

IN THE SUPREME COURT, STATE OF NEVADA

<p>JACK GAAL, an individual; and JACK'S PLACE BAR AND GRILL LLC,</p> <p style="text-align: center;">Appellants,</p> <p>vs.</p> <p>LAS VEGAS 101 INC., A NEVADA CORPORATION DOING BUSINESS AS FIRST CHOICE BUSINESS BROKERS, LAS VEGAS 101,</p> <p style="text-align: center;">Respondents.</p>	<p>Supreme Court No.: 8133 Case No. A-18-776982-C Department XXVII</p> <p>Electronically Filed Feb 07 2022 10:26 a.m. Elizabeth A. Brown Clerk of Supreme Court</p>
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from the Eighth Judicial District Court, Clark County
The Honorable Nancy Alf, District Judge
D.C. Case No. A-18-776982-C

APPELLANT'S APPENDIX VOLUME 3

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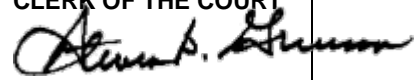
Attorneys for Appellants

IN THE SUPREME COURT, STATE OF NEVADA

<p>LAS VEGAS 101 INC., A NEVADA CORPORATION DOING BUSINESS AS FIRST CHOICE BUSINESS BROKERS, LAS VEGAS 101, Plaintiff,</p> <p>JACK GAAL, individually; JACK'S PLACE BAR AND GRILL LLC; DOES 1 through X; and ROE CORPORATIONS XI through XX, Defendant.</p>	<p>Case No.: A-18-776982-C Department: 27</p>
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Tab	DESCRIPTION	DATE
A	Complaint	6/29/2018
B	Answer to Complaint	5/22/2019
C	Order Re-Setting Civil Bench Trial and Calendar Call	8/27/2020
D	Proposed Pre-Trial Order for Bench Trials	5/6/2021
E	Findings of Fact and Conclusions of Law	6/16/2021
F	Notice of Entry of Order	6/21/2021
G	Notice of Appeal	6/23/2021
H	Order for Attorney's Fees and Costs	8/30/2021
I	Judgment	8/30/2021
J	Notice of Entry of Judgment	9/1/2021
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L	Exhibit 2 - Page 2-3 of First Choice Business Brokers document	

M	Exhibit 3 - Duties Owed by a Nevada Real Estate Licensee (Neuenswander)	
N	Exhibit 4 - Consent to Act Form (Neuenswander)	
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AC	Exhibit 25 - Letter from Johnson to Gaal dated 3/16/18	
AD	Email Re: Appraisal	
AE	Appraisal	



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5 DISTRICT COURT
6 CLARK COUNTY, NEVADA

7
8 LAS VEGAS 101,
9 Plaintiff,

10 vs.

11 JACK'S PLACE BAR AND GRILL,
12 LLC; JACK GAAL,
13 Defendants.

7)
8) CASE#: A-18-776982-C
9) DEPT. XXVII
10)
11)
12)
13)

14 BEFORE THE HONORABLE NANCY ALLF
15 DISTRICT COURT JUDGE
16 WEDNESDAY, JUNE 2, 2021

17 RECORDER'S TRANSCRIPT OF BENCH TRIAL - DAY 2

18 APPEARANCES:

19 For the Plaintiff:

ASSLY SAYYAR, ESQ.
MICHAEL ROCK ROCHELEAU, ESQ.

20 For the Defendants:

DAVID J. WINTERTON, ESQ.

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25 RECORDED BY: BRYNN WHITE, COURT RECORDER

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Las Vegas, Nevada, Wednesday, June 2, 2021

[Case called at 2:07 p.m.]

THE MARSHAL: District Court 27 is now in session. The Honorable Judge Allf presiding.

THE COURT: Thank you, everyone. Please be seated. Calling the case of Las Vegas 101 v. Jack Gaal. I'll take appearances please.

MS. SAYYAR: Good afternoon, Your Honor. Assly Sayyar on behalf of Las Vegas 101, Inc. Present again today in court are our two client representatives, Mr. Nyman and Mr. Neuenswander.

THE COURT: Thank you and welcome.

MR. ROCHELEAU: And Attorney Rock Rocheleau.

THE COURT: Thank you. And for the Defendant.

MR. WINTERTON: David Winterton on behalf of the Defendant.

THE COURT: Thank you. Is Mr. Gaal on the phone?

MR. WINTERTON: I don't believe he is. I think that he has some other matters.

THE COURT: Okay. Very good. Thank you.

Okay. So come on back Mr. Neuenswander

MS. SAYYAR: We finished.

THE COURT: You did. You know, I always think I know right where I am, and then the next day -- I forget to write it down. So, Plaintiff, please call your next witness.

1 MR. ROCHELEAU: We would like to call Mr. Angel Soto.

2 THE MARSHAL: Sir, watch your step, please. Step up on the
3 stand and face the Clerk.

4 THE CLERK: Please raise your right hand.

5 ANGEL SOTO, PLAINTIFF'S WITNESS, SWORN

6 THE CLERK: Thank you. Please be seated.

7 THE WITNESS: Thank you.

8 MR. ROCHELEAU: Please state your name for the record and
9 spell your name.

10 THE WITNESS: Angel Soto. First name is A-N-G-E-L. Last
11 name is Soto, S-O-TO.

12 THE CLERK: Thank you.

13 THE COURT: Go ahead, please.

14 DIRECT EXAMINATION

15 BY MR. ROCHELEAU:

16 Q Good afternoon, Mr. Soto.

17 A Good afternoon.

18 Q Could you tell the Court what your profession is?

19 A I currently own a franchise that repairs the computers and
20 networks.

21 Q How long have you owned that franchise?

22 A Approximately two years and nine months.

23 Q Did you start that business? Did you buy that business?

24 A I purchased the business, the franchise.

25 Q How much did you pay for that business?

1 A So far I have invested about \$560,000 in that business.

2 Q And is this the first business you've looked into purchasing?

3 A No.

4 Q Was another business that you had looked into purchasing,
5 the business in question here called Jack's Place?

6 A Yes.

7 Q Actually, Jack's Place Bar and Grill --

8 A Yes.

9 Q -- LLC?

10 A Yes, that was a business I looked into.

11 Q When did you learn of the possibility of purchasing that
12 business?

13 A I don't recall dates exactly, but somewhere early 2018.

14 Q Do you remember how you learned about that business?

15 A Through a broker.

16 Q Okay. Do you know what broker you used?

17 A First Choice, if I remember correctly.

18 Q Did you -- did they call you? Did they send you a letter? How
19 did you learn that Jack's Place LLC was for sale?

20 A I don't recall how, but somehow I ended up with First Choice.

21 Q Okay. Do you recall speaking with a broker from First Choice
22 Business Brokers, anybody in this courtroom? Did you recall talking to
23 someone talking about the business?

24 A Yes, I recall talking to Phil Neuenswander.

25 Q So you're talking about Mr. Neuenswander?

1 A Yes.

2 Q He was your first contact at First Choice Business Brokers?

3 A Yes.

4 Q And was it a phone call or was it meeting in person?

5 A I believe it was first a phone call, and then there was a
6 meeting in person.

7 Q Okay. What did Mr. Neuenswander require you to do to start
8 looking at the details of the business? Do you remember?

9 A I don't remember any details like that, yeah.

10 Q Okay. Let me see if I can help you with that. There is a book,
11 it should say Plaintiff's exhibits. There's one that says Defendants'
12 exhibits and Plaintiff's exhibits.

13 A Plaintiff's exhibits. Yeah.

14 Q If you could just turn to tab 2 or Exhibit 2. And it should say
15 at the top buyer confidentiality and non-disclosure agreement on that
16 document.

17 A Uh-huh.

18 Q Take a moment to review this document, if you would, and
19 then I can see if that refreshes your memory.

20 A Yeah. It's a non-disclosure agreement that I signed, yeah.

21 Q Is that your signature on page 6?

22 A Yes.

23 Q What date did you sign this document, Mr. Soto?

24 A 12/22/17.

25 Q So around this time is when you signed this document that

1 Mr. Neuenswander had given you?

2 A Yes.

3 Q Do you remember what the purpose of this document is?

4 A So that he could give me information on Jack's Place.

5 Q And did he in fact give you information on Jack's Place?

6 A Yes. He gave me two pieces of paper where it had
7 handwriting on it. Some information about income and expenses.

8 Q Could I ask you to turn to -- it's Exhibit 13, and then in the
9 middle of that Exhibit 13, there's a page 149? I would ask you to just
10 briefly turn through the pages 149 through 169. This has been entered
11 as Exhibit 13J for the Court. Mr. Neuenswander testified that this is the
12 documents that he sent to you in an email link, and we would just like to
13 see if you would agree with that?

14 A Yes. I believe that I did receive that document, yes.

15 Q So could you tell the Court what you feel these documents
16 represent?

17 A These documents represented, well, the business that I was
18 about to purchase.

19 Q So the information --

20 A The information on the --

21 Q -- on the business --

22 A -- business that I was --

23 Q -- that you were looking into -- inquiring into?

24 A -- looking into purchase, yeah.

25 Q Could you turn to page 162? There's some numbers on this

1 document. I'm going to have to use my glasses to read these. Are you
2 there, Mr. Soto?

3 A Yeah, I'm there.

4 Q Total sales. What's the number at that -- at the top of that
5 document?

6 A 1.15 million sales.

7 Q And then we have some total cost of goods?

8 A Yes.

9 Q And then equals gross profit? What's the number there?

10 A 742,000.

11 Q Could you turn to page 163? At the very bottom we have
12 total value of tangible assets. Do you know what that number is?

13 A It says 895,000.

14 Q All right. Thank you. When you were looking to purchase
15 this business, were you looking to purchase it with cash or finance?

16 A I was -- I guess I was looking to purchase the business with
17 cash and the building finance.

18 Q So the business in cash and the building in finance. So
19 you're saying that you were purchasing both the business and the
20 building?

21 A Yes.

22 Q How much cash did you have available to purchase the
23 business?

24 A At the time in liquid assets -- liquid cash, I probably had half
25 a million.

1 Q How much --

2 A In stocks and bonds probably a million-and-a-half.

3 Q How much cash did you have to purchase the property or the
4 building?

5 A Well, I considered everything the same, so I had \$500,00 in
6 liquid assets, and then I had a million-and-a-half, or around there, in
7 stocks and bonds, and stuff.

8 Q And I'm going to do my best, I'm not going to promise
9 anything, when I say business I'm kind of meaning the business and the
10 real property, but there is a discussion of whether the business was
11 separate, and the property was separate.

12 A Okay.

13 Q So I'll try and clarify that --

14 A Okay.

15 Q -- with any of your answers. After you looked at this
16 information, what did you do next?

17 A After I looked at this information? I guess, I contacted Phil,
18 because I was interested.

19 Q You were looking to purchase --

20 A Yeah.

21 Q -- the business and the property?

22 A And the property.

23 Q And what did Phil tell you?

24 A I don't recall what he told me at the time.

25 Q I understand, it's three years ago. Do you know if you made

1 an offer to purchase the business and the property?

2 A Yes, at one point we made an offer.

3 Q If you could just turn to -- and I'm sorry these books are so
4 heavy, I apologize, but Exhibit 7. Take a few moments. It's page 16
5 through page 22. Again this was a document admitted to the Court.
6 This was the asset -- this was testified that this was the asset and
7 purchase agreement that you and Mr. Jack Gaal worked on together.

8 A Uh-huh.

9 Q Is it your testimony that this is an offer to purchase the
10 business and the real property that you made to Mr. Jack Gaal?

11 A Yes.

12 Q Is that your signature on page 24?

13 A Yes.

14 Q To the best of your knowledge, is that Jack Gaal's signature
15 on page 24?

16 A To the best of my knowledge, I believe that to be his
17 signature.

18 Q And the initials all throughout this document are yours and
19 Mr. Jack Gaal's, to the best of your knowledge?

20 A To the best of my knowledge.

21 Q Were there any -- so do you remember -- do you recall how
22 you came to put this document together and present it to Mr. Jack Gaal?

23 A I'm not sure if I put this document together. I believe this
24 was Phil that put it together.

25 Q Was that -- were there discussions between you and Mr. Gaal

1 or you and Phil before this was memorialized in writing?

2 A I believe there was some back and forth between me and Phil
3 and Jack.

4 Q Okay.

5 A And then we came to put this together.

6 Q And was -- after this was presented to Mr. Gaal and signed,
7 do you know if there was further negotiations, or maybe some
8 counteroffers, or back and forth? Do you remember?

9 A I don't recall. There might have been. I don't recall.

10 Q Can I have you turn to page -- Exhibit 6, it says 1 through 4.
11 This was admitted in court as a counteroffer. Take a moment to review
12 that. And is that your signature at the bottom of that page?

13 A Yes.

14 Q And what's the date of that?

15 A February 2nd, 2018.

16 Q So this document was after the asset and purchase
17 agreement --

18 A Yes.

19 Q -- signature dates?

20 A Yes.

21 Q To the best of your memory, or we can always turn back to --

22 A Yes, it is.

23 Q -- the last page. If you turn to page 24, you signed the
24 purchase agreement on what date?

25 A It was January 25th?

1 Q 2000?

2 A And '18.

3 Q And then this counteroffer was signed?

4 A February 2nd, 2018.

5 Q So do you remember how this -- the terms in this
6 counteroffer came to fruition?

7 A I don't recall. There was back and forth between us as to
8 what a fair price was.

9 Q So importantly, Mr. Soto, there's a couple of terms in this
10 agreement that the Court is interested in. Right there in the middle
11 there's a -- where it says purchase price will be reduced from 1.1 million
12 to 1 million. Do you know who came up with that term?

13 A I believe it was me.

14 Q Okay. What about the next line? The deal structure will be
15 payable as, and it talks about earnest money, bank loan on the real
16 property. Do you know who put that in there?

17 A It had to be me. I must have told Phil that's how I wanted it.

18 Q All right. And to the best of your knowledge, Mr. Gaal signed
19 this document as well?

20 A Yes.

21 Q All right. Were there any other negotiations between me and
22 you -- between me and you -- between you and Mr. Gaal after this
23 document?

24 A I don't recall any.

25 Q Was it your impression that once this document was signed

1 that you were now bound to purchase the business and the real
2 property?

3 A No, because there's due diligence that I'm supposed to do.

4 Q So there's some contingent -- absent the contingencies,
5 which I'm going to go through, did you feel that you and Jack Gaal had
6 an agreement?

7 A Yes.

8 Q You know, principal to purchase the business?

9 A We had an agreement in principal that I was going to buy --

10 Q Not to purchase just the business --

11 A No.

12 Q -- to purchase, in your mind --

13 A It was the building and the business.

14 Q Okay. Now Mr. Gaal has stated in some discovery that the
15 building was not included with the business. Did Mr. Gaal ever bring up
16 to you needing to sign any sort of lease if you were just buying the
17 business?

18 A No.

19 MR. WINTERTON: I'm going to object. Misstates the
20 testimony. We haven't even had Mr. Gaal here.

21 THE COURT: Overruled. But he is going to testify, so it's
22 overruled.

23 MR. WINTERTON: Okay.

24 MR. ROCHELEAU: You want me to repeat the question, Mr.
25 Soto?

1 THE WITNESS: Yes, please.

2 BY MR. ROCHELEAU:

3 Q Did Jack ever -- did Mr. Gaal or Jack ever bring up to you that
4 you would need to do some sort of lease if you were to just buy the
5 business and not the building? Was there any sort of conversations that
6 went along that line?

7 A No.

8 Q Did he ever bring up that the building was owned by
9 someone else other than him?

10 A No.

11 Q Did he ever bring up whether the business was owned by
12 someone else other than him?

13 A No.

14 Q Did he ever mention a trust, a family trust that might own the
15 business or the building?

16 A He never mentioned a trust.

17 Q Did Jack ever give you the impression that someone else
18 needed to approve the sale of this business?

19 A No.

20 Q Was there ever a discussion that his wife Kathleen [sic] Gaal
21 needed to approve the sale of the --

22 A There was a discussion in passing that he had to convince
23 his wife to sell but that he managed to do that.

24 Q When did that discussion happen?

25 A That was at the meeting we had at Sotheby's. The office for

1 Sotheby's with Mr. Northup. And Phil --

2 Q Do you happen --

3 A -- Phil Neuenswander was the one who was there.

4 Q -- do you happen to remember when that was done?

5 A It was Phil Neuenswander, it was myself, Jack Gaal was
6 there, and Mr. Northup. I don't remember anybody else being there. I
7 don't recall anybody else being there.

8 Q Was that before you signed these agreements?

9 A I don't recall whether it was before or after, but it was
10 concurrent, maybe around the same time.

11 Q And tell the Court what the conversation was when it came
12 to Ms. Kathleen [sic] Gaal?

13 A I think Jack was talking about he's getting older, he needs to
14 get out, and his wife didn't want to sell, but he managed to convince her.
15 And so, you know, that's why we're here, I guess, to sign -- I guess, he
16 needed to sign or to go through with the deal.

17 Q Was Kathleen [sic] at this meeting?

18 A I don't recall her name, but he said his wife.

19 Q Okay. But he didn't give you the impression that he needed
20 or he --

21 A No.

22 Q -- gave you the impression that he had already gotten?

23 A Right.

24 Q Did that raise any concerns for you?

25 A No.

1 Q Did you believe at the time after the signing of the purchase
2 agreement, after the signing of this counteroffer, did you believe that
3 Jack had full authority to sell the business and the building --

4 A Yes.

5 Q -- to you? Can I get you to turn to Exhibit 7. We're going to
6 start with page 21. Again, I apologize for the super books. Page 21. And
7 this is a document you signed. Just to refresh your memory, this is the
8 purchase agreement. But page 21, chapter 40. Could you read that
9 section to the Court

10 A Sure. It says, "40, title. Upon receipt of the agreed upon
11 purchase price and terms, seller warrants and will deliver to buyer good
12 and marketable title to assets in the business, free and clear of all liens
13 and encumbrances, except for any encumbrance that is to be assumed or
14 taken subject to. Unless stated, all encumbrances on the business assets
15 will be paid in full by seller on or before the closing."

