

IN THE SUPREME COURT OF THE STATE OF NEVADA

SPANISH HEIGHTS ACQUISITION
COMPANY, LLC; SJC VENTURES
HOLDING COMPANY, LLC, d/b/a SJC
VENTURES, LLC,

Petitioners,

v.

THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF
NEVADA, IN AND FOR THE
COUNTY OF CLARK, AND THE
HONORABLE JOANNA KISHNER,
DISTRICT JUDGE

Respondents,

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

Real Parties In
Interest.

**APPENDIX VOLUME III TO
EMERGENCY PETITION FOR
WRIT OF MANDAMUS OR
PROHIBITION DIRECTING THE**

**EIGHTH JUDICIAL DISTRICT
COURT CLARK COUNTY,**

**NEVADA, HONORABLE JOANNA
KISHNER, DISTRICT JUDGE, TO**

**REVERSE THE DENIAL OF AN
INJUNCTIVE RELIEF ORDER**

WITH RESPECT TO

RESIDENTIAL PROPERTY

FORECLOSURE SALE SET FOR

FEBRUARY 1, 2022

**RELIEF REQUESTED WITHIN 14
DAYS**

Dist. Ct. Case No.: A-20-813439-B

ORIGINAL PETITION

From the Eighth Judicial District Court, Clark County
The Honorable Joanna Kishner, District Judge

JOSEPH A. GUTIERREZ, ESQ.

Nevada Bar No. 9046

DANIELLE J. BARRAZA, ESQ.

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CERTIFICATE OF SERVICE

I certify that on the 28th day of January 2022, this document was electronically filed with the Nevada Supreme Court. Electronic service of the foregoing: **APPENDIX VOLUME III TO EMERGENCY PETITION FOR WRIT OF MANDAMUS OR PROHIBITION DIRECTING THE EIGHTH JUDICIAL DISTRICT COURT CLARK COUNTY, NEVADA, HONORABLE JOANNA KISHNER, DISTRICT JUDGE, TO REVERSE THE DENIAL OF AN INJUNCTIVE RELIEF ORDER WITH RESPECT TO RESIDENTIAL PROPERTY FORECLOSURE SALE SET FOR FEBRUARY 1, 2022** shall be made in accordance with the Master Service List as follows:

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DATED this 28th day of January 2022.

/s/ Brandon Lopipero

An Employee of MAIER GUTIERREZ & ASSOCITES

1 SJC Ventures.

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

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

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

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

12 A I do.

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

14 A Where are you at?

15 Q Paragraph 2.

16 A Yes.

17 Q And it tells you the date; correct?

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

20 Q Just above that, sir.

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

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

24 A In paragraph 2, it does not.

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

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

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

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

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

9 Do you see that?

10 A I do.

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

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

19 Q Okay. Well, let's --

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

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

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

1 Q No problem.

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

5 A I do.

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

10 A I do.

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

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

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

21 A Yes.

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

24 A Paragraph 4?

25 Q Yes.

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

3 Q You are correct.

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

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

7 A I do see it.

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

10 A I signed this document on behalf of SJC.

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

13 A Paragraph 4 on page 3?

14 Q Paragraph 1 at the bottom of page 3.

15 A Okay.

16 Q And it goes on to page 4.

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

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

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

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

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

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

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

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

11 Mr. Bloom.

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

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

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

19 BY MR. MUSHKIN:

20 Q So let's --

21 THE WITNESS: Which created the defect.

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

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

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

1 Mr. Bloom?

2 THE WITNESS: Yes.

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

4 BY MR. MUSHKIN:

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

7 A Reaffirmation of Loans.

8 Q And it says,

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

14 Do you see that?

15 A I do.

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

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

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

24 A Not in context. It was never --

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

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

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

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

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

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

11 BY MR. MUSHKIN:

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

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

14 THE WITNESS: Yes.

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

17 THE WITNESS: Okay. Yes.

18 BY MR. MUSHKIN:

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

20 A Okay.

21 Q Do you see that paragraph?

22 A I do.

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

25 A I do.

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

2 A Yes.

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

5 A Okay.

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

7 A I do.

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

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

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

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

13 Q That's not my question, sir.

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

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

17 A And it's being disputed.

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

19 A I have not.

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

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

24 A I do.

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

1 that?

