC Partners?

6 A No, it's off the --

7 Q -- thanks much, Jay?

8 MR. GUTIERREZ: It's --

9 MS. FOLEY: Scoot it down a little.

10 THE WITNESS: It's off the screen.

11 MR. GUTIERREZ: Objection. Your Honor, this is not  
12 the document that's being shown.

13 THE COURT: Can you scoot down.

14 MR. GUTIERREZ: There you go.

15 BY MR. MUSHKIN:

16 Q Do you see that?

17 THE COURT: Do you see it in blue at the top?

18 THE WITNESS: Yeah, I do see it.

19 THE COURT: Okay.

20 BY MR. MUSHKIN:

21 Q Okay. So do you see anywhere in here where it talks  
22 about substitute collateral?

23 A Well, I don't know. It was at the bottom of the page  
24 that you didn't go down to.

25 Q There's nothing at the bottom.



1 THE WITNESS: Oh, no, the previous page that you only  
2 showed half the page.

3 THE COURT: And that was the part we looked at all  
4 the way to 4, remember? So if you go all the way to the bottom  
5 where we see 4 again.

6 THE WITNESS: Right. Then there was the next page  
7 that he put up.

8 BY MR. MUSHKIN:

9 Q 5.

10 A Right. And then the bottom of this page you  
11 didn't --

12 Q So it would be 7, security agreement.

13 A So the collateral --

14 Q And then the end of the letter there?

15 A No. Right. But the previous page --

16 MR. GUTIERREZ: Objection, Your Honor --

17 THE WITNESS: -- that you just pulled away --

18 MR. GUTIERREZ: -- he's trying to answer the  
19 question.

20 THE COURT: Could you go back to the prior page.  
21 Okay.

22 THE WITNESS: So your question was there any other  
23 collateral --

24 MR. MUSHKIN: No, sir.

25 / / /

1 BY MR. MUSHKIN:

2 Q Substitute collateral?

3 A Yeah. That portion of the SJC beneficial interest in  
4 the judgment is necessary to secure the secured -- and the  
5 language goes off the page -- estimated to be about  
6 \$700 million. We only need to secure about 3 million.

7 So, yeah, that's the substitute collateral.

8 Q Where does it say substitute collateral?

9 A That's the purpose of the collateral.

10 Q Show me where it says that, sir?

11 A It's not in that language, but conceptually that's  
12 what it is.

13 Q In fact, in your email that I read to you earlier, it  
14 said additional collateral, didn't it?

15 A Yes.

16 Q Thank you. And I wanted to show you that one more  
17 time, sir. Because not only does it say additional, it says  
18 additional full collateral, doesn't it?

19 A Where are you looking?

20 Q My thoughts is that this proposal gets the third  
21 lender a full recovery of its note balance plus all protected  
22 advances past and future, interim cash flow and provides  
23 interim additional full collateral where given the current  
24 value of the property of the third position lender is currently  
25 unsecured; correct?

1           A     Where given the current value of the property, the  
2 third position --

3                     If you could scroll over.

4           MS. FOLEY:   Scoot to the left, Michael.

5           THE WITNESS:  -- is currently unsecured.

6                     Yes, that's what it said, and that was the context of  
7 the proposal initially.

8 BY MR. MUSHKIN:

9           Q     And you wrote this document, didn't you?

10          A     Well, I wrote the responses to an email that was sent  
11 to me.  So part of it was written by me.

12          Q     Okay.  You don't argue that the pledge agreement  
13 recites a hundred percent of the interest; correct?

14          A     Correct.

15          Q     Yet you just alleged that -- I'm going to do it  
16 again.  I'm going to get it out of order, SJCVC -- is that the  
17 right order?

18          A     SJCVC.

19          Q     I keep questioning it now.

20          A     You got it.

21                 MR. MUSHKIN:  I reversed it one day, Judge, and I'm  
22 just lost.  I can't get in the right order.

23 BY MR. MUSHKIN:

24          Q     SJCVC.  You don't argue that the forbearance agreement  
25 says a hundred percent; correct?

1 A Yes. Although it's not signed by SJCVC.

2 Q No, the forbearance agreement.

3 A Oh, the forbearance agreement, yes.

4 Q Yes. And the forbearance agreement is signed by  
5 SJCVC?

6 A Right.

7 Q And you don't argue that the amended forbearance says  
8 a hundred percent; correct?

9 A Correct.

10 Q And that the amended forbearance agreement is signed  
11 by SJCVC.

12 A Correct.

13 Q And you don't argue that each of those documents  
14 contained merger clauses, do you?

15 A Which merger clause are you referring to?

16 Q That all modifications had to be in writing?

17 A Well, you'd have to show me the documents.

18 Q Okay. I'll show you.

19 (Pause in the proceedings.)

20 BY MR. MUSHKIN:

21 Q I would direct your attention to Exhibit 1.

22 Now, Mr. Bloom, who are the parties to this  
23 agreement?

24 A Kenneth and Sheila Antos Living Trust, CBC  
25 Partners I, Kenneth and Sheila Antos individually, and

1 SJC Ventures.

2 Q Spanish Heights Acquisition Company is also a party,  
3 are they not? Look at the first page, sir.

4 A I'm looking at the signature page because that's  
5 who's a party to the agreement. They have to sign it to be  
6 party.

7 So, no, I'm not seeing Spanish Heights as a signatory  
8 to this.

9 Q Take a look at the first page. It recites Spanish  
10 Heights Acquisition Company, LLC, and SJC Ventures. Do you see  
11 that?

12 A I do.

13 Q But then discloses the amended note; is that correct?

14 A Where are you at?

15 Q Paragraph 2.

16 A Yes.

17 Q And it tells you the date; correct?

18 A Well, it says, The amended note is secured by  
19 personal guarantees --

20 Q Just above that, sir.

21 A -- signed by Kenneth and Sheila Antos --

22 Q It gives you the date of 2012, June 22nd, 2012, and  
23 identifying the note in paragraph 1; correct?

24 A In paragraph 2, it does not.

25 Q I'm asking you about paragraph 1, sir.

1           A     Okay. You had me looking at paragraph 2.

2                     In paragraph 1, yes, it addresses the date of June  
3 22nd, 2012.

4           Q     And it says at the fourth line of that -- the third  
5 line of that paragraph,

6                             All of which have been executed by KCI  
7                     Investments and Preferred Restaurant Brands,  
8                     Inc.

9                     Do you see that?

10          A     I do.

11          Q     So it was disclosed to you in advance of  
12 September 27th that the KCI and Preferred were parties to the  
13 note; is that fair?

14          A     It was disclosed as part of this document. It was  
15 never discussed, and I didn't know the nature of KCI and  
16 Preferred Restaurant Brands involvement in the note, whether  
17 they were co-guarantors, co-borrowers. I didn't have any  
18 context in which to put that --

19          Q     Okay. Well, let's --

20          A     -- and quite frankly, I didn't even look at their  
21 names in this forbearance agreement.

22          Q     Okay. So you didn't read it. Is that what you're  
23 saying?

24          A     I read it, but I didn't -- I didn't pick up the  
25 names.

1 Q No problem.

2 Now let's look at the second paragraph. The amended  
3 note is secured by certain personal guarantees signed by  
4 Kenneth and Sheila Antos. Do you see that?

5 A I do.

6 Q The amended note is also secured by certain security  
7 agreements, subsidiary guarantees and inter-creditor  
8 agreements, deeds of trust, assignment of rents and fixture  
9 filings collectively the security agreements. Do you see that?

10 A I do.

11 Q So you were aware that there were other guarantees;  
12 correct?

13 A Again, at the time it didn't register it, but yes, in  
14 this document it clearly says that -- it clearly references the  
15 security agreements, which we've come to learn represent the  
16 security agreements of the borrower KCI and Preferred  
17 Restaurant Brands.

18 Q So the paragraph 5 says, pursuant to the terms  
19 hereunder, the Antos Trust intends to convey the property to  
20 SHAC. Do you see that?

21 A Yes.

22 Q Okay. Paragraph 4, SHAC intends to rent the property  
23 to SJCVC. Do you see that?

24 A Paragraph 4?

25 Q Yes.

1           A     Okay. We have two paragraph 4s. Paragraph 4 on  
2 page 3 --

3           Q     You are correct.

4           A     Yes, paragraph 4 on page 3 says that.

5           Q     Okay. Then paragraph B starts at the bottom of the  
6 page, amended note and advance of default. Do you see that?

7           A     I do see it.

8           Q     So and you signed this document on behalf of SHAC and  
9 on behalf of SJCV; right?

10          A     I signed this document on behalf of SJC.

11          Q     Okay. So you don't dispute the numbers contained in  
12 this paragraph; is that correct?

13          A     Paragraph 4 on page 3?

14          Q     Paragraph 1 at the bottom of page 3.

15          A     Okay.

16          Q     And it goes on to page 4.

17          A     Yeah. To the extent that the Antos party refers to  
18 Kenneth and Sheila Antos individually, no, I don't dispute  
19 these numbers.

20          Q     And you don't dispute the numbers as they relate to  
21 the note and deed of trust specifically, do you?

22          A     Well, I dispute the numbers as they relate to the  
23 deed of trust. I don't dispute the note -- I don't dispute the  
24 numbers as they relate to the commercial loan to the  
25 restaurant.



1 Q I believe I understand your testimony. I believe  
2 what you're saying is what you testified earlier, that somehow  
3 the deed of trust is defective and doesn't convey a security  
4 interest. Is that what you're trying to say?

5 A Well, there's a commercial restaurant loan; right?  
6 And there's --

7 Q Which was disclosed in the very beginning to you.

8 A I'm sorry. I'm still answering.

9 THE COURT: You've got to let him finish,  
10 Mr. Mushkin.

11 Mr. Bloom.

12 THE WITNESS: There's a commercial restaurant loan.

13 In 2014, there is a deed of trust by the Antos Trust  
14 which has no nexus to that loan. It's not a borrower. It's  
15 not a guarantor.

16 So, yes, the deed of trust has a defect, and this  
17 note would not be applicable to the deed of trust. The deed of  
18 trust at the time it issued secured an obligation of zero.

19 BY MR. MUSHKIN:

20 Q So let's --

21 THE WITNESS: Which created the defect.

22 MR. GUTIERREZ: And, Your Honor, I'm going to just  
23 object. He's still -- he's interrupting Mr. Bloom.

24 MR. MUSHKIN: Sorry. I thought you were done.

25 THE COURT: All right. You finished; correct,

1 Mr. Bloom?

2 THE WITNESS: Yes.

3 THE COURT: All right. Now, Mr. Mushkin.

4 BY MR. MUSHKIN:

5 Q So now let's take a look at page 5 of this document  
6 under paragraph 2. What's the title of that paragraph, sir?

7 A Reaffirmation of Loans.

8 Q And it says,

9 In pertinent part except as modified by  
10 this forbearance agreement the Antos parties  
11 and the SJCV parties reaffirm all obligations  
12 due to CBC I under the amended note and  
13 modified deed of trust.

14 Do you see that?

15 A I do.

16 Q And did you understand at the time that you signed  
17 this document that you were reaffirming these documents --  
18 reaffirming these documents?

19 A I was reaffirming what I understood at the time it  
20 was signed to be a third mortgage against the property, not a  
21 commercial loan to a restaurant.

22 Q Well, isn't it true that it was disclosed that the  
23 loan was executed by KCI and Preferred Brands?

24 A Not in context. It was never --

25 Q It was disclosed though, wasn't it?

1           A     -- it was never discussed. And while this document  
2 references it, it doesn't say how they were related to what was  
3 represented as a third mortgage, which turned out not to be the  
4 case.

5           Q     I'm going to ask you the question again, sir, and I'd  
6 appreciate it if you'd answer my question.

7                     Isn't it true that it was disclosed that the note was  
8 with KCI and Preferred Brands?

9                     THE COURT: That's a yes or no, sir.

10                    THE WITNESS: Sort of. It was a -- it was a --

11 BY MR. MUSHKIN:

12           Q     It's a yes or no, sir. I don't need an explanation.

13                    THE COURT: It was a yes or no, sir.

14                    THE WITNESS: Yes.

15                    THE COURT: Mr. Gutierrez will allow you to explain  
16 if he needs to you when he gets back up on redirect or cross.

17                    THE WITNESS: Okay. Yes.

18 BY MR. MUSHKIN:

19           Q     So now let's look at paragraph 4.5.

20           A     Okay.

21           Q     Do you see that paragraph?

22           A     I do.

23           Q     And it gives CBC the right to exercise all of its  
24 rights and remedies. Do you see that?

25           A     I do.

1 Q And you signed this document. Do you recall that?

2 A Yes.

3 Q Now let's take a look at the conditions to  
4 forbearance.

5 A Okay.

6 Q 5.1, no new defaults. Do you see that?

7 A I do.

8 Q You allowed a lien to be recorded on this property  
9 for a health and safety hazard; is that correct?

10 A No. I never allowed the lien to be recorded.

11 Q You didn't pay it, did you?

12 A It wasn't a legitimate lien. So I just --

13 Q That's not my question, sir.

14 A I disputed it, and I'm litigating it, and I continue  
15 to litigate it.

16 Q And it is a lien against this property; correct?

17 A And it's being disputed.

18 Q But you haven't bonded this lien, have you?

19 A I have not.

20 Q Okay. So no other lenders; I don't think that was  
21 particularly applicable.

22 The next one says delivery of outstanding items. Do  
23 you see that?

24 A I do.

25 Q The next one is delivery of consent. Do you see

1 that?

2 A I do.

3 Q The next one is,

4 Pursuant to certain sales, finance and  
5 collection of the judgment, the Antos parties  
6 and SJC parties will undertake efforts to  
7 obtain financing to satisfy the note prior to  
8 the termination of the forbearance period.  
9 Such efforts shall include efforts to obtain  
10 alternative finding, SJC efforts to collect  
11 on the judgment and to use any monies  
12 collected to pay the amended note in  
13 accordance with the terms of the judgment  
14 lien pledge agreement described in Exhibit B.

15 Do you see that?

16 A I do.

17 Q Did you make any efforts to refinance the property?

18 A I did.

19 Q And did you provide any documents to show that you  
20 did?

21 A No documents exist. They were all phone calls to  
22 private lenders.

23 Q And do you have the names of those private lenders?

24 A They were introduced by third parties. So it was one  
25 conversation and a quick no. There was insufficient equity in

1 the property to refinance the notes.

2 Q So 5.8 says,

3 During the forbearance period and unless  
4 otherwise agreed to in writing, CBC I, the  
5 Antos parties will not incur any liability or  
6 expend capital expenditures and improvements  
7 over and above the amount of 125,000.

8 Do you see that?

9 A I do.

10 Q Have you provided any evidence to show that you spent  
11 the 100,000 that you contracted for?

12 A This doesn't -- this says I won't spend above  
13 125,000 --

14 Q I understand what it says, sir, but I'm asking you a  
15 specific question. Did you provide any evidence to support  
16 that you spent a hundred thousand dollars to bring this quality  
17 up -- this property to top-quality condition?

18 A Your question was in the context of what I contracted  
19 for, and that's not what the contract says. So yes, I provided  
20 evidence of expenditures.

21 Q What evidence did you provide, sir?

22 A I provided you HVAC repairs, and I believe we  
23 provided the home automation improvements, home automation  
24 system replacement.

25 Q Do you know how much --

1 A And I provided pool -- pool repairs as well.

2 Q So the contract -- let me back it up a little bit.

3 You got possession in advance of the September 27th  
4 date; correct?

5 A Shortly before I believe, yes.

6 Q Sometime in August?

7 A Okay.

8 Q And you requested that to allow for repairs to be  
9 made; correct?

10 A Correct.

11 Q And have you provided any evidence to show that  
12 repairs were made during that period of time?

13 A I don't know that the repairs were required to be  
14 made during that period of time under the agreement.

15 Q That's not my question, sir.

16 My question is did you provide any evidence of  
17 repairs during that period of time? It's a simple yes-or-no  
18 answer.

19 A I believe yes.

20 Q Can you show them to me?

21 A I don't know if they were admitted as exhibits, but  
22 they're receipts for HVAC repairs.

23 Q Is that the only repairs you recall are HVAC repairs?

24 A During that period of time. There are additional  
25 improvements subsequent to that three month period.

1 Q And have you provided receipts to show those  
2 subsequent improvements?

3 A I believe so, yes.

4 Q Okay. I don't want to go into it now, but I'm going  
5 to ask you at the lunch hour to find your repairs so that you  
6 can show them to us at lunch, and when we pick up --

7 THE COURT: Do you mean after lunch?

8 MR. MUSHKIN: After lunch. I'm sorry.

9 BY MR. MUSHKIN:

10 Q You can show them -- we'll go into them after lunch.  
11 I'm going to move on to other parts of the contract right now,  
12 but I'd like you to show me what you've produced.

13 A Okay.

14 THE COURT: So, Mr. Gutierrez, we'll reopen the  
15 courtroom at 1:00 o'clock. So if you want to leave the binders  
16 in here. We'll start 15 minutes after that to give you time to  
17 find the documents if you haven't found them, but we're not  
18 stopping for another 15 minutes.

19 Keep going, Mr. Mushkin.

20 MR. MUSHKIN: Yes, ma'am.

21 BY MR. MUSHKIN:

22 Q Now, I'd like you to look at paragraph 5.9. What's  
23 the title of that paragraph, sir?

24 A Additional collateral.

25 Q Do you see anywhere where it talks about substitute



1 collateral?

2 A No, I do not.

3 Q There's a series of negative covenants; is that  
4 correct?

5 A Okay. Yes.

6 Q Now, I'd like you to look at 5.11.2.

7 A Yes.

8 Q What does that paragraph say?

9 A It says,

10 Except for the liens arising under the  
11 amended note and modified deed of trust, the  
12 Antos parties and SJC parties will not allow  
13 any new liens to be secured by the property  
14 which is owned or hereafter acquired by the  
15 Antos parties and SJC parties or any of their  
16 affiliated companies.

17 Q And that term was violated in March of 2020; correct?

18 A No, it was not.

19 Q There was a lien recorded by the homeowners  
20 association; was there not?

21 A But it was not allowed. They did it anyway, and it's  
22 being fought. It's being litigated. And actually it was  
23 brought by your client as a member of the board.

24 Q I don't even --

25 A Who is your lender to buy the note.

1 Q -- know what you're talking about. Who --

2 A Mr. Russo is on the board for Spanish Hills.

3 Mr. Russo is the lender to 5148, your company --

4 Q Mr. --

5 A -- which is trying to acquire the property.

6 Q Do you know when Mr. Russo -- well, first of all, how  
7 do you know Mr. Russo?

8 A I've never met him, but I'm aware of who he is.

9 Q How do you know who he is?

10 A I've had people talk to me about who bought the house  
11 from Rhodes.

12 Q Who?

13 A Workers that work at the property.

14 Q "Workers that work at the property."

15 So are you telling me that you've trespassed onto  
16 5212's property to talk with workers?

17 A I have not entered that property since the Rhodes  
18 have sold it. Not even --

19 Q What workers are you talking about, sir?

20 MR. GUTIERREZ: And, Your Honor, objection. Let him  
21 finish -- he needs to finish the question and answer.

22 THE COURT: Sir, did you have anything to add? I  
23 thought you had completed your answer, but Mr. Gutierrez  
24 disagrees.

25 THE WITNESS: I had not gone on to -- I have not been

1 in the property or even on the grounds of that property since  
2 the Rhodes have sold it.

3 BY MR. MUSHKIN:

4 Q Then how did you meet workers?

5 A The workers use the streets to access the property,  
6 and I can talk to the worker from the street, as can my son.  
7 We talked to the worker from the street.

8 Q Your son has actually been on the property since the  
9 acquisition by Dacia, hasn't he?

10 A My understanding is that a worker invited him in.

11 Q Oh.

12 A Along with Mr. Rhodes.

13 Q Oh. They invited him to tip over a Porta Potty. Is  
14 that what they invited him to do?

15 MR. GUTIERREZ: Objection, Your Honor.

16 THE WITNESS: He didn't do that even though you made  
17 that false allegation.

18 THE COURT: Overruled.

19 BY MR. MUSHKIN:

20 Q You're denying that that took place?

21 A I'm denying that he did it and that there's video  
22 evidence showing that he didn't do it.

23 Q Oh, I see.

24 A But you disregard any -- any evidence that doesn't --  
25 that isn't convenient to your narrative.

1 Q So I'd like you to look at paragraph 6. It starts on  
2 page 14.

3 THE COURT: Conditions precedent?

4 MR. MUSHKIN: Yes, Your Honor.

5 THE COURT: Thank you.

6 THE WITNESS: Okay. I'm there.

7 BY MR. MUSHKIN:

8 Q Do you see that provision?

9 A (No audible response.)

10 Q Did you read it at the time you signed the agreement?

11 A I'm sure I must have.

12 Q And you see at 6.2 you agree to reimburse CBC I's  
13 cost and expenses?

14 A I do.

15 Q Did you do that?

16 A I don't recall ever being provided a bill or an  
17 invoice for a request for payment relating to this paragraph.

18 Q The paragraph 8 is the Antos parties and the SJCV  
19 parties representations and warranties. Do you see that?

20 A I do.

21 Q Now, I want to make sure before you take the time to  
22 do it, that you now go back and make sure that SJCV signed this  
23 document.

24 Do you see where SJC Ventures signed it?

25 THE COURT: Page 25.

1 THE WITNESS: Yes, I do.

2 BY MR. MUSHKIN:

3 Q Okay. Let's look at the first one. First of all,  
4 the accuracy of the representations in the forbearance  
5 agreement and amended deed of trust. You represent that  
6 your -- that they are true and correct. Do you see that?

7 A I do.

8 Q Then you see 8.2 says that there's no default other  
9 than the identified defaults. Do you see that?

10 A I do.

11 Q And then it says 8.3,

12 To the extent applicable, the Antos  
13 parties and the SJC parties lawfully possess  
14 and hold a hundred percent ownership interest  
15 in the property and collateral for this  
16 forbearance agreement.

17 Do you see that?

18 A I do.

19 Q The Antos parties and the SJCV parties own all the  
20 collateral for the amended note and modified deed of trust free  
21 and clear of any defects, reservations of title and conditional  
22 sales contracts and free and clear of any liens and security  
23 interest other than the liens and security interest in favor of  
24 CBC I.

25 Do you see that?

1           A     I do.

2           Q     There is no financing statement affecting any  
3 collateral for the obligation and the Antos parties and the SJC  
4 parties in any public office except for financing statement in  
5 favor of CBC I.

6                     Do you see that?

7           A     I do.

8           Q     Then 8.4 discloses about the judgment. Do you see  
9 that?

10          A     I do.

11          Q     8.7, Enforceable amended note and modified deed of  
12 trust. No conflicts.

13                     Do you see that?

14          A     I do.

15          Q     And it says in pertinent part,

16                     The amended note and modified deed of  
17 trust and the forbearers agreement are legal,  
18 valid and binding agreements against --  
19 agreements of Antos parties and the SJC  
20 parties enforceable in accordance with their  
21 respective terms and any instrument or  
22 agreement required hereunder or when executed  
23 or delivered is or will be similarly legal,  
24 valid, binding and enforceable.

25                     This forbearance agreement does not

1 conflict with any law, agreement or  
2 obligation by which Antos parties and the  
3 SJCVC parties is bound.

4 Do you see that?

5 A I do.

6 Q And did you agree to that when you signed the  
7 agreement?

8 A To the extent that I understood that there was a  
9 first mortgage and that the Antos parties now represent the Ken  
10 and Sheila Antos individually, yes.

11 Q Now, the next one is the Antos parties'  
12 acknowledgments. Do you see that?

13 A I do.

14 Q And did you see at 9.7,

15 Fair consideration all payments made and  
16 security granted by Antos and SJCVC parties  
17 under the amended note and modified deed of  
18 trust and this forbearance agreement are for  
19 fair consideration and reasonably equivalent  
20 value.

21 Do you see that?

22 A I do.

23 Q Item 10 is a release. Do you see that?

24 MR. MUSHKIN: Your Honor, I'm going to spend quite a  
25 bit of time on the release. Perhaps now is a good time to

1 break.

2 THE COURT: So are you going to stop now? Okay.

3 Thank you.

4 1:15. We'll open the door at 1:00 so Mr. Gutierrez  
5 can get back in to look for those documents with Mr. Bloom.

6 MR. GUTIERREZ: I found them already, Your Honor.

7 So.

8 THE COURT: Oh, you did?

9 MR. GUTIERREZ: Yeah.

10 THE COURT: So can we start at 1:00?

11 MR. GUTIERREZ: 1:00 o'clock is fine.

12 THE COURT: Okay. We'll see you guys at 1:00.

13 We are in recess.

14 (Proceedings recessed at 11:54 a.m., until 12:58 p.m.)

15 (Pause in the proceedings.)

16 THE CLERK: Mr. Bloom, come on back up. You're still  
17 under oath.

18 Mr. Mushkin, did you get the homework assignment  
19 report from Mr. Gutierrez?

20 MR. GUTIERREZ: Your Honor, it's Exhibit 98.

21 THE COURT: Thank you.

22 MR. GUTIERREZ: It's been admitted. These are  
23 invoices from Infinity Air. The request was for the documents  
24 of improvements to the property. These are dated June 2018. I  
25 guess --



1 THE COURT: All I needed was a number. 98.

2 MR. GUTIERREZ: Okay. 98, Your Honor. That's  
3 admitted.

4 THE COURT: Thank you, Mr. Gutierrez. I just wanted  
5 make sure the homework assignment was done.

6 BY MR. MUSHKIN:

7 Q So let's take a look at 98 real fast as long as it's  
8 on everybody's mind.

9 A My exhibit package goes through 64.

10 MR. MUSHKIN: Mr. Gutierrez.

11 MR. GUTIERREZ: He can have my copy, but this is the  
12 problem we had yesterday.

13 THE COURT: What are you missing, guys?

14 MR. MUSHKIN: The next book for the witness.

15 THE COURT: Oh. That was a mistake.

16 THE WITNESS: Should we just put it on the overhead?

17 (Pause in the proceedings.)