16 Q What do you mean -- what do you feel that title -- that section
17 means, Mr. Soto?

18 A Well, that means that any loans on the building, or property,
19 or anything else is going to be paid off before I get possession of the
20 property.

21 Q How about paragraph 42? Could you read that for the Court?

22 A Sure. "Closing documents. Seller will deliver to buyer at the
23 closing any transfer of land documents, bill of sale, alignment --
24 assignment of lease and such other documents, including evidence of
25 corporate authority as reasonably required by buyer in connection with

1 the sale. Buyer and seller agree on or prior to closing to execute and
2 deliver to FCBB-101 a valid and binding release and indemnification for
3 FCBB-101."

4 Q What do you feel that that paragraph bound you and Mr.
5 Gaal to do?

6 A Well, I guess that he's going to transfer the building and any
7 assets in the property to me.

8 Q And then the next page, 22. Paragraph 51, Mr. Soto. Do you
9 mind reading that for the Court?

10 A Sure. "51. Authority. Buyer and seller each warrant to the
11 other that they respectively have the full power and authority to enter
12 into this agreement are not under the jurisdiction of a federal bankruptcy
13 court, and able to complete the transaction described herein, and no
14 contract or agreement to which either buyer or seller is party to,
15 prevents either of them from completing the transaction described
16 herein, nor is the consent of any government authority or third-party
17 required."

18 Q Is that your initial at the bottom of this page?

19 A Yes.

20 Q To the best of your knowledge, is that Mr. Gaal's initials?

21 A Yes.

22 Q What do you feel that paragraph is stating in this contract?

23 A That basically tells me that Mr. Gaal is acknowledging that he
24 owns the business and the building and that he's selling it to me.

25 Q Thank you. So you had a purchase agreement, you have

1 counteroffers. In your mind there's an agreement. What did you do
2 next? What was the next step?

3 A I believe the next step; I gave him a list of all of the
4 documentation that I wanted to see to do my due diligence.

5 Q That's correct. We missed that; didn't we. If I could just set
6 that foundation up for you. Page 19 of Exhibit 7, please. And I'm not
7 going to have you read the entire thing, because I don't want to drag it
8 out, but if you could just read Chapter 20, and then -- just to refresh your
9 memory, and then I'll ask you some questions.

10 A What page is that?

11 Q Page 19 of Exhibit 7.

12 A Read which one?

13 Q Paragraph 20. You don't have to read it verbatim. I just
14 wanted you to kind of look at it so I could ask you questions regarding
15 the due diligence document.

16 A Paragraph 20?

17 Q Paragraph 20. It should say due diligence.

18 A That's page 18. Exhibit 7, correct?

19 Q It should be page 19.

20 MR. ROCHELEAU: Permission to approach

21 THE COURT: You may.

22 MR. ROCHELEAU: Right there. I should have highlighted it.

23 THE WITNESS: Okay. That's --

24 MR. ROCHELEAU: I apologize.

25 BY MR. ROCHELEAU:

1 Q If you could just review that.

2 A Okay. "Due diligence. This purchase is contingent upon
3 buyer reviewing and accepting" --

4 Q Oh, you don't have to read the whole thing, Mr. Soto. I'm
5 just going to ask you some --

6 A Okay.

7 Q Per this paragraph, how many days did the seller have to
8 provide you some due diligence documents?

9 A He had ten days to provide me with due diligence
10 documents.

11 Q From the date of this agreement?

12 A Correct.

13 Q And then how many days did you have to get out of this
14 agreement for almost any reason you chose?

15 A Sixty days.

16 Q All right. So then the due diligence documents that we're
17 referring to, if you switch to page 20. Just turn to page 20. It's not really
18 numbered. It's under section 34. There's a statement there that says,
19 see attached document request, list item 1A. If you could review that,
20 and I'm going to question you about it.

21 A Okay.

22 Q Do you remember this sentence in this agreement about a
23 list of items called 1A?

24 A Yes.

25 Q Is that 1A referring to Exhibit 9 in your book?

1 A Yes. Yes.

2 Q To the best of your knowledge, the 1A that is in that purchase
3 agreement is referring to this document?

4 A Yes. That's referring to that document.

5 Q How do you know that?

6 A Because I wrote this document.

7 Q You wrote this document?

8 A I wrote the document, and I asked that this document be part
9 of it.

10 Q Is that your handwriting?

11 A That's not my handwriting.

12 Q So you typed this document?

13 A I typed -- I typed -- all the typeset is mine. Any handwriting
14 on there except for my initials at the bottom, are not mine.

15 Q To your recollection, why did you type this document? Why
16 did you type this document?

17 A I typed the document, because I wanted to be very clear of
18 the information that I was requesting.

19 Q Who did you give this document to?

20 A I believe I gave that to Phil, and then he passed it on to Jack.

21 Q So it was kind of given before the purchase agreement, in
22 between the counteroffer doing --

23 A Probably -- probably in between somewhere. I don't recall
24 exactly when.

25 Q What was your intent of this document? Why would you

1 type this -- take the time to type this document?

2 A The intent of this document is to -- for me to determine if the
3 business part of the deal was worth what he was trying to charge for it.

4 Q Explain that to me, the business deal part?

5 A Well, to me there was two parts of the deal. There was the
6 real estate, which I had them -- they had given me an appraisal. So I
7 already knew their building was worth 700,000, approximately, because
8 of the appraisal. But he was -- so the building was 1.2 million. So the
9 business was -- part of the deal was 500,000. So then we came down to
10 the 1 million, so the business part was 300,000, the building was 700,000.
11 And I wanted all this information to make sure that I was buying a
12 business that was generating 200 plus thousand dollars in profit, which
13 justified the \$300,00 purchase price.

14 Q So these documents were all related to verifying numbers --

15 A Verifying --

16 Q -- that had been presented?

17 A -- the actual business and income -- the business revenue
18 and the business income.

19 Q Okay. And that's your signature at the bottom?

20 A That's my signature at the bottom.

21 Q To the best of your knowledge --

22 A Yes.

23 Q -- is that Jack Gaal's signature?

24 A To the best of my knowledge.

25 Q And you -- who do you think handwrote on this document,

1 Mr. Soto?

2 A That -- it wasn't me. It had to be Mr. Jack that wrote all that
3 stuff on there.

4 Q So what was our expectations when we're referring to the
5 purchase agreement that you're going to be given due diligence
6 documents and then we have this. We have some line outs. We had
7 some handwriting. What was your expectations that you were going to
8 get?

9 A Well, I was expecting all of the documents that I wrote down.
10 I wasn't happy when I got stuff crossed off. You know, I wanted to verify
11 all the information. But I was willing to wait for all of the other
12 documents that he was saying he was going to provide to me, which is
13 the ones that he didn't cross off.

14 Q Out all of these documents, do you have any that are most
15 important to you?

16 A That was important to me? Profit and loss income
17 statements, and probably bank statements, and the tax returns.

18 Q Why were these statements so important to you?

19 A Because those help me best judge whether the business is
20 worth the \$300,000, I'm paying for it or not.

21 Q Did you need these documents to get a loan for the business
22 or for the building?

23 A I didn't need the documents to get a loan for the business,
24 no.

25 Q Did you ever visit a bank with a gentleman named Gene

1 Northup?

2 A I don't recall ever visiting a bank with Gene Northup.

3 Q Do you know a gentleman named Gene Northup?

4 A I don't recall ever visiting a bank with Gene Northup.

5 Q Do you know a gentleman named Gene Northup?

6 A I recall that's the person that we met with, with Jack.

7 Q In the previous meeting where the four of you were --

8 A Right. Correct.

9 Q And that's the only time you remember meeting Mr.

10 Northup?

11 A That's the only time I recall meeting him.

12 Q In that meeting, did Gene Northup ever give you an
13 impression that the business was owned by someone else?

14 A No.

15 Q Did Gene ever give you the impression the building -- the
16 building was owned by someone else?

17 A No.

18 Q What did you do when you finally got these documents on
19 Exhibit 9?

20 A I didn't get any documents from Exhibit 9.

21 Q You didn't get a single document?

22 A Not a single document.

23 Q Did you request these documents?

24 A Yes, I requested them.

25 Q How did you request them?

1 A Well, I request them from Phil, and I personally called Jack a
2 couple of times.

3 Q On the phone?

4 A On the phone, and he always said, I'm working on them. I'll
5 get them to you.

6 Q Do you recall when you called Mr. Gaal?

7 A I don't recall exactly, but it was -- I think one time before the
8 ten days were up, and then a couple times after.

9 Q So you called him more than once?

10 A Yes.

11 Q What did Jack say?

12 A He's working on them. He's putting them together. He'll get
13 them to me.

14 Q Did you ever try and meet with Jack to review he
15 documents?

16 A No. I did not try to meet with Jack.

17 Q Did you request these documents from Phil?

18 A Yes.

19 Q What did --

20 A He --

21 Q What was the impression you got from Phil?

22 A The impression that I got from Phil was the same. Phil said, I
23 talked to him. He said he's working on them. He says he's going to get
24 them to you.

25 Q Now there's some statements on this document, "see bank

1 statements in office." Did you ever go to the office or the business to see
2 any of these statements?

3 A I never went to the office.

4 Q Did you ever go to the business to see any of these
5 statements?

6 A I went to the business only to eat and to see -- I went to the
7 business several different times to see how busy it was at different times
8 of the day and of the week, because that tells me a little bit about, you
9 know, the atmosphere and if business is good or not good.

10 Q Did you talk to Jack when you were there?

11 A No.

12 Q And you never saw any documents while you were there?

13 A No. Never.

14 Q So I'm assuming the ten days for the due diligence had
15 passed because you're saying you never saw these documents. What
16 did you do then?

17 A After the ten days?

18 Q Yes.

19 A Well, after the ten days I was in contact with Phil a couple
20 times and also with Jack, requesting the documents.

21 Q What was going through your mind?

22 A At that point, I'm thinking that there's some reason why I'm
23 not getting these documents, and I'm starting to get a little bit
24 suspicious, and maybe this is not the right deal.

25 Q Why did you continue to stay in the deal?

1 A Well, I didn't. After a few -- after some days after the ten, I
2 got out.

3 Q Do you remember when you actually officially got out of the
4 deal?

5 A I don't recall.

6 Q Okay. I promise this is the last exhibit you're going to have
7 to turn to. Page 25 or Exhibit 25. You want to take a moment to review
8 this letter just to refresh your memory? It would be pages 349, 351 and
9 352.

10 A Okay.

11 Q Do you recognize this letter now, Mr. Soto?

12 A Yes. Yes.

13 Q What is this letter?

14 A This is the letter that I had my attorney write up to get out of
15 the deal.

16 Q Did you hire this attorney to write this letter?

17 A Yes.

18 Q How much did you pay this attorney to write this letter?

19 A The retainer was 2500, and I ended up paying 1800 for this
20 letter.

21 Q How many discussions did you have with this attorney
22 before you wrote this letter?

23 A Well, I had to bring him up to speed on everything that was
24 going on, and I gave him the documents that I signed.

25 Q Did he review your purchase agreement first?

1 A Yes. I believe, yes.

2 Q What was his analysis as far as you can recall of --

3 A As far as I can recall --

4 MR. WINTERTON: I'm going to --

5 THE COURT: Hang on. Hang on.

6 MR. WINTERTON: -- object

7 THE COURT: That's privileged.

8 MR. ROCHELEAU: Oh, that's correct. Withdrawn.

9 Withdrawn. I thought of it the second it came out of my mouth.

10 BY MR. ROCHELEAU:

11 Q Mr. Soto, would you have cancelled this deal sooner had Phil
12 Neuenswander not continue to help you with these documents?

13 A Yes.

14 Q Is the only reason you canceled this deal is because you
15 weren't shown the due diligence documents?

16 A Yes.

17 MR. ROCHELEAU: Your Honor, I'll pass the witness.

18 THE COURT: Okay. Mr. Winterton, cross?

19 MR. WINTERTON: Give me just one second.

20 CROSS-EXAMINATION

21 BY MR. WINTERTON:

22 Q How are you, Mr. Soto?

23 A Very well. Thank you.

24 Q Am I pronouncing the name right?

25 A Yes, you are.

1 Q Okay. Thank you. Okay. What I would like to do is, do you
2 know --

3 MR. WINTERTON: Strike that.

4 BY MR. WINTERTON:

5 Q You received a copy of the appraisal you testified --

6 A Yes, I believe so.

7 Q -- of the building? And did you review the appraisal?

8 A I believe so, yes.

9 Q And did you look at the appraisal before you made the offer?

10 A Yes.

11 Q Okay. And do you recall, does the appraisal tell you owned --

12 A I don't --

13 Q -- the building?

14 A I don't recall that.

15 Q Okay. Yeah. Okay. Would it surprise you if I told you that
16 the building was in the name of a trust?

17 A It wouldn't surprise me now because I've heard that before --

18 Q Okay.

19 A -- after the fact.

20 Q After the fact?

21 A Right.

22 Q Do you think that's an important fact?

23 A I don't know.

24 Q So who owns the building, you don't know if that's an
25 important factor or not?

1 A Yes. But Jack represented to me that he owned the building.

2 Q Okay. So -- okay. So let's go to -- you've got a book there --
3 Exhibit 3.

4 A There's two books here.

5 Q There is. And there's one of them that starts with 500 and
6 the other one starts with 1, 2, and 3, if that helps.

7 MR. WINTERTON: I could approach and maybe help you.

8 THE WITNESS: Yes, please.

9 MR. WINTERTON: Okay.

10 BY MR. WINTERTON:

11 Q Okay. Now Exhibit 3, do you have that in front of you?

12 A Yes.

13 Q And it says here -- page 8 is what I'm looking at.

14 A Yes.

15 Q It's called duties owed by a Nevada real estate licensee. And
16 it talks about -- where it says licensee's duties owed to all parties. Do
17 you see that?

18 A Yes.

19 Q And then I'm going to go to paragraph three. And it says
20 here, "to disclose to each party to a real estate transaction as practical --
21 as soon as practical, a) any material in relevant fact, data, or information
22 which licensee knows or with reasonable care and diligence, the licensee
23 should know about the property."

24 So from your opinion, do you think the licensee should know who
25 owns the property?

1 A Yes.

2 Q Okay. And during this whole transaction period, not after the
3 lawsuit was filed, but prior -- from when you withdrew prior to that, did
4 anyone tell you that the property was owned by a trust?

5 A No.

6 Q Okay. Now let's go to Exhibit 10, which is your offer. And
7 Phil signed this document? I mean --

8 MR. WINTERTON: Strike that.

9 BY MR. WINTERTON:

10 Q Phil drafted this document?

11 A I would assume that he did.

12 Q Okay. I just wondered if you knew.

13 A I don't know.

14 Q Okay. Who gave you this document?

15 A I don't --

16 Q Oh, excuse me. I've got the wrong contract. No wonder
17 you're puzzled. I'm sorry. We'll go to Exhibit 7. I'm sorry. I understand
18 why you were confused.

19 Okay. Now do you know who drafted this document?

20 A I would assume that it was Phil.

21 Q Okay. Who gave this to you to review?

22 A It was Phil.

23 Q Okay. And did you review this document prior to signing it?

24 A Yes.

25 Q And did you see anything in there dealing with a trust?

1 A No.

2 Q Okay.

3 A Well, it says it on top though.

4 Q What's that?

5 A It says on top, Jack Gaal, managing member Jack's Bar and
6 Grill, LLC.

7 Q Oh, okay. So that's who this contract, in your mind, was
8 with?

9 A Yes. Jack Gaal, yeah.

10 Q Okay. Now when you were signing this document, did you
11 think it was accurate?

12 A Did I think it was accurate? I must have at the time I signed
13 it.

14 Q Okay. And any time until -- from the time you signed this to
15 the time you withdrew, did anyone tell you there was an issue regarding
16 the ownership of the land?

17 A No.

18 Q Okay. Did anyone tell you there was an issue with
19 documents because there's an issue with the ownership of the land?

20 A No.

21 Q Just asking your knowledge. Do you know if real estate --
22 buying and selling real estate needs to be in writing or not? Do you
23 know that?

24 A I would say --

25 MR. ROCHELEAU: Objection. He's not -- objection, Your

1 Honor.

2 THE COURT: Objection. Sustained.

3 MR. WINTERTON: Okay.

4 BY MR. WINTERTON:

5 Q So I have a question, and I want you to look at the document,
6 because I'm trying to figure out where this came. That book next to you,
7 yes, there's an exhibit 502. Have you seen this document before?

8 A I don't recall seeing this document before.

9 Q Okay. And do you know whose handwriting that is on the
10 right hand side of the page?

11 A I don't know whose handwriting that is.

12 Q Okay. Now let's go back to Exhibit 9. I'm sorry, I'm having
13 you go back and forth. I'm just trying to figure out these documents.
14 Now when was the first time you saw this document with the
15 handwriting on the right hand side?

16 A That I don't recall.

17 Q Okay. Do you know where you got it?

18 A Which -- this one I never received.

19 Q And you're pointing to?

20 A I'm pointing to 50 --

21 Q 502. Okay.

22 A 502. I've never seen this one before.

23 Q You've never seen that one before.

24 A Exhibit 9, that one I remember getting it, probably from Phil.
25 I'm not -- I'm not 100 percent sure.

1 Q Okay. And, for example, it says copies of any inspection
2 reports from local government agencies are in the office. Did you go in
3 to look at those reports?

4 A No.

5 Q Okay. Did you ever go in to look at copies of loan
6 collateralization?

7 A Which item is that?

8 Q Item number 24.

9 A No.

10 Q Okay. Did you look at employee's typical schedule, item 16?

11 A No.

12 Q Okay. Okay. I want to go to the brochure that you received.
13 That's Exhibit 13. And in the middle of the pages it says 149. Okay. Did
14 you -- now how did you receive this? Was it from an email, you said?