2 A I do.

3 Q The next one is,

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

15 Do you see that?

16 A I do.

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

18 A I did.

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

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

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

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

1 the property to refinance the notes.

2 Q So 5.8 says,

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

8 Do you see that?

9 A I do.

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

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

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

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

21 Q What evidence did you provide, sir?

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

25 Q Do you know how much --

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

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

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

5 A Shortly before I believe, yes.

6 Q Sometime in August?

7 A Okay.

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

10 A Correct.

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

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

15 Q That's not my question, sir.

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

19 A I believe yes.

20 Q Can you show them to me?

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

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

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

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

3 A I believe so, yes.

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

7 THE COURT: Do you mean after lunch?

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

9 BY MR. MUSHKIN:

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

13 A Okay.

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

19 Keep going, Mr. Mushkin.

20 MR. MUSHKIN: Yes, ma'am.

21 BY MR. MUSHKIN:

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

24 A Additional collateral.

25 Q Do you see anywhere where it talks about substitute

1 collateral?

2 A No, I do not.

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

5 A Okay. Yes.

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

7 A Yes.

8 Q What does that paragraph say?

9 A It says,

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

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

18 A No, it was not.

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

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

24 Q I don't even --

25 A Who is your lender to buy the note.

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

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

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

4 Q Mr. --

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

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

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

9 Q How do you know who he is?

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

12 Q Who?

13 A Workers that work at the property.

14 Q "Workers that work at the property."

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

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

19 Q What workers are you talking about, sir?

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

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

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

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

3 BY MR. MUSHKIN:

4 Q Then how did you meet workers?

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

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

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

11 Q Oh.

12 A Along with Mr. Rhodes.

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

15 MR. GUTIERREZ: Objection, Your Honor.

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

18 THE COURT: Overruled.

19 BY MR. MUSHKIN:

20 Q You're denying that that took place?

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

23 Q Oh, I see.

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

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

3 THE COURT: Conditions precedent?

4 MR. MUSHKIN: Yes, Your Honor.

5 THE COURT: Thank you.

6 THE WITNESS: Okay. I'm there.

7 BY MR. MUSHKIN:

8 Q Do you see that provision?

9 A (No audible response.)

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

11 A I'm sure I must have.

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

14 A I do.

15 Q Did you do that?

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

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

20 A I do.

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

24 Do you see where SJC Ventures signed it?

25 THE COURT: Page 25.

1 THE WITNESS: Yes, I do.

2 BY MR. MUSHKIN:

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

7 A I do.

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

10 A I do.

11 Q And then it says 8.3,

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

17 Do you see that?

18 A I do.

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

25 Do you see that?

1 A I do.

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

6 Do you see that?

7 A I do.

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

10 A I do.

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

13 Do you see that?

14 A I do.

15 Q And it says in pertinent part,

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

25 This forbearance agreement does not

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

4 Do you see that?

5 A I do.

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

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

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

13 A I do.

14 Q And did you see at 9.7,

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

21 Do you see that?

22 A I do.

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

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

1 break.

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

3 Thank you.

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

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

7 So.

8 THE COURT: Oh, you did?

9 MR. GUTIERREZ: Yeah.

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

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

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

13 We are in recess.

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

15 (Pause in the proceedings.)

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

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

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

21 THE COURT: Thank you.

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

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

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

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

6 BY MR. MUSHKIN:

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

9 A My exhibit package goes through 64.

10 MR. MUSHKIN: Mr. Gutierrez.

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

13 THE COURT: What are you missing, guys?

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

15 THE COURT: Oh. That was a mistake.

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

17 (Pause in the proceedings.)

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

20 THE COURT: You may not.

21 Ramsey.

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

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

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

3 THE WITNESS: Thank you.

4 THE MARSHAL: You're welcome.

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

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

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

11 BY MR. MUSHKIN:

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

13 A Okay. I'm at 98.

14 Q And do you see 00148?

15 A I do.

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

17 A Correct.

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

20 A Correct.

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

23 A Correct.

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

1 A Correct.

2 Q The next one is \$254?

3 A Correct.

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

5 A I do not.

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

7 A Okay.

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

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

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

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

14 Q Thank you.

15 A -- in the exhibits here.

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

17 A Okay.

18 Q That's 2018; correct?

19 A Correct.

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

22 A Correct.

23 Q The next one is April of '19?

24 A Correct.

25 Q The next one is June of '19?

1 A Correct.

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

3 A I do.

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

6 A Do I? Yes.

7 Q Where are they?

8 A They're not included in this exhibit.

9 Q So you haven't produced them?

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

12 Q Why haven't they been produced?

13 A I don't know.

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

16 A I'm sure.

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

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

20 Q Okay.

21 A -- encapsulated.

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

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

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

1 during your deposition, sir?