18 MR. MUSHKIN: May I take this to the witness, Your  
19 Honor?

20 THE COURT: You may not.

21 Ramsey.

22 MR. MUSHKIN: May Mr. Gutierrez take it to his --

23 THE COURT: No. I've been making the witness go down  
24 to the table, but I'll let Ramsey in his secure position  
25 deliver it.

1 MR. MUSHKIN: It's just killing me. It's just  
2 killing me.

3 THE WITNESS: Thank you.

4 THE MARSHAL: You're welcome.

5 MR. MUSHKIN: You are just killing me, Judge.

6 THE COURT: You know, somebody asked for video of our  
7 proceedings yesterday. So if I'm not acting appropriately,  
8 they will know. So I'm trying very, very hard.

9 MR. MUSHKIN: I know who that is, Your Honor. I know  
10 exactly who that is.

11 BY MR. MUSHKIN:

12 Q Mr. Bloom, would you turn to Exhibit 98.

13 A Okay. I'm at 98.

14 Q And do you see 00148?

15 A I do.

16 Q And that's for the amount of \$6,000; correct?

17 A Correct.

18 Q And I'll direct your attention to the next page,  
19 1049. That's 3500; right?

20 A Correct.

21 Q Now, let's go to 1050. That's twenty-five hundred  
22 thirty-one; right?

23 A Correct.

24 Q Now let's go to the next one. And that's four  
25 thousand, two, eighty-five; is that correct?

1 A Correct.

2 Q The next one is \$254?

3 A Correct.

4 Q Do you know how much those total up to, sir?

5 A I do not.

6 Q Well, it's less than 20,000.

7 A Okay.

8 Q Do you have any other receipts that you've performed  
9 repairs on the property?

10 A I don't know that they're exhibit -- admitted as  
11 exhibits, but, yes.

12 Q Well, have you produced them in this case?

13 A I don't think they've been produced --

14 Q Thank you.

15 A -- in the exhibits here.

16 Q I would like you to look at the date of 1048.

17 A Okay.

18 Q That's 2018; correct?

19 A Correct.

20 Q And all of these are dated after that June date. The  
21 next one is August of '18; is that correct?

22 A Correct.

23 Q The next one is April of '19?

24 A Correct.

25 Q The next one is June of '19?

1 A Correct.

2 Q And the last one is August of '19. Do you see that?

3 A I do.

4 Q Do you have any evidence of repairs being made in  
5 2017?

6 A Do I? Yes.

7 Q Where are they?

8 A They're not included in this exhibit.

9 Q So you haven't produced them?

10 A They're not -- do I have them? Yes. They haven't --  
11 they're not included in this exhibit.

12 Q Why haven't they been produced?

13 A I don't know.

14 Q So you got discovery requests in this matter; is that  
15 correct?

16 A I'm sure.

17 Q And you were asked to produce all evidence of  
18 repairs; correct?

19 A I don't remember what the discovery was --

20 Q Okay.

21 A -- encapsulated.

22 Q It's your testimony that you were not or you just  
23 don't recall?

24 A I don't recall any specific discovery requests.

25 Q Do you know how many times you said I don't recall

1 during your deposition, sir?

2 A No.

3 Q If I told you you said that 51 times, would you  
4 dispute it?

5 A I have no basis to dispute it, but it was a very long  
6 deposition. So it's entirely possible.

7 Q Now, remember you testified that you said you didn't  
8 get the note?

9 A I don't recall getting the note at the time of the  
10 transaction.

11 Q So let's take a look at the screen. And I would  
12 direct your attention to an email from you to Mr. Hallberg  
13 August 11th. Do you see that?

14 A I do.

15 Q Do you see the part that is highlighted --  
16 Well, first of all, do you recognize this as your  
17 email?

18 A I do.

19 Q And I'd like you to look down where it says,  
20 Following are points for CBC Partners  
21 proposed 11th modification to secured  
22 promissory note.

23 A I see it.

24 Q How would you know that there would be an 11th  
25 modification if you hadn't seen the note and its ten

1 modifications?

2 A I don't recall, although it could have been a topic  
3 of discussion.

4 Q It's still your testimony that you didn't see the  
5 note?

6 A I don't recall seeing the note.

7 Q And it's still your testimony that you didn't know it  
8 was a commercial note?

9 A No. Yes, it's still my testimony that no, I didn't  
10 know it was a commercial note. It had been represented to me  
11 as a third mortgage for the entirety of the conversations.

12 Q And it was also represented to you to be a note that  
13 was from Mr. Antos's company; correct?

14 A No.

15 Q Well, let's look at the forbearance agreements, sir.  
16 That's Exhibit 1.

17 A Okay. I'm on Exhibit 1.

18 (Pause in the proceedings.)

19 BY MR. MUSHKIN:

20 Q Let's look at paragraph A of the recitals.

21 A Okay.

22 Q Doesn't it say in paragraph 1 that,

23 CBC is the holder of a certain secured  
24 promissory note dated June 22nd, which was  
25 amended by 10 subsequent amendments, all of

1                   which have been executed by KCI Investments,  
2                   LLC, and Preferred Brands, collectively the  
3                   amended note?

4                   Do you see that, sir?

5           A     I do see it.

6           Q     So how is it that you come before this Court and  
7           somehow think that you were not told this was a KCI Preferred  
8           Brands note?

9           A     My recollection focuses primarily on the  
10           conversations that occurred telephonically. I skimmed these  
11           documents, and I missed the names of KCI and Preferred  
12           Restaurant Brands.

13                   I want to be clear. I think Mr. Hallberg is  
14           honorable in what he says, and he's trying to be truthful, but  
15           I think we both rushed the documents, and we both probably  
16           missed some things.

17                   In my case, I missed -- I missed the involvement of  
18           KCI and Preferred Restaurant Brands in this document.

19                   But when I say I was unaware of them, it's because of  
20           the verbal conversations. It was always maintained that it was  
21           a third mortgage.

22                   And again, I don't think it was with the intent to  
23           deceive. I think that's what Mr. Hallberg actually believed,  
24           but I don't think that's what the documents reflect.

25           Q     I'd like you to look at page 19. Do you see under

1 Item 15, Integration?

2 A I do.

3 Q I'd like you to look at the last line where it says,

4 No modification of this forbearance

5 agreement or the amended note and modified

6 deed of trust shall be effective unless in

7 writing and signed by the applicable parties

8 to be bound thereby.

9 Do you see that?

10 A Is that on page 20?

11 Q Yes, sir, it is.

12 A I was looking on the last line on page 19 that you  
13 asked me to look at.

14 Q No. It was the last line of Provision 15. It's on  
15 page 20.

16 A Okay. Okay. I see it.

17 Q I'd also like you to look at the notice provision.

18 A Okay.

19 Q Do you see where the notice provision for both  
20 Spanish Heights and SJC Ventures is on that page?

21 A I do.

22 Q And who does the notice go to for these agreements?

23 A Maier Gutierrez.

24 Q And is it still your testimony that they were not  
25 your counsel for these agreements?



1 A Not on this particular matter, yes.

2 Q Well, why did you tell Mr. Hallberg and Mr. Nelson  
3 that they were your attorneys?

4 A Well, when I refer to them as my attorneys, I was  
5 referring to First 100 and its role.

6 Maier Gutierrez has been my attorneys on a number of  
7 cases for the last 10 years, and -- but they never were  
8 retained for this matter.

9 Q Did it say anywhere -- well, how does first -- does  
10 it say anywhere in here that they are First 100's attorneys?

11 A I believe that's on the agreement where the payment  
12 instructions, where they were told as First 100's attorneys to  
13 distribute funds payable from First 100 that are payable to SJC  
14 instead to CBC Partners.

15 Q But doesn't it say that they're your attorneys in  
16 that document, sir?

17 A I don't believe so --

18 Q Well, let's take a look --

19 A -- but we can go back and look at the document.

20 Q -- real fast.

21 A Which exhibit?

22 Q I'll get there. Give me a second. 7 or 8 I think.  
23 Let's take a look at 11. Take a minute and look at  
24 that.

25 Is there anywhere in the body of the agreement where

1 it says that they represent First 100?

2 A (No response.)

3 Q Let me direct your attention to the second page at  
4 the bottom in very small print.

5 A Okay.

6 Q Do you see anywhere in there that it talks about  
7 Maier Gutierrez representing anybody other than SJCV?

8 A I don't see that it represents SJCV.

9 Q Well, let's look a little farther.

10 A But what it does say is that First 100 holdings  
11 represents and warrants that no party other than the collection  
12 professionals engaged to collect the judgment and certain other  
13 creditors of First 100 have priority to receive judgment  
14 proceeds prior to distribution to members.

15 Q I see that, sir. Let's take a look at --

16 A So Maier Gutierrez is one of those --

17 Q -- the next page.

18 A So Maier Gutierrez is one of those collection  
19 attorneys collecting on the judgment.

20 Okay. I'm on the next. Page 110?

21 Q Let's go to look at the very bottom of 110 where it  
22 says,

23 Maier Gutierrez & Associates shall  
24 contemporaneously provide CBC I with an  
25 accounting of how Maier Gutierrez &

1 Associates intends to distribute the judgment  
2 funds amongst the collection professionals,  
3 the First 100 priority creditors, the members  
4 of First 100, including the distribution of  
5 the creditors' judgment interest.

6 Do you see that?

7 A I do.

8 Q Anywhere in there where it says it represents First  
9 100 to the exclusion of SJC?

10 A Well, I think it's imputed that they represent First  
11 100 since they're collecting the funds on behalf of First 100,  
12 but, no, it doesn't mention their representation of SJC.

13 Q Thank you. All right. Now I'd like you to take a  
14 look at Exhibit 1, page 23.

15 A Okay.

16 Q Do you understand what that provision means?

17 A I'm on page 23. Which provision are you referring --

18 Q 25.

19 A Yes.

20 Q And that says, Cumulative remedies; right?

21 A It does.

22 Q And you agreed to that at the time you executed the  
23 contract; correct?

24 A On behalf of SJC, yes.

25 Q So let's take a look at Exhibit 5 now.

1 A Okay.

2 Q Do you know what this agreement is?

3 A The cover page indicates it's a limited liability  
4 company agreement of Spanish Heights Acquisition.

5 Q Why don't you take a minute and look at it. Make  
6 sure you check the signature page.

7 Do you see your signatures there?

8 A I do.

9 Q You signed both as the investor member and as the  
10 manager; is that correct?

11 A Correct.

12 Q Do you believe this is a binding agreement?

13 A I do.

14 Q Well, let's take a look at what your obligations are.  
15 Would you take a look at page 12, provision F2.

16 A Okay.

17 Q Do you see where it says,

18 Directly permit to exist any lien or  
19 security interest on any of the assets of the  
20 company unless such action results in the  
21 satisfaction of the lender CBC Partners  
22 receivable secured by the property?

23 A I do.

24 Q You, in fact, allowed the lien to be recorded, didn't  
25 you?

1 A No, I did not.

2 Q Well, you didn't pay the assessment, did you?

3 A I did pay the assessments.

4 Q No. You were assessed \$19,000 as a health and safety  
5 violation; correct?

6 A That's not an assessment. That's a compliance fine  
7 and --

8 Q Sir, you were assessed --

9 MR. GUTIERREZ: Your Honor, object. Let him -- to  
10 let the witness finish the question.

11 THE COURT: He had finished, Mr. Gutierrez.

12 Okay. Keep going.

13 THE WITNESS: No, I was still answering, Your Honor.

14 THE COURT: Go on, Mr. Mushkin, please.

15 BY MR. MUSHKIN:

16 Q Mr. Bloom, isn't it true that you were assessed a  
17 fine by the HOA of approximately \$19,000?

18 A Yes.

19 Q And that fine was not paid by you, was it?

20 A That's correct. It was --

21 Q You contested the fine; correct?

22 A Correct.

23 Q But there is a lien that's been filed by the HOA;  
24 isn't that correct?

25 A Which is also being disputed.

1 Q Well, I appreciate that, sir, but that isn't  
2 responsive to my question. It's a yes-or-no question. There  
3 was a lien filed by the HOA; correct?

4 A Correct.

5 Q You haven't paid that lien, have you?

6 A Correct.

7 Q You haven't bonded that lien, have you?

8 A I have not. Nor did I directly permit the lien to  
9 occur.

10 Q Now I want to direct your attention to page 20,  
11 Section 8.02.

12 A Okay.

13 Q Do you see that?

14 A I do.

15 Q And did you understand these member -- investor  
16 member covenants when you signed this document?

17 A I believe I did.

18 Q So the first one under I says provide a \$150,000  
19 reserve account within 90 days of the execution of this  
20 agreement. You did not do that, did you?

21 A That requirement was waived. So no, I did not.

22 Q I didn't hear your answer, sir.

23 A That requirement was waived. So, no, I did not.

24 Q Do you have a document that says it was waived?  
25 Signed by the parties to the agreement?

1 A No. It was waived --

2 Q Thank you.

3 A -- by the performance --

4 Q Let's look at 2.

5 A Okay.

6 Q Provide a second funding of annual expense reserve

7 one year later in an additional amount of 150,000.

8 Did you do that?

9 A No, that provision was waived as well with the  
10 prepayment --

11 Q You said --

12 A -- in lieu of the security deposit.

13 Q And you don't have a written document that says that,  
14 do you?

15 A Other than the checks evidence in the prepayment, no.

16 Q So did you prepay the second year?

17 A I believe so.

18 Q Do you have a check that shows that?

19 A I believe the prepayments are shown.

20 Q Show me where it is, sir.

21 A Where are the checks in these hundred exhibits? I  
22 don't -- I don't know where the checks are in the exhibits.

23 Q Well, I'll represent to you that we have no such  
24 check, and if you can find one, we'll let you come up with it  
25 overnight or something. Because we don't have --

1 THE COURT: Mr. Gutierrez, do you know where they  
2 are?

3 MR. GUTIERREZ: I don't even know what checks counsel  
4 is referring to. We've got several checks as exhibits between  
5 115 to 128, but if he has --

6 MR. MUSHKIN: I asked the witness if he prepaid the  
7 second year's rent, and he said yes.

8 And I said, Do you have a check?

9 THE COURT: And he said yes.

10 MR. MUSHKIN: And he said yes --

11 THE WITNESS: Actually I --

12 MR. MUSHKIN: -- and I haven't seen such a check.

13 THE WITNESS: Actually, I believe it was by wire  
14 transfer.

15 BY MR. MUSHKIN:

16 Q Do have -- you were asked to produce evidence of  
17 payments in this case; is that correct?

18 A I'm not sure what the requests were on the  
19 production.

20 Q You don't recall being asked to provide proof of  
21 payments?

22 A I don't think that it's at issue that the payments  
23 were made.

24 Q Mr. Bloom, I'm asking a very specific question, sir.  
25 Did you prepay year two?



1 A Yes.

2 Q Where's the proof of it?

3 A In the -- well, there should be a wire transfer  
4 evidence somewhere in these documents, but beyond that there's  
5 no request or demand for payment for the entirety of the year  
6 by CBC, which would have been the case had the payment not been  
7 made.

8 Q Sir, that wasn't responsive to my question. I'm just  
9 asking if you have any proof of it. You haven't produced any  
10 proof of that in this case, have you?

11 A There is a wire transfer evidenced, but I don't know  
12 where it is in these documents.

13 Q And it's your testimony that you produced a wire  
14 transfer for approximately 12 times \$8,000 for prepayment of  
15 year two?

16 THE COURT: 96,000.

17 MR. MUSHKIN: I'm sorry?

18 THE COURT: 96,000.

19 MR. MUSHKIN: Thank you, Judge.

20 THE COURT: I was --

21 MR. MUSHKIN: It's a little more than 8,000. So it  
22 would be a little more than that but...

23 THE WITNESS: I don't know if it was for the monthly  
24 amount of the rent and the taxes or just the monthly amount of  
25 the rent. But, yes, it would be for the amount of the first

1 year's obligations which were supposed to have been secured by  
2 the security account, but was waived in favor of prepayment  
3 negating the need for a security account which was originally  
4 intended to secure the payments that were now being prepaid.

5 BY MR. MUSHKIN:

6 Q So let's look at Item 3. Item 3 says,  
7 Caused the company to service the  
8 nonmember CBC Partners receivable against the  
9 subject property commencing 90 days after the  
10 closing of this agreement.

11 Do you see that?

12 A I see it.

13 Q Did you do that?

14 A Yeah, I believe that was what the payments that were  
15 prepaid represented.

16 Q Cause to -- look at 4,  
17 Caused the company to effect repairs to  
18 the premises to bring back to top quality  
19 standard and working repair.

20 A Yes.

21 Q Do you see that?

22 A I do.

23 Q And you provided us less than \$20,000 worth of  
24 receipts; isn't that correct?

25 A In a subset of the receipts that's not exhaustive,

1 yes.

2 Q Where are the rest of them?

3 A They haven't been produced in this case. I'm not  
4 sure why.

5 Q Thank you. Your --

6 Caused the company to maintain and  
7 provide all costs related to ongoing  
8 maintenance of the property.

9 Do you see that?

10 A Yes.

11 Q Caused the company -- did you do that?

12 A Yes.

13 Q Caused the company to pay all utilities?

14 A Yes.

15 Q Now, I want to go back to maintain the property. Is  
16 it your testimony that the solar heating system works on the  
17 pool?

18 A To the best of my knowledge.

19 Q Mr. Bloom, you know that's not true, don't you?

20 A No. We've recently had somebody up there. It had a  
21 leak, and he repaired it, but I think it's working now.

22 Q Where's the -- I'm sorry. I didn't mean to cut you  
23 off.

24 A I believe it's working --

25 Q Have you provided any proof of repairs to the solar

1 system?

2 A That was actually just recent subsequent to the  
3 provision of documents.

4 Q So you haven't produced them, have you?

5 A No.

6 Q Thank you.

7 Pay all utilities, is that -- you've done that?

8 A Yes.

9 Q Caused the company to pay for all real property  
10 insurance. Have you done that?

11 A Yes.

12 Q Caused the company to pay all HOA assessments and  
13 fines. Have you done that?

14 A Assessments, yes. Fines, no.

15 Q Thank you.

16 Caused the company to pay for all landscaping.

17 Do you see that?

18 A Yes.

19 Q And it talks -- the next one is the First 100. Do  
20 you see that?

21 A I do.

22 Q At the earlier of two years upon collection of the  
23 judgment, pay the proceeds -- pay off the CBC receivable as it  
24 relates to the property.

25 Do you see that?

1 A I do.

2 Q And that was extended by three months by the amended  
3 forbearance agreement; is that correct?

4 A That's correct.

5 Q But other than that it remains in effect; correct?

6 A I believe so.

7 Q Thank you. And then the next one is,

8 The earlier of two years or upon  
9 collection of the judgment proceeds either  
10 assume service or retire either or both of  
11 the first and second position lenders.

12 Do you see that?

13 A I do.

14 Q Have you done that?

15 A Yes.

16 Q You've assumed the loans?

17 A It says or -- oh, I'm sorry. Assume service of the  
18 loans, yes. I've been servicing the loans for almost a year  
19 now.

20 Q Isn't it true that you did not assume or retire the  
21 loans within two years?

22 A Is it true that -- I'm sorry. Can you ask that  
23 again.

24 Q Sure.

25 A Because what you're asking is different than what the

1 document says.

2 Q Isn't it true that you did not assume or retire  
3 either the first or the second within two years?

4 A I assumed service but not assume the loan, and it was  
5 within the period of the extension.

6 Q Sir, you did not service that loan the first  
7 24 months, did you?

8 A No.

9 Q Thank you. And you didn't service the second loan  
10 the first 24 months, did you?

11 A Same situation. I assumed service at the end of the  
12 extension.

13 Q And so that would be April 1?

14 A Correct.

15 Q And you did not make payments for January, February  
16 and March of 2000, did you?

17 A Nobody did in January, February and March.

18 Q It's your testimony that those payments were never  
19 made?

20 A No. They were never made in a timely fashion as  
21 required by the agreement --

22 Q And did you notice --

23 A They weren't -- they weren't made in January,  
24 February and March by CBC under its obligation --

25 Q And did you --

1           A     They were later made, but there are late fees and  
2 penalties that were assessed that still remain outstanding to  
3 this day because of those late payments in several thousands of  
4 dollars.

5           Q     Did you notice default to CBC Partners at any time?

6           A     I did not.

7           Q     And then let's look at 13,

8                     At the earlier of two years or upon  
9                     collection of the judgment proceeds pay off  
10                    past due and accrued property tax assessments  
11                    if not already addressed by first or second  
12                    lender.

13           Do you see that?

14          A     I do.

15          Q     And did you pay those past due property taxes?

16          A     I believe it was addressed by the first lender.

17          Q     No, sir. In fact, you testified in your contempt  
18 hearing that you were paying only the postinjunction taxes  
19 pursuant to the Court's order; correct?

20          A     Correct.

21          Q     So that you in the first two years did not pay the  
22 property taxes that had accrued; isn't that correct?

23          A     If not addressed by the first or second lender and it  
24 was addressed by the first lender.

25          Q     Sir, I'm not asking you that. If you keep --

1 MR. MUSHKIN: Your Honor, I'd ask you to admonish the  
2 witness to answer my questions, or we'll be here forever.

3 THE COURT: I understand. And when it's appropriate,  
4 I will tell him to answer your question in a certain fashion,  
5 but I'm not going to give that as a blanket.

6 BY MR. MUSHKIN:

7 Q Mr. Bloom, my question was, you did not pay the tax  
8 arrears during the first two years, did you?

9 A Correct.

10 Q Thank you. And then Number 14 is,  
11 Utilize its lawyers to effectuate a  
12 quiet-title action for the purposes of  
13 extinguishing any and all judgment creditor  
14 liens against the property.

15 You did not do that, did you?

16 A Correct.

17 Q Now, let's take a look at -- the next provision is at  
18 Article XI. It says books and records.

19 A Okay.

20 Q And it says that, The company shall maintain true and  
21 correct books and records; is that correct?

22 A It is.

23 Q Isn't it true that the LLC Spanish Hills Acquisition  
24 Company did not have its own bank account until April of 2000?

25 A Correct.



1 Q Isn't it true that Spanish Hills Acquisition Company  
2 issued no tax returns up through and including today?

3 A I believe so.

4 Q And isn't it true that there had been no reports to  
5 members as required in the next provision 1102?

6 A I believe so.

7 Q Now let's take a look at 12.04 on page 26.

8 A Okay.

9 Q It says binding agreement; correct?

10 A Correct.

11 Q Do you believe this to be a binding agreement on the  
12 members, managers and their respective heirs, executors,  
13 administrators, personal representatives and successors?

14 A (No audible response.)

15 Q That would be a yes?

16 A I didn't hear a question. I just heard you read the  
17 paragraph.

18 Q I asked you isn't it true that this is a binding  
19 agreement against the members, managers and their respective  
20 heirs, executors, administrators, personal representatives and  
21 successors?

22 A Yes.

23 Q Let's take a look at Exhibit 7.

24 Do you see that document?

25 A I do.

1 Q Now, before we get into this document, I want to go  
2 back over your testimony at the time of the first application  
3 for extraordinary relief. The suit -- we'll do this first.  
4 I'm sorry. Let's go back to the forbearance agreement.

5 Do you see Exhibit B to the forbearance agreement?

6 A Yes.

7 Q Okay. Now, I'd like you to look at page B3, which is  
8 00081.

9 A Okay.

10 Q It sets forth the accuracy of the recitals. Do you  
11 see that?

12 A I do.

13 Q And it says that,

14 The Antos parties and the SJC parties as  
15 defined in the forbearance agreement  
16 expressly acknowledge that the recitals set  
17 forth are true, accurate and correct.

18 Do you see that?

19 A Well, I see that it says the Anton parties, but I  
20 assume it means the Antos parties.

21 Q You're right. I'm assuming that's a typo.

22 A The rest of the sentence, yes, I see that.

23 Q Thank you. And it says,

24 CBC has relied on the Antos parties' and  
25 the SJC parties' express acknowledgment of

1                   these recitals.

2                   Do you see that?

3           A     With the same notation as to the Anton parties, yes.

4           Q     No problem. But there's no question that the SJCVC is  
5 spelled properly; is that true?

6           A     Correct.

7           Q     According to these recitals are incorporated into the  
8 forbearance agreement pursuant to this Exhibit B, and these  
9 recitals are material provisions of the forbearance agreement.

10                  Do you see that?

11          A     I do.

12          Q     Isn't it true that in the recitals it discloses KCI  
13 and Preferred Brands as the makers of the note?

14          A     It references KCI and Preferred Brands. It doesn't  
15 reference them as the makers of the note I don't believe.

16          Q     It certainly references them as parties to the note;  
17 is that fair?

18          A     But not as makers of the note, yes.

19          Q     Well, there's either a maker and a holder. It's  
20 pretty obvious that CBC is loaning them money; correct?

21          A     Or they're guarantees or they're co-borrowers, or  
22 there are a bunch of different parties potentially to a note.

23          Q     We're now talking about KCI, sir.

24          A     Correct.

25          Q     KCI was the maker of the note; true?

1 A Ultimately came to learn that, yes.

2 Q Thank you. Now let's talk about that for a minute.  
3 You've testified that you learned all of this stuff, this  
4 all -- what is parol information after you filed the lawsuit;  
5 is that correct?

6 A That's correct.

7 Q Well, sir, then why didn't you provide the assignment  
8 of company interest pursuant to the demand made upon SHAC -- I  
9 mean made upon SCJV -- SJCVC --

10 A Mr. Mushkin, could you pull your mask up over your  
11 nose, and then I would ask you to repeat the question. Thank  
12 you.

13 THE COURT: Thanks for catching that, sir. Okay.

14 MR. MUSHKIN: I didn't know it had slipped.

15 THE COURT: It's all right. We're all going to keep  
16 you honest with your mask.

17 BY MR. MUSHKIN:

18 Q Isn't it true that your testimony was that you didn't  
19 know about this defect until after the litigation started?