15 A I don't recall.

16 Q Do you know if you had received a hard brochure?

17 A I received a hard brochure with an appraisal of the property.

18 Q I'm sorry?

19 A I received the brochure with an appraisal of the property.

20 Q Oh, okay. Was the brochure like this one?

21 A I don't recall.

22 Q Okay.

23 A Maybe.

24 Q I believe it's 149 through 157. Yeah.

25 A Yeah. I received this, but this is not -- this is not -- I don't

1 know if it was hard copy, or email, or whatever it was.

2 Q Okay. But you do recall receiving a brochure with the
3 appraisal?

4 A That was a separate document, yes.

5 Q Yeah. Okay. How many times --

6 MR. WINTERTON: Strike that.

7 BY MR. WINTERTON:

8 Q Now how -- when you -- the first -- when was the first time
9 you met with Jack?

10 A If I remember correctly, the first time I met with Jack was at
11 that Sotheby's place that we went to.

12 Q Okay. It was Sotheby's. And then after that, when was the
13 next time you saw Jack?

14 A The next time I saw Jack, I went to visit the restaurant. He
15 actually waited on me, but he didn't even acknowledge that I was there.

16 Q Okay. That was a pretty busy night?

17 A Yeah. It was pretty busy.

18 Q Okay. Do you know if he recognized you?

19 A Yes. Because then I had a conversation with him. He said,
20 yeah, I saw you there, but I was really busy.

21 Q Oh, okay. So he acknowledged you, but he was busy?

22 A Yes.

23 Q Okay. You didn't ask to see any other thing or go through
24 records at that time?

25 A No.

1 Q I'm sorry, you have to answer audibly. You can't shake your
2 head.

3 A No.

4 THE COURT: He said no.

5 MR. WINTERTON: Oh. I'm sorry, I didn't hear that.

6 BY MR. WINTERTON:

7 Q Okay. Now I just want to clarify. Mr. Northup talked about
8 trying to help you get a loan?

9 A I don't recall that.

10 Q Okay. Do you know if you ever went to Boulder Credit
11 Union?

12 A I don't believe I ever did.

13 Q Okay. Now you got your \$30,000 back?

14 A Yes.

15 Q Okay. And you have not sued for breach of contract or
16 anything?

17 A No.

18 Q Okay. You went on and just found another business, and
19 then moved on?

20 A Yes.

21 Q Okay.

22 MR. WINTERTON: I have no further questions, Your Honor.

23 THE COURT: Thank you. Redirect.

24 MR. ROCHELEAU: I have no more questions for the witness,
25 Your Honor.

1 THE COURT: Okay. May we excuse the witness?

2 MR. ROCHELEAU: I'm sorry?

3 THE COURT: May we excuse the witness?

4 MR. ROCHELEAU: You may, Your Honor.

5 THE COURT: Mr. Winterton, may we excuse the witness?

6 MR. WINTERTON: Yes.

7 THE COURT: All right. Mr. Soto, you may step down, and
8 you are excused.

9 THE WITNESS: Thank you.

10 THE COURT: Thank you. Please call your next witness.

11 MS. SAYYAR: Your Honor, Plaintiff calls Jeff Nyman to the
12 stand.

13 THE COURT: Thank you.

14 THE CLERK: Please raise your right hand.

15 JEFFREY NYMAN, PLAINTIFF'S WITNESS, SWORN

16 THE CLERK: Please state your name for the record and spell
17 your name.

18 THE WITNESS: Jeffrey Nyman, J-E-F-F-R-E-Y N-Y-M-A-N.

19 THE CLERK: Thank you.

20 THE COURT: Go ahead, please.

21 MS. SAYYAR: Thank you, Your Honor.

22 DIRECT EXAMINATION

23 BY MS. SAYYAR:

24 Q Mr. Nyman, what licenses do you hold through the Nevada
25 Division of Real Estate?

1 A A real estate broker's license and the business broker permit
2 license.

3 Q Okay. How long have you held your real estate broker's
4 license?

5 A Twenty-eight years.

6 Q How long have you held your business broker license?

7 A I believe when it came out, I actually wrote the test for the
8 state, so I think five years, six years.

9 Q So there was a time where there wasn't actually a separate
10 category for business broker?

11 A Correct.

12 Q Okay. And what is your connection with Las Vegas 101 or LV
13 101 also referred here today as First Choice or First Choice Business
14 Brokers?

15 A I'm the owner and broker.

16 Q Okay. And when was that company formed?

17 A I believe it was 2011.

18 Q When did you first start acting as a business broker here in
19 Nevada?

20 A In 1994.

21 Q Okay. How big is First Choice with all its entities and
22 subsidiaries?

23 A The Las Vegas office I have approximately 24 agents there,
24 and I franchised the company in 2005. And so I have about 100 agents
25 reporting to me, 20 -- 50 offices over 20 states.

1 Q Pre-COVID, before 2020, if we can remember back that far, on
2 average, how many business sales transactions would the Las Vegas
3 office handle to closing in an average year?

4 A Between 100 to 150.

5 Q Okay. I know we're not far in, only about five months into
6 2021. How many closings has this year seen?

7 A I believe the last count I saw was around 60.

8 Q Now there's been some testimony during this trial and
9 questions in this trial regarding real estate versus business broker, and
10 some equivalences -- questions related to equivalencies between the
11 two. Based on your experience and your understanding, are -- is a real
12 estate -- residential real estate transaction the same as a business
13 brokerage transaction?

14 A No, they're completely different.

15 Q In what ways are they generally different?

16 A Well, simply put, a real estate agent lists the house, puts the
17 house in the Multiple Listing System, waits for another broker to sell it.
18 In business brokerage, we list the business, and we can't advertise -- we
19 can't put a sign out there because of confidentiality, so we have to go --
20 really just do our business without letting anybody know, especially the
21 employees that we're actually selling the business. So the only thing we
22 really have in common with a residential agent is the license. There is
23 nothing else the same.

24 Q What if the business brokerage transaction involves real
25 estate? Does that in any way equate it to a more traditional residential

1 real estate transaction?

2 A No. No. We do quite a few deals, including the property.

3 Q And in what way is it different when it's a business brokerage
4 transaction involving real estate versus the more traditional single family
5 residence sale?

6 A Well, it a completely different transaction. We have a buyer
7 whose looking through the paperwork for due diligence. We have -- we
8 will send in the paperwork to the escrow company to check out title. It's
9 -- we don't have even the same forms that a residential agent has.

10 Q Okay. In a business brokerage situation, does First Choice
11 ever investigate the business and real property, and its viability on
12 behalf of a buyer?

13 A No. Actually, we're specifically prohibited by NRS 645 to act
14 outside our field of expertise. So we don't engage in that whatsoever.

15 Q So if a decision has to be made by the buyer as to the
16 viability of purchasing any one of your listings through First Choice, they
17 have to do their own due diligence?

18 A They have to. Absolutely.

19 Q Are there any provisions and agreements that First Choice
20 provides that reflects this point?

21 A I'm sorry?

22 Q In the listing agreement, in the asset purchase agreement,
23 are there terms and contract terms related to this prohibition by First
24 Choice Business Brokers of investigating or vetting?

25 A Some of the items in the agreements state that the buyer

1 must do their own due diligence and that First Choice is not responsible
2 for any type of investigation, and strictly up to the seller whether to sell
3 the business to the buyer, and up to the buyer whether they want to
4 proceed, especially if the books and records don't check out. It's up to
5 them.

6 Q As a business broker, does First Choice Business Brokerage
7 do any title reports or title checks as part of its process?

8 A Oh, no.

9 Q Okay. Why not?

10 A We leave that to the escrow company, title company to
11 perform that.

12 Q Have you ever had an instance in your many years of
13 experience where a seller includes real property in the business
14 brokerage listing and sale, but it turns out title to the real property is in
15 the name of the seller's trust?

16 A Quite often.

17 Q When has that happened most recently?

18 A There was a very large glass company, and the transaction
19 went through, and then escrow contacted us and said, by the way, the
20 property is in a different name, different corporation. We asked the
21 seller, and they said, oh, yeah, sorry. Forgot it. And so we just made an
22 adjustment in escrow.

23 Q Okay. In such instances, does First Choice Business Broker
24 get a new listing agreement?

25 A Oh, no.

1 Q Why not?

2 A Because we have an agreement for -- to list the business and
3 the property. We have a purchase agreement and escrow is simply
4 going to make the -- some form of amendment or change to make sure
5 the title is transferred correctly.

6 Q In such instances, does First Choice Business Broker get a
7 new asset purchase agreement of any kind?

8 A No, they don't. No.

9 Q Okay. In a situation where it turns out either the real
10 property or the business operation is in the name of a trust, and it wasn't
11 found out, like in your glass example, until escrow was going through
12 things, have you ever had the seller use it as an excuse to claim there is
13 no contract and back out of the deal except in this case?

14 A Not in 28 years. No.

15 Q Okay. Why do you think that's never happened before?

16 A Usually, if we find a situation where we're confronted with
17 escrow will call and say, hey, we found that there's a trust, because we
18 have no access to the trusts. It's a simple change within the escrow
19 documents to make sure the trustee signs it. But it's never happened
20 because normally a seller wants to sell the business.

21 Q Have you ever had a situation where a seller has gone
22 through that process, and got to the eve of closing, and used it as an
23 excuse to say, I'm not selling?

24 A Never. No.

25 Q Okay. Under the First Choice Business Broker contracts, the

1 listing agreement, which we've seen and is admitted as Exhibit 10, when
2 is the commission for First Choice Business Brokers earned?

3 A Upon acceptance of the agreement between the buyer and
4 the seller.

5 Q Okay. When can First Choice Business Brokers demand that
6 its fee be paid?

7 A We can, technically, demand it on the spot, technically, but
8 we usually don't do it, as a courtesy, until the close of the transaction.

9 Q Okay. Now what if an asset purchase agreement is signed
10 and the seller torpedoed the deal and doesn't produce due diligence
11 documents? What about the fee then? What happens then?

12 A We would assume that the seller is in breach of contract and
13 under the terms of the listing agreement, we would be entitled to our
14 fee.

15 Q Okay. What if it was the reverse? What if it was an asset
16 purchase agreement, and it's the buyer who unlawfully kills the deal?

17 A We would not normally pursue the seller; we would simply
18 find another buyer because we're not asking the seller to pay us a fee for
19 doing nothing. So for good public relations, we would just simply say,
20 okay, let's find you another buyer.

21 Q Okay. Now you probably looked at it while you were sitting
22 here in court, but just for the record, if you can turn to Exhibit 7.

23 A Which book would that be?

24 Q The Plaintiff's book, please.

25 A Okay.

1 Q And Exhibit 7 is part of the asset purchase agreement.
2 Obviously, the counteroffer is on another page, Exhibit 1A is under tab 9.
3 But just looking at the asset purchase agreement.

4 A Okay.

5 Q Have you looked through this document as part of trial
6 preparation?

7 A I did review it.

8 Q Is there any reference to a trust of any kind in this document?

9 A Not that I saw. No.

10 Q Okay. And looking at Exhibit 10, which is the asset purchase
11 agreement -- oh, excuse me, the exclusive right to sell listing agreement.
12 Is any particular trust named in that document?

13 A No, it isn't.

14 Q Okay. Does it matter -- does it matter that there is no trust
15 identified by name in the exclusive right to sell listing agreement in
16 terms of your obligation and ability to list a business for sale?

17 MR. WINTERTON: I'm going to object to the form of the
18 question. If this is his opinion, that's fine, but if he's acting as an expert,
19 I object.

20 THE COURT: You have to rephrase to limit it to his opinion.

21 MS. SAYYAR: Of course.

22 BY MS. SAYYAR:

23 Q Based on your opinion and your understanding of these
24 documents, as the broker, does it matter whether or not there's no
25 formal naming of any particular trust entity in a listing agreement?

1 A I would say not just in my opinion but my experience. We
2 have come across situations where there was a trust, and it was simply
3 cleaned up in escrow. So, no, it doesn't matter.

4 Q When a party, a seller, signs an exclusive right to sell listing
5 agreement are there terms in this document as to what capacity or with
6 what authority he or she is signing?

7 A I think it's very clear in the document that the person is
8 stating that they are the owner of the business and that they have the
9 authority to enter into this agreement.

10 Q Is that something that First Choice Business Brokers relies
11 upon?

12 A Absolutely. Yes, it does.

13 MS. SAYYAR: Court's indulgence.

14 [Counsel confer]

15 BY MS. SAYYAR:

16 Q In your experience, Mr. Nyman, is it unusual at all for a seller
17 to turn over absolutely no documents and due diligence after signing an
18 asset purchase agreement?

19 A In my experience, I've never actually seen a seller not turn
20 over anything. I've seen where they've turned over just a few
21 documents, but never where they just stonewalled and said, no, nothing.

22 Q Okay.

23 MS. SAYYAR: Your Honor, pass the witness at this time.

24 THE COURT: Okay. Cross-examination.

25 CROSS-EXAMINATION

1 BY MR. WINTERTON:

2 Q How are you, Mr. Nyman?

3 A I'm good. Thank you.

4 Q Good. Thank you. Okay. Now you testified that the
5 documents of a business broker and the documents of a real estate
6 property transaction are completely different.

7 A Yes, they are.

8 Q Okay. Let me turn to Exhibit number 3.

9 A Okay.

10 Q Okay. So that statement is not 100 percent correct; is it?

11 A The statement that I made was that the documents are not
12 the same as a residential purchase. These are the state forms.

13 Q Correct. And you are required to use these forms, whether
14 it's in a business or if it's in a property sale?

15 A Yes, we are.

16 Q Okay. So there are some overlapping that the state requires?

17 A I would say these are the only two forms, the duties owed
18 and consent to act --

19 Q Okay.

20 A -- are the only forms that are similar to residential. Other
21 than that, nothing else is the same.

22 Q Okay. So now there's at least two documents that you
23 believe?

24 A Yes.

25 Q Okay. Could there be more that you're not aware of?

1 A Not that I'm aware of.

2 Q Okay. That's a good answer.

3 A Yeah.

4 Q Okay. Now isn't it true that -- and I'm going to quote the
5 statute since you're the broker and should know these, the regulations of
6 an agent are three major sections. It's NRS 645, 252, 253, 254.

7 A Okay.

8 Q Okay. And isn't it true the duties owed fall under 645.252.

9 MS. SAYYAR: I'm going to object to the way the question is
10 phrased. Mr. Winterton himself objected to the fact that this is not an
11 expert witness, and he's calling into question items of law.

12 THE COURT: You're response?

13 MS. SAYYAR: And then best evidence would say show him
14 the statute.

15 THE COURT: And your response.

16 MR. WINTERTON: Yes. What it is, is he should know these
17 duties. This is the NRS that outlines the duties of a realtor, and if he
18 doesn't know his duties, that could be a problem.

19 THE COURT: Well, without showing him the statute, you can
20 talk to him about what it includes to test his --

21 MR. WINTERTON: Okay.

22 THE COURT: -- veracity and his demeanor.

23 MR. WINTERTON: Okay. Thank you, Your Honor.

24 BY MR. WINTERTON:

25 Q Mr. Nyman, do you agree that this is -- that Exhibit number 3

1 outlines the duties that Phil Neuenswander needed to do in this case?

2 A Yes.

3 Q Okay. And the elements -- oh, let me move on. Let's go to
4 Exhibit number 4, consent to act. And this is the other document that
5 you were referring to, where you say there are two documents?

6 A Yes.

7 Q This also is used in residential?

8 A Yes, it is.

9 Q It is also used in your business broker?

10 A Yes.

11 Q Isn't it also true that the requirements for an exclusive listing
12 are all under your business broker's?

13 A I'm not sure of the circumstances that you would be asked of
14 that.

15 Q It's not a circumstance. The NRS outlines the standards that
16 need to be done to have an exclusive listing agreement?

17 A There's a couple of items such as it must have an end date.

18 Q Okay.

19 A But there's very little, other than that.

20 Q Okay. But you agree that those elements apply to you?

21 A We would comply with the Real Estate Division requirements
22 regarding the expiration of the agreement, but there's very little else in
23 our agreements that match anything with the Real Estate Division.

24 Q Okay. And the Real Estate Division gets those requirements
25 from the statute?

1 A Yes.

2 Q Okay. So you would agree that if the statute outlines certain
3 requirements, you are to comply with those requirements?

4 A We -- absolutely. We comply.

5 Q Okay. Now I would like to have you turn to Exhibit 10.

6 A Okay.

7 Q Do you see the signature of the Jack Gaal Trust in this
8 exclusive right listing agreement?

9 A No.

10 Q Okay. Do you know, from your investigation of this case,
11 whether or not the property was listed under a trust?

12 MS. SAYYAR: Your Honor, I'm going to object only to the
13 extent that the question calls, potentially, for work product, potentially
14 calls for attorney-client privileged communications because he's asking
15 for investigations related to this case, and I will instruct my client not to
16 answer anything that he's discussed with counsel.

17 THE COURT: All right. So you need to limit your answer to
18 anything that you didn't discuss with your attorney.

19 THE WITNESS: Okay. Thank you.

20 THE COURT: All right.

21 THE WITNESS: I'm sorry --

22 THE COURT: So you can answer.

23 THE WITNESS: Could you repeat the question?

24 MR. WINTERTON: Sure.

25 BY MR. WINTERTON:

1 Q I'm just wondering if you, at any time, prior -- not excluding
2 what the Judge said, your attorney, did you ever learn that the property
3 was under the name of a trust?

4 A Not until we were notified.

5 Q Okay. And when were you notified?

6 A I -- when -- I think when Phil Neuenswander told me he had
7 received a letter saying that there was a trust involved. We had never
8 heard of it before.

9 Q Okay. And would that have been the letter from an attorney?

10 A I believe that was the letter from you.

11 Q Okay. So what did you do once you learned that an attorney
12 had sent a letter saying there's a trust involved?

13 A I think -- I believe that the first thing I did was really just find
14 out the circumstances, and I was told by Mr. Neuenswander that this
15 deal was basically in breach because the seller had never turned over
16 any of the documents, so there really wasn't too much point in being too
17 concerned about it, as far as what am I going to investigate because to
18 me it was like, okay, so let's see what we have to do.