2 A No.

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

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

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

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

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

14 A I do.

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

18 A I do.

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

23 A I see it.

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

1 modifications?

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

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

6 A I don't recall seeing the note.

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

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

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

14 A No.

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

17 A Okay. I'm on Exhibit 1.

18 (Pause in the proceedings.)

19 BY MR. MUSHKIN:

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

21 A Okay.

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

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

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

4 Do you see that, sir?

5 A I do see it.

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

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

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

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

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

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

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

1 Item 15, Integration?

2 A I do.

3 Q I'd like you to look at the last line where it says,
4 No modification of this forbearance
5 agreement or the amended note and modified
6 deed of trust shall be effective unless in
7 writing and signed by the applicable parties
8 to be bound thereby.

9 Do you see that?

10 A Is that on page 20?

11 Q Yes, sir, it is.

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

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

16 A Okay. Okay. I see it.

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

18 A Okay.

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

21 A I do.

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

23 A Maier Gutierrez.

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

1 A Not on this particular matter, yes.

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

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

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

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

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

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

17 A I don't believe so --

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

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

20 Q -- real fast.

21 A Which exhibit?

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

25 Is there anywhere in the body of the agreement where

1 it says that they represent First 100?

2 A (No response.)

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

5 A Okay.

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

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

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

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

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

16 A So Maier Gutierrez is one of those --

17 Q -- the next page.

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

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

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

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

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

6 Do you see that?

7 A I do.

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

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

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

15 A Okay.

16 Q Do you understand what that provision means?

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

18 Q 25.

19 A Yes.

20 Q And that says, Cumulative remedies; right?

21 A It does.

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

24 A On behalf of SJC, yes.

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

1 A Okay.

2 Q Do you know what this agreement is?

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

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

7 Do you see your signatures there?

8 A I do.

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

11 A Correct.

12 Q Do you believe this is a binding agreement?

13 A I do.

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

16 A Okay.

17 Q Do you see where it says,

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

23 A I do.

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

1 A No, I did not.

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

3 A I did pay the assessments.

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

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

8 Q Sir, you were assessed --

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

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

12 Okay. Keep going.

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

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

15 BY MR. MUSHKIN:

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

18 A Yes.

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

20 A That's correct. It was --

21 Q You contested the fine; correct?

22 A Correct.

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

25 A Which is also being disputed.

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

4 A Correct.

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

6 A Correct.

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

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

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

12 A Okay.

13 Q Do you see that?

14 A I do.

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

17 A I believe I did.

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

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

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

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

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

1 A No. It was waived --

2 Q Thank you.

3 A -- by the performance --

4 Q Let's look at 2.

5 A Okay.

6 Q Provide a second funding of annual expense reserve

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

8 Did you do that?

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

11 Q You said --

12 A -- in lieu of the security deposit.

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

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

16 Q So did you prepay the second year?

17 A I believe so.

18 Q Do you have a check that shows that?

19 A I believe the prepayments are shown.

20 Q Show me where it is, sir.

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

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

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

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

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

8 And I said, Do you have a check?

9 THE COURT: And he said yes.

10 MR. MUSHKIN: And he said yes --

11 THE WITNESS: Actually I --

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

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

15 BY MR. MUSHKIN:

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

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

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

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

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

1 A Yes.

2 Q Where's the proof of it?

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

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

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

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

16 THE COURT: 96,000.

17 MR. MUSHKIN: I'm sorry?

18 THE COURT: 96,000.

19 MR. MUSHKIN: Thank you, Judge.

20 THE COURT: I was --

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

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

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

5 BY MR. MUSHKIN:

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

11 Do you see that?

12 A I see it.

13 Q Did you do that?

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

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

20 A Yes.

21 Q Do you see that?

22 A I do.

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

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

1 yes.

2 Q Where are the rest of them?

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

5 Q Thank you. Your --

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

9 Do you see that?

10 A Yes.

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

12 A Yes.

13 Q Caused the company to pay all utilities?

14 A Yes.

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

18 A To the best of my knowledge.

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

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

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

24 A I believe it's working --

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

1 system?