20 A Yes.

21 Q Then why didn't you sign over the pledge like you  
22 promised?

23 A I signed over the security interest in the portion of  
24 the judgment like I promised. That released the --

25 Q Sir?

1 A -- obligation to provide the pledge.

2 Q It says in the forbearance agreement a hundred  
3 percent interest; right?

4 A Yes.

5 Q It says in the amended forbearance a hundred percent  
6 interest where you ratify it; correct?

7 A That's what it says.

8 Q And then in the pledge agreement it says a hundred  
9 percent, and it says SJCV is a party; correct?

10 A SJC is not a party. The signature block was removed.

11 Q I didn't say that, sir.

12 A And that was deliberate.

13 Q I said they're a party to the contract in the  
14 beginning of the contract; isn't that true?

15 A They were referenced --

16 MR. GUTIERREZ: Object to the form of the question.

17 THE COURT: Overruled.

18 THE WITNESS: They were referenced in the beginning  
19 of the contract --

20 MR. MUSHKIN: Thank you.

21 THE WITNESS: -- but they are not a party to the  
22 contract under -- as a signatory.

23 BY MR. MUSHKIN:

24 Q But it says in both the forbearance agreement and the  
25 amended forbearance agreement that a hundred percent is being

1 pledged; correct?

2 A That's what the agreement says.

3 Q And you have testified that there's some legacy  
4 language that's wrong?

5 A Correct.

6 Q Do you recall what I asked of you the first time you  
7 said this?

8 A Not really.

9 Q I asked you if you had any proof of it, that there  
10 was legacy language.

11 A Okay.

12 Q And I've now gone through your testimony and showed  
13 where it said over and over again additional collateral.

14 Do you recall that?

15 A Yes.

16 Q So do you have any information that substantiates  
17 your claim that these documents contained language that isn't  
18 correct?

19 A Yes.

20 Q What document do you have?

21 A The pledge agreement to which SJC is not a signatory.

22 Q Sir, that's not my -- that's not my question. I'm  
23 asking you a question if you have any document that supports  
24 your claim of legacy language?

25 A Yes.

1 Q What document?

2 A It's a combination of documents.

3 Q What documents?

4 A You can see from the initial conversations by email  
5 that there was originally discussions as to pledging the stock,  
6 and you can see by later actual executed documents that the  
7 signature block was taken out and removed, and the stock was  
8 not pledged by SJC, solely by the Antos Trust.

9 Q You acknowledged earlier that the execution was not  
10 proper by either SHAC -- Spanish Heights or by SJC; isn't that  
11 correct?

12 A I think it's accurate. I think it's -- well, it's  
13 definitely not signed by SJC, but I think it's accurate as to  
14 SHAC listing me as the manager in my capacity as the manager of  
15 SJC.

16 Q But it doesn't list you in your capacity as the  
17 manager of SJC, does it?

18 A Well, it says as manager, but that's a rather  
19 lengthy --

20 Q Thank you. It doesn't say it, does it?

21 A Okay.

22 Q Okay. But both of the forbearance agreements say  
23 that you're pledging your stock, and you acknowledge that  
24 you're pledging -- that SJC continues to pledge; correct?

25 A Well, it's acknowledging something that doesn't

1 exist --

2 Q I appreciate your -- but I'm just asking you what  
3 those documents say. They say that you pledged; right?

4 A That's what the documents say.

5 Q Okay. And in your July letter, you talk about  
6 additional collateral being the judgment; correct? Your email.

7 A The original proposal, the initial proposal, yes.

8 Q Okay. Now, I'm going to ask you again, is there any  
9 document other than the pledge agreement itself that you can  
10 show that this was language that was not agreed to?

11 A No.

12 Q The pledge language was not agreed to?

13 A No. The pledge agreement is -- it says it all.

14 Q Okay. Thank you.

15 Now, you understand that -- let's take a look at the  
16 Exhibit 8, page 2. It says the delivery of the pledge  
17 collateral will be done in a certain way; correct?

18 A It does.

19 Q And it specifically says the secured party shall have  
20 the right at any time in secured party's discretion after a  
21 nonmonetary event of default, after notice and a 30-day-cure  
22 period having been provided to pledge orders to transfer or to  
23 register in the name of secured party or any secured parties  
24 nominee any or all to pledge collateral.

25 Do you see that?



1 A I do.

2 Q What makes you think you still own any interest in  
3 SHAC?

4 A Well, that paragraph talks about pledge collateral,  
5 but the pledge agreement was not signed by SJC, and this also  
6 references a nonmonetary default, and you're alleging a  
7 monetary default on the commercial restaurant loan.

8 Q Well, I don't think that's quite true, sir. Let's go  
9 take a look at the very first letter that I sent out in March.  
10 And I want to look at the response as well. Give me just a  
11 moment.

12 (Pause in the proceedings.)

13 BY MR. MUSHKIN:

14 Q Let's take a look at Exhibit 66, sir.

15 A Okay.

16 Q You received that letter?

17 A I believe I recall seeing this, receiving this.

18 Q How long did it take you to provide evidence of  
19 homeowners insurance?

20 A I don't recall how long the response was.

21 Q And you never did produce evidence of repairs  
22 pursuant to paragraph 3C1, did you?

23 A I believe we did.

24 Q Not in response to this letter, did you?

25 A I believe we did.

1 Q You believe we did. Good. Let's go on.

2 Evidence of Bank of America account. Did you provide  
3 that?

4 A No, that requirement was waived. So it was never  
5 produced because it didn't exist.

6 Q Opinion letter from SJC Ventures and First 100  
7 Holdings' counsel regarding the judgment and security agreement  
8 pursuant to paragraph 2. Did you ever provide that?

9 A I don't believe so.

10 Q Evidence of corporate authority and First 100  
11 holdings pursuant to 1A13 of amendment to forbearance agreement  
12 related agreements. Do you see that?

13 A I do see it.

14 Q Did you provide that?

15 A I don't know if it was provided or not.

16 Q And Item 6, evidence of SJC Ventures's filing of  
17 applications for mortgages to refinance. Did you see that --  
18 did you provide that?

19 A I do see it, and that was all verbal communication  
20 with private lenders. So there was nothing to provide in  
21 response.

22 Q Did you provide any response to that letter?

23 A I believe that there was a response.

24 Q Say it again.

25 A I believe that there was a response.

1 Q Well, let's take a look at Exhibit 69. Have you ever  
2 seen this document before?

3 A Yes.

4 Q So you didn't provide any information in response to  
5 that letter except this correspondence; is that correct?

6 A I believe additional documents were provided, such as  
7 the repair bills that you provided in your exhibits that were  
8 provided in response to this letter.

9 Q No, sir. But you can testify to that all you want.  
10 Do you have any proof of that?

11 A That's just my understanding. I didn't initiate it.  
12 It went through attorneys.

13 Q Okay. And so your testimony is that you provided a  
14 hundred thousand dollars worth of receipts?

15 A I provided -- I don't know what the total was, but  
16 it --

17 Q Well, we just went over them.

18 A I'm sorry. I'm in the middle of finishing my answer.  
19 I provided receipts that are in that neighborhood,  
20 but that was an estimate, not a guaranteed minimum payment  
21 under the obligation.

22 Q It was an estimate, huh?

23 A Yeah.

24 Q It said a hundred thousand, didn't it?

25 A Estimated to be a hundred thousand. We just read it.

1 Q But it said not more than a hundred and twenty-five;  
2 didn't it?

3 A Correct.

4 Q So the minimum was a hundred; correct?

5 A No. It said estimated to be a hundred, not more than  
6 one, twenty-five.

7 Q But there was a chart --

8 A But there was no minimum --

9 Q There was a chart given, wasn't there, of all the  
10 things that you were supposed to do?

11 A Do you have it that I can --

12 Q I'm just asking you if you remember.

13 A -- look at?

14 THE COURT: You've got to let him finish.

15 MR. MUSHKIN: Sorry.

16 THE COURT: Mr. Bloom, were you done?

17 THE WITNESS: Yeah. Not that I can remember, but if  
18 it's -- if you have an exhibit you want me to look at to  
19 refresh my recollection.

20 BY MR. MUSHKIN:

21 Q So I'd like you to look at the third paragraph.

22 A Of Exhibit 69?

23 Q Yes.

24 A Okay.

25 Q It says,

1                   Accordingly, your notice of default  
2                   letter is in violation of the amended  
3                   forbearance agreement, which stays any  
4                   default until March 31st, 2020.

5                   Do you see that?

6           A     I do.

7           Q     That's not true, is it?

8           A     I believe it is true.

9           Q     Well, let's go back to Exhibit 1. Take a look at  
10          page 5, 000005.

11          A     Okay.

12          Q     Paragraph 4.1,

13                         Forbearance limited to identified  
14                         defaults. CBI's (sic) forbearance is limited  
15                         solely to the suspended exercise of its  
16                         respective rights and remedies arising under  
17                         the amended note and modified deed of trust  
18                         as a result of the identified defaults, and  
19                         CBC shall not be deemed to have suspended or  
20                         waived any rights or remedies it may have  
21                         with respect to any other existing breach,  
22                         default or event of default under the loan  
23                         documents, including the amended note and the  
24                         modified deed of trust.

25                   Do you see that?

1 A I do.

2 Q So the notice that you received is not in violation  
3 of the amended forbearance agreement, is it?

4 A Bear with me while I review what you just asked me to  
5 read.

6 THE COURT: Once you've completed that, let us know,  
7 sir.

8 THE WITNESS: Thank you.

9 So in comparing the documents, I believe it is in  
10 violation of the forbearance agreement.

11 BY MR. MUSHKIN:

12 Q Tell me why.

13 A Section 4.1 says CBC's forbearance is limited solely  
14 to its suspended exercise of its respective rights and remedies  
15 arising under the amended note and modified deed of trust. In  
16 your letter dated March 16th --

17 Q And see we got to read the rest of the sentence --

18 THE COURT: Wait.

19 MR. GUTIERREZ: Your Honor --

20 BY MR. MUSHKIN:

21 Q -- sir.

22 THE COURT: He's got to be able to finish.

23 MR. GUTIERREZ: Thank you.

24 THE COURT: Please, Mr. Bloom, finish.

25 THE WITNESS: Okay. So in Exhibit 1, the forbearance

1 is limited to identified defaults, and the forbearance is  
2 limited solely to the suspended exercise of its respective  
3 rights and remedies arising under the amended note and modified  
4 deed of trust.

5 In your letter, Exhibit 66, it says,

6 The law firm has been retained to  
7 represent the interest of CBC I as it relates  
8 to the secured promissory note -- amended  
9 secured promissory note, modified deed of  
10 trust.

11 Right. So the letter that you sent relates to the  
12 actions that were considered to be forbearance (sic) under 4.1 of  
13 Exhibit 1.

14 BY MR. MUSHKIN:

15 Q Really?

16 A That's what --

17 Q Doesn't it say just the opposite, sir? It says only  
18 the identified defaults. All other defaults limited.

19 Do you see that, sir?

20 A So I guess my question would be to better understand  
21 this what are the identified defaults?

22 Q Well, that's not my question.

23 A Because what it says --

24 Q -- sir. My question --

25 A It says in that --

1 THE COURT: Wait. One of us can speak at a time.  
2 Mr. Bloom, can you finish, please.

3 THE WITNESS: Yes. Thank you.

4 What it says in that paragraph is it's limited solely  
5 to the suspended exercise of rights and remedies arising under  
6 the amended notes and modified deed.

7 So if the identified defaults are rights and remedies  
8 arising under the amended note and modified deed, then they're  
9 precluded from taking any action until March 31st. So your  
10 letter March 16th would be in violation of that.

11 BY MR. MUSHKIN:

12 Q Is it your testimony that any of the items requested  
13 in the letter of March 23rd are identified defaults?

14 A It's my interpretation that as you referenced the  
15 secured promissory note as being defaulted that that's what  
16 you're referencing. If you're --

17 Q So --

18 A If you're suggesting that you're noticing us of a  
19 default of the operating agreement, that's not what your letter  
20 says.

21 Q Mr. Bloom, the forbearance agreement sets out certain  
22 things that you were going to do; correct?

23 A Correct.

24 Q And it references the operating agreement; correct?

25 A Correct.



1 Q And in both of the agreements, the operating  
2 agreement and the forbearance agreement, you promised to do  
3 certain things, including provide evidence of homeowners  
4 insurance, evidence of repairs, Bank of America account  
5 balance, an opinion letter from counsel, and evidence of  
6 corporate authority for SJCV, along with filing of applications  
7 for mortgages.

8 Do you see those?

9 A I do.

10 Q They're all nonmonetary; right?

11 A Correct.

12 Q And none of them are identified defaults, are they?

13 A (No audible response.)

14 Q In fact, they are specific covenants that you agreed  
15 to in these agreements?

16 A I think the confusion comes from your letter  
17 referencing that you're writing regarding the promissory note  
18 and modified deed of trust. Because you're declaring -- you're  
19 not declaring a breach of the operating agreement or the  
20 forbearance agreement. That's never mentioned in your letter.  
21 The only thing mentioned is a breach of the promissory note and  
22 the amended promissory note and the modified deed of trust.

23 Q And that's exactly what the paragraph in the  
24 forbearance agreements references; isn't it, sir?

25 A But your letter does not. So your letter references

1 the note and the deed of trust, which it's in violation.

2 Q Which are the subject matter of the forbearance  
3 agreement; correct?

4 A It's related.

5 Q Thank you.

6 Now, I'd like you to take a look at Exhibit 68. And  
7 it's an email from my office to Ms. Barraza with copies to you,  
8 Mr. Hallberg and Mr. Gutierrez. Do you see that?

9 A I do.

10 Q Now, the -- it's interesting. There's no lawsuit  
11 pending at this point; right?

12 A I don't believe so, no.

13 Q But Mr. Gutierrez and Ms. Barraza are your attorneys;  
14 right?

15 A At this point in time they were.

16 Q No? And this email says.

17 Unfortunately, your letter is incorrect.  
18 Both the forbearance and amended forbearance  
19 agreement identify specific defaults that  
20 were subject to forbearance. The remaining  
21 obligations under the various agreements are  
22 to be followed.

23 In fact, the amended forbearance  
24 agreement calls out specific items to be  
25 provided, most of which are within my letter.

1                   As they have not been provided, you are  
2                   hereby defaulted.

3                   Do you see that?

4           A     (No audible response.)

5           Q     Do you see that?

6           A     I'm sorry. I was looking at -- I was looking at  
7 something else in continuation of my last answer.

8           THE COURT: Do you need him to repeat his question,  
9 sir?

10          THE WITNESS: Yeah.

11          THE COURT: Okay. Would you repeat your question,  
12 please.

13 BY MR. MUSHKIN:

14          Q     Have you ever seen the email dated March 25th,  
15 2020, at 11:19 from me to Ms. Barraza with copies to other  
16 parties?

17          A     I'm sure I did. I'm copied on it.

18          Q     And it says,

19                         Unfortunately, your letter is incorrect.  
20                         Both the forbearance and the amendment to the  
21                         forbearance agreement identify specific  
22                         defaults that were to be subject to  
23                         forbearance. The remaining obligations under  
24                         the various agreements are to be followed.

25                         In fact, the amended forbearance

1                   agreement calls out specific items to be  
2                   provided, most of which are within my letter.  
3                   As they have not been provided, you are  
4                   hereby defaulted.

5                   Do you see that?

6           A     I do see that.

7           Q     And do you see the response from Ms. Barraza just  
8     above it?

9           A     I do.

10          Q     Did you authorize her to send this response?

11          A     I don't believe we discussed it, but I'm in agreement  
12     with it.

13          Q     The documents speak for themselves.

14                   Do you see that?

15          A     I do.

16          Q     My client will be pursuing damages for any breach of  
17     the governing forbearance agreement, including the improper  
18     attempts to deem my client in default.

19                   Do you see that?

20          A     I do.

21          Q     I'd like to show you what's been admitted as  
22     Exhibit 69.

23          A     I'm there.

24          Q     Which one did I point you to?

25          A     69.

1 Q Okay. Now, this is March 23rd of 2020.

2 A Correct.

3 Q Hold on. I'm sorry. We already did that one. I'm  
4 sorry.

5 A This is the one where we retained Maier Gutierrez for  
6 the first time.

7 Q Yeah. For some reason I have -- check your second  
8 page or the third page. Let's see.

9 MS. FOLEY: It's the attachment to the letter.

10 BY MR. MUSHKIN:

11 Q It's the amended forbearance agreement. Do you see  
12 the amended forbearance agreement attached?

13 A I do. It's the second document on the third page of  
14 Exhibit 69.

15 Q And you see again,

16 As such, no default has occurred.

17 Do you see that?

18 A Where are you looking?

19 Q In the letter: As such, no default exists.

20 A Oh. Okay. I thought you were on the amended  
21 forbearance.

22 Q It's the 722, the last line.

23 A Correct.

24 Q Now, you didn't make any claim that there was a  
25 defect in the deed of trust at this time, did you?

1 A We were unaware of it.

2 Q Okay. So and you made no claim that the pledge had  
3 not been given in these documents; correct?

4 A No claim was made under the pledge. So we would have  
5 no reason to reiterate that SJC was now participatory in the  
6 pledge.

7 Q Mr. Bloom, is it your testimony that no demand was  
8 made under the pledge? I just went over the letter with you  
9 that had the -- that went to you and Mr. Antos requesting your  
10 assignments with your assignment.

11 A When was that?

12 Q March.

13 MS. FOLEY: 74.

14 BY MR. MUSHKIN:

15 Q Let's take a look at 74:

16 Dear Mr. Bloom and Mr. and Mrs. Antos.

17 A Wait a second. 74 I have an assignment of company  
18 and membership interest.

19 Q You've got to look at the first page, sir. It's a  
20 letter: 000887.

21 A Okay. That's --

22 THE COURT: Are you there?

23 THE WITNESS: -- the last page of 73. Oh, wait, no.  
24 It's not in 73. The last page of 73 is 886. The first page of  
25 74 is 888.

1 MS. FOLEY: Well, we're missing 887.

2 BY MR. MUSHKIN:

3 Q 887, sir.

4 A Yeah. I --

5 MR. GUTIERREZ: Yeah. I might have --

6 THE COURT: He may not have it. Why don't you put it  
7 up on the Elmo.

8 MR. MUSHKIN: We just went over it in great length.

9 THE COURT: Mr. Mushkin, it's okay. Sometimes  
10 documents are missing.

11 BY MR. MUSHKIN:

12 Q Do you see this letter, sir, dated April 1st?

13 A I do.

14 Q Do you see it's to Mr. Bloom and Mr. Antos?

15 A Correct.

16 Q It talks about, the second paragraph, Notice of  
17 nonmonetary default was delivered on March 16th. You see  
18 that?

19 A The March 16th letter is the one we went through  
20 previously.

21 Q Yes, sir.

22 A Yes.

23 Q Now, this is exercising the rights under the pledge  
24 agreement. Do you see that?

25 A Correct.

1 Q And there's an assignment attached for you, which  
2 is 888 -- I'm sorry, for Mr. Antos, which is 888; and one for  
3 Jay Bloom, manager, 889.

4 Do you see that?

5 A I see 888 and 889 is both unsigned --

6 Q Both unsigned?

7 A Right.

8 Q Right. But that's what those -- that's what came  
9 with the letter; right?

10 A I don't remember those. I do remember the letter.

11 Q Okay.

12 A And I do remember objecting to the assertion that  
13 there was a pledge of --

14 Q Do you see the last paragraph, sir?

15 A Which paragraph? Which page?

16 Q Of the letter?

17 MS. FOLEY: You have to put it back on the Elmo.

18 MR. MUSHKIN: Sorry. Thank you, Karen.

19 MS. FOLEY: No problem.

20 BY MR. MUSHKIN:

21 Q Do you see that last paragraph?

22 A I do.

23 Q Enclosed herein, please find an assignment of  
24 membership interest for your review and signature.

25 Do you see that?



1 A I do.

2 Q Any reason to believe that the assignment was not  
3 attached?

4 A No.

5 Q Thank you. But you didn't sign it, did you?

6 A No.

7 Q And you didn't make any claim that the pledge was not  
8 effective at this time, did you?

9 A I believe I did. That's why it wasn't signed.

10 Q Where did you make the claim?

11 A Well, we spoke through attorneys. So it would have  
12 been through the attorneys.

13 Q Any written document that says that?

14 A I don't know.

15 Q All right. Let's go back to the amendment to  
16 forbearance agreement. It's Exhibit 16.

17 A Okay. I'm there.

18 Q Hold on one second. I don't want stuff to start  
19 ricocheting around the courtroom. Okay.

20 Have you ever seen this document before?

21 A I believe so.

22 Q I'd like you to look at 162, page 9 of the agreement.  
23 You signed on behalf of Spanish Heights and on behalf  
24 of SJC; right?

25 A Correct.

1 Q The final "whereas" states that,

2 The parties desire to extend the  
3 forbearance until March 31st of 2020.

4 Do you see that?

5 A I do.

6 Q And then it recites consideration. Do you see that?

7 A And now therefore in consideration, is that what  
8 you're referring to?

9 Q Yes. Mutual covenants and agreements. Do you see  
10 that?

11 A Yes.

12 Q And it goes to conditions to extension. Do you see  
13 that?

14 A I do.

15 Q And Item Number 5,

16 The membership pledge agreement executed  
17 by SJCVC and the Antos Trust shall remain in  
18 effect, and the execution of this amendment  
19 shall not be considered a waiver of CBC I's  
20 rights under the membership pledge agreement.

21 Do you see that?

22 A I do see it.

23 Q And did you understand what you were signing when you  
24 signed this document?

25 A Well, there is no membership pledge agreement --

1 Q Sir, it's not --

2 A -- executed by SJC.

3 THE COURT: Could you rephrase your question.

4 BY MR. MUSHKIN:

5 Q Did you understand the terms of this amendment when  
6 you signed it?

7 A I thought I did at the time.

8 Q Now, let's go back to the next paragraph,

9 SHAC will provide CBC I with evidence of  
10 homeowners insurance coverage that is  
11 effective through March 31st, 2020.

12 Do you see that?

13 A I do.

14 Q And you ultimately provided that; did you not?

15 A I did.

16 Q The payment of the balloon is due on March 31st.

17 That's paragraph 7.

18 A Correct.

19 Q Did you pay that?

20 A No.

21 Q The parties acknowledge the extension of a lease  
22 agreement and such agreement shall continue to govern the lease  
23 of the parties. Do you see that?

24 A I do.

25 Q The membership pledge executed by SJCv and the Antos

1 Trust shall remain in effect, and the execution of this  
2 amendment shall not be considered a waiver of CBC's rights  
3 under the membership pledge agreement.

4 Do you see that?

5 A I do.

6 Q That's actually a repeat of Number 5, isn't it?

7 A It is.

8 Q Twice they put that in there.

9 The assignment of rents will remain in  
10 effect.

11 Do you see that?

12 A I do.

13 Q And then 11,

14 The account control agreement shall  
15 remain in effect.

16 Do you see that?

17 A I do.

18 Q But you never funded the account control agreement,  
19 did you?

20 A The account control agreement was not able to be set  
21 up. So prepayment was made in lieu of an account control  
22 agreement that was supposed to secure the payments.

23 Q Mr. Bloom, that wasn't responsive to my question. My  
24 question is a real simple yes or no.

25 You never funded a control agreement, did you --

1 excuse me, a control account, did you?

2 A No.

3 Q Thank you. And then it goes on,

4 The security agreement shall remain in  
5 effect. Exercising of the amendment shall  
6 not be considered a waiver of CBC's rights  
7 under the security agreement. In addition,  
8 SJC agrees to obtain from counsel for SJCV  
9 and First 1 Holdings dated as the effective  
10 date of this agreement, the form and  
11 substance reasonably satisfactory to CBC I to  
12 the effect that the judgment lien pledge  
13 agreement,

14 One, constitutes a valid and binding  
15 obligation of SJCV and First 100, LLC, in  
16 accordance with its terms;

17 Two, properly evidenced to CBC I's first  
18 priority position and that no other party  
19 apart from the collection professionals has  
20 priority over CBC I to receive payments in  
21 relation to the judgment;

22 And, three, no, ungiven notice to or  
23 obtained consent, authorization, approval or  
24 order of any court or governmental agency or  
25 body is to be obtained by SC -- agency or

1 body required to be obtained by SJCV or First  
2 100 holdings is required for the consummation  
3 of the transaction sets forth.

4 CBC I may require that the opinion of  
5 counsel address any other matters incident to  
6 the matters herein contemplated by CCV I may  
7 -- sorry -- CBC I may reasonably request.

8 Do you see that?

9 A I do.

10 Q And did you understand that term when you signed it?  
11 When you signed the agreement?

12 A I believed I did at the time.

13 Q And did you ever provide that opinion letter?

14 A No.

15 Q Thank you.

16 A It wasn't requested until March, at the end of the  
17 expiration of the forbearance agreement.

18 Q Well, this document is dated December of '19;  
19 correct?

20 A The document that says that CBC may require --

21 Q Exhibit 16.

22 A Yes.

23 Q And you were requesting that information in the  
24 middle of March; correct?

25 A Of 2020.

1 Q Correct.

2 A Yes.

3 Q Approximately three months later.

4 And we already went through that the lease has been  
5 terminated, and we went through that you signed it.

6 Okay. So in spite of this document, is it still your  
7 testimony that somehow SJCV is not obligated under the amended  
8 note and -- the amended secured note and deed of trust?

9 A We have gone through the lease was not terminated to  
10 correct your prior statement.

11 And no, SJC still has pledged its assignment of its  
12 interest in the judgment if it's collected.

13 All it's saying is the house is not collateral  
14 because the deed of trust was issued before an obligation  
15 existed.

16 Q Now, is it still your testimony that you never saw  
17 the note and the 10 amendments?

18 A I don't recall seeing it until this litigation.

19 Q Well, then how did you write that email that said you  
20 wanted an 11th amendment if you hadn't seen the others?

21 A I don't even recall the email, but it must have been  
22 from oral communications regarding that it was a note as  
23 amended 10 times from telephonic communications.