19 Q Did you --

20 A I'm not going to worry about the trust.

21 Q -- okay. Sorry, I didn't mean to interrupt. Did you tell Mr.
22 Neuenswander that we need to correct this error?

23 A I believe by the time that we received the letter the
24 agreement was already in breach. So I'm not sure what we would be
25 correcting because he was already in breach.

1 Q Okay. Now you talked about that what would -- you were
2 talking about different scenarios in your experience. What adjustments
3 would escrow make when they discovered that a trust is involved --

4 A This is --

5 Q -- to your knowledge?

6 A Yeah, this is not that unusual where they would simply say --
7 they would contact that office and notify us that there was a trust and
8 that they were producing the documents where the trustor or trustee,
9 whoever has to sign it, would simply sign the documents and close the
10 transaction. It's been a very simple situation.

11 Q So, I'm sorry, I'm trying to see if I can understand it. So
12 escrow would create documents for the trustee to sign?

13 A Yes.

14 Q Okay. And do you know what those documents would be?

15 A I believe it's a simple amendment or change of name of
16 ownership. I can't recall the exact documents, but it's simply to make
17 sure that we correct the change of title.

18 Q So they would try to take it out of the trust; would that be it?
19 And if you don't know, you don't know. I'm just trying to see what
20 knowledge you have.

21 A Yeah. I don't believe they would be taking it out of the trust.
22 I think they simply have the trustee sign the documents whether they can
23 release or make the transfer.

24 Q Okay. So from your knowledge, the trustee would have to
25 sign?

1 A Yes, I would assume so.

2 Q Okay.

3 MR. WINTERTON: Your Honor, I have no further questions.

4 THE COURT: Very good. Redirect.

5 MS. SAYYAR: Yes, Your Honor.

6 REDIRECT EXAMINATION

7 BY MS. SAYYAR:

8 Q Mr. Nyman, since you first learned of Jack's Place Bar and
9 Grill as it related to First Choice Business Brokers, to this day, have you
10 ever seen a copy of any alleged trust purportedly related to Mr. Jack
11 Gaal?

12 A No, I haven't.

13 Q From the first time that First Choice Business Brokers entered
14 into any sort of contact with Mr. Gaal, to the present day, have you ever
15 seen the actual deed for the real property in question?

16 A No, I haven't.

17 MS. SAYYAR: Court's indulgence. One moment. I need to
18 find something.

19 [Pause]

20 BY MS. SAYYAR:

21 Q I would like you to go to Exhibit 7, the asset purchase
22 agreement. Specifically, page 22, paragraph 42.

23 A I'm sorry, what page was that?

24 Q 21, paragraph 42.

25 A Oh.

1 Q I'm sorry, if I misspoke.

2 A Oh.

3 Q Are you there, sir?

4 A Page 21, paragraph?

5 Q 42, closing documents.

6 A Yes.

7 Q Okay. And this has been read before. "Seller will deliver to
8 buyer at the closing of any transfer, any transfer of land documents, bill
9 of sale, assignment of lease, and such other documents, including
10 evidence of corporate authority as reasonably required by the buyer in
11 connection with the sale."

12 In your experience, have you ever gotten to closing, escrow is
13 sending out final documents for the buyer and seller to sign to transfer
14 everything, and a seller balks, and says, I refuse to sign?

15 A We've had situations of seller's remorse, but usually it's over
16 some minor detail that --- sometimes of a vehicle, but other than that, no,
17 usually the deal is completed.

18 MS. SAYYAR: Pass the witness, Your Honor.

19 THE COURT: Mr. Winterton, anything further?

20 MR. WINTERTON: Nothing further, Your Honor.

21 THE COURT: Okay. May we excuse the witness or allow
22 him, at least to step down?

23 MS. SAYYAR: Yes, Your Honor. Subject to potential rebuttal
24 chief.

25 THE COURT: Okay. Mr. Nyman, you may step down.

1 THE WITNESS: Thank you.

2 THE COURT: Is this a good time for our afternoon recess?

3 MS. SAYYAR: Yes, Your Honor, because I believe after
4 checking with the Clerk we may be resting.

5 THE COURT: Okay. So it's 3:27. Let's give you a longer
6 break. 3:45, please, and that will be our last break of the day. Thank you
7 all.

8 MS. SAYYAR: One housekeeping matter. If we are resting,
9 which I believe we are my understanding, logistically, is we are done for
10 the day.

11 MR. WINTERTON: What it is, is I was told -- we were trying
12 to coordinate, and we thought we would take these witnesses to the end
13 of today. I've arranged for Mr. Northup to be here first thing Friday
14 morning.

15 THE COURT: Okay.

16 MR. WINTERTON: And Jack Gaal is having a procedure
17 Friday morning, but it's a minor one, so we're thinking of having him in
18 the afternoon Friday.

19 THE COURT: Okay.

20 MR. WINTERTON: If we can finish both of those up, I think
21 we may be done with the trial.

22 THE COURT: Good enough. That would be great. So I'll
23 come back sooner if you're ready to --

24 MS. SAYYAR: yes.

25 THE COURT: -- go ahead and recess for the entire day. And

1 work out with the -- we have a fill-in court clerk today.

2 MS. SAYYAR: Of course.

3 THE COURT: So that's a really hard job, so be kind to my fill
4 in, so that she'll come back.

5 MR. WINTERTON: We will.

6 MS. SAYYAR: And I will say your regular clerk has done
7 such an amazing job, that I very much doubt there's any issues. I'm sure
8 it's going to be fine.

9 THE COURT: All of these people are the best at what they do
10 in the whole building. So thanks, guys. And I'm here, you know,
11 anytime you're ready to proceed.

12 MS. SAYYAR: Thank you, Your Honor.

13 MR. WINTERTON: Thank you.

14 [Recess from 3:28 p.m. to 3:41 p.m.]

15 THE MARSHAL: Court is back in session.

16 THE COURT: Thank you. Please remain seated. Okay, guys.
17 So, Plaintiff, please call your next witness.

18 MS. SAYYAR: Your Honor, Plaintiff has no more witnesses
19 for its case-in-chief and at this point in time, Plaintiff rests.

20 THE COURT: Thank you.

21 PLAINTIFF RESTS

22 THE COURT: And Defendant are you prepared to call your
23 first witness?

24 MR. WINTERTON: I will tomorrow morning, Your Honor.

25 THE COURT: Okay. Well, can we make that Friday morning?

1 MR. WINTERTON: I'm sorry. You're right. Friday morning.
2 Yes.

3 THE COURT: Okay. So if we start at 10, can we easily get
4 done on Friday?

5 MR. WINTERTON: I think so. I plan on Mr. Northup being an
6 hour to an hour-and-a-half, allowing time for cross, and then Jack Gaal
7 would be in the afternoon.

8 THE COURT: Good enough. Okay. The Nevada District
9 Judges Association is virtual this year. Every Friday from 12 to 1 I'm
10 supposed to do that, but if you need that time, I'll ask permission to miss
11 that.

12 MS. SAYYAR: We appreciate the offer, Your Honor. We'll
13 know by mid-morning or do you need to ask for permission earlier?

14 THE COURT: No. No.

15 MS. SAYYAR: Okay. We'll see how we go.

16 THE COURT: Just to be mindful of my schedule, if we can
17 accommodate it, and if we can't you come first. Okay.

18 MR. WINTERTON: I think --

19 MS. SAYYAR: We're very hopeful --

20 MR. WINTERTON: -- we can --

21 MS. SAYYAR: -- that we can finish.

22 MR. WINTERTON: Yes.

23 MS. SAYYAR: And all portions of this case by Friday.

24 THE COURT: Great. Okay, guys. Thank you. Stay safe, stay
25 healthy. You're in the home stretch. See you Friday.

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MS. SAYYAR: Thank you very much, Your Honor.

MR. WINTERTON: Thank you.

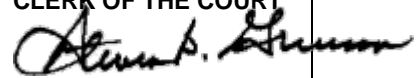
MS. SAYYAR: And thank you to your staff, again.

[Proceedings adjourned at 3:42 p.m.]

ATTEST: I do hereby certify that I have truly and correctly transcribed the audio-visual recording of the proceeding in the above entitled case to the best of my ability.



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1 RTRAN

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5 DISTRICT COURT
6 CLARK COUNTY, NEVADA

7
8 LAS VEGAS 101,
9 Plaintiff,

10 vs.

11 JACK'S PLACE BAR AND GRILL,
12 LLC; JACK GAAL,
13 Defendants.

7)
8) CASE#: A-18-776982-C
9) DEPT. XXVII
10)
11)
12)
13)

14 BEFORE THE HONORABLE NANCY ALLF
15 DISTRICT COURT JUDGE
16 FRIDAY, JUNE 4, 2021

17 RECORDER'S TRANSCRIPT OF BENCH TRIAL - DAY 3

18 APPEARANCES:

19 For the Plaintiff:

ASSLY SAYYAR, ESQ.
MICHAEL ROCK ROCHELEAU, ESQ.

20 For the Defendants:

DAVID J. WINTERTON, ESQ.

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24
25 RECORDED BY: BRYNN WHITE, COURT RECORDER

1 Las Vegas, Nevada, Friday, June 4, 2021

2
3 [Case called at 10:06 a.m.]

4 THE COURT: Las Vegas 101 v. Jack Gaal. Can I have
5 appearances, please, starting first with the Plaintiff?

6 MS. SAYYAR: Good morning, Your Honor. Assly Sayyar on
7 behalf of the Plaintiff. Also present today in the courtroom again is
8 Jeffrey Nyman and Phil Neuenswander.

9 THE COURT: Thank you.

10 MR. ROCHELEAU: And Rock Rocheleau for the Plaintiff.

11 THE COURT: Thank you. Thank you and welcome.

12 MR. WINTERTON: David Winterton on behalf of the
13 Defendant. And also in the courtroom I have Gene Northup. He's our
14 next witness.

15 THE COURT: Very good. Thank you and welcome. Okay.

16 MR. WINTERTON: Your Honor, we do have one issue. Mr.
17 Gaal had a surgical procedure this morning. We were hoping that he
18 would be good enough to come in. He is not. He's also under
19 medication that I'm concerned about the coherency and his ability to
20 testify.

21 THE COURT: Okay.

22 MR. WINTERTON: We know we had next Thursday
23 scheduled. We have checked with all the doctors on his procedures and
24 things that need to go on. We've also checked with him and Thursday
25 he will be able to be here and complete it. We apologize about that.

1 THE COURT: No problem. My trial for Monday went off
2 yesterday, so I have Monday and Tuesday available, if you would prefer
3 to finish sooner than Thursday.

4 MR. WINTERTON: We checked with his medical
5 professionals, and he has certain things on Monday, Tuesday, and
6 Wednesday, and nothing on Thursday.

7 THE COURT: Okay.

8 MR. WINTERTON: If I find out that it's opened up I could call
9 the Court and call counsel and see. I don't know what the procedures
10 are Monday, Tuesday, and Wednesday.

11 THE COURT: Well, we have Thursday at 1 set aside for the
12 trial.

13 MS. SAYYAR: Yes, Your Honor. We'll wait to be heard.

14 THE COURT: Okay. Did you have anything further?

15 MR WINTERTON: No, I don't have anything.

16 THE COURT: And the response, please.

17 MS. SAYYAR: Your Honor, on behalf of my client we
18 received notice of this change from our Wednesday afternoon
19 scheduling when we conferred before we recessed. The voicemail from
20 Mr. Winterton's office, and I thank you for the courtesy, sir, at 4:20 p.m.
21 yesterday. On behalf of my clients, I would like to lodge an objection
22 and an opposition for the record, Your Honor, if I may.

23 This is not the first time during the course of discovery,
24 during mediation, and in the course of trial setting where Mr. Gaal's
25 health has, at the last minute, caused these types of delays or

1 rescheduling, and we've been sympathetic, we've been understanding,
2 but at this point in time when we were present for the status conference
3 on May 20th, 2010 [sic], and set all these dates and all these times, Mr.
4 Winterton, on behalf of his client, represented that other than treatments
5 on May 23rd and May 24th, his schedule was clear, he would keep his
6 schedule clear, and he would be present.

7 Now there's no requirement that the Defendant actually
8 testify, and absent a trial subpoena, there's no requirement that the
9 Defendant actually appear in a civil case. So holding up the trial when
10 we had all anticipated closing and finishing today, my clients even made
11 travel plans and rearranged their schedules for next week in anticipation
12 of those representations, they now have to undo those travel plans.

13 And we in no way cast aspersions on Mr. Winterton. I think
14 he was just as in the dark as we were, but surgeries have to be
15 scheduled. Bloodwork has to be done. COVID tests have to be done. If
16 Mr. Gaal knew that this was a trial day, and he knew -- all of us knew as
17 of May 20th, this was going to be a trial day and there's no proffer of
18 proof from Mr. Winterton that this is an emergent or emergency
19 situation, that means he chose to schedule it on this day, and he either
20 didn't tell his counsel and/or he didn't tell us until the last minute.

21 THE COURT: I was aware that he was having a procedure
22 this morning, and we're only talking about a few days. I realize there is
23 inconvenience for the Plaintiff and for that I apologize. It delays justice. I
24 understand that. But the Defendant is entitled if he wants to appear and
25 wants to testify, to be able to be his best.

1 MS. SAYYAR: I do understand Your Honor's ruling, and I
2 thank you for allowing us to make the record. I will, however, like to
3 then ask if we are resuming on Thursday, we would not like this to
4 happen a third time. Absence -- and we understand emergencies
5 happen, but I would hate to get here, my client comes in from Salt Lake,
6 everyone comes in and Wednesday afternoon I again get a voicemail
7 from Mr. Winterton, in all earnestness saying, I'm sorry he won't be here.

8 I know we can't foresee the future, but I would like to place
9 on the record that if this happens again we will ask to proceed, and we
10 will ask the Court to revisit the pending issue of sanctions related to
11 continuances of this kind.

12 THE COURT: I understand.

13 MS. SAYYAR: Thank you, Your Honor.

14 THE COURT: Thank you. Now where were we, because I
15 always think I remember, and then my notes just say recross ended at
16 4:40.

17 MR. WINTERTON: Yes. They had rested --

18 THE COURT: Right.

19 MR. WINTERTON: -- so I was going to call my first witness,
20 which is Mr. Northup.

21 THE COURT: Okay. Come on up, Mr. Northup.

22 MR. ROCHELEAU: Your Honor, we're going to object to this
23 witness on the basis of NRC 16.1, and the requirement to give us --
24 provide without awaiting discovery requests, parties to a litigation
25 matter must name the name of each individual likely to have. They

1 didn't do it in their initial 16.1. They didn't do it in our request for
2 interrogatories specifically asking for their witnesses in October of 2019.
3 They only added Mr. Northup on the very last day.

4 THE COURT: We have had the exclusionary rule invoked. I'll
5 ask you please to step out in the hall, Mr. Northup.

6 MR. ROCHELEAU: Thank you, Your Honor. It was only on
7 the very last day that discovery was allowed -- that witnesses were
8 allowed to be added on January 18th, 2020, that they added his name at
9 the bottom. So the Plaintiff never got a chance to -- they had plenty of
10 opportunity to give us this gentleman's testimony, so that we could
11 schedule a deposition to find out what he's going to be having here
12 today, so that we're not surprised and ambushed, and then they added
13 him on the very last day of their disclosures when they had plenty of
14 time to add him before, and we would object to his testimony.

15 THE COURT: He was listed on the Defendants' pretrial
16 memorandum as a witness, but you are telling me that he was first
17 disclosed after the discovery cutoff?

18 MR. ROCHELEAU: No. He was disclosed on the very last day
19 of discovery cutoff, January 18th, 2020.

20 THE COURT: And the response, please.

21 MR. WINTERTON: Yes. I do not have the documents in front
22 of me to tell -- to determine when was the first time he was disclosed,
23 but they have known about him the whole time. In fact, this Court --

24 THE COURT: No. You can't argue that. You have to follow
25 the rules.

1 MR. WINTERTON: Then I would have -- okay. What I would
2 like to do is I would like to -- if we don't have him, then what I'll do is I'll
3 -- I would like to see when he was first disclosed.

4 THE COURT: Take a minute and do that, because Mr.
5 Rocheleau, I assume he is correct in what he is saying.

6 MR. WINTERTON: Uh-huh.

7 THE COURT: So take a moment --

8 MR. WINTERTON: I'm not doubting him. I just haven't --

9 THE COURT: Yeah.

10 MR. WINTERTON: I can't recall.

11 THE COURT: Because what I normally do in this situation is
12 consider the arguments and at least let you make an offer of proof of
13 what his testimony might have been. And if he was in fact disclosed on
14 the last, they didn't get a chance --

15 MR. WINTERTON: True.

16 THE COURT: -- to depose him.

17 MR. WINTERTON: Well, the only issue that I have, Your
18 Honor, is he was part of the settlement conference ordered by the Court.
19 And so he was there. He was present. So they knew about him the
20 whole time.

21 THE COURT: That doesn't --

22 MR. WINTERTON: Okay.

23 THE COURT: -- satisfy the rules.

24 MR. WINTERTON: Okay.

25 THE COURT: So take a minute and look at that, please. In

1 fact, let's take a five minute recess --

2 MS. SAYYAR: Thank you, Your Honor.

3 THE COURT: -- because I had that other hearing before, and
4 I'll come back fresher. Thank you.

5 [Recess from 10:14 a.m. to 10:27 a.m.]

6 THE COURT: Thank you. Please remain seated. Okay. Mr.
7 Winterton, did you have a chance to look at everything?

8 MR. WINTERTON: We did. We did not list it earlier, so.

9 THE COURT: Okay.

10 MR. WINTERTON: So, I guess --

11 THE COURT: I'll let you make an offer of proof of what his
12 testimony would have been.

13 MR. WINTERTON: Sure. Your Honor, basically what Mr.
14 Northup would have testified is that he and Jack Gaal had a partnership
15 and have done a work together. That Jack Gaal called him up and said,
16 hey, could you sell the property, and he said, let me bring Phil
17 Neuenswander in. He sells businesses. We will work together. We had
18 a 40 percent contingency agreement that he would get 40 percent and
19 Phil would get 60 percent. And he would also testify that when he
20 looked at the contract, he will say he didn't see the initial -- he didn't read
21 over the exclusive listing agreement. He says, when I looked over the
22 original contract, I said -- he will testify it did not cover the real property.
23 And that's basically what he would testify to.