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

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

5 A No.

6 Q Thank you.

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

8 A Yes.

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

11 A Yes.

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

14 A Assessments, yes. Fines, no.

15 Q Thank you.

16 Caused the company to pay for all landscaping.

17 Do you see that?

18 A Yes.

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

21 A I do.

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

25 Do you see that?

1 A I do.

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

4 A That's correct.

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

6 A I believe so.

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

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

12 Do you see that?

13 A I do.

14 Q Have you done that?

15 A Yes.

16 Q You've assumed the loans?

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

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

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

24 Q Sure.

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

1 document says.

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

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

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

8 A No.

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

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

13 Q And so that would be April 1?

14 A Correct.

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

17 A Nobody did in January, February and March.

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

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

22 Q And did you notice --

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

25 Q And did you --

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

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

6 A I did not.

7 Q And then let's look at 13,

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

13 Do you see that?

14 A I do.

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

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

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

20 A Correct.

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

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

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

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

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

6 BY MR. MUSHKIN:

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

9 A Correct.

10 Q Thank you. And then Number 14 is,

11 Utilize its lawyers to effectuate a
12 quiet-title action for the purposes of
13 extinguishing any and all judgment creditor
14 liens against the property.

15 You did not do that, did you?

16 A Correct.

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

19 A Okay.

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

22 A It is.

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

25 A Correct.

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

3 A I believe so.

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

6 A I believe so.

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

8 A Okay.

9 Q It says binding agreement; correct?

10 A Correct.

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

14 A (No audible response.)

15 Q That would be a yes?

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

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

22 A Yes.

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

24 Do you see that document?

25 A I do.

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

5 Do you see Exhibit B to the forbearance agreement?

6 A Yes.

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

9 A Okay.

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

12 A I do.

13 Q And it says that,

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

18 Do you see that?

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

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

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

23 Q Thank you. And it says,

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

1 these recitals.

2 Do you see that?

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

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

6 A Correct.

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

10 Do you see that?

11 A I do.

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

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

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

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

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

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

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

24 A Correct.

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

1 A Ultimately came to learn that, yes.

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

6 A That's correct.

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

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

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

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

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

17 BY MR. MUSHKIN:

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

20 A Yes.

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

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

25 Q Sir?

1 A -- obligation to provide the pledge.

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

4 A Yes.

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

7 A That's what it says.

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

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

11 Q I didn't say that, sir.

12 A And that was deliberate.

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

15 A They were referenced --

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

17 THE COURT: Overruled.

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

20 MR. MUSHKIN: Thank you.

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

23 BY MR. MUSHKIN:

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

1 pledged; correct?

2 A That's what the agreement says.

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

5 A Correct.

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

8 A Not really.

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

11 A Okay.

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

14 Do you recall that?

15 A Yes.

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

19 A Yes.

20 Q What document do you have?

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

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

25 A Yes.

1 Q What document?

2 A It's a combination of documents.

3 Q What documents?

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

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

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

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

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

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

21 A Okay.

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

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

1 exist --

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

4 A That's what the documents say.

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

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

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

11 A No.

12 Q The pledge language was not agreed to?

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

14 Q Okay. Thank you.

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

18 A It does.

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

25 Do you see that?

1 A I do.

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

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

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

12 (Pause in the proceedings.)