24 Q And you do -- well, let's go back to that release  
25 provision that I ended on.

1           So let's take a look at page 18 to Exhibit 1. Do you  
2 see the paragraph Number 10?

3           A     I do.

4           Q     And take a minute and read it, would you.

5                 Have you finished the paragraph, sir?

6           A     Almost. Okay.

7           Q     So in the middle it starts that you release CBC,  
8 hereby fully release, remise and forever discharge CBC, the  
9 parents of CBC I -- sorry. I said CBC -- CBC I and any other  
10 affiliates and predecessors of CBC I and all past and present  
11 officers, directors, agents, employees, servants, partners,  
12 shareholders, attorneys and managers of CBC I from, for and  
13 against any and all claims, counterclaims, liens, demands,  
14 causes of action, controversies, offsets, obligations, losses,  
15 damages and liabilities of every kind and character whatsoever,  
16 including without limitation any action, omission,  
17 misrepresentation or other basis of liability found either in  
18 tort or contract and the duties arising thereunder that the  
19 releasors or any one or more of them has had in the past or now  
20 has, whether known or unknown, whether asserted or unasserted  
21 by reason of any matter caused or things set forth in, relating  
22 to or arising out of in any way connected with the resulting  
23 from the amended note and modified deed of trust. This  
24 forbearance agreement and any other agreements executed in  
25 connection with this forbearance agreement.



1 Do you see that?

2 A I do.

3 Q And did you understand at the time that you were  
4 signing this document that you were waiving these claims?

5 A In the context of there was a third mortgage on a  
6 property, which we later learned did not exist, yes.

7 Q Thank you. I'd like you to go to paragraph 4.2 on  
8 page 6.

9 A Of Exhibit 1 still?

10 Q Yes.

11 It warrants that there will be no new events of  
12 default; correct?

13 A Correct.

14 Q And you have violated that provision; correct?

15 A How so?

16 Q It's a yes or no.

17 A I'm asking you to clarify the question.

18 THE COURT: So, sir, you can say yes or no. If you  
19 want, Mr. Gutierrez will have plenty of opportunity to follow  
20 you -- follow up with you.

21 THE WITNESS: Yeah, potentially. Potentially there  
22 could be a -- construed as a default, yes.

23 MR. MUSHKIN: Thank you.

24 BY MR. MUSHKIN:

25 Q And then in paragraph 4.5 where it talks about the

1 exercise of rights and remedies, in the amended forbearance --  
2 in the agreement, it says CBC I is free to exercise all of its  
3 rights and remedies under the amended note and modified deed of  
4 trust, including, but not limited to the rights and remedies  
5 available to CBC I as a result of the identified defaults.

6 Do you see that?

7 A I do.

8 Q Okay. And you understood at the time that you signed  
9 this; is that correct?

10 A I understood at the time I signed this? I understood  
11 what?

12 Q That provision?

13 A Oh. Yes.

14 Q And then paragraph 25, we may have already gone over  
15 this. That says cumulative remedies?

16 A Wait. Wait. What page are you on?

17 Q 23. Do you see that?

18 A I do.

19 Q And it says at the last line that CBC may pursue at  
20 any time from time to time and in such order as CBC shall  
21 determine in its sole discretion. Do you see that?

22 A I do.

23 Q Thank you. And you understood that provision when  
24 you signed this; is that correct?

25 A Within the context of there was a third mortgage that

1 didn't exist, yes.

2 Q Now, you made a separate promise to the Antoses;  
3 isn't that correct?

4 A Could you be more specific in what you're referring  
5 to?

6 Q Well, the Antoses are a party to the forbearance  
7 agreements; correct?

8 A I believe so, yes.

9 Q And they're referred to as the Antos parties, which  
10 is them individually and as trustees in the trust; is that  
11 correct?

12 A I'd have to look again. I know it's to them  
13 individually.

14 Q Let's go back to the first page of Exhibit 1.

15 I take that back. Let's do -- let's go to the  
16 amended forbearance agreement, which is I believe 16.

17 A 16?

18 Q Let me just check.

19 Right.

20 Do you see in the second "whereas" where they refer  
21 to the Antos parties?

22 A I do.

23 Q Okay. Do you understand who the Antos parties are?

24 A It's referencing the loan documents, which was signed  
25 by the Antos parties individually.

1 Q Sir, it's referencing the first paragraph:

2 Kenneth and Sheila Antos Living Trust,  
3 Kenneth and Sheila Antos Trust, Kenneth and  
4 Sheila Antos as trustees, and as personal  
5 guarantors of the secured promissory note  
6 described below.

7 Do you see that?

8 A Well, I see that, but I don't see --

9 Q And those are the Antos parties, aren't they?

10 MR. GUTIERREZ: Objection, Your Honor. He's got to  
11 let him finish.

12 THE COURT: You've got to let Mr. Bloom finish,  
13 Mr. Mushkin.

14 MR. MUSHKIN: Sure, Judge.

15 THE COURT: Even if you don't like what he's saying.

16 MR. MUSHKIN: I just didn't -- I can't hear him half  
17 the time, Judge.

18 THE COURT: It's okay.

19 Mr. Bloom, finish up.

20 THE WITNESS: I don't see a definition of the Antos  
21 parties other than a reference to the loan documents executed  
22 which were executed by Sheila and Ken Antos in their individual  
23 capacities, not by the Antos Trust.

24 BY MR. MUSHKIN:

25 Q Okay. Let's take a look at page 6 of the amended

1 forbearance agreement, and that provision is marked G.

2 A Okay. I'm there.

3 Q And Exhibit G says,

4 The Antos parties and SJCV represent  
5 they continue to lawfully possess and hold  
6 100 percent ownership.

7 Is that correct?

8 A Correct.

9 Q The Antos parties and SJCV in paragraph H,  
10 They continue to acknowledge that the  
11 amended note, modified deed of trust and  
12 forbearance agreement are legal, valid and  
13 binding agreements of the Antos parties and  
14 the SJCV parties.

15 Correct?

16 A Correct in that that's what it says, yes.

17 Q And Jay -- and you understood that when you signed  
18 this agreement, didn't you?

19 A Well, we didn't have all the information on the  
20 notes. So within the context of the information I had, I  
21 understood it.

22 Q Well, what information didn't you have, sir?

23 A I didn't have the notes to see that it was a  
24 commercial loan to a restaurant where the Antoses individually  
25 guaranteed it, and the Antos Trust did not.

1           Q     But doesn't it say that on the very first page of  
2 the -- I just went through it with you, in the original  
3 forbearance agreement it talks about KCI Investments and  
4 Preferred Restaurant Brands, that they executed the note.  
5 Explain that to the Court, please.

6           A     I think we did explain it when we went through it and  
7 that we don't know what capacity they participated.

8                     I was told that there was a third mortgage on the  
9 house. The house was owned by the Antos Trust. I don't know  
10 who the restaurants were. I didn't know it was a restaurant  
11 loan. I didn't know that the Antos Trust, the owner of the  
12 house never signed the loan and that it didn't sign as a  
13 borrower. It didn't sign as a guarantor, and, quite frankly, I  
14 should've paid more attention and asked more questions, but I  
15 didn't. I was told it was a third party -- it was a third  
16 mortgage. I accepted on its face the representation that it  
17 was a third party and a third mortgage.

18          Q     And, in fact, you were provided a preliminary title  
19 report too, weren't you?

20          A     I don't remember, but entirely possible.

21          Q     And that preliminary title report has been admitted  
22 as?

23                     MS. FOLEY: It's the blue tab.

24                     MR. MUSHKIN: Say it again.

25                     MS. FOLEY: It's the blue tab on the side. It's

1 Exhibit 104. And it's attached to an email sent to Mr. Bloom.

2 BY MR. MUSHKIN:

3 Q I would direct your attention to Exhibit 104.

4 MS. FOLEY: The page before is the email where it --

5 BY MR. MUSHKIN:

6 Q Page 003682. It's about two thirds of the way down.

7 A Do you have a Bates number?

8 Q 003682.

9 A In Exhibit 104?

10 Q 104.

11 A So Exhibit 104 runs from Bates Number 1220 to 1348.

12 I don't have one that starts in the three thousands.

13 MR. GUTIERREZ: He can have my copy if he needs it,  
14 Your Honor.

15 THE COURT: Mr. Bloom, why don't you go grab at  
16 Mr. Gutierrez's from him.

17 THE WITNESS: I am on my way.

18 THE COURT: Great. I'm trying to keep people out of  
19 the well.

20 MR. GUTIERREZ: You're doing a great job, Your Honor.

21 (Pause in the proceedings.)

22 THE COURT: Take the time you need to look at the  
23 document, and then let us know when you're ready, sir.

24 THE WITNESS: Thank you.

25 Starting on 3682?

1 MR. MUSHKIN: Yes, sir.

2 BY MR. MUSHKIN:

3 Q Have you ever seen this document before?

4 A I don't remember it, but it's entirely possible I  
5 did.

6 Q Let's take a look at the exceptions which start on  
7 page 3686.

8 A Okay.

9 Q All right. Do you understand what these exceptions  
10 reference?

11 A I haven't read them in detail, but they look pretty  
12 boilerplate. So I believe so with a cursory review.

13 Q And through items 32, they're pretty boilerplate,  
14 aren't they? Easements, orders of vacation, things like that;  
15 right?

16 A Right.

17 Q CC&Rs, reservations, patents, all that; right?

18 A Correct.

19 Q And then you get to Item 33, and that's a deed of  
20 trust by Kenneth and Sheila Antos for 3,640,000, dated  
21 October 6, 2010. Do you see that?

22 A I do.

23 Q And is that the first deed of trust that is reflected  
24 on the exceptions?

25 A I believe so.



1 Q And then Item 34 is a revolving credit deed of trust  
2 and assignment of rents to Northern Trust. Do you see that?

3 A I do.

4 Q And is that the second deed of trust recorded on the  
5 property?

6 A Yes.

7 Q And Item 35 is a deed of trust and assignment of  
8 rents for the amount of \$3 million in favor of CBC Partners I,  
9 LLC, a Washington limited liability company. Do you see that?

10 A I do.

11 Q Is that the third deed of trust on the property?

12 A Yes.

13 Q Thank you. And I'd like you to look at Item 36. And  
14 that's a lien from Red Rock Financial Services. Do you see  
15 that?

16 A I do.

17 Q Do you know what that's for?

18 A I do not.

19 Q The next item I want to look at is a treasury of  
20 certificate holding delinquent property taxes. Do you see  
21 that?

22 A I do.

23 Q Okay. And then the next one is a judgment. Do you  
24 see that document?

25 A I do.

1 Q And do you know how much that judgment is for?

2 A It's reflected on the title report as \$87,213.05.

3 Q I'd like you to look at the next one, a judgment,  
4 this one from E and H distributing. Do you see that?

5 A I do.

6 Q How much is that one for?

7 A That one appears to be for \$15,819.09.

8 Q And Item 40 is an application of foreign judgment,  
9 and that is in the amount of \$812,217.92. Do you see that?

10 A I do.

11 Q Creditor CT Communications. Do you see that one?

12 A I do.

13 Q And then 41 is a judgment. Creditor is Shetakis, and  
14 is 19,640.98. Do you see that?

15 A I do.

16 Q The next one is a judgment dated May of '16. The  
17 creditor is Robert Walsh and the amount is 538,500. Do you see  
18 that?

19 A I do.

20 Q And then the next one is another application of  
21 foreign judgment. Do you see that one?

22 A I do.

23 Q And that's 93,190.49. Do you see that?

24 A I do.

25 Q And then the next one is another application of

1 foreign judgment in the amount of 89,524.

2 Do you see that?

3 A I do.

4 Q And then finally, another judgment, the debtors --  
5 creditor is Mengyun Han, and that's for \$585,000.

6 Do you see that?

7 A I'm looking at one that it's 560,000.

8 Q I'm looking at 45. Are you looking at 45?

9 A I am.

10 Q It says amount 560, and 585 and other amounts due  
11 hereunder. So I guess that one's a million, four. Is that  
12 fair?

13 A A million 45.

14 Q Thank you. And you are obligated yourself to file a  
15 quiet-title action; is that correct?

16 A As a method to resolve the liens.

17 Q And you didn't file that quiet-title action, did you?

18 A I did not.

19 Q And those judgments remain of record on the property  
20 to this day; isn't that correct?

21 A They do.

22 Q Why haven't you filed the quiet-title action?

23 A Because I don't think a quiet-title action would be  
24 necessary. I think they made the same mistake that CBC did.  
25 The judgments are against the Antoses individually, but at the

1 time the lien was filed, it was filed against the Antos Trust  
2 property, which is a separate entity.

3 Q Well, that's --

4 A So these liens never -- those liens never should have  
5 been recorded, and I think a quiet-title action is probably not  
6 necessary. There's no reason to file a dozen litigations when  
7 a demand would probably yield the same result.

8 Q Did you submit a demand?

9 A I have not.

10 Q You obligated yourself to file a quiet title; did you  
11 not, sir?

12 A The intent was to resolve the liens, yes.

13 Q And you have not resolved those liens, have you, sir?

14 A Not yet.

15 Q Mr. Bloom, you promised Mr. Hallberg on a number of  
16 occasions to pay off the note, didn't you?

17 A Upon recognizing liquidity, yes.

18 Q Well, I'm going to direct your attention to 104  
19 again, this time the very first page of 104, 2717.

20 A What's the Bates number?

21 Q 2717.

22 MS. FOLEY: That's the middle of 104. 104 starts  
23 [inaudible].

24 MR. MUSHKIN: I'm sorry.

25 / / /

1 BY MR. MUSHKIN:

2 Q It's the first one in the book that I'm looking at.

3 A That could not be less helpful.

4 MR. MUSHKIN: I feel the exact same way, Judge.

5 THE COURT: So, Mr. Bloom, if you want to go,  
6 Mr. Gutierrez may have something for you there it looks like.

7 THE WITNESS: Okay. Should I return this book to  
8 him?

9 MR. MUSHKIN: No, leave it up there.

10 THE COURT: No. You're going to gather all the books  
11 you have and keep them until you're done.

12 THE WITNESS: Okay.

13 (Pause in the proceedings.)

14 MR. MUSHKIN: Your Honor, would you like to take the  
15 afternoon break now?

16 THE COURT: If you think it's a convenient time.

17 How much longer do you think given the pace that is  
18 currently going?

19 MR. MUSHKIN: Today is Tuesday; is that right? My  
20 expectation is all week.

21 THE COURT: You can't see my face under the mask.  
22 And it is a good --

23 MR. MUSHKIN: That was a yes, today is -- I'm bad  
24 with days of the week.

25 THE COURT: Yeah.

1 MR. MUSHKIN: I work all seven. At least I try to do  
2 a little.

3 THE COURT: Today was Tuesday.

4 MR. MUSHKIN: It's almost gone.

5 THE COURT: Uh-huh.

6 MR. MUSHKIN: My expectation that I'll be done maybe  
7 by the end of Thursday.

8 MR. GUTIERREZ: And, Your Honor, I'd like to know  
9 exactly what's going to take another two and a half days.

10 THE COURT: Are you going to just examine Mr. Bloom?

11 MR. MUSHKIN: Yes, sir -- yes, ma'am, absolutely.

12 THE COURT: Because at some point I'm going to tell  
13 you you're done if that's how we're going.

14 MR. MUSHKIN: Well, I'm doing the best I can, Judge.

15 THE COURT: I understand, but at some point it's like  
16 no matter how much difference you guys have there's only so  
17 much we can do.

18 MR. MUSHKIN: Well --

19 MR. GUTIERREZ: And, Your Honor, I'd object just  
20 given the limited scope of this trial. I want to make sure  
21 he's addressing the issues, and obviously going till  
22 Thursday --

23 THE COURT: Well, he is addressing the issues.

24 MR. GUTIERREZ: He is, but not until Thursday.

25 THE COURT: I'm not saying this is Mr. Mushkin's

1 fault.

2 MR. GUTIERREZ: Right. But --

3 THE COURT: And as --

4 MR. GUTIERREZ: -- going to till Thursday --

5 THE COURT: Wait. I don't know that you heard me,  
6 Mr. Gutierrez, but I almost granted the 50(a) motion.

7 MR. GUTIERREZ: Understood.

8 THE COURT: The only reason I didn't grant the 50(a)  
9 motion is there's a case, I don't remember if it's published or  
10 not, that says I'm not supposed to weigh evidence at the 50(a)  
11 stage. So I didn't.

12 MR. GUTIERREZ: Understood.

13 THE COURT: But if I had weighed evidence at the  
14 50(a) stage, we wouldn't still be here.

15 MR. GUTIERREZ: Understood, Your Honor, and --

16 THE COURT: So --

17 MR. GUTIERREZ: And these are serious issues that we  
18 take serious. We want to make sure the record is complete, but  
19 I want to make sure that the record is limited to what we are  
20 actually addressing --

21 THE COURT: Absolutely.

22 MR. GUTIERREZ: -- in this case.

23 THE COURT: The five issues that we're addressing --

24 MR. GUTIERREZ: Absolutely.

25 THE COURT: -- plus the preliminary injunction.

1 But at some point, Mr. Mushkin, for purposes of the  
2 limited trial we have on this issue, we're beating a dead  
3 horse. That's all I'm trying to say.

4 MR. MUSHKIN: Your Honor...

5 THE COURT: I'm going to take the afternoon break and  
6 let you guys think and talk.

7 MR. MUSHKIN: Thank you, Your Honor. Fifteen  
8 minutes?

9 THE COURT: Sure.

10 (Proceedings recessed at 2:41 p.m., until 2:50 p.m.)

11 (Pause in the proceedings.)

12 THE COURT: Okay. Keep going.

13 MR. MUSHKIN: Your Honor, I'm going to try and get  
14 through this as quickly as I can.

15 THE COURT: I know you tried cases in front of Stu  
16 Bell and Sally Loehrer before. So...

17 MR. MUSHKIN: You know, Your Honor, I have and --

18 (Pause in the proceedings.)

19 BY MR. MUSHKIN:

20 Q Okay. Mr. Bloom, you contracted to pay the HOA dues;  
21 is that correct?

22 A Spanish Heights did, yes.

23 Q And you failed to do that for a period of time,  
24 didn't you?

25 A Spanish Heights did.



1 Q They failed?

2 A Yes.

3 Q In fact, the HOA was going to go to foreclosure;  
4 correct?

5 A Nobody would have allowed it to go to foreclosure.

6 Q Well, you didn't pay it, did you?

7 A No.

8 Q In fact, my client had to pay it the day before the  
9 sale, didn't he?

10 A I don't remember it being the day before the sale,  
11 no.

12 Q Well, isn't it true, Mr. Bloom, that you were trying  
13 to steal position on title by letting that accrue and then  
14 buying it at an auction?

15 A No, that's not true.

16 Q Why didn't you pay the HOAs?

17 A I don't remember the circumstances, but, no, that is  
18 not --

19 Q Thank you.

20 A -- I was not looking to steal title --

21 Q You don't remember. I appreciate that, sir. okay.

22 And do you know what the amount of the HOA notice of  
23 default was?

24 A I do not.

25 Q It was -- would you be surprised if it was \$8,507.83?

1 A Not necessarily.

2 Q Let's take a look at 3230. It's in Exhibit 4.

3 (Pause in the proceedings.)

4 THE WITNESS: So it's not in my Exhibit 4, and I  
5 don't know that Mr. Gutierrez had it either.

6 MR. MUSHKIN: That's all right. We'll put it on the  
7 Elmo. I'm such an expert.

8 BY MR. MUSHKIN:

9 Q Do you see this email on January --

10 THE COURT: You've got to lower it a little bit.  
11 Thank you.

12 MR. MUSHKIN: I've got to look up.

13 BY MR. MUSHKIN:

14 Q All right. Do you see that email?

15 A I do.

16 Q And that's your email address, Jay Bloom at F 100  
17 LLC, dot, com?

18 A Yes.

19 Q And it goes to Alan Hallberg. Do you see that?

20 A I do.

21 Q Below is the email that you respond to. There's one  
22 from Alan to you.

23 A Okay.

24 Q It says,

25 It looks like the HOA dues are owing,

1                   and the association is taking action. Would  
2                   you please take care of this. Please let me  
3                   know if you'd like to chat first.

4                   And what was your response, sir?

5           A       The response in the email was,

6                               I'll take care of this. I prepaid for a  
7                   period of time and forgot about it when the  
8                   property -- when the prepay ran out. It went  
9                   to NOD. Easy fix.

10          Q       You didn't fix it though, did you, sir?

11          A       I think they advanced it to the payoff.

12          Q       Sir, my question is you did not take care of the HOA  
13       dues, did you?

14          A       Mr. Mushkin, could you pull up your mask, please.

15          Q       No. I'm asking you a question. My mask is fine.

16                   THE COURT: Pull your mask back over your nose,  
17       please.

18                   MR. MUSHKIN: It was over my nose.

19                   THE COURT: No, it wasn't. It had fallen down.

20                   MR. MUSHKIN: Only to there.

21                   THE COURT: All right.

22       BY MR. MUSHKIN:

23          Q       Mr. Bloom, you did not take care of the HOA dues, did  
24       you, sir?

25          A       I spoke with CBC, and CBC --

1 Q Sir, it's a yes-or-no answer.

2 A Yes.

3 Q Show me the payment, sir.

4 A It wasn't by payment. It was by arrangement with  
5 CBC.

6 Q What?

7 A I spoke with CBC, and we made an arrangement where  
8 they would pay it and add it to the balance.

9 Q That they would pay it?

10 A Yes.

11 Q Do you have that in writing anywhere?

12 A It was evidenced by the actions of the parties.

13 Q Oh, I see.

14 My question again, sir, you did not pay the HOA dues,  
15 did you?

16 A I paid a great number of HOA dues.

17 Q Sir, I'm referring to the HOA dues represented in the  
18 notice of default. You did not pay those dues, did you?

19 A Those particular dues, no.

20 Q Thank you.

21 MR. MUSHKIN: We may be here that long, Judge.

22 THE COURT: I'm just telling you I understand,  
23 Mr. Mushkin, but...

24 BY MR. MUSHKIN:

25 Q Is it fair to say that SHAC made no payments pursuant

1 to these agreements until May of 2020?

2 A No.

3 Q SHAC never had a bank account until April 30th,  
4 2020; correct?

5 A Correct.

6 Q So how would SHAC make payments?

7 A SHAC was due rent from SJC and assigned its rent  
8 payments to satisfy the obligations directly. So it did it by  
9 way of assignment of rents receivable.

10 Q Who assigned what rents to who?

11 A SHAC assigned SJC rents to SHAC's obligations.

12 Q Sir. I'm asking a real simple question. You're  
13 making this a lot harder.

14 Isn't it true that SHAC did not make any payments  
15 pursuant to this agreement until May of 2020 when they opened  
16 their bank account? It's a yes-or-no answer.

17 A No, that's not true.

18 Q Isn't it true that others made payments on behalf of  
19 SHAC until April -- until May of 2020?

20 A Others made payments to SHAC obligations on behalf of  
21 SHAC obligations in satisfaction of their obligations to SHAC.  
22 So SJC owed Spanish Heights rent. Spanish Heights assigned  
23 those rent receivables to satisfy Spanish Heights obligations  
24 to pay them.

25 Q I'm not asking about assignment, sir. I'm asking who

1 made payments, and isn't it true that all the payments made up  
2 until May of 2020, all payments made to CBC I were made by a  
3 party other than SHAC?

4 A Yes.

5 Q Thank you. Do you recall my asking in the deposition  
6 for proof of the hundred thousand and repairs?

7 A Not offhand, but I'm not specifically denying that  
8 you asked that.

9 Q And do you also recall I'll leave a blank in the  
10 transcript for you to add whatever you have not produced up  
11 until now? Do you recall that?

12 A No, but I'm sure you said that.

13 Q I'm going to direct your attention -- are you  
14 acknowledging that you made that statement, sir, with the deny  
15 or don't deny? Which is your answer? Did you recall it, or do  
16 you not recall?

17 A You're referencing a statement that you made. I  
18 didn't make that statement.

19 Q I'm asking if you recall hearing it, sir?

20 A Okay. Sort of. Vaguely.

21 Q Have you produced everything you have showing that  
22 you made a hundred thousand in repairs?

23 It says, I'd have to go back and check to see what  
24 production I gave to the attorneys.

25 Question, I'll leave a blank in the transcript for

1 you to add whatever you have not produced up until now.

2 Do you see that?

3 A I see that.

4 Q Did you produce anything subsequent to your  
5 deposition?

6 A I don't know if the production of the home automation  
7 repairs was prior to or subsequent to my deposition and other  
8 expenses.

9 Q Are you saying you don't know?

10 A I don't know if it was prior to or subsequent.

11 Q We've gone through the produced receipts. You saw  
12 those earlier?

13 A I did.

14 Q Did you provide anything in addition to those  
15 receipts?

16 A Yes.

17 Q Pursuant to the depo?

18 A I provided things in addition to the receipts. I  
19 don't remember if it was pursuant to the depo or prior to the  
20 depo.

21 Q Where are those documents, sir?

22 A They've been provided.

23 Q Where? Show me them.

24 A Well, I don't see them in the exhibits beyond the  
25 HVAC repairs.

1 Q So there aren't any, are there, sir?

2 A There are.

3 Q Where are they?

4 A They're not --

5 Q There have been no other --

6 THE COURT: You've got to let him finish.

7 MR. MUSHKIN: Sorry. I thought he was done, Judge.

8 THE COURT: Mr. Bloom, could you finish, please.

9 THE WITNESS: They're not in the exhibits, but there  
10 are more documents.

11 BY MR. MUSHKIN:

12 Q But you have not produced them in this case?

13 A I provided them to counsel. I don't see them. They  
14 didn't make the exhibit pack.

15 Q So you answered a question that said that -- we were  
16 talking about SJCVC as the investor member and the covenants  
17 that you agreed to upon entering into and taking management of  
18 SHAC.