24 So, for us it just reemphasize, but we'll be using Jack Gaal to
25 cover all that information.

1 THE COURT: Good enough. Thank you. May I see counsel
2 in the hall?

3 MS. SAYYAR: Yes.

4 MR. WINTERTON: Sure.

5 [Sidebar at 10:29 a.m., ending at 10:34 a.m., not transcribed]

6 THE COURT: Okay. So just for the record we've had a
7 colloquy off the record with counsel, and we'll be in recess until next
8 Thursday at 1:00 p.m. Everybody stay safe and healthy in the meantime.

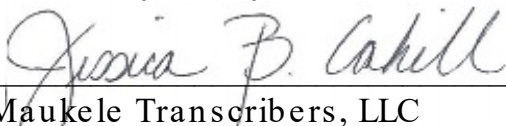
9 MS. SAYYAR: Thank you very much, Your Honor.

10 MR. WINTERTON: Thank you.

11 MS. SAYYAR: And thank you to your staff. Thank you.

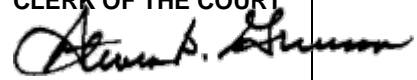
12 [Proceedings adjourned at 10:34 a.m.]
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19 ATTEST: I do hereby certify that I have truly and correctly transcribed the
20 audio-visual recording of the proceeding in the above entitled case to the
21 best of my ability.

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24 Jessica B. Cahill, Transcriber, CER/CET-708
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1 RTRAN

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5 DISTRICT COURT
6 CLARK COUNTY, NEVADA

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8 LAS VEGAS 101,
9 Plaintiff,

10 vs.

11 JACK'S PLACE BAR AND GRILL,
12 LLC; JACK GAAL,
13 Defendants.

7)
8) CASE#: A-18-776982-C
9) DEPT. XXVII
10)
11)
12)
13)

14 BEFORE THE HONORABLE NANCY ALLF
15 DISTRICT COURT JUDGE
16 THURSDAY, JUNE 10, 2021

17 RECORDER'S TRANSCRIPT OF BENCH TRIAL - DAY 4

18 APPEARANCES:

19 For the Plaintiff:

ASSLY SAYYAR, ESQ.
MICHAEL ROCK ROCHELEAU, ESQ.

20 For the Defendants:

DAVID J. WINTERTON, ESQ.

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25 RECORDED BY: BRYNN WHITE, COURT RECORDER

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<u>FOR THE PLAINTIFF</u>	<u>MARKED</u>	<u>RECEIVED</u>
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None		
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<u>FOR THE DEFENDANTS</u>	<u>MARKED</u>	<u>RECEIVED</u>
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1 Las Vegas, Nevada, Thursday, June 10, 2021

2
3 [Case called at 1:01 p.m.]

4 THE MARSHAL: Department 27 is now in session. The
5 Honorable Judge Allf presiding.

6 THE COURT: Thank you, everyone. Please be seated. All
7 right. So, Mr. Winterton, your next witness, please.

8 MR. WINTERTON: Yes. I would like to call Jack Gaal to the
9 stand.

10 THE COURT: Thank you. Let's take appearances first. First
11 for the Plaintiff.

12 MS. SAYYAR: Good morning, Your Honor. Assly Sayyar on
13 behalf of the Plaintiff. Also present here today is Mr. Neuenswander.
14 Mr. Nyman, unfortunately, could not be here today. He is presenting at a
15 conference on the east coast and passes on his apologies.

16 THE COURT: Thank you.

17 MR. ROCHELEAU: Attorney Rock Rocheleau for the Plaintiff.

18 THE COURT: Thank you. Mr. Winterton.

19 MR. WINTERTON: David Winterton on behalf of the
20 Defendants, and I have Jack Gaal with me, and, also, I have Gene
21 Northup.

22 THE COURT: Okay. Mr. Northup is not a witness, so he may
23 sit in the courtroom. Please come up, Mr. Gaal.

24 THE MARSHAL: Sir, watch your step please. Step up to the
25 stand and face the Clerk over there for me.

1 MR. GAAL: Okay.

2 THE CLERK: Please raise your right hand.

3 JOHN JACK GAAL, DEFENDANTS' WITNESS, SWORN

4 THE CLERK: Thank you. Please be seated. And, sir, will you
5 please state and spell your first and last name for the record.

6 THE WITNESS: Well my legal name is John, J-O-H-N. I go
7 by Jack, J-A-C-K. Last name is Gaal, G-A-A-L.

8 THE CLERK: Thank you.

9 THE COURT: Go ahead, please.

10 MR. WINTERTON: Thank you.

11 DIRECT EXAMINATION

12 BY MR. WINTERTON:

13 Q Okay. Do you mind if I call you Jack, for the record?

14 A Perfect.

15 Q Okay. Now, Jack, I wonder if you could give us a brief
16 background on your work experience that you have had.

17 A Well, I was in construction and development for the most
18 part of my life. High school and college days, I was in the fast food
19 business. I worked for the In-N-Out hamburger people. I ended up being
20 food and souvenir manager at two racetracks in southern California.
21 And from about 2000 to 2010, we had a mobile food business. I retired
22 from construction, in about 2013, '14, '15, something like that. I still do a
23 little bit of it. But we bought the restaurant -- we closed escrow June
24 29th of 2012. So July 1st, will be about nine years.

25 Q Okay. So let me go over some of that. I wonder if you could

1 elaborate a little bit more about your construction and that type of
2 experience that you have.

3 A Well, construction was a lot of fun in those days. I don't
4 know if it's fun anymore with the price of materials. Stuff's going
5 through the roof. But I was in it for a long time. I started out in industrial
6 and commercial. I built a home for my wife and myself overlooking Lake
7 Meade, and we got a lot of attention. Turned out a whole bunch of
8 money, so I got into the residential business. So we did that until the
9 recession hit. Fortunately, got out of most of it. And then we worked for
10 Sanford [phonetic] Generation out in Boulder City building solar fields.
11 We did everything except the fields themselves.

12 Q Okay.

13 A So we did not feel the recession.

14 Q Okay. Good. Now -- and you briefly touched on it. There
15 came a point in time where you were interested in acquiring what is
16 known as Jack's Place Bar and Grill. You said it was around 2012 that
17 you acquired that?

18 A That's correct.

19 Q Okay. And how did you have it -- when you acquired it, did
20 you also acquire the building?

21 A We bought the -- it was a great location. My wife was the
22 only one in Boulder City that saw my vision. Everyone else thought I
23 was crazy, okay. Good location. We bought the land, the building, and
24 the business.

25 Q Okay.

1 A Okay. The business needed a lot of work, so we kind of
2 doubled the size of the building, cleaned it up, fixed it up, here we are.

3 Q Okay. Now when it was set up, did you have an LLC that
4 owned the business?

5 A That's how my attorney at the time set it up, yes.

6 Q Okay. And he put the building in a trust?

7 MS. SAYYAR: Objection. Calls for speculation. Leading.

8 THE COURT: It is leading.

9 MR. WINTERTON: Okay.

10 BY MR. WINTERTON:

11 Q What type of entity did they put the building in?

12 A The attorney that I was using to set up the LLC, okay, was
13 doing all the paperwork that's required for a new business, okay. The
14 land and the building just automatically went into my trust.

15 Q Okay. So when the land and the building went into the trust,
16 has it changed since that time or is it still in the trust?

17 MS. SAYYAR: Your Honor, I'm going to object to the best
18 evidence rule at this point in time if they're going to testify about deeds,
19 the contents of the trust, trust list of assets. The best evidence rule
20 would require documents to be produced if he's going to discuss the
21 contents of them.

22 THE COURT: I'm going to overrule the objection.

23 THE WITNESS: Nothing has changed.

24 BY MR. WINTERTON:

25 Q Okay. And the ownership of the business, has that changed

1 since it was first set up?

2 A No, it has not.

3 Q Okay. Now in -- there came a point in time -- okay, from
4 2012, we're going to move forward to 2017. And in 2017, did you reach a
5 point in time that you wanted to sell the business?

6 A That's correct.

7 Q I wonder if you could tell us a little bit about that? Why you
8 decided?

9 A Well, I had pretty much gotten out of the construction
10 business and restaurants can be tough. I wasn't getting younger and my
11 wife and I kind of agreed that we should -- it's time to do something
12 different. So I called Gene Northup who we had been doing real estate
13 deals together for a long time, 20 some years, probably, 25 years. I don't
14 know. I said, Gene, here's what we want to do, okay.

15 Q Okay.

16 A So that's how I started.

17 Q Okay. So you decided to sell and put it on the market, so you
18 called your friend Gene. And did you meet with Gene or what happened
19 next?

20 A Well, I'm sure Gene and I met, and I gave him a tour of the
21 facility, and he said, I need to hire a business --

22 MS. SAYYAR: Object, Your Honor, to the extent it's calling
23 for hearsay.

24 THE COURT: I think it's still foundational at this point.

25 Overruled.

1 MS. SAYYAR: Thank you, Your Honor.

2 THE WITNESS: I met with Gene, gave him a tour, and we
3 talked things over, and I had an appraisal upgraded, because like I said
4 earlier we had added about 50 percent of the square footage to the
5 building, plus some improvements out back. The whole backyard was
6 dirt, and you don't want dirt around a restaurant. So that's all concrete
7 and a new shed out there.

8 So we got the new appraisal, and Gene said, I'm not qualified
9 to sell a business. I said, well, go find someone that's qualified to sell a
10 business.

11 BY MR. WINTERTON:

12 Q Okay. And so did Mr. -- Gene go ahead and find someone?

13 A Yes.

14 Q And who was that individual?

15 A It was Phil from, what is it, First Choice.

16 Q Okay. And what happened next? Did you meet Phil? Did
17 you call --

18 A I think we met -- I met Phil once or twice at Gene's office.
19 Gene put together a pretty fancy brochure for us and Phil went to work
20 and got an offer a while later, half a year later.

21 Q Okay.

22 A Three months, four months.

23 Q Okay. What I would like to do is I'm going to break it down.
24 Do you recall where your first meeting was with Phil?

25 A Gene's office.

1 Q Okay.

2 A At the District.

3 Q Okay. And do you recall what was discussed there?

4 A To start talking about Phil and the whole deal.

5 Q Okay. Did Phil ask you any questions, like, who owns what,
6 where when ?

7 A No, we just talked about square footage and what I thought
8 values were is the best of my recollection.

9 Q Okay. And then Phil left after the meeting. He got all the
10 information he needed at that time, and then did he -- and then did the
11 meeting end or anything else you recall?

12 A Well, I recall meeting with Phil and Gene in Gene's office two
13 times, I believe, near the start.

14 Q Okay.

15 A That's the best of my recollection.

16 Q Okay. And the second time you met, is that when you signed
17 the listing agreement with Phil?

18 A I would say yes.

19 Q Okay.

20 A That's an assumption is it was a couple days ago.

21 Q Okay. What I would like to do is go to -- in front of you there
22 are a couple of books. And one of them has got Exhibit number 10.

23 A Okay.

24 Q Okay. Before I talk about Exhibit number 10, I just want to
25 ask you a few questions. When you were meeting with Phil, did you ever

1 give any false information to Phil?

2 A No.

3 Q Did you withhold any information from Phil that the he asked
4 for?

5 A To my knowledge, no.

6 Q Did Phil ask you about the ownership?

7 MS. SAYYAR: Your Honor, leading.

8 MR. WINTERTON: I'll withdraw that question.

9 BY MR. WINTERTON:

10 Q Did the representatives from First Choice make an inquiry as
11 to how the properties were owned?

12 A No.

13 Q Now in front of you we have a book -- or Exhibit 10 is the
14 exclusive right to sell listing agreement. And this has been admitted into
15 evidence. So have you seen this before?

16 A Yes.

17 Q Okay. Now in this agreement does it say anything about a
18 trust?

19 A No.

20 Q Okay. Who drafted this agreement?

21 A I'm assuming someone from First Choice.

22 Q Okay. Did you draft this agreement?

23 A No.

24 Q Do you know who provided the information that's in it? For
25 example, Jack Gaal, managing member. Do you know where that

1 information came from?

2 A It could have come from one of our meetings.

3 Q Okay. Now you are -- are you or are you not the manager of
4 Jack's Place Bar and Grill?

5 A Yes.

6 Q Okay. Yes, you are or yes, you're not a manager?

7 A Well, I have a general manager that runs it day to day, but
8 I'm the owner and the managing partner. My wife pretty much stays out
9 of the deal.

10 Q Okay.

11 A So I guess the answer to your question is yes.

12 Q Okay. Now what I would like to do is Exhibit 10, and go to
13 the very bottom in the middle, and it says, page 35. Okay. Is there
14 anywhere in this agreement where you signed as the trustee of the trust?

15 A No.

16 Q Okay. Is that your signature that's one-third of the way
17 down?

18 A What page are we on now?

19 Q The same page.

20 A Same page?

21 Q Exhibit 10, at the bottom of the page it says 35. It's the last
22 page of Exhibit 10.

23 A Yes.

24 Q Okay. And were you signing this as the manager of Jack's
25 Place Bar and Grill, LLC?

1 MS. SAYYAR: Objection. Leading.

2 THE COURT: Overruled.

3 BY MR. WINTERTON:

4 Q You can answer.

5 A Well, it says here Jack's Place Bar and Grill, LLC, Jack Gaal,
6 managing partner. So that's my signature on top of it.

7 Q Okay. What was -- what's your understanding when it's
8 signed like that?

9 A I'm signing for the LLC.

10 Q Okay. Now why did you hire Phil or First Choice?

11 A He had the proper license, and Gene and I both agreed that
12 he was the right guy.

13 Q Okay. Did you -- were you counting on his expertise to assist
14 you?

15 A Very definitely.

16 Q Okay.

17 A In the construction business, if you need a plumber, you hire
18 a plumber. If you're selling a business, you hire the business guy to sell
19 it for you.

20 Q Okay. So you relied upon him to prepare the listing
21 agreement?

22 A Yes.

23 Q Okay. Now what I would like to do is on Exhibit 10, and if
24 you look at the bottom where it says pages, I want you to go to page 32.
25 And at the very -- almost the very bottom it says parcel number, and it

1 has a number. Do you see that?

2 A On the right side there?

3 Q The left side.

4 A Oh, the parcel number. Yes.

5 Q Okay. Did you provide that parcel number to Phil?

6 A Not to my knowledge, no.

7 Q Okay. Okay. Now there came a point in time where you had
8 an appraisal on the property; is that correct?

9 A We had one before we bought it in 2012, and then we
10 upgraded it towards the end of 2017.

11 Q Okay. Could I get you -- there's another book up there. And
12 in that other book --

13 A I've only got one book.

14 THE COURT: Yeah, there -- I'm not sure if the second one is
15 up here. I have a second one.

16 [Court and Clerk confer]

17 THE COURT: Okay. So, Mr. Winterton, could you please
18 approach?

19 MR. WINTERTON: Can I come up?

20 THE WITNESS: Thank you.

21 BY MR. WINTERTON:

22 Q Okay. What I would like to do is turn to page 511 -- or Exhibit
23 511.

24 A Okay.

25 Q Okay. What is this document?

1 A This is the updated appraisal.

2 Q Okay. And this is the one that you were referring to that you
3 had obtained?

4 A Yes.

5 Q And what is the date of that -- this appraisal?

6 MS. SAYYAR: I would like to object, Your Honor, to the
7 extent that he's looking at the document. The document has not been
8 admitted into evidence.

9 THE COURT: It hasn't been admitted.

10 MR. WINTERTON: Okay.

11 THE COURT: You have to test his memory another way.

12 MR. WINTERTON: Okay. I'll withdraw the question and get it
13 admitted.

14 BY MR. WINTERTON:

15 Q I wonder if you could take a minute and review this appraisal
16 to make sure that this is a true and correct copy of the appraisal.

17 [Witness reviews document]

18 A Yeah. This is it.

19 Q And you paid for this appraisal to be done?

20 A Yes, I did.

21 Q And this is the appraisal that you relied upon in this case?

22 A Yes.

23 MR. WINTERTON: Your Honor, we would move for the
24 admission of Exhibit 511.

25 MS. SAYYAR: Your Honor, we're going to reaffirm our

1 objection before. This appraisal was not created by this witness. This
2 appraisal was created by a licensed appraisal [sic]. It's dated well before
3 any of the acts and incidents that are involved in this contract case. It
4 wasn't prepared for this matter. It is improper [sic] expert testimony. It
5 is hearsay. It is speculation. It is unauthenticated. This witness lacks the
6 personal knowledge to grant foundation as to why or how this is even
7 relevant to this case, Your Honor. So we will resume our prior objection.

8 THE COURT: And your response, please.

9 MR. WINTERTON: Yes, Your Honor. First of all, this is part
10 of the case because they testified about an appraisal. Phil's testified
11 about an appraisal and that it was used in this case, and that's how they
12 came up in their listing agreement to list it at \$700,000.

13 Number two is if he hires someone to do the appraisal and
14 this is what they give him, and he uses it in this case, he relies upon it,
15 we're not asking for expert testimony. This is just a document that I
16 have. This is what I used. This is part of the contract, and that meets the
17 rules that it could be admitted at this time.

18 THE COURT: Okay.

19 MR. WINTERTON: And it's testified as a true and accurate
20 copy.

21 THE COURT: Objection is overruled. Exhibit 511 will be
22 admitted.

23 [Defendants' Exhibit 511 admitted into evidence]

24 MS. SAYYAR: Your Honor, may I make one other proffer of
25 evidence in response to his comment about --

1 THE COURT: You may.

2 MS. SAYYAR: -- Phil does, just for the record?

3 Mr. Winterton's argument that Mr. Neuenswander said that
4 he used this appraisal was not put in evidence. Those were questions
5 Mr. Winterton asked, but Mr. Neuenswander did not answer them the
6 way Mr. Winterton is claiming that he did. There is no evidence in the
7 record currently that this appraisal was used by anyone, nor is there any
8 foundation or evidence in the record as to when or how anyone saw it, at
9 what date. With that understanding, thank you, Your Honor.