13 BY MR. MUSHKIN:

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

15 A Okay.

16 Q You received that letter?

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

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

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

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

23 A I believe we did.

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

25 A I believe we did.

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

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

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

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

9 A I don't believe so.

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

13 A I do see it.

14 Q Did you provide that?

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

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

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

22 Q Did you provide any response to that letter?

23 A I believe that there was a response.

24 Q Say it again.

25 A I believe that there was a response.

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

3 A Yes.

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

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

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

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

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

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

17 Q Well, we just went over them.

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

22 Q It was an estimate, huh?

23 A Yeah.

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

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

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

3 A Correct.

4 Q So the minimum was a hundred; correct?

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

7 Q But there was a chart --

8 A But there was no minimum --

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

11 A Do you have it that I can --

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

13 A -- look at?

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

15 MR. MUSHKIN: Sorry.

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

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

20 BY MR. MUSHKIN:

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

22 A Of Exhibit 69?

23 Q Yes.

24 A Okay.

25 Q It says,

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

5 Do you see that?

6 A I do.

7 Q That's not true, is it?

8 A I believe it is true.

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

11 A Okay.

12 Q Paragraph 4.1,

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

25 Do you see that?

1 A I do.

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

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

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

8 THE WITNESS: Thank you.

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

11 BY MR. MUSHKIN:

12 Q Tell me why.

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

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

18 THE COURT: Wait.

19 MR. GUTIERREZ: Your Honor --

20 BY MR. MUSHKIN:

21 Q -- sir.

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

23 MR. GUTIERREZ: Thank you.

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

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

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

5 In your letter, Exhibit 66, it says,

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

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

14 BY MR. MUSHKIN:

15 Q Really?

16 A That's what --

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

19 Do you see that, sir?

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

22 Q Well, that's not my question.

23 A Because what it says --

24 Q -- sir. My question --

25 A It says in that --

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

3 THE WITNESS: Yes. Thank you.

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

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

11 BY MR. MUSHKIN:

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

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

17 Q So --

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

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

23 A Correct.

24 Q And it references the operating agreement; correct?

25 A Correct.

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

8 Do you see those?

9 A I do.

10 Q They're all nonmonetary; right?

11 A Correct.

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

13 A (No audible response.)

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

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

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

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

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

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

4 A It's related.

5 Q Thank you.

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

9 A I do.

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

12 A I don't believe so, no.

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

15 A At this point in time they were.

16 Q No? And this email says.

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

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

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

3 Do you see that?

4 A (No audible response.)

5 Q Do you see that?

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

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

10 THE WITNESS: Yeah.

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

13 BY MR. MUSHKIN:

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

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

18 Q And it says,

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

25 In fact, the amended forbearance

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

5 Do you see that?

6 A I do see that.

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

9 A I do.

10 Q Did you authorize her to send this response?

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

13 Q The documents speak for themselves.

14 Do you see that?

15 A I do.

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

19 Do you see that?

20 A I do.

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

23 A I'm there.

24 Q Which one did I point you to?

25 A 69.

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

2 A Correct.

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

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

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

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

10 BY MR. MUSHKIN:

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

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

15 Q And you see again,

16 As such, no default has occurred.

17 Do you see that?

18 A Where are you looking?

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

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

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

23 A Correct.

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

1 A We were unaware of it.

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

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

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

11 A When was that?

12 Q March.

13 MS. FOLEY: 74.

14 BY MR. MUSHKIN:

15 Q Let's take a look at 74:

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

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

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

21 A Okay. That's --

22 THE COURT: Are you there?

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

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

2 BY MR. MUSHKIN:

3 Q 887, sir.

4 A Yeah. I --

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

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

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

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

11 BY MR. MUSHKIN:

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

13 A I do.

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

15 A Correct.

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

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

21 Q Yes, sir.

22 A Yes.

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

25 A Correct.

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

4 Do you see that?

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

6 Q Both unsigned?

7 A Right.

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

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

11 Q Okay.

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

14 Q Do you see the last paragraph, sir?

15 A Which paragraph? Which page?

16 Q Of the letter?

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

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

19 MS. FOLEY: No problem.

20 BY MR. MUSHKIN:

21 Q Do you see that last paragraph?

22 A I do.

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

25 Do you see that?

1 A I do.

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

4 A No.

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

6 A No.

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

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

10 Q Where did you make the claim?

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

13 Q Any written document that says that?

14 A I don't know.

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

17 A Okay. I'm there.

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

20 Have you ever seen this document before?

21 A I believe so.

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

25 A Correct.

1 Q The final "whereas" states that,

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

4 Do you see that?

5 A I do.

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

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

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

11 A Yes.

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

14 A I do.

15 Q And Item Number 5,

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

21 Do you see that?

22 A I do see it.

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

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

1 Q Sir, it's not --

2 A -- executed by SJC.

3 THE COURT: Could you rephrase your question.

4 BY MR. MUSHKIN:

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

7 A I thought I did at the time.

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

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

12 Do you see that?

13 A I do.

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

15 A I did.

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

17 That's paragraph 7.

18 A Correct.

19 Q Did you pay that?

20 A No.

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

24 A I do.

25 Q The membership pledge executed by SJCv and the Antos

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

4 Do you see that?

5 A I do.

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

7 A It is.

8 Q Twice they put that in there.

9 The assignment of rents will remain in
10 effect.

11 Do you see that?

12 A I do.

13 Q And then 11,

14 The account control agreement shall
15 remain in effect.

16 Do you see that?

17 A I do.

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

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

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

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

1 excuse me, a control account, did you?