19 And your response to that was, When you say "you,"  
20 you mean SJCVC? And your answer is, Yes, sir.

21 And then you add, Subject to modification of the  
22 parties subsequent to this agreement, yes. Okay.

23 And I ask you, Are you aware of any modifications  
24 other than the amended forbearance agreement?

25 Do you recall that question?



1 A If you could put it on the Elmo, it would be helpful.

2 Q Do you recall that question?

3 A I don't specifically recall that question.

4 Q I'm asking you today, are you aware of any written  
5 modifications to the documents other than the amended  
6 forbearance agreement?

7 A No.

8 Q I asked you a question:

9 Did you ever have any agreement from  
10 Mr. Antos that you were not obligated to do  
11 what you promised Mr. Antos in the operating  
12 agreement.

13 Do you recall that question?

14 A I do not.

15 Q Well, I'm going to ask it now. Do you have any  
16 agreement from Mr. Antos that you were not obligated to do what  
17 you promised Mr. Antos in the operating agreement?

18 A No.

19 Q Do you remember what your response was to that  
20 question at the time of your deposition?

21 A I do not.

22 Q Your answer was, Mr. Antos directed me to speak to  
23 CBC.

24 A Okay.

25 Q Why did you answer that way at the deposition?

1 A By "that way," you mean truthful?

2 As I said at the beginning of this trial, the  
3 beginning of my testimony, I spoke to Mr. Antos maybe once.  
4 Every other time he directed me to speak to CBC.

5 Q So in answer to the question, Did you have any  
6 agreement from Mr. Antos that you were not obligated to do what  
7 you promised in the operating agreement, you responded,  
8 Mr. Antos directed me to speak to CBC?

9 A Apparently. That's what the transcript says --

10 Q And you believe that to be a truthful answer --

11 A I don't recall that.

12 Q -- to the question?

13 THE COURT: Wait. You've got to let him finish.  
14 Sir.

15 MR. MUSHKIN: Well, I didn't finish my question  
16 first.

17 THE COURT: Sir, were you done with your answer?

18 THE WITNESS: I'm not sure what the question was at  
19 this point.

20 THE COURT: Okay. Could you start over.

21 BY MR. MUSHKIN:

22 Q Did you ever have a written agreement from Mr. Antos  
23 that you were not obligated to do what you promised Mr. Antos  
24 in the operating agreement?

25 A Is that the end of the question?

1 Q Yes.

2 A No.

3 Q When I asked that question at your deposition you  
4 answered, Mr. Antos directed me to speak to CBC.

5 Why did you give that answer?

6 A It's a truthful answer. That's --

7 Q Well -- sorry.

8 A That's what I -- that's what I recalled in the moment  
9 in response to that question.

10 Q It's not responsive to the question, is it, sir?

11 A You know, I'm not sure that it isn't.

12 Q Thank you.

13 A I'm not sure that it is.

14 Q Thank you, Mr. Bloom. So I asked you a question, and  
15 I'm asking it to you again today. Are there other  
16 modifications other than the amended forbearance agreement?

17 A None that I can recall in the moment.

18 Q When I asked you that question, your answer was as  
19 follows: There are potentially other email communications  
20 which would be subsequent modifications, and then there are  
21 telephone conversations.

22 Is it your testimony that the contracts can be  
23 modified by an email?

24 A I would think they could.

25 Q You believe they can. Okay. And I asked you,

1                   Doesn't it say in the operating  
2                   agreement as well as the forbearance  
3                   agreement that all modifications must be in  
4                   writing, signed by the parties?

5           A     I believe so.

6           Q     Thank you. Why did you tell me you don't know at the  
7           time of your deposition to the same question?

8           A     Pull your mask up. Thank you.  
9           Could you repeat that.

10          Q     The question is,

11                   Doesn't it say in this document that all  
12                   modifications must be in writing?

13           Your answer is, I don't know.

14           I answered -- I asked you the same question just now,  
15           and you said yes. Why did you say I don't know at the time of  
16           your deposition?

17          A     Well, I think we just reviewed the document, and I  
18           saw it here. I think.

19          Q     There are no amendments to the operating agreement.  
20           Is that fair?

21          A     No. No.

22          Q     There are no amendment -- isn't it true there are no  
23           amendments to the operating agreement?

24          A     Yes, I believe that's the case.

25          Q     Now, when I asked you that question, you equivocated,

1 and your answer was,

2                   There are no formal amendment to the  
3                   operating agreement, but the agreement terms  
4                   are modified by the amendment to the  
5                   forbearance agreement, which we've  
6                   acknowledged, and emails that occurred  
7                   between the parties.

8                   Right? That was your answer?

9           A     I'll accept your representation, but I don't have the  
10           transcript in front of me.

11           Q     Didn't you just testify that you rarely had any  
12           conversations with Mr. Antos?

13           A     Yes.

14           Q     And Mr. Antos and you are the only parties to the  
15           operating agreement; right?

16           A     Correct.

17           Q     The operating agreement is referenced in the  
18           forbearance agreement; right?

19           A     Correct.

20           Q     And the same covenants appear in both the 150, the  
21           quiet title, all those things that were under investor.  
22           Remember, those appear in the forbearance agreement; correct?

23           A     I believe so.

24           Q     Okay. And -- but in your answer it says,

25                   But the agreement terms are modified by

1 the amendment to the forbearance agreement  
2 and emails occurred between the parties.

3 Have you produced any emails with Mr. Antos?

4 A I don't believe so.

5 Q Thank you. There's no modification by emails to the  
6 operating agreement; correct?

7 A None that I can recall as I sit here today.

8 Q I may have covered this already, but you were aware  
9 that Preferred Restaurant Brands and KCI were parties to the  
10 note before you entered into the agreement on September 27th;  
11 correct?

12 A Well, the language was included in the document, no,  
13 it was not.

14 Q Well, when I asked you that question -- let me read  
15 the two questions I asked you:

16 Are you talking about paragraph 1 that it says that  
17 the note -- sorry.

18 I'll represent to you that it's CBC I, but I don't  
19 really care. And then it talks about the original note on June  
20 22nd, 2012, and its origination. Do you see that?

21 Can't hear you. Are you talking about paragraph 1,  
22 which it says the notes have been executed by KC Investments  
23 and Preferred Brands?

24 Your answer, yes. Yes, I see that.

25 Question, and you saw that at the time you entered

1 into the agreement. Is that also true?

2 Do you know what your answer was?

3 A I do not.

4 Q Well, I'm going to ask you now: Did you see the KCI  
5 and Preferred names at the time you entered into the agreement?

6 A I don't recall seeing that.

7 Q At the time of your deposition you answered yes. Why  
8 are you answering differently today?

9 A Well, I think during my deposition I made a mistake.

10 Q So at the time of your deposition I asked you this  
11 question: Pursuant to the terms hereunder, SHAC intends to  
12 acquire the property and make certain payments to CBC and other  
13 parties pursuant to the terms of this forbearance agreement.

14 Do you recall that provision in the forbearance  
15 agreement?

16 A I'm sorry. Are you asking a question now, or are you  
17 reading the transcript?

18 Q I am asking you a question. Pursuant to the terms of  
19 the agreement, the terms hereunder, SHAC intends to acquire the  
20 property and make certain payments to CBC and other parties  
21 pursuant to the terms of this forbearance agreement.

22 Is that in fact the provision within the forbearance  
23 agreement?

24 A I believe so.

25 Q And did you agree to that provision at the time of

1 you signed the agreement?

2 A I believe so.

3 Q Thank you. Now, I asked you, and the question is --  
4 I'll read it: And, finally, in addition amounts -- in  
5 additional amounts for accrued interest, recoverable costs,  
6 including reasonable attorneys' fees, certain indemnities,  
7 postforbearance protection payments and other note expenses as  
8 described below, and I asked you if you saw that provision.

9 Do you know what you responded?

10 A I do not.

11 Q Well, did you see the -- do you recall seeing the  
12 provision at the time of your depo?

13 A No.

14 Q And have you reviewed these documents in advance of  
15 today?

16 A No.

17 Q So do you -- are you able to affirm or deny that the  
18 forbearance agreement covered accrued interest, recoverable  
19 costs, reasonable attorneys' fees, indemnities, postforbearance  
20 protection payments and other note expenses as described below.  
21 That's what's covered in the forbearance agreement; correct?

22 A I believe so.

23 Q And you agree to pay all of those sums; isn't that  
24 correct?

25 A Uh --



1 Q SJC?

2 A Yes.

3 Q Thank you. And, in fact, as we've shown you on the  
4 preliminary title report, the CBC note is in third position.  
5 That's also correct, isn't it?

6 A There is a deed of trust recorded in the third  
7 position for the benefit of CBC securing a note to which the  
8 Antos Trust as the pledgor has no nexus.

9 Q Now, you have now claimed that something was  
10 misrepresented to you; is that correct?

11 A I believe so.

12 Q What was misrepresented?

13 A The existence of the third mortgage. There was no  
14 third mortgage. It was a commercial loan to a restaurant, and  
15 I only found that out through the course of this proceeding.

16 Q Well, if you only found -- the day you filed this was  
17 April 9th of 2020; right?

18 A I believe about then, yes.

19 Q Okay. If you didn't find out about any of this  
20 defect, why didn't you make the balloon payment on March  
21 31st, 2020, as required by the amendment to the forbearance  
22 agreement?

23 A I don't -- I think because we were arguing about the  
24 default that you had sent two weeks prior.

25 Q Who is we?

1 A Me and MGA.

2 Q Well, I showed you the letter. You claimed there  
3 couldn't be a default; right?

4 A Well, the defaults that you were claiming weren't  
5 defaults.

6 Q Okay.

7 A Yeah.

8 Q Well, but you acknowledged that the document matures  
9 March 31st; right? That's the end of the forbearance period?

10 A Correct.

11 Q Well, you testified that you didn't know about any  
12 defect until the course of this litigation. I'm assuming that  
13 was when discovery was taking place; is that fair?

14 A That's correct.

15 Q Well, then why didn't you pay on March 31st, like  
16 you were obligated to?

17 A You noticed a default improperly two weeks prior.

18 Q And that's the --

19 A And it set us down this path.

20 Q And you're testifying to this Court that the notice  
21 of default is a defense to payment of a matured note?

22 A Mr. Mushkin, your mask is down again.

23 There are several. We have a breach of the  
24 forbearance agreement by CBC in January, February and March.

25 Q Did you notice default?

1 A Not at that time.

2 Q Okay.

3 A We didn't know about the default to notice the  
4 default.

5 Q Well, if you didn't know about the default, then how  
6 can that be a defense to payment on March 31st? I'm asking  
7 you what you knew on March 31st that you can tell this Court  
8 that's a defense to payment of this balloon payment?

9 A We knew that you noticed a default improperly.

10 Q That's all?

11 A And then we found out there were subsequent --  
12 subsequently we found out other issues.

13 Q Well, but you didn't find out until sometime in May  
14 or June; right?

15 A Right.

16 Q March 31st the obligation was due; right?

17 A Correct.

18 Q Now, through the course of this you spoke directly to  
19 me on a number of occasions, didn't you?

20 A I did.

21 Q And, in fact, there was consent given by your counsel  
22 to speak with me; isn't that correct?

23 A Correct.

24 Q What were you trying to accomplish in speaking to me?

25 A I don't recall. I think we were talking about

1 extending the forbearance.

2 Q You wanted more time; right?

3 A Correct.

4 Q And you asked that of Mr. Hallberg; correct?

5 A Correct.

6 Q And Mr. Hallberg said no; correct?

7 A Correct.

8 Q And, in fact, Mr. Hallberg told you all  
9 communications were to go through my office; right?

10 A Yes.

11 Q And you communicated with Mr. Hallberg after that,  
12 didn't you?

13 A I did.

14 Q You sent him an email, didn't you -- I mean a text  
15 message, didn't you?

16 A Possibly.

17 Q Do you know what that -- do you remember what the  
18 text message said?

19 A No. What did it say?

20 Q Do you recall?

21 A I do not.

22 Q It said, Your attorney is going to get you into  
23 trouble.

24 Do you recall that?

25 A Probably. That sounds -- yes.

1 Q Okay. Now, you were instructed not to communicate  
2 with him; correct?

3 A Uh --

4 Q You just said, yes, all communications through  
5 counsel.

6 A It was -- it was a request to communicate with you.

7 Q Okay.

8 A That's not an instruction not to communicate with  
9 him.

10 Q But then you decided you would try and interfere with  
11 my relationship with my client; is that correct?

12 MR. GUTIERREZ: Objection, Your Honor.  
13 Argumentative.

14 THE COURT: Overruled.

15 THE WITNESS: It was not intended to interfere with  
16 your relationship. It was intended to inform your client as to  
17 some of the actions you were taking are improper.

18 BY MR. MUSHKIN:

19 Q So can you tell me today what was falsely represented  
20 to you?

21 A The existence of a third mortgage.

22 Q But we've just gone through it that it's the third  
23 deed on the property; correct?

24 A It is a third deed, but the deed is not the  
25 obligation. The deed secures an obligation, and it was an

1 obligation that didn't exist that represented that it -- which  
2 was represented as a (indiscernible).

3           So when CBC says there's a third mortgage, I  
4 understand that to be an obligation of the Antos Trust. What  
5 came out later is that the Antos Trust never really did have  
6 that obligation, that it was a commercial restaurant loan.

7           Q     Well, what document revealed this to you?

8           A     When we finally got the note.

9           Q     Sir, you referenced a note before the documents are  
10 assigned. You're creating the 11th modification.

11          A     Right. Based on telephone --

12          Q     You saw the note before you signed.

13          A     That's not true.

14          Q     Okay. Do you have any proof of that?

15          A     I don't think you can prove the absence of something.  
16 I mean, clearly if there was an email that said the note is  
17 attached we would have provided it, but you've provided every  
18 email except that critical one. The note was never provided.

19          Q     Well, did you ever ask for it?

20          A     No. I accepted it on face value of the  
21 representation that there was a third mortgage, that the Antos  
22 Trust was a borrower.

23          Q     And you have now seen the documents that set forth  
24 the Antos -- the certificate of borrowing. You saw that  
25 document; correct?

1 A Certificate of borrowing?

2 Q The certificate of authority to borrow, sir, do you  
3 recall that document?

4 A There's a certificate of trust -- I don't know which  
5 document you're referring to, and I don't want to guess.

6 MS. FOLEY: 34.

7 THE COURT: Maybe it's 34.

8 BY MR. MUSHKIN:

9 Q Let's take a look at 34.

10 A Okay. So 34 is a certificate of the trust existence  
11 and authority.

12 Q You got that document, didn't you, sir?

13 A In discovery.

14 Q And there's also a document that is the guarantee of  
15 the trust, isn't there?

16 A Yes.

17 Q Okay.

18 A In discovery.

19 Q Tell me why you can't -- you're not obligated to pay,  
20 sir.

21 A Well, it's really not as complicated as you're making  
22 it. In 2014, the Antos Trust was not a borrower and not a  
23 guarantor, but it issued a deed of trust. The deed of trust is  
24 supposed to secure an obligation of the Antos Trust as a  
25 pledgor. No obligation existed for the Antos Trust. It

1 existed for the Antoses individually and for KCI and Preferred  
2 Restaurant Brands at some point either prior or subsequent. In  
3 2016, there was a confirmation, but the confirmation didn't  
4 create the liability, and there was an amended deed of trust,  
5 but again, against no obligation of the Antos Trust. So there  
6 was no obligation for the pledgor to secure.

7 In 2017, there first appears a guarantee by the Antos  
8 Trust which creates the obligation, but there's no deed of  
9 trust that's issued afterwards. The prior ones are defective,  
10 and the subsequent one -- there is no subsequent one.

11 Q But you waived --

12 A And then the trust transferred the ownership of the  
13 property.

14 Q Okay. And you've released and waived all these  
15 claims, haven't you?

16 A You can't waive what you don't know about.

17 THE COURT: You don't think so?

18 THE WITNESS: Not intentionally.

19 THE COURT: Okay.

20 BY MR. GUTIERREZ:

21 Q It says right in here known or unknown, doesn't it,  
22 sir?

23 A It may, but that wasn't my intent to waive something  
24 that was misrepresented.

25 Q How many years have you been in the real estate



1 business, sir?

2 A Probably 20.

3 Q And your testimony doesn't change from these  
4 documents. You still think you don't have to pay?

5 A Well, I think SJC has an obligation under its  
6 assignment of proceeds or its security agreement under the  
7 judgment, but that's a different question than whether or not  
8 the property is pledged as collateral.

9 Q I didn't ask you if the property was pledged as  
10 collateral. Sir, I asked you if you had to pay. You think you  
11 don't have to pay?

12 A No. I think when the judgment -- when the judgment  
13 is collected there's an obligation under the security agreement  
14 that remains.

15 Q What about your obligation to the Antos parties?

16 A Which obligation specifically?

17 Q Well, what did you pay for the 51 percent in SHAC?

18 A Well, I put over a million dollars into that house so  
19 far, maybe under a million dollars, but close to it.

20 Q Sir, that's not what you paid to the Antoses. That's  
21 what you put in the house. I had asked you a very specific  
22 question. What did you pay the Antoses for your 51 percent of  
23 the property?

24 A The Antoses were upside down millions of dollars in  
25 equity in the property. There was nothing to be paid to them

1 other than to alleviate some of their liability.

2 Q So you paid nothing to them; is that correct?

3 A They didn't have any equity. They were upside down  
4 by millions.

5  
6 Q Sir, I'm not asking about equity. I'm just asking  
7 you simple questions. Hopefully you can answer yes or no so we  
8 can get off of this merry-go-round quicker than we're going to  
9 get off the way you're answering questions. Please answer yes  
10 or no when I ask a yes or no question.

11 You paid the Antos parties nothing; correct?

12 A Correct.

13 Q So they have received no consideration for the  
14 51 percent that you got in Spanish Heights Acquisition Company;  
15 isn't that correct?

16 A That is not correct.

17 Q Tell me what you paid them.

18 A Consideration comes in forms other than direct cash  
19 payments to the Antoses.

20 Q And isn't the very same thing true of the deed of  
21 trust that the Antos Trust pledged for the benefit of CBC I?

22 A No.

23 Q Okay. Even though the documents recite that; no?

24 A The Antoses got specific consideration in the form of  
25 relief. But the Antos Trust got no consideration for issuing

1 that deed of trust. CBC testified to it. The Antoses  
2 testified to it, and, yes, there's language in the document  
3 that says for consideration, but it doesn't say what  
4 consideration, and the testimony both in the depositions and  
5 here at trial is that no consideration had been provided.

6 Q So you know that's not what their testimony is, sir.  
7 You heard Mr. Antos testify --

8 MR. GUTIERREZ: Objection.

9 BY MR. MUSHKIN:

10 Q He testified --

11 MR. GUTIERREZ: -- misstates testimony.

12 THE COURT: Overruled.

13 BY MR. MUSHKIN:

14 Q He testified that he got exactly what he wanted. He  
15 got an extension of credit; correct?

16 A He got a benefit individually, but he didn't  
17 testify --

18 Q And the Antos --

19 A I'm sorry. You didn't --

20 THE COURT: Wait. You've got to let him finish.

21 THE WITNESS: He did not testify that the Antos Trust  
22 received a benefit. He testified that he as a beneficiary of  
23 the trust individually got a benefit, and KCI got a benefit  
24 because they got additional extensions of credit for their  
25 working capital.

1 BY MR. MUSHKIN:

2 Q And the document itself recites that the trust and  
3 its beneficiaries receive both the direct and indirect benefits  
4 from the forbearance agreement; isn't that correct?

5 A Correct.

6 Q Thank you.

7 Now, you keep making an issue about this being a  
8 commercial note. You always knew it was a commercial note;  
9 correct?

10 MR. GUTIERREZ: Objection. Asked and answered.

11 THE WITNESS: Not correct.

12 THE COURT: Overruled.

13 BY MR. MUSHKIN:

14 Q So and when I asked you a question at your  
15 deposition,

16 It is a third-position mortgage. It's  
17 reported -- recorded against the property.  
18 Let's go back to the first representation  
19 executed by KCI Investments and Preferred  
20 Brands; correct?

21 Answer, I said commercial note.

22 So you knew right from the get-go it was a commercial  
23 note; isn't that correct?

24 A No, that's not what my testimony in the deposition  
25 says either.

1 MR. MUSHKIN: I would bring the Court's attention to  
2 page 48 of his deposition.

3 THE COURT: Okay.

4 BY MR. MUSHKIN:

5 Q Now, I asked you, And so because the Antos Trust was  
6 not a borrower, you believe that's a defense to payment under  
7 this agreement.

8 And Ms. Barraza objected as to form.

9 And do you know what your answer was?

10 A I do not.

11 Q To the extent it calls for a legal conclusion, I  
12 would object, but that's my belief, and you can -- that you  
13 can't pledge a deed of trust against a loan where there's no  
14 obligation to pledgor. That's not a mortgage.

15 Do you see that?

16 A I don't have that testimony in front of me.  
17 If you could slide it over.

18 Q Oh, thank you.

19 Do you see that?

20 A Yes.

21 Q And is that still your belief today?

22 A Yes.

23 Q What is the basis of that belief, sir?

24 A My experience in real estate.

25 Q Any other?

1           A     My understanding of what a deed of trust comprises  
2 of.

3           Q     So you keep -- you said over and over again that the  
4 trust owed zero, and I've shown you the documents that obligate  
5 the trust. Is that still your testimony today that in view of  
6 the certificate of trust that authorizes the deed of trust and  
7 in view of the recitation of consideration, both direct and  
8 indirect, it's still your testimony that the trust is not  
9 obligated to pay anything?

10          A     No.

11          Q     So the trust is obligated to pay?

12          A     Yes, but just not -- it didn't secure its debt with  
13 the real property.

14          Q     So you made a separate promise to the Antoses, both  
15 individually and as the trust in the forbearance agreement;  
16 correct?

17          A     I didn't make promises to the trust to anybody, not  
18 the trust. The Antoses own the trust or are the beneficiaries  
19 of the trust.

20          Q     Well, the parties -- the Antoses are a party -- the  
21 trust is a party to the agreement; correct?

22          A     I believe so.

23          Q     And they're referred to as the Antos parties?

24          A     The Antos parties I think refers to Ken and Sheila  
25 Antos individually.

1 Q Oh, okay. You made a promise to them to pay the CBC  
2 I note; did you not?

3 A SJC and SHAC made a promise to pay the Antos Trust  
4 obligation under the deed of trust.

5 Q SHAC didn't make that promise, did they? SCJV (sic)  
6 did, didn't they?

7 A I'm not clear.

8 Q In fact, you made that promise in order to get your  
9 51 percent and become the irrevocable manager; isn't that  
10 correct?

11 A That's not correct.

12 Q Well, then how do you become the manager? How do you  
13 get your 51 percent? What did you pay for it?

14 A All the other aspects of the agreement.

15 Q And you didn't perform any of them, did you?

16 A Yes, I did.

17 Q You didn't get a quiet title, did you?

18 A I did pay the utilities. I did pay the repairs. I  
19 did pay the improvements. I did pay the first and second for  
20 almost a year now. Yeah, there's --

21 Q Sir --

22 A -- there's material performance under the contract.

23 Q Those promises you made to CBC I, sir, you have not  
24 fulfilled a single promise you made to the Antoses, have you?

25 A What promises do you think I made to the Antoses?

1 Q Quiet title? No?

2 A That was to CBC.

3 Q No. It's in the operating agreement, sir.

4 A So are the other performance issues that I --

5 Q Exactly. You made a separate promise to the  
6 Antoses --

7 A Your mask is --

8 Q -- and the Antos Trust to retire this obligation;  
9 isn't that true?

10 A So you said --

11 Q Yes or no, sir?

12 THE COURT: That's a yes or no, sir.

13 THE WITNESS: Can you ask the question again.

14 BY MR. MUSHKIN:

15 Q No, I can't. You heard it.

16 A No. I was hearing something different.

17 THE COURT: You're going to have to repeat it,  
18 please, Mr. Mushkin.

19 BY MR. MUSHKIN:

20 Q Isn't it true that you made a promise to the Antos  
21 parties to pay the CBC I obligation?

22 A SJC did.

23 Q Thank you.

24 Now, I asked you a question, and the question is --  
25 the first question is, well, how much do you think the note is



1 off?

2 The balance that is owed by the trust is zero. They  
3 are not a borrower. They are not a guarantor.

4 Do you recall that question and answer, sir?

5 A Not specifically, but I agree with it.

6 Q But that's false, isn't it?

7 A No.

8 Q We've shown you the guarantee of the trust.

9 A This proceeding is the first time I've seen it.

10 Q It recites all over these documents, doesn't it, that  
11 the Antos Trust owes this money?

12 A Well, it didn't prior to this document, which was the  
13 2017 document. The Antos Trust did not owe this money in 2014  
14 when it issued the deed, the deed of trust, and it didn't in  
15 2016 when it reconfirmed the deed of trust.

16 Q So what? What's the effect?

17 A The effect is the deed of trust is to secure, to  
18 provide security for an obligation under a different  
19 instrument.

20 Q Is it executed wrong?

21 A Well, I don't know if it's executed wrong or not. It  
22 just doesn't exist.

23 Q So you're just claiming this defect based upon your  
24 testimony. You have no other document to support it; is that  
25 correct?

1 A All of these documents support it.

2 Q Sir?

3 A They have the 2014 -- we have the 2000 --

4 THE COURT: Let him finish. Thank you.

5 THE WITNESS: We have the 2014 deed of trust. We  
6 have the note and the 10 amendments, none of which add the  
7 Antos Trust as a guarantor or a borrower. The first time the  
8 Antos Trust has a nexus to the note is in 2017, the year after  
9 it issued the deed of trust. So the deed of trust, when it was  
10 issued and when it was reconfirmed in 2014 and 2016 had no  
11 obligation to secure. There was nothing for the pledgor to  
12 secure.

13 Q So it doesn't matter that Mr. Antos is obligated as a  
14 guarantor, and he's the beneficiary? That has no consequence  
15 to you?

16 A That's defeats the purpose of trust.

17 Q And where do you come up with this understanding of  
18 trust law, sir?

19 A I mean, I think it's plain on the face; right? The  
20 Antos Trust would have to be a borrower or a guarantor to have  
21 an obligation for which it could secure.