10 THE COURT: Okay. Go ahead, please.

11 BY MR. WINTERTON:

12 Q Okay. Have you -- so, Mr. Gaal, what was the date of this
13 report?

14 THE WITNESS: Can I answer that now?

15 THE COURT: You can.

16 THE WITNESS: June 23rd of '17.

17 BY MR. WINTERTON:

18 Q And what was the -- who was the entity or person that it was
19 prepared for?

20 A It was prepared for me. It says John A. Gaal and Katherine B.
21 Gaal, trustees of the John A. Gaal Family Trust dated such and such.

22 Q Okay. And so it was prepared as -- on your behalf as trustees
23 of the trust?

24 A That what it says on page 1.

25 Q Okay. Now there came a point in time that you wanted to

1 sell the building and how did this appraisal affect what you were going
2 to sell the building for?

3 A Well, I never wanted to just sell the building.

4 Q Okay.

5 A I always wanted to sell the land, the building, and the
6 business. I did not want to be a landlord.

7 Q Okay. So how did this appraisal affect in determining the
8 price of the business and the land?

9 A I think it was an updated number from the guy that did the
10 one in 2012. He added some dollars in there for the extra square footage
11 of the improvements --

12 Q Okay.

13 A -- upgrades, et cetera.

14 Q And I wonder if you could turn to page 3 of Exhibit 511. And
15 what is your understanding that the appraiser determined the value of
16 the building and land?

17 A It looks it was 715,000.

18 Q Okay. And did you use that figure to determine how much to
19 sell the building for?

20 A I'm sure it entered into part of the formula.

21 Q Okay.

22 A The seller always thinks it's low.

23 Q Okay. So now you talked -- you testified that you talked to
24 Mr. Northup around September/October of 2017?

25 A Sounds about right.

1 Q Okay. So if I go from June to October, this appraisal is only
2 about four months old?

3 A Four or five.

4 Q Okay. Now at one point in time do you know if this appraisal
5 was given to Phil Neuenswander?

6 A I'm assuming it was.

7 Q Okay. Did you give it to Gene Northup to give it to Phil
8 Neuenswander?

9 MS. SAYYAR: Objection. Leading.

10 THE COURT: Sustained.

11 MR. WINTERTON: Okay.

12 BY MR. WINTERTON:

13 Q Do you know -- okay. Do you know how it could have gotten
14 to Mr. Neuenswander --

15 MS. SAYYAR: Calls for speculation. Lack of personal
16 knowledge.

17 THE COURT: It's a yes or no -- hang on. Do you know? It
18 calls for a yes or no answer. Overruled.

19 THE WITNESS: What was the question again?

20 BY MR. WINTERTON:

21 Q Do you know how the appraisal could have gone to Phil
22 Neuenswander?

23 THE COURT: It's yes or no.

24 THE WITNESS: No.

25 THE COURT: Okay.

1 BY MR. WINTERTON:

2 Q Okay. Okay. I want to go back to another document. It's on
3 page 521. And have you seen this document before?

4 A I'm assuming I have. I don't recall specifically.

5 Q Okay. Is this the one where it says, tax full? Are we on the
6 same page?

7 A Tax full.

8 Q Do you have any idea what this is?

9 A Well, it's from the Assessor's Office, obviously. Giving you
10 some values.

11 Q Okay.

12 MR. WINTERTON: Your Honor, what I would like to do at this
13 time is ask that the Court take judicial notice of a tax record that is dated
14 2/13/18, which is printed out and provided from the tax records. Under
15 the NRS 47.150, that says the Court can take judicial notice, if requested
16 by a party, and supplied with the necessary information, which is the
17 information of the tax record, which the Court can also go back and
18 check back in 2013, '18 as to the owner of the property. We would just
19 like to take judicial notice again that the owner of the property was John
20 A. Family -- John A. Gaal Family Trust dated May 9th, 1995.

21 THE COURT: Your response, please.

22 MS. SAYYAR: Your Honor, our objection to Your Honor
23 taking judicial notice of 521, is this does not appear to be in any way
24 certified or there's no way to confirm based on the website address at
25 the bottom that this, a) is a complete document; b) who printed it out,

1 and c) that it actually came from the Assessor's website. I'm sure, Your
2 Honor, many of us are familiar with what Assessor website printouts
3 look like. I don't think I've ever seen one that looks like this, but Your
4 Honor can, of course, use your discretion.

5 THE COURT: Well, I haven't reviewed it because it hasn't
6 been admitted. But if you -- you'll have to lay more foundation for it, if
7 you want to get it in through him.

8 MR. WINTERTON: Okay. I'm not asking to have it admitted.

9 THE COURT: Oh, I see.

10 MR. WINTERTON: I'm just asking to take judicial notice of
11 the ownership.

12 THE COURT: But how do I know that it's correct?

13 MR. WINTERTON: The biggest thing is if you provide the
14 information to the Court, and it can be readily substantiated, which is
15 going to the Assessor's Office, you can take judicial notice of it.

16 THE COURT: I'm going to decline.

17 MR. WINTERTON: Okay. Okay.

18 THE COURT: And it is discretionary, certainly, under NRS
19 47.150.

20 MR. WINTERTON: Correct. Okay.

21 BY MR. WINTERTON:

22 Q Now what I would like to do is to go to -- there's a book
23 there, Exhibit 7, or I mean book, and it's got Exhibit 7 to it. Okay. Are
24 you there?

25 A Yes.

1 Q Okay.

2 A I'm sorry.

3 Q No problem. Now under 7, is this the asset purchase
4 agreement that was presented to you?

5 A Yes.

6 Q And is there anywhere in this agreement where it talks about
7 the Jack Gaal Family Trust?

8 A No.

9 Q Okay. And on this page, under where it says 3B, it says,
10 \$700,000. Do you see that?

11 A Yes.

12 Q Okay. And then what does it say, right across from that in
13 the handwriting?

14 A "Bank loan on real estate."

15 Q Okay. What is your understanding of the 700 and the bank
16 loan on real estate?

17 A Well if the land and building was appraised at \$715,000, and
18 we're asking for \$700,000, that's never going to happen.

19 Q Why?

20 A Well, you can't borrow 95 plus percent. Who's going to loan
21 it to you?

22 Q Okay. And let's go over to Exhibit number 6. And one-third
23 of the way down it says, the purchase price, and then it says the deal
24 structure will be payable as follows: \$30,000 earnest money deposit,
25 \$700,000 bank loan on the real property. So what is your understanding

1 under the amendment how the real property was to be finances?

2 A Well, you got 700,000 of the million was going to be a bank
3 loan.

4 Q Okay. And, again, you had the same concern that can you
5 finance 95 to 100 percent. Have you done a lot of financing throughout
6 your career in building and things like that?

7 A I'm not a CPA or an accountant, but I understand financing.

8 Q Okay. And have you ever obtained 100 percent loan on any
9 of your projects?

10 A I wish.

11 Q Okay. Have you ever --

12 A The answer is no, I'm sorry.

13 Q Yeah. Have you ever obtained a 95 percent loan to value on
14 any of your projects?

15 A No.

16 Q Okay. What is your understanding regarding loans for
17 commercial versus residential contents?

18 A Well my understanding is that, you know, depending on the
19 time period, they're going to loan maybe as much as 80 percent, never
20 any more --

21 Q Okay.

22 A -- to my knowledge.

23 Q Okay. Now did you give references to try to help Mr. Soto to
24 get financing on the property?

25 A He called the Boulder Dam Credit Union. I thought he was

1 going to visit the credit union, but he made one or two phone calls to my
2 knowledge and talked to some loan officers without a very favorable
3 response from what I learned.

4 Q Okay. And you've a relationship with Boulder Dam Credit
5 Union?

6 A I've been doing all their construction and maintenance from
7 1995, and we've got a project going right now, but I've turned it over to
8 some other people.

9 Q So if you felt if anyone could do it, they could have done it
10 for you?

11 MS. SAYYAR: Objection. Leading.

12 MR. WINTERTON: I'll withdraw.

13 THE COURT: Objection sustained.

14 MR. WINTERTON: Thank you.

15 BY MR. WINTERTON:

16 Q What was your belief about how Boulder Credit Union could
17 help him?

18 A Well, I think Gene and I thought they would be the best since
19 the real estate was right in downtown Boulder City. And if they couldn't
20 help his cause, no one else probably could.

21 Q Okay. Now there came a point in time that a sale took place
22 where -- not a sale, but a contract -- let me see if I can find it here. Okay.
23 I wonder if I could get you to turn to Exhibit 9. Okay. Have you seen this
24 document before?

25 A Yes.

1 Q From your understanding, what is it?

2 A It was a list of requests or demands from the potential buyer.

3 Q Okay. And is this handwriting your handwriting? For
4 example --

5 A I think -- I think --

6 Q Oh, go ahead.

7 A I think Gene and I could have met and put it together. I think
8 that's Gene's handwriting.

9 Q Okay. And then, for example, number 2 is crossed out. You
10 and Gene together, he crossed that out or did you cross it out?

11 A We had already provided that stuff.

12 Q Oh, okay.

13 A That's my recollection.

14 Q Okay. How about number 3, copy of invoices for expenses
15 claimed on profit and loss statement? Do you recall that?

16 A I think all the stuff that was crossed out had already been
17 provided.

18 Q Okay. Okay. Now let's go down to the very bottom where it
19 says, copies of unemployment claims and experience record, and it says
20 none. Why did you put none?

21 A Because at the time we didn't have any unemployment
22 claims.

23 Q Okay. And so you went through each one of these and
24 evaluated to get these documents for the buyer; is that correct?

25 A That's my recollection.

1 Q And then did you gather some documents?

2 A We gathered as much of the information that we could.

3 Q Okay. And what did you do with it?

4 A I would say 100 percent of the time they went to Gene, and
5 Gene passed them on to Phil.

6 Q Okay. Now there was a point in time where there was an
7 issue regarding whether or not the trust was part of the purchase
8 agreement. Do you recall that?

9 A Yeah, there was conversation about that.

10 Q Okay. And was there -- do you have knowledge as to
11 whether or not there was a request to have things fixed up?

12 A I'm sure there was, because we found quite a few mistakes in
13 my opinion or Gene's opinion.

14 Q Okay. Did you want to have those errors corrected?

15 A My recollection is yes.

16 Q And did you ever -- did First Choice ever get back to you with
17 the corrections that you wanted?

18 MS. SAYYAR: Objection. Assumes facts not in evidence.

19 THE COURT: Overruled. You can answer.

20 THE WITNESS: No.

21 MR. WINTERTON: Your Honor, I have no further questions.

22 THE COURT: Cross-examination, please.

23 MS. SAYYAR: Thank you, Your Honor.

24 CROSS-EXAMINATION

25 BY MS. SAYYAR:

1 Q Good afternoon, Mr. Gaal. My name is Assly Sayyar. I
2 represent the Plaintiff along with Mr. Rocheleau in this case. I have just a
3 few follow-up questions to your testimony.

4 Now you are a trustee of the John A. Gaal Family Trust, correct?

5 A Yes.

6 Q And you own that trust? That's your trust, correct?

7 A I'm a co-trustee with my wife.

8 Q And you've represented that that's your trust, and you own
9 it?

10 A My wife and I own it, yes.

11 MS. SAYYAR: Your Honor, we're going to have to publish a
12 deposition. May I approach?

13 THE COURT: Give us the name and date.

14 MS. SAYYAR: It is in the matter of Las Vegas 101, Inc. v. Jack
15 Gaal. This is the deposition of Jack Gaal dated October 1, 2020.

16 THE COURT: Any objection to the publication of Mr. Gaal's
17 deposition?

18 MR. WINTERTON: I'm sorry.

19 THE COURT: Any objection to the publication of Mr. Gaal's
20 deposition?

21 MR. WINTERTON: No objection, Your Honor.

22 THE COURT: Okay. Ms. Sayyar, if you'll approach?

23 MS. SAYYAR: Of course, Your Honor. Thank you very much.
24 Here you are, Mr. Gaal.

25 THE WITNESS: Thank you.

1 BY MS. SAYYAR:

2 Q Mr. Gaal, you were deposed in this case, correct?

3 A Yes.

4 Q I would like you, and I would like to direct the Court to page
5 13 of this deposition transcript. Beginning on line 22 and ending on line
6 25.

7 "Q Do you own a trust?

8 "A Yes.

9 "Q What is the name of the trust?

10 "A The John A. Gaal Family Trust."

11 A I'm sorry, what page are we on?

12 Q Page 13.

13 A I'm sorry. Thank you. Got it.

14 Q Line 22 to 25, which I have just read in. Now your wife's
15 name is not part of the name of the trust, correct?

16 A No.

17 Q And it's your testimony that in 2017, you wanted to sell the
18 whole deal, land, business, building operation, everything, correct?

19 A Yes.

20 Q Okay. And isn't it true that you were the only one that
21 needed to authorize that sale and listing, correct?

22 A Correct, because the trust had nothing to do with it.

23 Q But you wanted to sell the land?

24 A The deal was land, building, and business, yes.

25 Q Okay. And isn't true that you accepted Mr. Soto's offer to

1 purchase the land, the building, and the business in 2018?

2 A We thought that's what we were signing, but there's nothing
3 listed on both documents that mention the trust.

4 Q But it lists the land, the building, and the business, correct?

5 A I don't --

6 Q It's a yes or no answer.

7 A I don't have that in front of me. Yes.

8 Q Yes?

9 A I'm assuming yes.

10 Q Shall we look at the document. Can you please turn to
11 Exhibit 6, for example?

12 A What page are we on now?

13 Q Exhibit. We're no longer in the deposition, sir. I'm sorry for
14 the confusion. You're in the binders now.

15 MS. SAYYAR: I'm going to approach, Your Honor.

16 THE WITNESS: Back in the binder?

17 THE COURT: Give him a chance first. Hang on. Give him a
18 chance.

19 MS. SAYYAR: Okay. Thank you, Your Honor.

20 THE WITNESS: Are we in this one, the witness copy?

21 THE COURT: It's -- on the front it says Plaintiff's exhibits, and
22 they're numbered 1 through 29.

23 THE WITNESS: Oh, here we are. Got it. Wrong one. Okay.
24 I'm on Exhibit -- page 14.

25 BY MS. SAYYAR:

1 Q Yes, sir.

2 A Okay.

3 Q Does that refresh your recollection?

4 A I've seen it before. I've signed it. Yes.

5 Q And so you accepted an offer from Mr. Soto to sell the land,
6 the building, and the business operations?

7 A Yes.

8 [Counsel confer]

9 MS. SAYYAR: Pass the witness, Your Honor.

10 THE COURT: Thank you. Redirect, please.

11 REDIRECT EXAMINATION

12 BY MR. WINTERTON:

13 Q John, how many people does it take to sign -- to authorize an
14 action on behalf of the trust?

15 MS. SAYYAR: I'm going to object to best evidence rule, Your
16 Honor. We don't have any trust documents, even disclosed in discovery,
17 let alone proposed in evidence.

18 THE COURT: I'm going to allow him to answer it, but that
19 will affect the weight of his testimony.

20 MS. SAYYAR: Thank you, Your Honor.

21 THE WITNESS: The trust has to be signed by two of us.
22 We're both trustees, my wife and myself.

23 BY MR. WINTERTON:

24 Q So to authorize any action on the trust, what two people have
25 to sign?

1 A Whatever document we're looking at.

2 Q Oh, I mean, what -- the name of the two people that have to
3 sign?

4 A Oh, John A. Gaal and Katherine B. Gaal.

5 Q Okay. And in this whole transaction, was there any
6 paperwork given to you to have those two people sign any documents?

7 A No.

8 MR. WINTERTON: No further questions, Your Honor.

9 THE COURT: Okay. Any recross?

10 MS. SAYYAR: Your Honor, we are going to go back to Mr.
11 Gaal's deposition, if he could.

12 RECROSS-EXAMINATION

13 BY MS. SAYYAR:

14 Q So look in the deposition, Mr. Gaal, not in the binder. We're
15 going to go to page 18.

16 THE COURT: He's there.

17 BY MS. SAYYAR:

18 Q Okay.

19 A Almost there. Okay. Thank you.

20 MS. SAYYAR: We're going to read, Your Honor, from line 13
21 to line 25.

22 BY MS. SAYYAR:

23 Q "Q When you listed Jack's place for sale, who needed to
24 authorize the listing?

25 "A I did.

1 "Q Anyone else?

2 "A No.

3 "Q Were you authorized to transact the listing agreement on
4 behalf of the trust?

5 "A No.

6 "Q Were you authorized to transact the listing agreement on
7 behalf of the LLC?

8 "A I'm assuming yes.

9 "Q Why weren't you authorized with the trust?

10 "A I have no idea."

11 MS. SAYYAR: No further questions, Your Honor.

12 THE COURT: Okay.

13 MR. WINTERTON: No further questions.

14 THE COURT: All right. May we excuse the witness? Mr.
15 Winterton, may we excuse the witness?

16 MR. WINTERTON: Oh, I'm sorry. Yes.

17 THE COURT: Sir, you may step down. Defendant, please call
18 your next witness.

19 MR. WINTERTON: Phil Neuenswander.

20 THE COURT: Okay. Mr. Neuenswander, you're -- he's
21 already been sworn.

22 THE CLERK: Oh, okay.

23 THE COURT: You're under the same oath you took
24 previously. There's no reason to reswear you.

25 THE WITNESS: Okay.

1 PHILIP NEUENSWANDER, DEFENDANT'S WITNESS, PREVIOUSLY
2 SWORN

3 THE COURT: Go ahead, please.

4 MR. WINTERTON: Thank you.

5 DIRECT EXAMINATION

6 BY MR. WINTERTON:

7 Q I can still call you, Phil.

8 A Please. Sure.

9 Q Yes. Thank you, Phil. Okay. Phil, isn't it true that you
10 received a copy of this appraisal that was admitted in Exhibit 511?