2 A No.

3 Q Thank you. And then it goes on,

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

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

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

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

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

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

8 Do you see that?

9 A I do.

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

12 A I believed I did at the time.

13 Q And did you ever provide that opinion letter?

14 A No.

15 Q Thank you.

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

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

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

21 Q Exhibit 16.

22 A Yes.

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

25 A Of 2020.

1 Q Correct.

2 A Yes.

3 Q Approximately three months later.

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

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

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

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

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

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

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

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

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

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

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

3 A I do.

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

5 Have you finished the paragraph, sir?

6 A Almost. Okay.

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

1 Do you see that?

2 A I do.

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

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

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

9 A Of Exhibit 1 still?

10 Q Yes.

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

13 A Correct.

14 Q And you have violated that provision; correct?

15 A How so?

16 Q It's a yes or no.

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

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

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

23 MR. MUSHKIN: Thank you.

24 BY MR. MUSHKIN:

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

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

6 Do you see that?

7 A I do.

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

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

12 Q That provision?

13 A Oh. Yes.

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

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

17 Q 23. Do you see that?

18 A I do.

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

22 A I do.

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

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

1 didn't exist, yes.

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

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

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

8 A I believe so, yes.

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

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

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

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

17 A 16?

18 Q Let me just check.

19 Right.

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

22 A I do.

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

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

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

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

7 Do you see that?

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

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

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

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

14 MR. MUSHKIN: Sure, Judge.

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

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

18 THE COURT: It's okay.

19 Mr. Bloom, finish up.

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

24 BY MR. MUSHKIN:

25 Q Okay. Let's take a look at page 6 of the amended

1 forbearance agreement, and that provision is marked G.

2 A Okay. I'm there.

3 Q And Exhibit G says,

4 The Antos parties and SJCV represent
5 they continue to lawfully possess and hold
6 100 percent ownership.

7 Is that correct?

8 A Correct.

9 Q The Antos parties and SJCV in paragraph H,
10 They continue to acknowledge that the
11 amended note, modified deed of trust and
12 forbearance agreement are legal, valid and
13 binding agreements of the Antos parties and
14 the SJCV parties.

15 Correct?

16 A Correct in that that's what it says, yes.

17 Q And Jay -- and you understood that when you signed
18 this agreement, didn't you?

19 A Well, we didn't have all the information on the
20 notes. So within the context of the information I had, I
21 understood it.

22 Q Well, what information didn't you have, sir?

23 A I didn't have the notes to see that it was a
24 commercial loan to a restaurant where the Antoses individually
25 guaranteed it, and the Antos Trust did not.

1 Q But doesn't it say that on the very first page of
2 the -- I just went through it with you, in the original
3 forbearance agreement it talks about KCI Investments and
4 Preferred Restaurant Brands, that they executed the note.
5 Explain that to the Court, please.

6 A I think we did explain it when we went through it and
7 that we don't know what capacity they participated.

8 I was told that there was a third mortgage on the
9 house. The house was owned by the Antos Trust. I don't know
10 who the restaurants were. I didn't know it was a restaurant
11 loan. I didn't know that the Antos Trust, the owner of the
12 house never signed the loan and that it didn't sign as a
13 borrower. It didn't sign as a guarantor, and, quite frankly, I
14 should've paid more attention and asked more questions, but I
15 didn't. I was told it was a third party -- it was a third
16 mortgage. I accepted on its face the representation that it
17 was a third party and a third mortgage.