22 Q Do you know what a living trust is, sir?

23 A Somewhat.

24 Q What is it?

25 A It's a -- it's an instrument that's used by

1 individuals to safeguard assets and separate assets from  
2 themselves individually.

3 Q Do you know that a revocable living trust has no  
4 separate existence?

5 A No.

6 Q Do you know that a revocable living trust has no tax  
7 return?

8 THE COURT: Separate and apart from the trustors.

9 BY MR. MUSHKIN:

10 Q Separate and apart from the trustors?

11 A Okay.

12 Q But you stand by your testimony that somehow the  
13 trust cannot obligate itself under this deed of trust. Is that  
14 your testimony?

15 MR. GUTIERREZ: Objection. Misstates the testimony.

16 THE COURT: Overruled.

17 THE WITNESS: That's my understanding that the trust  
18 would have to obligate itself and is not obligated by an  
19 obligation of the guarantors by an obligation of the  
20 beneficiaries of the trust outside of the trust itself.  
21 Otherwise every trust would be subject to obligations of the  
22 beneficiaries' pledges.

23 Q But you clearly promised the Antoses to pay this  
24 debt; correct?

25 A SJC has an obligation under its agreement when it

1 collects the judgment to pay the debt.

2 Q Where does it say that, that you only have the  
3 obligation --

4 A I think it's in the.

5 Q -- when it collects its judgment?

6 A I think it's in the forbearance agreement.

7 Q Show me. It's Exhibit 1.

8 A Or maybe the -- where's the security agreement?  
9 Which exhibit?

10 Security agreement, Exhibit 10. I'm going to look at  
11 that for a second.

12 THE COURT: Okay. Thank you for telling us.

13 THE WITNESS: All right. It's not that document.  
14 I'd have to go through the documents to find it.

15 BY MR. MUSHKIN:

16 Q Mr. Bloom, there's nowhere in any of these documents  
17 that says that the sole remedy for CBC or its successors is  
18 collection under that judgment, is there?

19 A I don't think it's the sole remedy.

20 Q In fact --

21 A CBC has cumulative remedies.

22 Q Thank you.

23 A So they can look to KCI. They can look to Preferred  
24 Restaurant Brands. They can look to the Antoses individually.

25 Q And they can look to the property that was secured by

1 a deed of trust. Thank you, sir.

2 A No, they cannot.

3 Q That's -- I'm talking about the third. The agreement  
4 by SJCv to pay off the third within 24 months is a condition to  
5 the conveyance of the property to SHAC; isn't that correct?

6 Do you know what your answer was?

7 A What's that?

8 Q Well, what's your answer today?

9 A Today, my answer today is there was no third.

10 Q Okay. With the caveat that there is no third, and it  
11 was misrepresented, the commercial note to KCI was  
12 misrepresented by CBI as constituting a third mortgage and two,  
13 subject to the extension by the parties. Yes.

14 Do you see that answer?

15 A I don't have the transcript in front of me.

16 THE COURT: Could you put it on the Elmo, please.  
17 That's lovely. Thank you.

18 MR. MUSHKIN: Sorry, Judge.

19 THE COURT: That's all right.

20 BY MR. MUSHKIN:

21 Q So the first caveat is there is no third; right?

22 A Correct.

23 Q And you're claiming it was misrepresented as a  
24 commercial note; right?

25 A No. It was misrepresented as a mortgage when, in

1 fact, it was a commercial note.

2 Q And, in fact, it is a third mortgage; isn't it, sir?  
3 It's the third deed of trust on the property?

4 A No. It's a commercial loan to a restaurant. It's  
5 not a mortgage. There is a deed of trust by an entity that  
6 owns the property that's not party to the commercial loan to  
7 the restaurant. It's very different from a third mortgage.

8 Q So then why did you say yes at the end of this  
9 answer?

10 A Can you put it back up so I can see it.

11 Q You had caveats, and then you said, yes, but the  
12 conveyance is subject to the condition that SJCV pay off the  
13 note.

14 That's not what I'm talking about. It's talking  
15 about the payment of the third. The agreement by SJCV to pay  
16 off the third within 24 months is a condition to the conveyance  
17 of the property to SHAC; isn't that correct?

18 And then you give me a bunch of caveats, and then  
19 ultimately you say yes; isn't that correct?

20 A Okay.

21 Q So the payment of the CBC obligation was a condition  
22 precedent to the transfer of property to SHAC. That is a true  
23 statement; correct?

24 A Had there been a third mortgage, yes.

25 Q That's not what I said, sir. I said the payment of

1 the obligation to CBC I is a condition to precedent -- the  
2 eventual payment is a condition precedent to the transfer of  
3 the real property from the Antos Trust to SHAC?

4 A I don't think it's a condition precedent.

5 Q Then why did you say yes?

6 A Well, because I still think that SJC has an  
7 obligation. It's just the house isn't pledged as collateral.  
8 Those are two separate issues that you're conflating.

9 Q When I asked you if you agreed to pay those balloon  
10 payments, do you know what your answer was?

11 A I do not.

12 Q The answer -- what's your answer today? Are you  
13 obligated? Is SJC obligated to pay those balloon payments?

14 A I think so.

15 Q If you're obligated to make those payments, why  
16 haven't you made them?

17 A Because I think the payments are going to be made out  
18 of the liquidity event that was discussed.

19 Q Where in this -- well, you -- let's talk about that  
20 for a minute, Mr. Bloom. You provided Mr. Hallberg with  
21 various emails saying you were about to pay him, didn't you?

22 A Correct.

23 Q Why didn't you pay him?

24 A Because the liquidity events that were referenced in  
25 those emails didn't come to pass.

1 Q Well, but you didn't reference liquidity events in  
2 all the emails, did you?

3 A I think I did.

4 Q Well, let's take a look at 2717. It's part of 104.  
5 Do you see that email?

6 A I do.

7 Q That's from you, isn't it?

8 A I believe so.

9 Q And it's to Mr. Hallberg, and it's dated January  
10 22nd of 2018.

11 A Correct.

12 Q I'll read the relevant part:

13 Hi, Alan. All parties are en route to  
14 or have already arrived in Hong Kong.  
15 Closing this week for funding the hedge fund  
16 which is buying out our judgment out of their  
17 management fees. Subscription agreements  
18 drafted and being reviewed today and  
19 tomorrow. Signatures this week. Funding by  
20 February 16th, Chinese new year is the  
21 goal.

22 I have not yet seen the prefunded  
23 interest check. I am looking at a month end.  
24 I'm supposed to pick up a check from someone  
25 for 260 K this week against which I will



1 issue a CBC check.

2 Talking a little bit.

3 Did you send that email?

4 A I believe so.

5 Q Did you ever send CBC a check?

6 A No.

7 Q Why?

8 A I believe that was a litigation funding source that  
9 was -- there had been discussions about funding against the  
10 judgment, and ultimately they didn't fund.

11 Q Did you ever tell Mr. Hallberg that you didn't have  
12 the money?

13 A I believe so.

14 Q When?

15 A We had numerous phone conversations, but it would  
16 have been on or about that following week, whatever the day was  
17 in the email.

18 Q Did you ever send him an email?

19 A I don't recall. It would have been an email or a  
20 telephone call. Those were our two primary methods of  
21 communicating.

22 Q So let's take a look at 2913.

23 THE COURT: And this is still in 104?

24 MR. MUSHKIN: Yes, ma'am. Still in 104.

25 THE COURT: Just checking.

1 BY MR. MUSHKIN:

2 Q I'll try and make it a little easier for you by  
3 putting it up here.

4 A All right. Okay.

5 Q Have you ever seen this document?

6 MS. FOLEY: You need to move it --

7 MR. MUSHKIN: Oops. Sorry.

8 BY MR. MUSHKIN:

9 Q Have you ever seen this email before?

10 A (No audible response.)

11 Q Do you see that?

12 A I do.

13 Q And do you see that it references a complete set of  
14 executed documents from the closing this morning?

15 A I see that.

16 Q And did you get a complete set of documents?

17 A I got a set of documents.

18 Q Thank you. So I'd like to direct your attention to  
19 2929. Have you ever seen this document?

20 A I don't believe I have.

21 THE COURT: Drop it down a little.

22 THE WITNESS: The other direction.

23 THE COURT: Does that help, sir?

24 THE WITNESS: It does. Okay.

25 / / /

1 BY MR. MUSHKIN:

2 Q And can you see that this is March of '18?

3 A I do.

4 Q And this is regarding hazard insurance; is that  
5 correct?

6 A Yes.

7 Q Thank you.

8 (Pause in the proceedings.)

9 THE COURT: Mr. Gutierrez, put your mask back on.

10 MR. GUTIERREZ: I was getting a mint, Your Honor.  
11 I'm sorry.

12 BY MR. MUSHKIN:

13 Q Now, in regards to the insurance, there was quite a  
14 back and forth on this issue; is that correct?

15 A I believe so.

16 Q And for a while you had insurance in your personal  
17 name; is that correct?

18 A I gave -- yes.

19 Q And then it was after I became into the case and gave  
20 you several written demands you ultimately went and got  
21 insurance in the name of SHAC; is that correct?

22 A Well, after your first written request, I asked the  
23 insurance company to modify the policy, and ultimately they  
24 did.

25 Q Thank you. And that was in March of 2020; correct?

1 A Could be.

2 Q Thank you. I would direct your attention to 3226 of  
3 104.

4 A I don't believe I have that in my packet.

5 Q I'm just going to show you the first page.  
6 Have you ever seen this document before?

7 A If you can scroll down.

8 Yes.

9 Q And that is a recorded notice of default for failure  
10 to pay HOA assessments; is that correct?

11 A Correct.

12 Q You never did pay that, did you?

13 A No. I believe CBC paid that.

14 Q Thank you. Now, you promised on more than one  
15 occasion to pay that, didn't you?

16 A Not that I can recall. I think I had conversations  
17 with Mr. Hallberg, and they agreed to pay it, and add it to the  
18 balance.

19 Q Well, don't you recall the email I just showed you  
20 that said I'll take care of it?

21 A Oh. I'm sorry. I'm thinking of the taxes.

22 Q No. This is the assessments.

23 A Right.

24 Q You agreed to take care of it, didn't you?

25 A I believe so.

1 Q And then let's look at 3233, and this is to Ken  
2 Antos.

3 I indicated to Alan I would take care of  
4 this. I don't think I mentioned today. I'm  
5 jammed up the rest of the week. The NOD file  
6 provides no less than 90 days pursuant to  
7 NRS 116. I'll probably have time to cure it  
8 next week.

9 Do you see that?

10 A I do.

11 Q You didn't cure it, did you, sir?

12 A No.

13 Q That would be a no? You did not cure that, did you?

14 A That's correct.

15 Q Okay. Now let's take a look at the next one, and  
16 that's 3255. Do you see that? Do you recall seeing it?

17 A I don't recall seeing it, but that's my email  
18 address.

19 Q And it says the liquidity expected on March 5th and  
20 any, slash, all other sources. Do you see that?

21 A I do.

22 Q Isn't it true that you represented to Mr. Hallberg  
23 that you had multiple sources for payment of this obligation?

24 A That's correct.

25 Q But in your deposition, why did you keep answering,

1 when I asked this that you intended to pay only from the  
2 collection of the note?

3 A Can you show me in the deposition what you're  
4 referring to?

5 Q No. I'm asking you a question.

6 A Well, you're referencing the deposition. So I'd like  
7 to confirm that that's the testimony.

8 BY MR. MUSHKIN:

9 Q Sir, I --

10 THE COURT: Sir, do you recall one way or the other?  
11 If you don't recall, that's fine.

12 THE WITNESS: I don't. I don't recall.

13 THE COURT: Okay.

14 MR. MUSHKIN: That's fine. The deposition has been  
15 published.

16 We published the deposition. Is that correct, Your  
17 Honor?

18 THE COURT: Both volumes.

19 MR. MUSHKIN: Oh, yes.

20 MR. GUTIERREZ: So objection. Is there a cite that  
21 he has for (Indiscernible) or is he not going to --

22 THE COURT: He doesn't have to give him one.

23 MR. GUTIERREZ: Okay. I just want to make sure that  
24 the record is accurate of what he's referencing.

25 (Pause in the proceedings.)

1 BY MR. MUSHKIN:

2 Q Mr. Bloom, I like to direct your attention to 3341,  
3 part of Exhibit 4 -- 104.

4 Can you read that?

5 A I can.

6 Q And this is March 28th of '19. You're in the  
7 property about 18 months at this point; right? August of '17  
8 to March of '19?

9 A Okay.

10 Q Is there any mention in here of applying to assume or  
11 refinance the mortgage?

12 A No.

13 Q And did any of these sources of income come through,  
14 Mr. Bloom?

15 A Not yet.

16 Q And you don't have five and a half million dollars  
17 available to you today to retire this note, do you?

18 A I would have to free it up.

19 Q I didn't hear you, sir.

20 A I would have to free it up.

21 Q You don't have \$5 million of cash available to pay  
22 this note today, do you, sir?

23 A Not in liquidity.

24 Q Thank you. I want to direct your attention to 3349.  
25 Do you see that?

1 A I do.

2 Q And you're forwarding an email from Andersen Law  
3 Firm; is that correct?

4 A Correct.

5 Q And who are the Andersen Law Firm?

6 A The Andersen Law Firm is local counsel here in Vegas  
7 for First 100. They represented First 100 as a judgment  
8 creditor in our judgment debtor's bankruptcy petition.

9 Q And you were never able to collect anything; is that  
10 correct?

11 A Not yet.

12 Q Thank you. Now, you claim to have some sort of  
13 copper powder; is that correct?

14 A Correct.

15 Q Where is it?

16 A It's in a storage facility here in Las Vegas.

17 Q What's the address?

18 MR. GUTIERREZ: Objection, Your Honor. Relevance.

19 THE COURT: Sustained.

20 MR. MUSHKIN: Well, Your Honor, I have a security  
21 interest.

22 THE COURT: The address -- well, but if you want  
23 access to that, we'll go through a different kind of procedure,  
24 if you have a judgment debtor exam. I understand you have a  
25 security interest, but that doesn't mean you get the location



1 of it at this point in time.

2 BY MR. MUSHKIN:

3 Q Isn't it true that that isotope was stored in your  
4 home in the garage?

5 A It has been on occasion.

6 Q And it was recently moved; is that fair?

7 A It's moved in between my home and storage locations.

8 Q And have you managed to sell any of that?

9 A Not yet.

10 Q Why?

11 MR. GUTIERREZ: Objection. Relevance.

12 THE COURT: Overruled.

13 THE WITNESS: It's a fairly rare isotope that has a  
14 handful of end users and very rare. Very little of it exists.  
15 So it's extremely valuable, but it's not very liquid. It's not  
16 like gold or silver.

17 Q How do you know this?

18 A Because we've been dealing with this for years trying  
19 to liquidate it.

20 Q So I'm going to direct your attention to 3372,  
21 another email from you to Mr. Hallberg. Who is Benjamin Wei?

22 A Benjamin Wei is somebody out of San Francisco that  
23 contacted me that he was a victim in a transaction of our  
24 judgment debtor, and he read about our judgment.

25 Q So you represent to Mr. Hallberg in April of '19

1 that, We seized 861 million in copper and found 321 million --

2 I take it MM means million; correct?

3 A Correct.

4 Q -- in Bitcoin.

5 A Correct.

6 Q Have you been able to -- do you still have the  
7 Bitcoin?

8 A We found it on a computer that our judgment debtor  
9 had in a Bitcoin wallet. We have not been able to access it.

10 Q So you didn't find 320 million in Bitcoin, did you?  
11 MR. GUTIERREZ: Objection. Misstates the testimony.  
12 THE COURT: Overruled.

13 You can explain.

14 THE WITNESS: Yes. We found a significant sum of  
15 Bitcoin in our judgment debtor's cryptocurrency wallet, and  
16 we're trying to access it.

17 BY MR. MUSHKIN:

18 Q You have not been able to access it until now, have  
19 you, up through today?

20 A As of today we have not accessed it.

21 Q And when did you find it?

22 A Sometime around the date of that email.

23 Q Back in April of '19?

24 A Correct.

25 Q So, Mr. Bloom, do you recall our discussion at your

1 deposition about the commission agreement for the sale of this  
2 property of the house to SHAC?

3 A Not really.

4 Q And do you recall that I asked you who was obligated  
5 to pay the commission? Do you recall that?

6 A I don't.

7 Q And do you recall testifying that the seller was  
8 obligated to pay the commission?

9 A I don't recall that testimony.

10 Q You don't recall any of it?

11 A Not that particular line of questions.

12 Q And you don't recall me pointing out the commission  
13 agreement to you where it says that the buyer is to pay the  
14 commission on the transaction?

15 A I'm not denying that the conversation took place.  
16 Clearly there's a record on the transcript. I just don't  
17 recall it.

18 Q You don't recall any of this?

19 A No.

20 Q Do you know today who is supposed to pay the  
21 commission for the sale of the property to SHAC?

22 A I'm not sure.

23 Q I'm going to show you 3412.

24 Do you recall receiving this?

25 A I don't recall receiving it, but that's my email

1 address.

2 Q Isn't it true that as of November 29th of '19 you  
3 were in arrears --

4 MS. FOLEY: The book's going to fall. Mike, the  
5 book's going to fall.

6 BY MR. MUSHKIN:

7 Q You were in arrears pursuant to the --

8 THE COURT: Good catch.

9 MR. GUTIERREZ: Great catch. That was good.

10 MR. MUSHKIN: Thank you, Karen. That would have gone  
11 everywhere.

12 BY MR. MUSHKIN:

13 Q You were in arrears under the forbearance agreement  
14 of \$70,360.94?

15 A I don't believe so. I think that relates to a  
16 prepayment that was coming up.

17 Q The email says.

18 Per our earlier call, here's what I'm  
19 coming up with. Let me know if there's  
20 anything -- if you're arriving at the same  
21 number.

22 Do you see that?

23 A No. You took the page away.

24 Q Do you see it now?

25 A I do.

1 Q Did you respond to this in any way?

2 A Can you slide it down a little.

3 Yeah. So this is definitely for prepayments of rents  
4 at the end of the second extension -- or at the end of the  
5 second year of the initial term. I don't know if I responded  
6 or not.

7 Q Sir, this isn't for prepayments. This shows that  
8 you're in arrears as of 11/29/19, of 70,360.94; isn't that  
9 correct?

10 A No, it's not arrears. It's 11/29/19, is the email,  
11 and it's amounts owing to 3/31 of 2020. So that's a  
12 prepayment. That's for the next however many months.

13 Q Well, that's 25 of it. Fair?

14 A That's 25 of it, and the amount owing --

15 Q And the amount owing is 70,000; correct?

16 A For a prepayment.

17 Q No. It says you're in arrears. Amount owing to  
18 12/27/19, forty-four, six, seventy-nine, sixty-eight.

19 A But the email is dated prior to 12/27/19.

20 Q I appreciate that, sir. So your December payment  
21 would be 8,600 -- \$8,560.42, and you were in arrears four  
22 months at that time, weren't you?

23 A So we were at the end of the second year's  
24 prepayment, and we were discussing an extension and a continued  
25 prepayment for the extension.

1 Q It's a yes or no. You were in arrears four months as  
2 of the date of that email; correct, sir?

3 A No.

4 Q Explain it to me.

5 A Okay. I had prepaid for the second year, and we went  
6 through a period of several months figuring out what we were  
7 going to do, and this was for under the extension rents that  
8 would be due, both from the period of the end of the prepay to  
9 the current point and forward as future prepayments. But, no,  
10 it wasn't arrears because we didn't have a controlling document  
11 at that point.

12 Q Sir, this is 11/29 of '19; correct?

13 A Right.

14 Q And as of that time, it says you owe forty-four, six,  
15 seventy-nine, sixty-eight, through 12/27 of '19; isn't that  
16 correct?

17 A Correct.

18 Q So there's one month that's not technically due, but  
19 there are four months approximately that are in arrears as of  
20 11/29/19; isn't that correct?

21 A Yeah. I had prepaid the year through -- I guess it  
22 would be July or August.

23 Q Thank you.

24 A All right. So --

25 Q So by November you were in arrears four months?

1 That's correct, isn't it, sir?

2 A No, it's not arrears because we were figuring out  
3 what we were going to do to structure it. Once we had an  
4 agreement, then it became rent due at the point of the  
5 agreement.

6 Q Sir?

7 A And then the agreement contemplated forward rent, as  
8 had been the case for the prior two periods.

9 Q Mr. Bloom, you had a forbearance agreement for 24  
10 months; correct?

11 A Correct.

12 Q And you had paid only through July of the second  
13 year; correct?

14 A Which would be the end of the 24th month.

15 Q No, sir. The 24 months goes farther, doesn't it?  
16 Doesn't it go until August?

17 A Well, then it would've been through August.

18 Q So from August on you're in default; is that fair?

19 A Until we signed the extension.

20 Q Until you signed the extension. Thank you very much.  
21 So can you locate in your book 3417.

22 A Yes.

23 Q And you see this is a redline; is that correct?

24 A I do.

25 Q I direct your attention to paragraph 5.

1 A Which page?

2 Q 3418.

3 A Okay.

4 Q And a condition to extension, membership pledge  
5 agreement executed by SJCV and Antos Trust shall remain in  
6 effect, and the execution of this amendment shall not be  
7 considered a waiver by CBC of the rights under the membership  
8 pledge agreement. Do you see that?

9 A I do.

10 Q Do you see any redline changes to that?

11 A I do not.

12 Q Thank you. And you see on page 8 where it says  
13 options to extend have terminated? B1.

14 A Yes.

15 Q Do you see any redline there?

16 A I do.

17 Q Where?

18 A The last sentence of B1 where it says the parties  
19 acknowledge the conditions to which the options were subject  
20 have been satisfied, and the SJC options have been exercised.

21 Q Right.

22 A That's the top of Bates page --

23 Q Okay. There's one word, not have been exercised.  
24 Those are the changes; right?

25 A Right.



1 Q Okay. Nothing about substitute security or anything  
2 like that; right?

3 A No.

4 Q Thank you. And do you recall when you executed the  
5 amended forbearance agreement?

6 A I do not.

7 Q All right. Now let's take a look at March 18th  
8 exhibit -- that's 3456. Can you pull that one up.

9 A Okay.

10 Q And it's sort of in the middle of the page. It says,

11 Just an update. We had a visit this  
12 week from representatives. The Chinese  
13 government for the purchase of copper  
14 isotopes. They wanted it and wanted it to  
15 physically verify that the quantity we  
16 represented actually existed.

17 The second bullet point.

18 We are 30 to 60 days out from  
19 \$180 million investment tax credit  
20 monetization on 4100 mobile solar generators  
21 worth 150 K each.

22 Final,

23 I am negotiating refinancing of all  
24 three loans now. We are with the recent Fed  
25 rate drop to zero percent, it's getting

1 easier to negotiate this refinance.

2 As you may or may not be aware, 5116  
3 Spanish Heights Drive, two doors over on the  
4 same side of the street, comparable, just  
5 sold for 4,950,000 on 12/20/19, after 203  
6 days on the market. I really believe that an  
7 amicable resolution is around the corner  
8 which will provide a hundred percent recovery  
9 for CBC Partners despite the property being  
10 upside down in equity by 2 million, and it is  
11 a much shorter time frame than would be  
12 otherwise realized through an adversarial  
13 action, and I'm willing to bear all costs  
14 from April forward in order to prevent CBC no  
15 longer need front any money during these  
16 final months.

17 I look forward to hearing back from you  
18 soon and hopefully with acceptance of this  
19 proposal.

20 Do you see that?

21 A I do.

22 Q Did you get the tax credit monetization?

23 A We did not.

24 Q Did you sell the isotope to the Chinese government?

25 A Not yet.

1 Q And did you refinance the loans?

2 A No.

3 Q And have you provided any evidence of effort to so  
4 refinance?

5 A No.

6 Q Thank you.

7 All right. I'm going to show you 3459. This is  
8 March 20 of 2020. Do you recall sending this email?

9 A I don't, but that's my email address, and I'm sure I  
10 sent it.

11 Q So the negotiations for further extension have broken  
12 down at this point; is that correct?

13 A I believe so.

14 Q And you've been advised to communicate solely with my  
15 office; is that correct?

16 A I had been requested to communicate with you for  
17 questions.

18 Q And here you are communicating with Alan again:

19 Hi, Alan. You know, sometimes the  
20 universe just works in our favor. We were  
21 just approached by SPAC on NASDAQ with  
22 200 million in cash. They formed in 2018 and  
23 have a deadline to close the acquisition no  
24 later than June 10th, 2020, or the SPAC is  
25 going to be dissolved with millions in

1 penalties. They are -- they had an  
2 acquisition that just fell through, and they  
3 are pursuing us pretty aggressively. I am on  
4 with their co-CEOs. One is out of Sac  
5 (phonetic) and more recently Steve Cohen's  
6 family office, and as I'm typing this  
7 email --

8 I'm sorry. I may have skipped -- no.

9 I'm in touch with their co-CEOs. One is  
10 out of Sac and more recently Steve Cohen's  
11 family office as I am typing this email.

12 So as the property -- so as to the  
13 property, as there is a moratorium on any  
14 foreclosure activity right now, nothing is  
15 happening for the next 90 days I would  
16 venture. Even a nonjudicial foreclosure  
17 would require 90-day notice of default  
18 starting after the moratorium is lifted and  
19 then an additional 30-day notice if opposed.  
20 It could be forced to a judicial foreclosure,  
21 and then a foreclosure start might force a  
22 Chapter 11 restructure for Spanish Heights  
23 Acquisition Company, which would cause a cram  
24 down and hurt your ability to sell the note  
25 or force reduction on the face value.

1           Either I can pay the first and second  
2           for the next three months under an extension  
3           or CBC can absent an extension. Either way  
4           it looks like I will have the funds from SPAC  
5           if nothing else by June.

6           I'm trying to get CBC every dollar, and  
7           I'm hoping that CBC acts rationally in its  
8           own best interest. It would seem to me that  
9           if you are looking to sell the note an  
10          extension and resultant performing note would  
11          sell better than a nonperforming note which  
12          is upside down in equity and subject to cram  
13          down. Help me help you.