11 A Yes.

12 Q And isn't it true it was before the time period of the offer by
13 Mr. Soto?

14 A Yes.

15 Q Okay. I wonder if I could have you turn to Exhibit 14, and it
16 will say page 209. Okay. And have you seen this document before?

17 A Yes.

18 Q Okay. All right. This is one of your documents that you
19 produced in this case; isn't that correct?

20 A Yes.

21 Q And does this look like a true and accurate copy of an email
22 between you and Mr. Northup?

23 A Yes.

24 MR. WINTERTON: Your Honor, we would move for
25 admission of Exhibit 14, page 209.

1 THE COURT: Any objection?

2 MS. SAYYAR: Your Honor, I'm assuming this will come in as
3 14C, and it's only -- excuse me, 14E; is that correct, just for my records,
4 Mr. Winterton?

5 MR. WINTERTON: Yes.

6 MS. SAYYAR: No objection, Your Honor, for 14E coming in
7 page 209, D195.

8 THE COURT: Thank you. It will be admitted.

9 [Defendant's Exhibit 14E admitted into evidence]

10 [Court and Clerk confer]

11 BY MR. WINTERTON:

12 Q Now isn't it true that on January 5th, 2018 --

13 MR. WINTERTON: Strike that.

14 BY MR. WINTERTON:

15 Q On January 4th, 2018, at 4:03, you received a copy of this
16 appraisal from Mr. Northup?

17 A Yes.

18 Q Okay. And then you took that appraisal, and you forwarded
19 it on to Angel Soto on the 5th?

20 A Yes.

21 Q Okay. And isn't it true that the appraisal listed who the
22 owner of the property was?

23 A Yes, it listed Jack Gaal's name.

24 Q Let's have you turn to 511. Okay. And it says John A -- it
25 says it was prepared for John A. Gaal and Katherine B. Gaal, trustees of

1 the John A. Gaal Family Trust; isn't that correct?

2 A Yes.

3 Q Did you make any effort to change the documents now that
4 there was no question you knew that the trust owned the property?

5 A I had no reason to. Jack represented himself as the
6 authorized seller over, and over, and over again.

7 Q Okay. So you felt like there was no need?

8 A Well, like I said, there's a position of trust that takes place
9 between clients, and he said in his deposition, he said he was the
10 authorized seller.

11 Q Okay. Now --

12 A It even says his name right there on the first line.

13 Q So when you created the purchase agreement after that, why
14 didn't you use John A. Gaal Family Trust, and then the trustee's name?

15 A That was never an issue until he decided not to turn over the
16 due diligence documents, and then that was an issue.

17 Q Okay. So once it was an issue, why didn't you correct it?

18 A Because they were asking for a new contract, which would
19 have given them the backdoor to exit the current contract that he had
20 already signed.

21 Q So with the new contract in the form of -- the standard
22 Gelbar [phonetic] form to sell real estate?

23 A No. There was no new contract needed. As stated before,
24 any errors that would have been there would have been handled in
25 escrow, but we never got to that point because the documents were

1 never supplied.

2 Q Okay.

3 A Due diligence documents. We didn't get to that point.

4 Q So, Mr. Gaal testified that he relied upon your
5 professionalism, why don't you feel like you needed to have the property
6 party listed?

7 A I did a great job for him. That's a hard thing to sell, a sports
8 bar without slots. He accepted an agreement and refused to cooperate.

9 Q No, the question I asked is why did you not feel like you
10 needed to correct it?

11 A Because again and again, and as witnessed on all the
12 paperwork, he signed as the authorized seller.

13 Q Okay. And in your --

14 A And personally guaranteed it.

15 Q Okay. And did you sign anywhere on behalf of the trust that
16 he was the authorized signer on behalf of the trust?

17 A I've already answered the question. No. He signed as the
18 authorized seller over and over again.

19 MR. WINTERTON: I have no further questions, Your Honor.

20 THE COURT: Thank you. And cross-examination

21 MS. SAYYAR: No questions, Your Honor.

22 THE COURT: Okay. Sir, you may step down.

23 THE WITNESS: Thank you.

24 THE COURT: Defendant, please call your next witness.

25 MR. WINTERTON: Your Honor, we rest at this point. We

1 have no further witnesses.

2 DEFENDANT RESTS

3 THE COURT: Thank you. Plaintiff, do you have a rebuttal
4 case?

5 MS. SAYYAR: Plaintiff does not have a rebuttal case.

6 THE COURT: Okay. So that concludes the presentation of
7 evidence. It's 2:00. If I give you a recess, will you be ready to argue this
8 afternoon?

9 MS. SAYYAR: On behalf of Plaintiff, yes, Your Honor. We
10 hope we can finish today.

11 THE COURT: Thank you.

12 MR. WINTERTON: On behalf of the Defendant, we also will
13 be ready.

14 THE COURT: All right. Ten, 15, 20 minutes? How long do
15 you all want?

16 MS. SAYYAR: Ten minutes, Your Honor.

17 THE COURT: Mr. Winterton.

18 MR. WINTERTON: Okay. I'm looking at my clients to see.
19 I'm sorry.

20 THE COURT: Thank you. All right.

21 MR. WINTERTON: Ten minutes is fine.

22 THE COURT: You know, we've got a bigger crew today, and I
23 can't let you guys in the back yet, so let's make it 2:15 just to be safe.
24 Thank you.

25 MS. SAYYAR: Thank you, Your Honor.

1 THE COURT: Court will be in recess until 2:15.

2 [Recess from 2:01 pm. to 2:15 p.m.]

3 THE MARSHAL: Court is back in session.

4 THE COURT: Please remain seated. Plaintiff, are you ready
5 to argue?

6 MS. SAYYAR: Yes, Your Honor.

7 PLAINTIFF'S CLOSING ARGUMENT

8 MS. SAYYAR: After hearing the evidence presented, Plaintiff
9 must admit we are no more enlightened today than we were at the
10 beginning of trial as to why this deal didn't close. Why this deal fell
11 through. We have a lot of stories that have changed over time, both
12 through litigation, during discovery, and now here at trial as to what, and
13 who, and why.

14 We've had a lot of silence and a lot of things not produced,
15 not in the record, and we are left with testimony of assumptions and
16 beliefs, but very little evidence from the Defense. No deed, no Mrs. Gaal,
17 no trust, not a lot of evidence in support of any of the alleged defenses.
18 And it makes sense that there's not a lot of evidence because the
19 defenses have shifted over time.

20 Going back to Mr. Winterton's first February 22nd, 2018,
21 letter to Phil in this case, Exhibit 22, where he represented one of the
22 unnamed trustees and argued that the trust owned the business, not the
23 real property. Then we have a subsequent letter a day later saying
24 documents will be produced. And then here at trial, we have a whole
25 different theory as to what is going on and why it's going on.

1 So we are still in the dark. And so what we are left with is
2 the contracts, Your Honor. We are left with contracts that are admitted
3 into evidence, signed by Mr. Gaal. We also have signatures of Mrs. Gaal
4 on Exhibit -- what was it, Your Honor? Let me just --

5 THE COURT: 14A.

6 MS. SAYYAR: 14A is the email. But, also, in Exhibit 13 --
7 13F, we also have Mrs. Gaal's signature. And we have key provisions in
8 the listing agreement, which we've looked at, ad nauseum, paragraph 6,
9 paragraph 8, 11, 13C, 14, 19, 20, 26, 29, 31, 35, 40, 41, and key provisions
10 in the asset purchase agreement, 21, 20, 37, 40, 42, 47, 51, 52, 56, 61, 62,
11 65, and 68.

12 And what all of this comes down to, Your Honor, is that Mr.
13 Gaal wanted to sell the whole deal, the real property, the business, the
14 building, and he came to First Choice, and he signed document after
15 document saying I'm the owner, I want to sell. And the law supports
16 finding him, individually, and his company liable for breach of those
17 documents. And I want to talk a little bit about the law, because we've
18 argued the facts, and we've gone over these agreements repeatedly,
19 Your Honor.

20 And I'm looking at, for example, the *U.S. Fidelity and*
21 *Guaranty Co v. Reno Electric Works* case, 43 Nev. 191. It's a 1919 case.
22 It's still valid, because it stands for the very simple proposition the
23 parties may adopt a writing -- written contract, and thus make it binding
24 as though formally executed by both, without signing it, simply by their
25 conduct. Simply by other signing action and performance.

1 We also have more case law on this point and the Nevada
2 Supreme Court has looked to the issue of when someone signs, did they
3 write comma agent, comma managing member, no comma, some other
4 title.

5 And we have the case, still good law, from 1866, *Gillig, G-I-L-*
6 *L-I-G v. Lake Bigler Road Co*, where the Supreme Court said it will be
7 agreed that no precise form of words is required to be used in the
8 signature. That every word must have an effect, if possible, and that the
9 intention must be collected from the whole instrument taken together.
10 And that's on page 22 of that decision.

11 The Court goes on to say, quote, "whether the intention to
12 bind the principal is apparent on the face of an instrument, is a question
13 which must be determined by the peculiar facts of each case considered
14 in the light of practical philosophy. For the law is preeminently a
15 practical science. It deals with the transactions of man as it finds them,
16 and judges of his motives and purposes not by some metaphysical or
17 speculative theories, but by those philosophical principals, which are
18 drawn from his daily action or conduct."

19 That case went on to say that because there had been -- it
20 was discussing evidence about what authority had been granted a
21 person who signed. And in that case, the defense actually put forth
22 documents that said, here's a piece of paper that said he can't sign. He
23 doesn't have the authority. We don't have that here. We don't have a
24 trust; we don't have any other trustee. We have nothing that actually
25 establishes Mrs. Gaal is a trustee.

1 And so we come to the law in 1997, Supreme Court of
2 Nevada case, *Great American Insurance Co v. General Builders, Inc.*, 113
3 Nev. 346. And this is the standard, and we have met it, Your Honor. A
4 party claiming apparent authority of an agent as a basis for contract
5 formation must prove, 1) that he subjectively believed that the agent had
6 authority to act for the principal; and, 2) that his subjective belief in the
7 agent's authority was objectively reasonable.

8 Now you have heard extensively from Mr. Neuenswander,
9 and we've gone through a host of documents signed by Mr. Gaal,
10 outward action, outward expressions of his intention, even documents
11 signed by Mrs. Gaal, showing their intent to sell the building, the land,
12 and the business operations. It is established, I think, by credible
13 evidence by the documents and the testimony we've presented that my
14 client had a subjective reasonable belief that they were dealing with the
15 authorized person. I mean, who comes to sell land that isn't there's
16 unless there is a fraud. And there's no fraud here. This is a question of
17 apparent authority.

18 Now as for the second element that his subjective belief and
19 the agent's authority was objectively reasonable, I've already -- did a
20 laundry list of how many places in the contracts Mr. Gaal again and
21 again signed, yeah, I'm the one. I'm the one. I have consent. I have
22 authority. No third-party approval is necessary. No third-party consent
23 is necessary. We can read them if you would like, but I'm trying to
24 shorten these proceedings, not lengthen them, Your Honor, and I'm sure
25 you've looked at them.

1 So the question now turns on was it objectively reasonable
2 for First Choice to rely on this? And based on the meetings that Mr.
3 Neuenswander had and the testimony of Angel Soto, who himself
4 testified, and he has no dog in this fight. He's unbiased. He's not
5 claiming he's owed anything. He's like, yeah, Jack said, yeah, I talked
6 my wife around. We're good. We're selling. We're going forward.
7 Where was there the indication?

8 And then we have even Mr. Winterton telling Mr.
9 Neuenswander after he met with him in person on February 23rd, you're
10 right. Jack's got to produce documents or he's going to be in breach.
11 And then we have Mr. Winterton's letter saying, we're going to get you
12 documents. The problem is, no documents came.

13 So what we have here, Your Honor, is we have all of the
14 elements of breach of contract established. A valid contract exists. Mr.
15 Gaal had the apparent authority to sign on behalf of the LLC and the
16 trust. Mrs. Gaal further indicated her consent, and we have signatures to
17 prove it. And Mr. Gaal personally guaranteed performance under both
18 agreements. The Plaintiff performed or is excused from performance.

19 First Choice found a buyer. First Choice found Angel Soto.
20 Angel Soto testified, I had cash and assets plenty to purchase for this
21 business. The Defendant breached the terms of the contract. No
22 documents were provided.

23 There was some testimony today that Mr. Gaal said he had
24 provided -- he had given documents to Mr. Northup. Where are they,
25 Your Honor? Where are they in discovery? We looked at the only

1 documents that were provided. Those handwritten notes that were part
2 of some of the subsections of Exhibit 13. And those were provided
3 months before the due diligence period began, and that was it. And the
4 Plaintiff was damaged as a result. And we've had the testimony from my
5 client regarding damages and the damages' calculations, which we'll
6 double check.

7 Now Mr. Winterton, since the beginning of this case, has
8 pointed to NRS 645.320, saying hold on, wait a minute. The listing
9 agreement doesn't comply with this, therefore, you're out of luck. You
10 did all this work, you're out of luck. The requirements of the statute on
11 Subsection 4 say, quote, "Be signed by both the client or his or her
12 authorized representative and the broker or his or he authorized
13 representative.

14 As the case law I just cited to, Your Honor, points out, Mr.
15 Gaal had apparent authority. We justifiably relied on that apparent
16 authority and his multiple representations of that apparent authority.
17 Therefore, he either signed as himself, which he did, because he
18 personally guaranteed performance and payment of fees, and he signed
19 as the authorized representative of, as Mr. Gaal put it today, the whole
20 deal, building, operations, land.

21 And it's very interesting that NRS 645.320 doesn't say owner.
22 It says client. Client is defined in the statute, in NRS 645.009. And in that
23 one, Your Honor, it says client means a person who has entered into a
24 brokerage agreement with a broker or property management agreement
25 with the broker. Nowhere does it say owner.

1 Now the newest thrust of Defendants' defenses brought up
2 in trial is that somehow Mr. Neuenswander should have magically
3 known that there was a trust involved and today they moved for the
4 admission of an appraisal report, and Your Honor can look at the
5 appraisal report. But I will submit, Your Honor, if you look at the
6 appraisal report as Phil Neuenswander testified, you know what it says?
7 It says this is prepared for Jack Gaal. This is prepared -- and it does
8 mention a trust.

9 But you know what I doesn't do, it doesn't list title, it doesn't
10 list ownership, it's made for internal use only, and it also says it's, quote,
11 an appraisal report of Jack's Place Sports Bar and Grill, and then it gives
12 an address. It's not appraisal of property. It's also an appraisal of a
13 business. Lots of different things are contained in this report if Your
14 Honor looks at it. And it states that the intended user of the appraisal
15 report is the client. The client who it was prepared for, in this case, the
16 trust.

17 And I think what's being forgotten here is anyone can get an
18 appraisal report. I could pay, and get prepared for myself, an appraisal
19 report. That isn't title. That isn't disrupting our reasonable belief in their
20 apparent authority to list and sell the whole deal.

21 And so, Your Honor, we believe, and we will submit that we
22 have set forth all the elements of our cause of action for breach of
23 contract, and we have set forth all the elements of our secondary cause
24 of action for breach of implied covenant of good faith and fair dealing.
25 While the damages are the same under both, either theory is before Your

1 Honor. And in that one, it's when one party performs a contract in a
2 manner that is unfaithful to the purpose of the contract and the justified
3 expectations of the other party are thus denied, damages may be
4 awarded against the party who does not act in good faith.

5 We've heard testimony how, unfortunately, Mr. Gaal ghosted
6 this transaction. I don't know what better word to use. He stopped
7 returning phone calls, didn't produce one iota of documentation that is
8 listed on 1A, Exhibit 9, to First Choice Business Brokers. Mr. Soto
9 testified that he didn't get information either. And we have no chain of
10 documents to rebut that testimony from the Defense. Nothing credible
11 that supports that.

12 So relying on the apparent authority of Mr. Gaal and his
13 outward expressions, the signature of Mrs. Gaal, it's clear that
14 Defendants breached this agreement. And by breaching it first, they
15 cannot now complain if another party subsequently refuses to perform.
16 That's 17 AmJur 2d Contracts, Section 606. This is basic contract law. If
17 you breach your contract first, you can't point and say, well, later on you
18 didn't do something.

19 As Mr. Neuenswander has just recently taken the stand to
20 say, we never got to closing. And as Mr. Nyman testified, this happens
21 constantly, and it's an easy fix in escrow. Oh, your property is in a trust,
22 I didn't know it was in a trust, sign here, done. Because we have terms
23 in the listing agreement and the assets purchase agreement where Jack
24 Gaal said, I will do everything I need to do to close and give you good
25 marketable title, and he didn't do. And that's what we come down to,

1 Your Honor. And we don't know why. He took the stand today, and I
2 still don't know why.

3 So what we're left with, Your Honor, is damages. And as Phil
4 Neuenswander testified on behalf of First Choice Business Brokers -- let
5 me just get my numbers together, Your Honor. First Choice took a
6 reduced commission on this. Ten percent, rather than 12, which is
7 \$100,000 on a \$1 million purchase price, and it was 18 percent interest
8 calculated at 49.31 cents per day. So we're looking at \$100,000 plus total
9 interest of \$59,867.89 as of June 1st, from the date of the disposition
10 onward. Plaintiff is also entitled, if they prevail, to all their collection
11 costs and fees, Your Honor, under paragraph 19 of the listing agreement.

12 And we believe that at this point in time, to buy defense
13 argument would be allowing this technicality to overcome the substance
14 of every action that Mr. Gaal took during his connection with First
15 Choice. Every representation, every meeting, every communication,
16 every signature. And I would submit, Your Honor, that the law in the
17 State of Nevada does not permit that response and that result. Making a
18 contract essentially meaningless as to all the terms. And we've cited the
19 law that talks exactly about how those signature blocks work.