14          Talk soon, buddy.

15          Did you write that email?

16          A     I believe I did.

17          Q     And did you ever get the 200 million in cash?

18          A     This doesn't say that I was getting 200 million in  
19          cash?

20          Q     It says, We were approached by SPAC on NASDAQ with  
21          200 million in cash. That's what it says, sir.

22          A     Right. So and SPAC is a "spack." It's a special  
23          purpose acquisition company. It's an entity that goes public  
24          and raises cash and looks for a venture. So that's not  
25          intended to say that I had \$200 million coming to me from the

1 SPAC, but that that entity had \$200 million in cash.

2 Q Did you get any money from the SPAC?

3 A No. We didn't fit their profile for --

4 Q Thank you.

5 A And by the way, this email was in response to Alan's  
6 email 15 minutes earlier. So this was not in spite of  
7 instructions not to contact Alan.

8 Q All right. We've already gone over the July 21, '17,  
9 email. I don't want to repeat that.

10 You don't dispute that you owe the property taxes;  
11 correct?

12 A That SHAC owes the property taxes.

13 Q Sorry. SHAC owes them. You don't dispute that, do  
14 you?

15 A I do not.

16 Q Okay. Now, let's take a look at 3626. No, I take  
17 that back -- oh, yes, that is correct.

18 Would you take a look at 3627.

19 Do you see where at the second paragraph you offer  
20 \$150,000 one-year reserve?

21 A I do.

22 Q And then do you see the list of items that set forth  
23 that amount?

24 A I do.

25 Q Almost one forty-three, five, thirty-nine,

1 twenty-two?

2 A I do.

3 Q And did you ever provide that reserve?

4 A This was that security account that we referenced  
5 earlier. So this was an initial proposal from July of 2017  
6 that ultimately turned into a prepayment instead.

7 Q The answer is no, you never provided it, did you?

8 A There was nothing to reserve against. It was  
9 prepaid.

10 Q Now, you know in March -- I'm sorry, in December  
11 of '19, you agreed again to create the reserve account in the  
12 amended forbearance agreement. You acknowledge that; right?

13 A That's what the document reflects --

14 Q Thank you.

15 A -- but that's different than the parties agreed to.

16 Q And you never did create that 150,000 reserve, did  
17 you?

18 A As with the prior year, we prepaid the year. So  
19 there was no requirement to establish a reserve. And, in fact,  
20 Bank of America wouldn't let us.

21 Q That would be a yes, you never funded the account,  
22 did you?

23 A Correct.

24 Q I may have asked you this. You don't -- did you tell  
25 me you didn't recall who was to pay the commission?

1 A I did not. I don't recall.

2 Q You do not recall?

3 A No.

4 Q Do you know who Gavin Ernstone is?

5 A I do.

6 Q And do you recall the testimony and the deposition  
7 where I took you through the commission agreement where it said  
8 that the buyer is to pay the commission?

9 A I don't really have a very good recollection of that  
10 conversation, but I --

11 Q Do you have any reason to dispute that the commission  
12 agreement says that the buyer will pay?

13 A No.

14 Q So you do not dispute it?

15 A I do not dispute it.

16 Q Thank you. Though you testified that it was the  
17 seller's obligation.

18 A I would imagine that was my understanding at the time  
19 of the testimony.

20 Q Okay.

21 A Or at least my recollection during the testimony.

22 Q Now, are you aware that there were arrears on the  
23 first and second as well?

24 A At what point in time?

25 Q At the time in September, '17.



1           A     No, I don't think I was. At the time we entered the  
2 agreements?

3           Q     Well, it's true that CBC undertook to make the  
4 payments on the first and second; correct?

5           A     That's my understanding.

6           Q     And do you recall why they did that?

7           A     They represented it as a protective advance.

8           Q     Wasn't it true that they had contacted City National  
9 and asked them for a standstill?

10          A     I don't know about the conversations with City  
11 National.

12          Q     You didn't receive the emails?

13          A     Not that I recall. If you have a specific exhibit  
14 you want to look at, I'd be happy to.

15          Q     I just want your recollection, sir.

16          A     Not that I recall.

17          Q     Mr. Bloom, do you know how much is due on the second  
18 loan on the property?

19          A     Approximately.

20          Q     Approximately what?

21          A     Just under 600,000.

22          Q     Would \$584,079.35 sound right?

23          A     At some point in time. It's been --

24          Q     Yeah, I agree. Do you know when that's due and  
25 payable?

1 A I believe March 31st.

2 Q So now the second is due and payable; is that  
3 correct?

4 A Not yet.

5 Q No, as of March, the loan will be due and payable;  
6 correct?

7 A I believe so.

8 Q And have you made arrangements to pay that off?

9 A I'm in discussions with the bank about having  
10 somebody purchase the note from me.

11 Q But you haven't paid it off? You haven't made  
12 arrangements to pay it off?

13 A No. I've made arrangements to purchase it.

14 Q And do you have good funds in your possession of  
15 \$584,079.35?

16 A The entity that I made arrangements to purchase it  
17 does, yes.

18 Q I'm not asking if the entity does, sir. I'm asking  
19 if you do.

20 A I have access to capital to purchase that note.

21 Q Where?

22 A Through my relationships.

23 Q Oh. And but do your relationships know the number of  
24 judgments that you have against you personally?

25 A That would be zero and, yes.

1 Q Zero?

2 A Yes.

3 Q You don't have a tax lien?

4 A The tax lien was paid.

5 Q Your testimony to this Court today is that all your  
6 tax liens are paid?

7 A To the best of my knowledge.

8 Q Okay. Now, do you know in '17 that there were tax  
9 arrears?

10 A On this property?

11 Q Yeah, on this property.

12 A I'm not sure. I'm not sure if I knew it at the time.

13 Q Isn't it true that City National advanced money to  
14 pay the prior property taxes?

15 A I believe so, but I don't know for what period of  
16 time.

17 Q Thank you.

18 THE COURT: So we've got 13 minutes until we break.  
19 We're coming back at 9:30 tomorrow, and if we don't finish  
20 tomorrow, we're coming back Tuesday at 10:00.

21 MR. MUSHKIN: Today is Tuesday; right? Yeah?

22 THE COURT: Wednesday --

23 MR. MUSHKIN: Today is Wednesday?

24 THE COURT: -- is tomorrow?

25 MR. MUSHKIN: Wednesday is tomorrow. We don't get

1 Thursday?

2 THE COURT: Oh, yeah, you get Thursday.

3 Is today Tuesday?

4 MR. MUSHKIN: Stop doing this to me. Stop it. I  
5 confuse easily.

6 THE COURT: I am --

7 MR. GUTIERREZ: I thought she pulled Thursday from  
8 us.

9 MR. MUSHKIN: What's going on here?

10 THE COURT: So tomorrow you're 9:30, and Tuesday -- I  
11 mean Thursday, Thursday it looks like -- what's that thing  
12 that's on there Thursday? Is that a special setting on 9:30 on  
13 Thursday?

14 THE CLERK: No, that's empty, Judge.

15 THE COURT: It's empty?

16 THE CLERK: Yeah.

17 MR. MUSHKIN: It's a fake out.

18 THE COURT: 9:30 on Wednesday and Thursday, and then  
19 if you don't finish on Thursday --

20 MR. MUSHKIN: I will finish.

21 THE COURT: Then you will be Tuesday at 9:30.

22 MR. MUSHKIN: What happened to Friday?

23 THE COURT: Friday I have a personal appointment in  
24 the morning, and I can't move it. I tried.

25 MR. MUSHKIN: No problem. Whatever you want, Judge.

1 THE COURT: Okay.

2 MR. MUSHKIN: And if you'd like to end, it's a good  
3 point to break right now if you'd like to thirteen minutes --

4 THE COURT: No, I'd like to use 11 more minutes.

5 MR. MUSHKIN: I will be happy to use 11 more minutes.

6 BY MR. MUSHKIN:

7 Q Mr. Bloom, would you turn to 1232. That's going to  
8 be in a prior book. You have the second book. You need to go  
9 to the first book of emails.

10 A Do you have an exhibit number?

11 Q It's part of 104, and it's 001232. Do you see that  
12 email?

13 A I'm turning to it now. Okay.

14 Q So in Item 1, it asks, it says,

15 If I understand correctly, once a  
16 judgment is domesticated in any given  
17 jurisdiction, there's an automatic stay.

18 Do you see your answer? Is that your answer in red?

19 A I believe so.

20 Q How do you come to know that when you domesticate a  
21 judgment there's 120 day stay?

22 A Somebody -- well, somebody must have told me that,  
23 one of the attorneys that was working on the collection of the  
24 judgment.

25 Q Then down a little farther it says,

1                   At the time of the writ service, the  
2                   defendant has approximately three weeks to  
3                   mount a defense based upon the assets covered  
4                   by the writ being exempt. Is this basically  
5                   correct?

6                   You say,

7                   Correct. An important note is that  
8                   during the period the account is frozen, and  
9                   all funds -- and should funds be released,  
10                  the financial institution assumes liability  
11                  for any funds.

12                  Do you see that?

13                 A     I do.

14                 Q     And where did you learn that?

15                 A     That would have been from one of the attorneys that  
16                 was working on the collection of the judgment.

17                 Q     Okay. Then it says.

18                         Offshore the judgment has been  
19                         domesticated in Hong Kong.

20                         Is that right?

21                 A     I think that was a question by Alan.

22                 Q     Are these your responses, sir?

23                 A     Yeah. What you read, Offshore the judgment has been  
24                 domesticated in Hong Kong, which is in black, would be part of  
25                 Alan's initial email.

1 Q Correct. And your response is in red; is that right?

2 A Correct.

3 Q Did you get anything in Hong Kong?

4 A No.

5 Q And then it says.

6 And is pending in Bahrain. An attempt  
7 that would be made to summary judgment in the  
8 Cayman Islands.

9 Do you see that?

10 A Correct.

11 Q Was that ever done?

12 A We were unable to recover assets from there.

13 Q So these are representations that you made to CBC in  
14 July of 17; is that correct?

15 A That's correct.

16 Q Thank you. You drafted the operating agreement; is  
17 that correct?

18 A Yes.

19 Q And did you have counsel?

20 A No.

21 Q And you provided a K-1 from First 100 Holdings; is  
22 that correct?

23 A Entirely possible. I do have a --

24 Q Thank you. Okay. You represented to Mr. Hallberg  
25 that there was \$6 million in -- verified in a Morgan Stanley

1 account; is that correct?

2 A What are you referencing?

3 Q I'm just asking for your recollection.

4 MR. GUTIERREZ: Your Honor, objection. Vague.

5 THE COURT: If you remember, sir.

6 Overruled.

7 THE WITNESS: No, I don't represent -- I don't recall  
8 that representation.

9 BY MR. MUSHKIN:

10 Q And didn't you represent to Mr. Hallberg that somehow  
11 the money had been transferred from Morgan Stanley to bank  
12 Muscat (phonetic). Does that refresh your recollection?

13 A I think you're talking about we found -- our  
14 investigators found our judgment debtor had money at Merrill  
15 Lynch and that he transferred it from a Merrill Lynch account.  
16 We're not sure where it went, but our investigators found that  
17 he had money at Bank Muscat as well.

18 Q And were you able to collect any of that money?

19 A No.

20 Q Now, are you sure you didn't have counsel during this  
21 time?

22 A I had not retained counsel for this, no.

23 Q I'd like to direct your attention to 1340. In the  
24 middle of the page.

25 THE CLERK: I'm sorry. Mr. Mushkin, what's the Bates



1 again?

2 MR. MUSHKIN: 1340.

3 And if it's all right with you, Judge, I'll end with  
4 this question.

5 THE COURT: That would be lovely.

6 MR. MUSHKIN: Mr. Bloom, I'd like you to look at the  
7 middle of the page where it says from Jay Bloom to Alan  
8 Hallberg dated August 1, 2017.

9 BY MR. MUSHKIN:

10 Q Okay. Below is Mr. Hallberg's email to you that I  
11 believe you're responding to, and it starts out,

12 Just got out of my meeting. We're okay  
13 to proceed on the terms as we discussed.

14 And you say,

15 That's great. Please let me know when  
16 your attorneys would like to speak with ours.

17 Mr. Bloom?

18 A Yes.

19 Q You sure you didn't have counsel?

20 A Yeah, I don't believe I retained counsel for  
21 preparing these documents for this transaction.

22 Q So why did you misrepresent that to Mr. Hallberg?

23 A It's not a representation.

24 Q It isn't a representation when it says would like to  
25 speak with ours?

1 A Yeah, no. I was considering getting counsel.

2 Q Oh, I see.

3 A And then subsequently I decided to do it myself.

4 Q I see.

5 A And Mr. Hallberg's attorneys, CBC's attorneys  
6 certainly had an opportunity to speak to counsel.

7 Q And in spite of all the emails to Mr. Gutierrez, he  
8 wasn't your attorney?

9 A No.

10 Q Okay.

11 A Not on this matter.

12 Q Okay. How many members are there to First 100?

13 A 40 or 50.

14 Q What type of entity is First 100?

15 A It's a limited liability company.

16 Q And is it registered with the Securities and Exchange  
17 Commission?

18 MR. GUTIERREZ: Objection. Relevance, Your Honor.

19 THE COURT: Overruled.

20 THE WITNESS: It filed a what's called a Reg D 506  
21 exemption, safe harbor exemption.

22 MR. MUSHKIN: Thank you.

23 Judge, I promise that was the last question for  
24 today. It will be the last question for today.

25 THE COURT: All right. How long do you think you're

1 going to need in addition to tomorrow? Tomorrow is Wednesday.

2 MR. MUSHKIN: I will finish -- I believe I will  
3 finish my examination of Mr. Bloom tomorrow without a problem.

4 THE COURT: Okay. Thank you.

5 And then what additional evidence do you think?  
6 Because I know Mr. Hallberg is leaving on Thursday.

7 MR. MUSHKIN: I have about 5 or 10 minutes with  
8 Mr. Hallberg. That's about it.

9 THE COURT: Okay.

10 MR. MUSHKIN: Just to confirm certain documents and  
11 this and that. I mean, with cross-examination I guess it could  
12 be an hour.

13 THE COURT: And then after that?

14 MR. MUSHKIN: That's it.

15 THE COURT: All right. Mr. Gutierrez, you're going  
16 to do some examination of Mr. Bloom after Mr. Mushkin finishes.  
17 You might ask some follow-up questions. Mr. Mushkin then  
18 rests.

19 Do you have additional witnesses you think you're  
20 going to call in a rebuttal case?

21 MR. GUTIERREZ: Not at this time, Your Honor.

22 THE COURT: So you guys think you'll be done on.  
23 Thursday?

24 MR. GUTIERREZ: Yes. Yeah, I think so.

25 (Proceedings recessed for the evening at 4:44 p.m.)

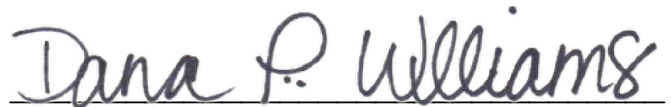
**CERTIFICATION**

I CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT FROM THE AUDIO-VISUAL RECORDING OF THE PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.

**AFFIRMATION**

I AFFIRM THAT THIS TRANSCRIPT DOES NOT CONTAIN THE SOCIAL SECURITY OR TAX IDENTIFICATION NUMBER OF ANY PERSON OR ENTITY.

**DANA L. WILLIAMS**  
LAS VEGAS, NEVADA 89183

A handwritten signature in dark ink, reading "Dana L. Williams", is written over a horizontal line.

DANA L. WILLIAMS, TRANSCRIBER

02/07/2021

DATE

**BY MR. GUTIERREZ:**

[12] 5/18 8/3 9/5 11/12  
12/5 13/5 16/1 16/17  
23/23 25/3 27/1 185/20  
**BY MR. MUSHKIN:**  
[93] 47/2 48/14 50/14  
52/23 53/7 53/20 54/20  
55/5 56/3 58/6 60/22  
62/1 63/1 63/4 64/17  
65/3 65/15 65/20 66/8  
67/1 68/8 68/23 69/20  
74/19 75/4 76/11 76/18  
81/9 81/21 84/3 84/19  
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213/12 230/6 233/9  
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**MR. GUTIERREZ: [76]**

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89/11 89/20 89/22 90/2  
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**MR. MUSHKIN: [166]**

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91/9 105/6 105/10  
105/12 106/17 106/19  
106/21 113/1 117/14  
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149/16 151/24 153/1  
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161/17 163/6 163/12  
164/18 164/20 165/21  
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236/14

**MS. FOLEY: [23]**

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42/25 43/2 43/14 44/11  
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137/19 151/23 151/25  
152/4 157/22 184/6  
203/6 213/4  
**THE CLERK: [10]** 4/3  
43/7 43/9 43/13 43/17  
49/12 89/16 229/14  
229/16 233/25

**THE COURT****RECORDER: [3]**

5/5 5/9

**THE COURT: [271]****THE MARSHAL: [3]**

44/3 44/6 91/4

**THE WITNESS: [91]**

3/16 3/19 4/5 5/4 5/8  
5/10 6/21 7/18 8/1 9/1  
12/3 15/22 16/14 21/20  
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105/11 105/13 106/23  
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**\$**

**\$100,000 [1]** 58/3  
**\$15,819.09 [1]** 155/7  
**\$150,000 [2]** 103/18  
223/20  
**\$180 [1]** 218/19  
**\$180 million [1]** 218/19  
**\$19,000 [2]** 102/4  
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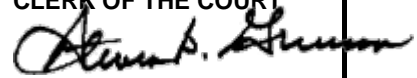
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TRAN

DISTRICT COURT  
CLARK COUNTY, NEVADA  
\* \* \* \* \*

SPANISH HEIGHTS ACQUISITION )  
COMPANY LLC, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
CBC PARTNERS I LLC, )  
 )  
 )  
Defendant. )  
 )  
AND RELATED PARTIES )

CASE NO. A-20-813439-B  
DEPT NO. XI

**TRANSCRIPT OF  
PROCEEDINGS**

BEFORE THE HONORABLE ELIZABETH GONZALEZ, DISTRICT COURT JUDGE  
WEDNESDAY, FEBRUARY 3, 2021

**PRELIMINARY INJUNCTION HEARING AND TRIAL - DAY 3**

APPEARANCES:

FOR THE PLAINTIFFS: JOSEPH A. GUTIERREZ, ESQ.

FOR CBC PARTNERS I: MICHAEL R. MUSHKIN, ESQ.

RECORDED BY: JILL HAWKINS, COURT RECORDER  
TRANSCRIBED BY: JD REPORTING, INC.

1 **LAS VEGAS, CLARK COUNTY, NEVADA, FEBRUARY 3, 2021, 9:39 A.M.**

2 \* \* \* \* \*

3 THE COURT: Nobody has been on the witness stand  
4 since you, Mr. Bloom. So that's clean.

5 MR. GUTIERREZ: Judge, are we on the record?

6 MR. MUSHKIN: No. Wait till we --

7 THE COURT: No.

8 THE COURT RECORDER: Yes. Yes.

9 MR. MUSHKIN: I don't think you're going to need  
10 much, Judge.

11 THE COURT: Jill says you're on the record.

12 MR. GUTIERREZ: Okay. Judge, I just -- I informed  
13 Mr. Mushkin I found out this morning Spanish Heights  
14 Acquisition Company, LLC, filed for bankruptcy, Case  
15 Number 21-10501. Attorney is James Greene from Greene Infuso.  
16 Obviously it's our request that --

17 THE COURT: Hold on. I've got to look at the  
18 caption. Give me a second. I've got to go back to the case.

19 MR. GUTIERREZ: Do you need the number, Judge?

20 THE COURT: No, no, not that. Our case.

21 MR. GUTIERREZ: Oh, okay. Give me a second.

22 (Pause in the proceedings.)

23 THE COURT: So which entity? Just Spanish Heights  
24 Acquisition Company, LLC, filed bankruptcy?

25 MR. GUTIERREZ: That's correct, Judge.

1 THE COURT: All right. I have a number of  
2 counterclaims and individuals who are also parties. So with  
3 respect to Spanish Heights Acquisition Company, LLC, the  
4 bankruptcy stay would apply.

5 Does anybody want to talk to me about other issues as  
6 to whether the stay extends beyond that?

7 MR. GUTIERREZ: Your Honor, I think the stay would,  
8 at least for purposes of this proceeding stay this proceeding  
9 because this is directly related to Spanish Heights Acquisition  
10 properties.

11 THE COURT: It doesn't apply to SJC Ventures, LLC, as  
12 a co-plaintiff.

13 MR. GUTIERREZ: It possibly it could --

14 THE COURT: How?

15 MR. GUTIERREZ: -- but the claims against them are  
16 intertwined with SHAC and also the claims against them are  
17 separate and apart from this proceeding and that are subject to  
18 a jury trial that aren't subject to this proceeding. I think  
19 the limited --

20 THE COURT: Well, I know. Because remember we only  
21 stipulated to the limited issues on this.

22 MR. GUTIERREZ: Correct. And the limited issues I  
23 think were surrounding procedurally, but we did -- we had filed  
24 a motion for preliminary injunction on the foreclosure sale of  
25 the house owned by SHAC, the corporate argument. And then we

1 agreed to this proceeding as far as these issues that would  
2 affect that foreclosure sale, and that's why I think the filing  
3 of the bankruptcy stays this proceeding.

4 Now, how it would effect --

5 THE COURT: It doesn't stay the proceeding. It only  
6 stays the proceeding as to the party that filed bankruptcy.  
7 There may be a situation where I'd decide to stay the remainder  
8 of the proceedings because things are inextricably intertwined.

9 MR. GUTIERREZ: I'm sorry. I misspoke, Your Honor.  
10 I mean the trial or whatever, the injunction hearing that we're  
11 doing today.

12 But I understand the Court's position on the other  
13 remaining claims and how they -- I think we'd have to walk  
14 through each one of those claims and sort of what's left and  
15 how they proceed and which ones are going in front of a jury  
16 trial.

17 But I think we've been really focusing on this  
18 injunction hearing that deals with the sale of the -- the  
19 foreclosure sale on the property. That is owned by SHAC, and  
20 that's now subject to the bankruptcy court. So.

21 THE COURT: Okay. Mr. Mushkin.

22 MR. MUSHKIN: I can't say I'm surprised.

23 THE COURT: Me neither, but I didn't think it would  
24 happen until after you guys left here after closing arguments.

25 (Pause in the proceedings.)

1 MR. MUSHKIN: I rarely agree with counsel. You are  
2 correct, Your Honor, that the matter is stayed only to Spanish  
3 Heights. The relief sought in the preliminary injunction is  
4 the, if you will, the stay of foreclosure. I believe that is  
5 related to Spanish Heights. And to that extent I agree.

6 As to the legal issues as they relate to SJCv, I  
7 agree with the Court. You can make findings that the contracts  
8 are valid as to the parties, et cetera. And the parties to the  
9 forbearance agreements are the Antos parties and the SJCv  
10 parties. So they are not stayed, and that legal conclusion the  
11 Court could come to without affecting the bankruptcy. To that  
12 extent I disagree.

13 I will do whatever the Court chooses.

14 THE COURT: What document is the 2017 forbearance  
15 agreement? Somebody remind me of the exhibit number.

16 MR. GUTIERREZ: Exhibit 1, Your Honor.

17 MR. MUSHKIN: Exhibit 1.

18 THE COURT: What?

19 MR. GUTIERREZ: Exhibit 1.

20 MR. MUSHKIN: Exhibit 1.

21 THE COURT: Give me a second. I need to look at that  
22 document because I need to identify the parties in my brain.

23 MR. GUTIERREZ: And for the record, Your Honor, it's  
24 also Exhibit 7, which is exhibit --

25 THE COURT: Oh, no. I've got it. I've got Exhibit 1

1 already.

2 MR. GUTIERREZ: Okay.

3 THE COURT: All right. The issue that Mr. Mushkin  
4 and I are concerned about is whether all of the claims that  
5 have been made that are related to this advanced trial on the  
6 merits on the stipulated issues are subject to the stay given  
7 the issues of Spanish Heights Acquisition Company.

8 Because Spanish Heights Acquisition Company is a  
9 signatory to the forbearance -- is a party to the forbearance  
10 agreement but apparently not a signatory, as we previously  
11 discussed, it would appear that it is appropriate to stay the  
12 action at this time.

13 The reason I am staying the action is because the  
14 limited stipulated issues that I am being asked to decide asked  
15 me to decide documents to which the entity who has filed  
16 bankruptcy is a party as well as the other parties.

17 While I do not believe the entire case is stayed and  
18 there may be other issues that we can proceed on -- the limited  
19 issues on the one-action rule, the merger, the validity of the  
20 promissory notes which preexist SHAC's involvement and the deed  
21 of trust which preexist SHAC's involvement, the deed of trust  
22 which preexist SHAC's involvement and the forbearance agreement  
23 to at least the 2017 forbearance agreement and the amendments  
24 which SHAC is a party to -- the Court believes it is  
25 appropriate to stay the matter at this time, reluctantly, but I

1 do recognize that the bankruptcy stay sometimes trumps this.

2 So I am going to say the entire matter for 30 days  
3 while you all try and figure out which items are appropriate to  
4 remain and to proceed.

5 There may be claims that we are able to proceed on,  
6 especially those are part of the counterclaims where Mr. Bloom  
7 as an individual is a party, and he would not be protected by  
8 the current bankruptcy stay regardless.

9 MR. MUSHKIN: Your Honor, we will immediately seek  
10 relief from the bankruptcy court and on shortened time and try  
11 and get back before you.

12 THE COURT: How much more time do you think you've  
13 got with Mr. Bloom?

14 MR. MUSHKIN: Well, I was going to try and get him  
15 done in two hours, Judge.

16 THE COURT: Okay. So you think you've got about a  
17 day's worth of stuff left?

18 MR. MUSHKIN: Yes, ma'am.

19 THE COURT: Okay.

20 MR. MUSHKIN: Could you project out perhaps 45 days  
21 to an available date so I can represent to the Court that we  
22 have an available date?

23 THE COURT: I have lots of available dates if you  
24 only need a day. Do you want me to give you one right now?

25 MR. MUSHKIN: You bet.



1 THE COURT: Hold on a second.

2 MR. MUSHKIN: So instead of 30 days out, we could  
3 literally have it, you know, set out -- well, I'll do whatever  
4 you want.

5 THE COURT: Do you think you can get a response from  
6 the bankruptcy court in 45 days?

7 MR. MUSHKIN: I believe so, Your Honor. It's set  
8 up --

9 THE COURT: My experience has not been that quick  
10 but, okay.

11 MR. MUSHKIN: Whatever the Court wants.

12 THE COURT: Hold on. I've got to do math.

13 How do you feel about March 15th?

14 Is that 45 days? No, not quite.

15 THE CLERK: You're right. It is 45 days.

16 THE COURT: March 15th at 10:00 o'clock, and I can  
17 give you the rest of the day.

18 MR. GUTIERREZ: Your Honor, our position on that is I  
19 think we have to let the bankruptcy court see how that plays  
20 out. I understand counsel has relief he can try to seek here.

21 THE COURT: Well, no. It's an available date.

22 MR. GUTIERREZ: Okay.

23 THE COURT: You're penciled in. It's not firm.

24 MR. GUTIERREZ: Okay. Thank you.

25 THE COURT: If the bankruptcy Court says, no, I'm not

1 doing it, and I'll try cases.

2 MR. GUTIERREZ: Your Honor, I think --

3 THE COURT: Can you close the business court  
4 settlement conference date on that date just in case.

5 MR. GUTIERREZ: Your Honor, I think you had a  
6 pretrial conference in a few weeks on this case. Is that also  
7 stayed until we decide what issues remain or?

8 THE COURT: The matter is stayed for only 30 days.  
9 So hold on. Let me go back and answer your question because  
10 you're going to make me do math.

11 MR. MUSHKIN: Your Honor, just so you'll know that  
12 the --

13 THE COURT: Wait. Wait. I'm doing math.

14 So the motion for summary judgment that is on is  
15 stayed. That was Mr. Antos's motion for summary judgment.  
16 That will be continued to that March 15th date tentatively.  
17 If the stay has not been lifted, we'll probably move it.

18 The February 18th pretrial conference is beyond the  
19 30 days that I've stayed the entire case.

20 March 9th is beyond this stay.

21 And March 15th, the first day of your trial stack,  
22 is beyond the stay.

23 MR. MUSHKIN: Your Honor, I would just point out to  
24 the Court that Mr. Antos's claim is not against SHAC. It's  
25 against SJCV.

1 THE COURT: I have it on for March 15th now.

2 MR. MUSHKIN: Oh.

3 THE COURT: Tentatively. Because remember I stayed  
4 the whole case.

5 MR. MUSHKIN: Ah.

6 THE COURT: For 30 days.

7 MR. MUSHKIN: Okay.

8 THE COURT: I am moving his motion from  
9 February 8th, which would be within that 30-day period, to  
10 March 15th at 9:00 o'clock.

11 MR. MUSHKIN: I'm a little slow on the uptake.  
12 Sorry.

13 THE COURT: I'm trying to manage the bankruptcy stay  
14 time, and the stay I've granted for 30 days only for the whole  
15 case.

16 I assume you guys will figure out both the bankruptcy  
17 issue and what claims are not intertwined, which the Spanish  
18 Heights claim --

19 MR. MUSHKIN: Well, I'll do my best, Judge.

20 THE COURT: Okay.

21 MR. GUTIERREZ: Thank you.

22 MR. MUSHKIN: Thank you very much, Your Honor.

23 THE COURT: Be well.

24 MR. GUTIERREZ: Thank you, Judge.

25 (Proceedings concluded at 9:51 a.m.)

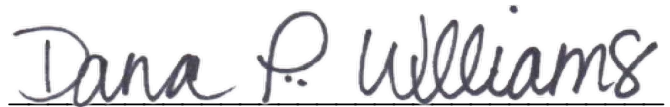
**CERTIFICATION**

I CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT FROM THE AUDIO-VISUAL RECORDING OF THE PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.

**AFFIRMATION**

I AFFIRM THAT THIS TRANSCRIPT DOES NOT CONTAIN THE SOCIAL SECURITY OR TAX IDENTIFICATION NUMBER OF ANY PERSON OR ENTITY.

**DANA L. WILLIAMS**  
LAS VEGAS, NEVADA 89183

A handwritten signature in dark ink, reading "Dana L. Williams", is written over a horizontal line.

DANA L. WILLIAMS, TRANSCRIBER

02/07/2021

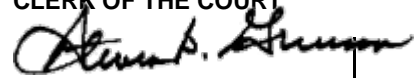
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TRAN

DISTRICT COURT  
CLARK COUNTY, NEVADA  
\* \* \* \* \*

SPANISH HEIGHTS ACQUISITION	)	
COMPANY, LLC,	)	
	)	
Plaintiff	)	CASE NO. A-20-813439-B
	)	
vs.	)	DEPT. NO. XI
	)	
CBC PARTNERS I, LLC,	)	
	)	
Defendant.	)	<b>TRANSCRIPT OF</b>
	)	<b>PROCEEDINGS</b>
	)	
<u>AND RELATED PARTIES</u>	)	

BEFORE THE HONORABLE ELIZABETH GONZALEZ, DISTRICT COURT JUDGE  
MONDAY, MARCH 15, 2021

**PRELIMINARY INJUNCTION HEARING AND TRIAL - DAY 4**  
**(VOLUME I)**

APPEARANCES:

FOR THE PLAINTIFFS: JOSEPH A. GUTIERREZ, ESQ.

FOR THE DEFENDANTS: MICHAEL R. MUSHKIN, ESQ.

ALSO PRESENT: KAREN FOLEY, Paralegal  
Mushkin & Coppedge

RECORDED BY: JILL HAWKINS, COURT RECORDER  
TRANSCRIBED BY: LGM TRANSCRIPTION SERVICE



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\* \* \* \*

1           **LAS VEGAS, NEVADA, MONDAY, MARCH 15, 2021, 10:27 A.M.**

2                           \* \* \* \* \*

3           THE COURT: Okay. All right. It's my understanding  
4 that the bankruptcy court has not ruled on the request to lift  
5 the stay, Mr. Mushkin, so I will be proceeding only against  
6 those entities who are not subject to the bankruptcy petition.  
7 However, my factual findings may relate to conduct of Spanish  
8 Heights because it relates to the findings I need to make  
9 related to the parties who have not filed for bankruptcy  
10 protection.

11           Mr. Gutierrez, anything you'd like to say before we  
12 get started?

13           MR. GUTIERREZ: Yes, Your Honor. Thank you for that.  
14 And I believe, as we stated before --

15           THE COURT: I was trying to cut to the chase.

16           MR. GUTIERREZ: Yeah, proceeding in any manner,  
17 because of how these claims are intertwined, would be a  
18 violation of the stay. In fact, recalling Mr. Bloom to the  
19 stand as a 30(b)(6) witness for Spanish Heights, who's in  
20 bankruptcy, and the court hasn't ruled to be in violation of  
21 the stay, you know, it's our position, Your Honor, that this  
22 hearing was related specifically to legal issues to prevent  
23 a foreclosure on the Spanish Heights property that's owned  
24 by Spanish Heights Acquisition Company, the debtor. And the  
25 determination of those legal issues would affect the debtor,

1 Spanish Heights Acquisition Company, and the court has not  
2 ruled on lifting that stay and I believe if we proceeded in  
3 any way today would violate that stay because the claims  
4 involving the other parties, Your Honor, are subject to a jury  
5 trial and those aren't really subject to the proceeding we  
6 have today. And I think we had limited the issues to the one  
7 action rule, the doctrine of merger, the defenses that were  
8 being raised to prevent foreclosure.

9           Once the Spanish Heights Acquisition Company filed  
10 bankruptcy, the stay stayed in place and proceeding in any  
11 way, especially with Mr. Bloom testifying on behalf of Spanish  
12 Heights Acquisition Company would be a violation of that  
13 bankruptcy court stay, Your Honor. I don't believe we can  
14 proceed in any way because I don't know that there's any  
15 claims for this proceeding that relate to the other parties,  
16 and that's where my confusion is. Those claims have been --  
17 a jury trial has been requested on some of those additional  
18 claims, Your Honor.

19           So I think if Mr. Mushkin decides to proceed today,  
20 he would be violating the stay by cross-examining Mr. Bloom on  
21 behalf of Spanish Heights Acquisition Company, especially in  
22 light of the bankruptcy court having not made its ruling yet.  
23 And in an abundance of caution I would request -- sorry, Your  
24 Honor.

25           THE COURT: It's all right.

1 MR. GUTIERREZ: I would just request that the  
2 proceeding be stayed until we get clarification from the  
3 bankruptcy court of what they're going to do. They may lift  
4 the stay partially for Your Honor to finish the hearing on  
5 the determination of the validity of the third deed of trust,  
6 and in that case we come back and finish. But until that  
7 determination is made, I don't want to in any way violate the  
8 stay or acquiesce to going forward. It could be a violation  
9 of the stay, Your Honor. Thank you.

10 THE COURT: There are five issues that the parties  
11 have stipulated to have resolved in this portion of the  
12 proceeding, which is a preliminary injunction hearing, as well  
13 as a bench trial on those related issues. Those five issues  
14 were the contractual interpretation and/or validity of the  
15 underlying secured promissory note between CBC Partners and  
16 KCI Investments and all modifications; the interpretation  
17 and/or validity of the claimed third position deed of trust  
18 and all modifications thereto and determination as to any  
19 consideration which provided an exchange for the deed of  
20 trust; contractual interpretation and/or validity of the  
21 forbearance agreement, amended forbearance agreement and all  
22 associated documents and contracts; whether the doctrine of  
23 merger applies to the claims at issue and whether the one  
24 action rule applies to the claims at issue.

25 I will continue to stick to the issues you've

1 stipulated to, but I understand your concern.

2 Mr. Mushkin, anything else you'd like to add?

3 MR. MUSHKIN: No, Your Honor.

4 THE COURT: Okay. So when we last were together,  
5 I believe Mr. Bloom was testifying.

6 MR. MUSHKIN: That's correct, Your Honor.

7 THE COURT: And we will not be taking any action  
8 today related to the assets or liabilities of Spanish Heights,  
9 but are simply getting information so I can resolve the five  
10 issues that have been agreed to and stipulated by the parties.

11 Everybody understand that?

12 MR. GUTIERREZ: Your Honor, to clarify, I think  
13 these five issues, which were stipulated before the  
14 bankruptcy, directly affect SHAC, and I don't understand how  
15 a decision could be made on five issues that directly affects  
16 SHAC, who is a debtor in bankruptcy and the stay hasn't been  
17 lifted. That's our position.

18 THE COURT: They don't just affect SHAC. I'm not  
19 going to take any action against Spanish Heights at all as  
20 part of my decision that I make in this progress. However,  
21 I may be making factual determinations that relate to them  
22 because it is necessary for me to decide the five issues which  
23 do not solely relate only to Spanish Heights but also relate  
24 to the other plaintiffs in this action, SJC Ventures Holding  
25 Company -- there's only one other plaintiff, SJC Ventures

1 Holding Company.

2 MR. GUTIERREZ: SJC Ventures Holding Company is the  
3 manager of SHAC, so it's going to affect SJC as much as it  
4 affects SHAC, who's the owner of the property. And I think --

5 THE COURT: There is no bankruptcy stay as to SJC  
6 Ventures Holding, nor is there a bankruptcy stay as to Mr.  
7 Bloom.

8 MR. GUTIERREZ: But the claims against Mr. Bloom are  
9 alter ego claims that have nothing to do with what we're  
10 proceeding for today. And so --

11 THE COURT: There are no -- there is no bankruptcy  
12 stay protecting Mr. Bloom.

13 MR. GUTIERREZ: I understand, but we're not going  
14 forward on any claims involving Mr. Bloom today. The five  
15 issues have to do with the foreclosure, which is a Spanish  
16 Heights property that's owned by SHAC. These are legal  
17 defenses to that foreclosure that, if Your Honor makes a  
18 factual finding then it's eliminating SHAC's defense to  
19 foreclosure. Now, the problem I have is if we go forward  
20 with Mr. Bloom, he obviously can't testify on behalf of SHAC,  
21 who's in bankruptcy. We have an incomplete record because now  
22 I had redirect prepared for him already before the bankruptcy  
23 filing that would have addressed some of the issues that were  
24 brought up during the cross that now if he's not able to  
25 testify on behalf of SHAC, who's in bankruptcy, how do we

1 have a complete record for Your Honor to make some of these  
2 rulings? That's my concern, Your Honor.

3 THE COURT: Do you think Mr. Bloom can't testify as  
4 an individual because of the bankruptcy?

5 MR. GUTIERREZ: He can absolutely testify as an  
6 individual.

7 THE COURT: Okay.

8 MR. GUTIERREZ: What I'm saying is he was called as  
9 the Spanish Heights Acquisition Company 30(b)(6).

10 THE COURT: We don't have 30(b)(6)'s in trial.  
11 That is a discovery rule. People get called as individuals.  
12 They may be as a result of their information associated with  
13 a particular party, but Rule 30(b)(6) only applies to  
14 depositions. This is not a deposition, this is a preliminary  
15 injunction hearing and an advance trial on the five stipulated  
16 issues. I understand your concern, Mr. Gutierrez, and I'm  
17 going to try my best to navigate that issue. It's not the  
18 first time I've been put in this position because sometimes  
19 things in bankruptcy court don't operate at the same pace  
20 that I think they should. Sometimes they work really quick.  
21 Sometimes they're back in three days.

22 MR. GUTIERREZ: Yeah.

23 THE COURT: It just depends on the case and who's  
24 over there.

25 MR. GUTIERREZ: And I agree, Your Honor. I am not

1 familiar with the bankruptcy court or the judge. And I just  
2 think -- they took it under advisement, was my understanding.  
3 I was hoping they'd have a ruling by today so we'd have  
4 clarification. I just think it doesn't hurt to even delay  
5 this a week just so we have clarification from the bankruptcy  
6 court because I'd much rather have a full record where we're  
7 able just to finish the last day of -- I don't even think it  
8 will be a half day of testimony and then we have closing  
9 arguments and Your Honor makes the legal determination,  
10 especially if the bankruptcy court says the state court has  
11 already gone this far, let them finish on these legal issues  
12 and that will be binding.

13           That's just really my concern. I've been down there  
14 once to the bankruptcy court and I don't want to get down that  
15 route again, Your Honor. I think it's too sticky and I don't  
16 want to do anything at our end that would show that we're --  
17 agree to violate what I believe is the stay because I believe  
18 this entire proceeding is about SHAC's ownership of a property  
19 and the defendant's attempt to foreclose and the legal  
20 defenses that have been raised since day one to prevent that  
21 foreclosure. And Your Honor rightfully held the evidentiary  
22 hearing to determine those issues, but with the bankruptcy  
23 filing we can't finish. That's our position, Your Honor.

24           THE COURT: I understand what you're saying.

25           Mr. Mushkin, did you want to say anything for



1 purposes of the record?

2 MR. MUSHKIN: I do, Your Honor. Two things real  
3 fast. First, I want to make clear for the record that all  
4 of the obligations and duties that are the subject of these  
5 claims are the obligations and duties of the investor member,  
6 SJCVC, non-debtor. The only reason that SHAC appears is  
7 because SHAC is created as a vehicle to allow the Trust to  
8 transfer the asset to allow Mr. Bloom to take ownership of  
9 the asset by way of being the manager of an LLC that he owned  
10 51 percent of. That is clearly set forth in the forbearance  
11 agreement and all of the attachments thereto, and those very  
12 documents are the documents that are before the Court today  
13 to be resolved as binding and legal obligations.

14 Now I want to be just slightly schizophrenic. If  
15 the Court has any doubt that we should not go forward today  
16 and has a date a week or two weeks --

17 THE COURT: I've got no dates for eight weeks, Mr.  
18 Mushkin. Today is it.

19 MR. MUSHKIN: Then I'm ready to go, Judge.

20 THE COURT: You asked me for this date when you  
21 left, saying you'd have an order from the bankruptcy court.

22 MR. MUSHKIN: Your Honor, I told the Court --

23 MR. GUTIERREZ: He threw out two weeks, Your Honor.  
24 Two weeks until we have it.

25 MR. MUSHKIN: I told the Court we were scheduled

1 to go forward on the 15th.

2 THE COURT: Yeah.

3 MR. MUSHKIN: I expected her to have submitted a  
4 ruling, at least to say to go ahead and go forward. But I'm  
5 prepared, Judge. I will try and make this as quick as  
6 possible, as you expressed your desire for us to hurry and  
7 finish.

8 THE COURT: I'd like for us to be able to finish.  
9 Even if I, you know, get something from the bankruptcy in mid-  
10 term before I issue my written decision, I will of course  
11 consider it. We may have a conference call about it. But  
12 the factual issues related to the five issues which have been  
13 stipulated to by the parties do not violate the bankruptcy  
14 stay, in my opinion.

15 All right. Anything else for purposes of our record  
16 that all of you are making to make sure that nobody thinks  
17 there was an acquiescence to proceeding?

18 MR. GUTIERREZ: And that's my -- as long as the  
19 record is clear, Your Honor.

20 THE COURT: Did I say it loud enough for you?

21 MR. GUTIERREZ: You did. I just want to make sure  
22 the record is clear because I'll be asking Mr. Bloom some  
23 questions on redirect and I want to make sure that we're not  
24 waiving any issues that are pending before the bankruptcy  
25 court that have been briefed and argued already.

1 THE COURT: Yeah.  
2 All right. Mr. Mushkin, are you ready?  
3 MR. MUSHKIN: I am, Your Honor.  
4 THE COURT: Mr. Bloom, if you would come on back up.  
5 We have wiped the witness stand down. There have been a  
6 couple of people up there since you've been there the last  
7 time, but we have been wiping it down.  
8 MR. BLOOM: Yes.  
9 THE COURT: All right.  
10 [Pause in the proceedings]  
11 [The clerk confers with Mr. Hallberg on conference call]  
12 **JAY BLOOM**  
13 [having been recalled as a witness and being first duly sworn,  
14 testified as follows:]  
15 THE CLERK: Thank you. Please be seated. Please  
16 state and spell your name for the record.  
17 THE WITNESS: My name is Jay Bloom. J-a-y B-l-o-o-m.  
18 THE CLERK: Thank you.  
19 THE COURT: And, sir, as I indicated before, if you  
20 have trouble understanding because of the masks, let us know.  
21 You may be asked to repeat yourself. If you need a break  
22 anytime, you let us know. Sorry I can't offer you M&Ms or  
23 water.  
24 THE WITNESS: I will. Thank you.  
25 THE COURT: All right. Let's go, Mr. Mushkin.

1 DIRECT EXAMINATION (Continued)

2 BY MR. MUSHKIN:

3 Q So, Mr. Bloom, I want to sort of go back and do a  
4 quick summary of what your claim of defense is. And is it my  
5 understanding that you claim that someone -- and I'll ask you  
6 who in a minute -- misrepresented the CBC note to you?

7 A You're using "you" as a pronoun. Who, specifically,  
8 are you asking me about?

9 Q You. Jay Bloom.

10 A I, in an individual capacity, am not a party to the  
11 transaction, so it wouldn't be --

12 THE COURT: Sir, you're a signatory. We're asking  
13 about your personal knowledge. I understand there may be  
14 representative capacities that you were in, but you're being  
15 asked questions as an individual. So if you did something in  
16 a representative capacity we're happy to find out about it.  
17 But you acting in a capacity, whether it's individual or  
18 representative, is fair game at this hearing.

19 THE WITNESS: Okay.

20 THE COURT: Thanks.

21 THE WITNESS: Yes.

22 BY MR. MUSHKIN:

23 Q Who?

24 A Alan Hallberg.

25 Q And how did Mr. Hallberg misrepresent to you?

1           A     Mr. Hallberg represented that there was a third  
2 mortgage on the property.

3           Q     And did you believe that the deed of trust that's  
4 been admitted in evidence is something different than a third  
5 mortgage on the property?

6           A     Yes.

7           Q     What's the difference?

8           A     A third mortgage would be a loan to the Antos Trust  
9 where the pledger of the deed of trust was securing an  
10 obligation of the Trust. In this particular case, I found out  
11 after the fact that this was a commercial restaurant loan, not  
12 a mortgage to the owner of the property, to KCI Restaurant  
13 Brands, which was guaranteed by the Antoses individually. As  
14 the Antos Trust is not a borrower and not a guarantor on the  
15 debt, the Antos Trust as a pledger has no obligation to secure  
16 with a deed of trust. None of that was disclosed prior to the  
17 transaction.

18          Q     And none of that is true. Isn't that also correct?

19          A     I don't understand your question.

20          Q     Well, we showed you the amended documents; correct,  
21 sir?

22          A     You showed me quite a number of documents, yes.

23          Q     And we showed you the document that said that the  
24 Trust had now become a credit borrower; isn't that correct?

25          A     I don't recall that document.

1           Q     And that happened years before you arrived; isn't  
2 that also correct?

3           A     All of the borrowing by the restaurant and the  
4 Antoses individually as guarantor took place before our  
5 transaction.

6           Q     Now, you testified in May before the Court that --  
7 in May of '20 that you knew this to be a commercial loan  
8 agreement. Is that correct?

9           A     I don't remember the date that we found out it was  
10 a commercial loan agreement, but I think it was after the --  
11 after the April transfer by CBC.

12          Q     So is it your testimony that somehow you learned  
13 something in April of '20 that leads you to testify the way  
14 you've testified today?

15          A     To the best of my recollection, it was sometime  
16 after April of 2020.

17          Q     And what did you learn?

18          A     We learned that this wasn't a third mortgage.

19          Q     Well, you knew that when you entered into the  
20 forbearance agreement; didn't you?

21          A     That was not my understanding at the time.

22          Q     Well, let's go back to Exhibit 1. Can you see that  
23 page?

24                 THE COURT: Not if you keep moving it.

25                 MR. MUSHKIN: No, I know. I'm going to try and

1 elevate the thing so you can get the whole page.

2 BY MR. MUSHKIN:

3 Q Okay. Can you see that picture?

4 A Yes, I can see that picture.

5 Q All right. And do you recall signing this document?

6 A I believe so.

7 Q I'd like to direct your attention to Section B,

8 where it talks about the amended note and events of default.

9 Do you see that?

10 A I do.

11 Q Okay. So -- and I'd direct your attention to the --

12 THE COURT: And you're on the bottom of page 3?

13 Top of page 4?

14 MR. MUSHKIN: Top of page 4.

15 BY MR. MUSHKIN:

16 Q Do you see that document? Do you see that

17 information?

18 A I do.

19 Q Okay. So as you sit here today, you're not

20 objecting to the numbers, the numbers that were disclosed.

21 You're not claiming these numbers are not accurate; are you?

22 A I haven't done the calculation, so I don't know if

23 they're accurate or not.

24 Q You don't have any evidence to show that they're not

25 accurate; do you?

1           A     No. We haven't reviewed the accuracy. We reviewed  
2 the validity.

3           Q     Okay. And I would just direct your attention to  
4 paragraph 2 of page 5 --

5           A     Yes.

6           Q     -- where you are reaffirming all obligations due.  
7 Is that correct?

8           A     We're reaffirming all obligations due under the  
9 amended note and modified deeds of trust.

10          Q     Yes, sir.

11          A     Yes.

12          Q     That's correct. And you did that; didn't you?

13          A     Yes.

14          Q     Now, you have -- if you look at paragraph 4.5, it  
15 references Exhibit B. Do you see that?

16          A     I do.

17          Q     All right. And it says that, "CBC is free to  
18 exercise all of its rights and remedies." Do you see that?

19          A     I do.

20          Q     And you agreed to that at the time; correct?

21          A     It would appear so.

22          Q     Take a look at page 23, paragraph 25, Cumulative  
23 Remedies. You agreed to that as well; did you not?

24          A     I believe so.

25          Q     And it gives CBC its sole discretion to enforce its



1 remedies; correct?

2 A Correct.

3 Q So then as a part of this, and I just want to real  
4 quickly go to page 25, you signed that; is that correct?

5 A On behalf of SJC Ventures.

6 Q Correct. Now, I notice that SHAC is not a signatory  
7 to this agreement. Is that correct?

8 A Correct.

9 Q Thank you. So we showed you the limited liability  
10 company agreement that was a part of the transaction. Do you  
11 recall that?

12 A I do.

13 Q And in that document, SJC Ventures undertakes  
14 certain investor covenants. Do you see that?

15 A I do.

16 Q And that's on page 20; correct?

17 A Correct.

18 Q Now, we've talked about this \$150,000 and you've  
19 claimed that there was some modification and you didn't have  
20 to do that; correct?

21 A Correct.

22 Q You don't have any written documentation to support  
23 that modification; do you?

24 A No. It was modified by performance and verbal  
25 agreement of the parties.

1           Q     Okay. So when I ask you a yes or no question, I'd  
2 appreciate a yes or no answer. You don't have any written  
3 document --

4           THE COURT: Sir, if you need to explain, you can,  
5 but Mr. Mushkin will then ask you three or four more times to  
6 get to the yes or no.

7           THE WITNESS: Okay.

8           MR. MUSHKIN: Thank you, Judge.

9 BY MR. MUSHKIN:

10          Q     You don't have any written documentation to support  
11 any modification to this agreement; do you?

12          A     No. Just the performance by the parties and the  
13 lack of a request for performance by CBC.

14          Q     And you made one prepayment to CBC; is that correct?

15          A     I don't recall if it was one or two, but it was a  
16 prepayment, yes.

17          Q     Did you provide any documentation to support any  
18 other prepayments other than that first year?

19          A     Yes.

20          Q     Do you have document -- what exhibit is it, sir?

21          A     I don't know the exhibits from recollection.

22          Q     Well, you produced it. Tell me what check it is,  
23 from whom, to whom, on what date.

24          A     It was from SJC to CBC. There was one payment for  
25 the first year and a second payment for the second year. And