20 So for that reason, Your Honor, we would submit that based
21 on the representations, the testimony, the evidence that's been
22 submitted, and weighing the credibility of the witnesses, that Plaintiff
23 has prevailed and established its case and should be awarded damages.
24 Thank you, Your Honor.

25 THE COURT: Thank you. Mr. Winterton.

1 DEFENDANTS' CLOSING ARGUMENT

2 MR. WINTERTON: Thank you, Your Honor.

3 What we have here is when I first started at the presentation
4 of this case, as I mentioned, there are only two causes of action. One, is
5 breach of contract. The other is the breach of covenant of good faith and
6 fair dealing.

7 Now I stated that what had happened is Jack had owned the
8 place. We know now it was June 29th, 2012, when he acquired the
9 property, and he testified that one was put in an LLC, the property and
10 real estate was put into the family trust. And that, even today, that's
11 where it stands. There's been no sale, no disposition of the property.
12 It's still the exact same.

13 Well, as it turns out, in 2017, Jack said that he wanted to sell
14 the property. So he calls his good friend, Gene Northup, who sells real
15 estate and says, hey, would you sell. And Gene says, well, there's a
16 business here, let's get a professional that sells business -- business
17 brokers. That's Phil Neuenswander.

18 So Phil comes in, and then they have a meeting, and then
19 they have a meeting, and then they gather information. There is no
20 fraud, no misrepresentation. Phil could have asked any questions they
21 wanted, and then he goes back to his office. Well, this is where part of
22 the problem comes in. As you can see, Phil specializes in businesses.

23 So what do you do? As the evidence presented, he went to
24 their office, checked the Secretary of State. They found the business
25 and all of this. Somebody came up with an APN number, and they had

1 to have looked at the County records, because that's part of the exclusive
2 listing agreement on Exhibit 10, page 32. So right then and there, he
3 should have been put on notice who actually owned this property.

4 Now Phil actually prepared, or his office prepared this
5 exclusive listing agreement. Now who is the listing agreement with?
6 Well, let's look at the parties. The parties as has been testified is Jack
7 Gaal -- it's Jack's Place Bar and Grill, LLC, and it was done by Jack Gaal,
8 managing member. It was also signed by -- if you go to the last page of
9 Exhibit 10, page 35, it says Jack Gaal, managing member and of Jack's
10 Place Bar and Grill, LLC.

11 It was asked of Phil Neuenswander, is the trust listed at all in
12 the listing agreement. The answer was no. Was it signed by the listing --
13 was it signed by someone from the trust? No. That same question was
14 asked to Mr. Nyman. I hope I'm saying his name right. He also
15 acknowledged it was signed by the trust, and it was not signed by -- it
16 does not state the trust is here. The third witness is Jack Gaal. He said
17 that the trust is not listed, and it is not signed by the trust. This is the
18 listing agreement.

19 Now I appreciate the arguments in regards to the cases that
20 were presented, but it was around the 1970s, and I want to say '74, don't
21 hold me to that, that Darrell Clark and a few of these others, they wanted
22 to revamp the real estate division and all of these -- the code. And so
23 they said, what must be in an exclusive listing agreement. So we'll look
24 at it here.

25 Section 645.320, requirements for exclusive agency

1 representation. "Every broker agreement, which includes a provision for
2 an exclusive agency relationship must, number one, be in writing."

3 There is no writing with the trust. There is no -- it doesn't even list the
4 trust as being a party to the contract. And not only that, if they thought --
5 they're saying apparent authority, and it should, they didn't even sue the
6 trust. The trust isn't here. Because if they're trying to sue the trust for a
7 commission because of apparent authority, the party is not here. There
8 is -- they failed to reach requirement, number one.

9 "Have set forth, in its terms, definite, specific, and completer
10 termination." That's the problem, is it's not definite and certain because
11 it doesn't even have the trust. It just has a vague comment including real
12 estate. That's not definite and certain. It does not include -- it does not
13 meet the requirement.

14 Number three is not relevant to what we're doing here.

15 Number four is, "be signed by both the client." Well, who's
16 the client. The client, according to them, is Jack's Place Bar and Grill,
17 LLC. They have not identified any other client. They have not identified
18 their client as being the trust, and Jack is the managing member. So
19 that's all they have. Or it says, "his or her authorized representative." It
20 doesn't say apparent authority. That's why they did this, is it has to be
21 authorized. They should have dug in and said, okay, were you
22 authorized or not? And Jack said, no, it takes two people to sign. They
23 have no evidence whatsoever.

24 Now there's a case I had before the Nevada Supreme Court,
25 *Beling v. Davis*. And there was a discussion about the statute because

1 there was a statute before the Supreme Court and the Supreme Court
2 said the first thing you do is you look at the clear language of the statute.
3 Here it's clear. It's says authorized representative. It doesn't say, oh,
4 someone that may have authority or apparent authority. I strongly
5 believe, as you go with the clear interpretation of the statue, you can't
6 even argue apparent authority. You have to show an authorized
7 representative. That's what the purpose of this statute is. That's why
8 they wanted to prevent arguments like this. That's why they say
9 authorized.

10 Now they're suing for breach of contract, which is Exhibit 10.
11 It does not meet the requirements as stated. Now there's a case that
12 came out in '74 that says, "the weight of authority construing similar
13 statutes like this one, precludes quantum merit recovery reasoning that if
14 a broker were entitled to obtain value of services, the statute would have
15 the effect -- would not have the effect intended and the legislative
16 purpose would be frustrated."

17 Then they quote the Restatement 468. "We choose to obtain
18 this view. It seems to us the very purpose of 645.320 is best served by
19 denying any relief to any broker or salesman who claims an exclusive
20 agency to sell unless the requirements of the statute are complied with."
21 That's *Led-Mil of Nevada v. Skyland Realty*, 90 Nev. 72, 1974.

22 There's another case. "Exclusive agency and not comply you
23 can't get quantum merit. The purpose of this section is best served by
24 denying any relief to a broker or salesman who claims an exclusive
25 agency to sell unless the requirements of the statute are complied with.

1 Therefore, quantum merit recovery from an owner with whom the broker
2 who has not complied an exclusive listing agreement is precluded."

3 *Bangle v. Holland Realty Investment*, 80 Nev 331, 1964. So again, Your
4 Honor, they have not complied. They have not met the requirements.

5 Now with that being said, I would like to go on and talk a
6 little bit more about what they have said. They go on and talk about
7 apparent authority. I don't think apparent authority even applies, but I'll
8 just address what they said.

9 Apparent authority requires that there must be -- there must
10 be reasonable reliance. It's got a case that says, moreover, in any case,
11 the reliance must have been a reasonable one. And this isn't a real
12 estate case, because I couldn't find any, because I don't think it applies.
13 But, anyway, "the reliance must be a reasonable one consistent with the
14 exercise of reasonable prudence. The party who claims reliance must
15 not close their eyes to warnings or inconsistent circumstances.
16 Authority is not apparent just because a party claims claiming has acted
17 upon his conclusion.

18 It is not apparent in contemplation of the law simply because
19 it looks so to him. It is not a situation where on reads while he runs. It is
20 only where a person of ordinary prudence, conversant with business
21 usage and the nature of a particular business acting in good faith and
22 giving heed, not only to the opposing inferences, but also the restrictions
23 where they're brought to his notice would reasonably rely that this is
24 present within the operations of the rule."

25 What we have here is there's no question as of January,

1 there is no apparent authority anymore. He knows who owns the
2 property. He admits he saw the appraisal and everything. But what
3 didn't -- and he went ahead after that and created a purchase agreement
4 when he knew there wasn't authority at this point, or a reasonable
5 realtor would have known that he did not have authority. So reasonable
6 reliance for apparent authority is not there at this point in time.

7 Also, when you have reasonable reliance, there's case law
8 that talks about where the principal holds himself out and there's no one
9 -- no trustee holding himself out. It's -- they're saying Jack is the one.

10 The one last thing, also, Your Honor, is they have the burden
11 to establish that they had -- I mean, I'll say this, a ready, willing, and able
12 buyer. Even just a general look at the contract can't be done. I've never
13 heard of 98 percent, 100 percent financing on a piece of property. They
14 have not established -- yeah, he may have been ready and wanting to,
15 but they haven't proved that he actually could buy it.

16 Now there's one last case that I want to go over and the
17 reason why I don't think this procuring cause and all of that is even
18 relevant. I had a case; it's call *Easton Business Systems*. And under
19 *Easton Business Systems*, we had the exact same thing. He was a
20 business broker. He had a contract, and the contract was correct. It was
21 properly done. It went to -- what had happened is after the listing,
22 Easton Business Systems says, this is everybody we listed, everybody
23 we listed who we showed it to. We've got six months to get our -- if you
24 should sell it, and we get out.

25 Well, what had happened then within that six months, they

1 sold it to one of those people, and they came back and said, oh, no,
2 Easton Business Systems was not procured costs. And we lost. We
3 went up to the Supreme Court and the Supreme Court reversed it and
4 said, you look at the contract. And if there is a contract, and they were
5 listed on it, we don't even carry it. We were not even going to look at
6 procuring costs. We're not even going to get to that issue. We believe
7 you go by the listing agreement, which is valid and that's what we
8 enforced. So they threw that out.

9 That's why, in this case, when they're arguing a listing
10 agreement, this procuring cause and all of this, I don't believe is
11 relevant. They have not met the requirements and the case law says
12 they're not entitled to it.

13 So, anyway, that's why, Your Honor, we believe that they
14 should be denied. My client tried. If they would have changed the deal
15 or corrected their mistake, Phil says, I'm afraid they would back out. He
16 doesn't know that. That's what he's guessing, but it still doesn't matter.
17 He has a duty to do his job, to do things right, otherwise he's not entitled
18 to a commission. And the statute says, if you don't do listing
19 agreements right, you don't it.

20 I also disagree with when they talk about authority. It says
21 here that they're referring to that deals with authority, basically, it's
22 saying you have -- basically, you have authority to sign it, and then go
23 forward. Well, he signed it on behalf of the LLC, and the LLC could have
24 gone. It did have the authority, but the problem is, is it had the building,
25 it wasn't properly done, so it couldn't close. They haven't earned a

1 commission. They haven't followed 645.320. They should be denied
2 any compensation. Thank you.

3 THE COURT: Thank you. And the reply.

4 PLAINTIFF'S REBUTTAL CLOSING ARGUMENT

5 MS. SAYYAR: Thank you, Your Honor. Just points of
6 clarification. At First Choice testified, as Mr. Neuenswander testified,
7 we're here under two contracts. Exhibit 7 and Exhibit 10. The asset
8 purchase agreement and the listing agreement. Not just one. That was
9 our testimony in this case and that's been our position in this case since
10 the beginning. So the idea that we're only here on the listing agreement
11 is not accurate for the representation of the evidence presented.

12 A disposition of the property absolutely did occur, because a
13 disposition of the property occurred the second that Mr. Gaal accepted
14 Mr. Soto's offer, which he did.

15 The Canons of Construction of both Exhibit 10 and Exhibit 7,
16 the listing agreement and the purchase agreement, clearly says that it
17 doesn't matter who prepared the documents. They are to be interpreted
18 in accordance with the law. And looking at the law, NRS 645.320, they
19 are in writing. And Mr. Gaal -- and there's plenty of evidence that shows
20 that he was the authorized representative. He said it over and over
21 again. And the case law regarding contracts looks towards the outside
22 representations of people's conduct.

23 The argument that First Choice Business Brokers was on
24 notice and could no longer reasonably rely on Mr. Gaal's authority, after
25 receiving a copy of an appraisal via email that was prepared for a trust,

1 but not actually a titled document is further compounded, and confused,
2 and rebutted by Mr. Winterton's own letter to my client dated February
3 23rd, the same day he met with him saying, I believe he understands,
4 and he will be getting you the documents so that the buyer can complete
5 his due diligence and close the sale of the business as soon as possible.

6 The reason why the trust wasn't brought into this case is
7 because this trust argument was raised for the very first time in this case
8 in the post-discovery motion for summary judgment filed by Mr.
9 Winterton. This is only excuse number -- I've lost count of the defenses
10 raised.

11 So what we come to, Your Honor, is we have presented
12 substantial evidence, credible evidence. We have met our burden by the
13 preponderance of the evidence. NRS 645.320 is not a bar for recovery
14 under breach of contract or breach of good faith and fair dealing for
15 Defendants' breaches under Exhibit 10 and Exhibit 7, the asset purchase
16 agreement and the listing agreement. And we nothing further unless
17 Your Honor has any questions.

18 THE COURT: I don't.

19 MS. SAYYAR: Thank you very much, Your Honor.

20 THE COURT: Now, I'm prepared to rule from the bench, and
21 it will be a little bit choppy, because I'm going off my notes, but I'd rather
22 give you at least a ruling now than make you wait for something next
23 week. This is -- and if anyone wants me to put my mask on, I will, but I
24 think you can hear me better. Okay.

25 So this is a case where the Plaintiff sued and LLC and an

1 individual for breach of contract and good faith and fair dealing. The two
2 contracts that I'm looking at are 7 and 10 -- Exhibits 7 and 10. And I find
3 that the Plaintiff prevails and is entitled to the commission of \$100,000,
4 together with interest per the contract, fees and costs. And this is why.

5 The Exhibit 10 is an exclusive listing agreement and in that,
6 Mr. Gaal and the LLC represent that they have the authority to enter into
7 the contract. It clearly included real estate from the very beginning with
8 the parcel number. And Mr. Gaal's testimony was that he intended to
9 sell the land, the structure, and the ongoing concern. And the contract
10 says that when the Plaintiff -- I'm sorry, when the counteroffer was
11 accepted that the fee was earned. So the fee was earned on Exhibit 7.

12 You know, the brokerage agreement is really clear. Plaintiff
13 (sic) had a duty to cooperate with the due diligence period, which I also
14 find that he failed to do. And he represented that he had the authority.
15 The Plaintiff had the right to rely on that, and they -- I don't think that the
16 Plaintiff added the real estate into the contract to create fraud. I think it
17 was contemplated by both side that the Plaintiff was engaged to sell the
18 entire going concern, and the land, and the structure.

19 There was a personal guarantee of the LLC by Mr. Gaal. But
20 Exhibit 14A further bolsters my belief that -- that I have to overrule Mr.
21 Winterton's arguments. The wife -- husband and wife both signed the
22 corporate resolution to sell, and the both signed as LLC managers. I
23 suspect that it was a mistake on Mr. Gaal's part to add the trust to the
24 seller -- the Plaintiff, and I suspect that when he realized the difference in
25 commission of between 6 and 10 percent, that that's what created the

1 problem. But they both signed that corporate resolution, and they
2 signed as managers of the LLC. You know, they both received the duties
3 owed under Nevada real estate agent to the seller and, again, all of those
4 documents contain the language with regard to the real estate being
5 included.

6 Now in Exhibit 7, the asset purchase agreement, Mr. Gaal
7 and the LLC again warranted that they had good title, and they would
8 transfer it. And they warranted that they had power and authority to
9 complete the transaction. So that again weighs in favor of the Plaintiff
10 here.

11 And I think it would be improper for me to allow the vesting
12 of the deed as an excuse to avoid paying the commission. I think it
13 would be a mistake of law here. I think the exclusive listing agreements
14 suffices as a binding written contract between the parties. I suspected
15 when I saw the due diligence provided by Mr. Gaal that he was
16 concerned about turning over his books to the buyer. That may have --
17 that factored in because all of the expenses were in round numbers.
18 There were no bank accounts or no QuickBooks. There was nothing
19 there. So that was concerning to me too.

20 And the due diligence related primarily to the operation of
21 the business where those dollars would matter, more than just the value
22 of the real estate.

23 Angel Soto was -- it was not unreasonable for him to pull
24 out. He was a credible witness. His testimony is that he had the
25 wherewithal to close the transaction, and he testified that the Defendant

1 refused to produce the due diligence or to even respond to him. And
2 Jack represented himself also to Angel as the seller.

3 The terms of the trust have never been a matter of evidence
4 in this case. And so I don't have actual evidence that it took both the
5 husband and the wife to bind the trust to this transaction. The wife did
6 sign two documents, but I don't have any evidence that Mr. Gaal couldn't
7 act alone on behalf of the trust. His evidence was that he had to have
8 both husband and wife. That contradicted his deposition testimony and,
9 again, I don't have the best evidence, which is what the trust actually
10 says.

11 So the bottom line is that the Plaintiff had the right to rely on
12 the representatives of the seller representations. There's no ambiguity
13 in the contract. Mr. Gaal refused to cooperate with due diligence, and it
14 wasn't a sufficient defense that he was concerned about the Plaintiff's
15 ability to finance the real estate, because the testimony of the Plaintiff
16 was that he had the liquid assets to do that, plus with the bank loan.

17 So I just think it was a mistake on Mr. Gaal's part, and he
18 didn't realize at the time that he entered into the agreement that the trust
19 held the title. I do find, as a matter of law the NRS 645.320 was satisfied
20 under the listing agreement and under the definition of client.

21 And then my concerns about Mr. Gaal getting seller's
22 remorse when he realized when he was going to pay more than a real
23 estate commission to sell the real estate, is only -- enforces the argument
24 made by the Plaintiff that he wanted a new contract and a chance to
25 renegotiate.

1 So for those reasons, Mr. Gaal, I'm sorry, I have to rule
2 against you, but I believe it's the appropriate thing under the law. So the
3 Plaintiff will be directed to prepare findings of fact and conclusions of
4 law. You'll make your request for fees and costs by separate motion.
5 And all that being said, I honestly hope that your health is fine.

6 So Court is in recess.

7 MS. SAYYAR: Thank you very much, Your Honor.

8 [Proceedings concluded at 2:58 p.m.]
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20 ATTEST: I do hereby certify that I have truly and correctly transcribed the
21 audio-visual recording of the proceeding in the above entitled case to the
22 best of my ability.

23 

24 Maukele Transcribers, LLC

25 Jessica B. Cahill, Transcriber, CER/CET-708