18 Q And, in fact, you were provided a preliminary title
19 report too, weren't you?

20 A I don't remember, but entirely possible.

21 Q And that preliminary title report has been admitted
22 as?

23 MS. FOLEY: It's the blue tab.

24 MR. MUSHKIN: Say it again.

25 MS. FOLEY: It's the blue tab on the side. It's

1 Exhibit 104. And it's attached to an email sent to Mr. Bloom.

2 BY MR. MUSHKIN:

3 Q I would direct your attention to Exhibit 104.

4 MS. FOLEY: The page before is the email where it --

5 BY MR. MUSHKIN:

6 Q Page 003682. It's about two thirds of the way down.

7 A Do you have a Bates number?

8 Q 003682.

9 A In Exhibit 104?

10 Q 104.

11 A So Exhibit 104 runs from Bates Number 1220 to 1348.

12 I don't have one that starts in the three thousands.

13 MR. GUTIERREZ: He can have my copy if he needs it,
14 Your Honor.

15 THE COURT: Mr. Bloom, why don't you go grab at
16 Mr. Gutierrez's from him.

17 THE WITNESS: I am on my way.

18 THE COURT: Great. I'm trying to keep people out of
19 the well.

20 MR. GUTIERREZ: You're doing a great job, Your Honor.

21 (Pause in the proceedings.)

22 THE COURT: Take the time you need to look at the
23 document, and then let us know when you're ready, sir.

24 THE WITNESS: Thank you.

25 Starting on 3682?

1 MR. MUSHKIN: Yes, sir.

2 BY MR. MUSHKIN:

3 Q Have you ever seen this document before?

4 A I don't remember it, but it's entirely possible I
5 did.

6 Q Let's take a look at the exceptions which start on
7 page 3686.

8 A Okay.

9 Q All right. Do you understand what these exceptions
10 reference?

11 A I haven't read them in detail, but they look pretty
12 boilerplate. So I believe so with a cursory review.

13 Q And through items 32, they're pretty boilerplate,
14 aren't they? Easements, orders of vacation, things like that;
15 right?

16 A Right.

17 Q CC&Rs, reservations, patents, all that; right?

18 A Correct.

19 Q And then you get to Item 33, and that's a deed of
20 trust by Kenneth and Sheila Antos for 3,640,000, dated
21 October 6, 2010. Do you see that?

22 A I do.

23 Q And is that the first deed of trust that is reflected
24 on the exceptions?

25 A I believe so.

1 Q And then Item 34 is a revolving credit deed of trust
2 and assignment of rents to Northern Trust. Do you see that?

3 A I do.

4 Q And is that the second deed of trust recorded on the
5 property?

6 A Yes.

7 Q And Item 35 is a deed of trust and assignment of
8 rents for the amount of \$3 million in favor of CBC Partners I,
9 LLC, a Washington limited liability company. Do you see that?

10 A I do.

11 Q Is that the third deed of trust on the property?

12 A Yes.

13 Q Thank you. And I'd like you to look at Item 36. And
14 that's a lien from Red Rock Financial Services. Do you see
15 that?

16 A I do.

17 Q Do you know what that's for?

18 A I do not.

19 Q The next item I want to look at is a treasury of
20 certificate holding delinquent property taxes. Do you see
21 that?

22 A I do.

23 Q Okay. And then the next one is a judgment. Do you
24 see that document?

25 A I do.

1 Q And do you know how much that judgment is for?

2 A It's reflected on the title report as \$87,213.05.

3 Q I'd like you to look at the next one, a judgment,
4 this one from E and H distributing. Do you see that?

5 A I do.

6 Q How much is that one for?

7 A That one appears to be for \$15,819.09.

8 Q And Item 40 is an application of foreign judgment,
9 and that is in the amount of \$812,217.92. Do you see that?

10 A I do.

11 Q Creditor CT Communications. Do you see that one?

12 A I do.

13 Q And then 41 is a judgment. Creditor is Shetakis, and
14 is 19,640.98. Do you see that?

15 A I do.

16 Q The next one is a judgment dated May of '16. The
17 creditor is Robert Walsh and the amount is 538,500. Do you see
18 that?

19 A I do.

20 Q And then the next one is another application of
21 foreign judgment. Do you see that one?

22 A I do.

23 Q And that's 93,190.49. Do you see that?

24 A I do.

25 Q And then the next one is another application of

1 foreign judgment in the amount of 89,524.

2 Do you see that?

3 A I do.

4 Q And then finally, another judgment, the debtors --
5 creditor is Mengyun Han, and that's for \$585,000.

6 Do you see that?

7 A I'm looking at one that it's 560,000.

8 Q I'm looking at 45. Are you looking at 45?

9 A I am.

10 Q It says amount 560, and 585 and other amounts due
11 hereunder. So I guess that one's a million, four. Is that
12 fair?

13 A A million 45.

14 Q Thank you. And you are obligated yourself to file a
15 quiet-title action; is that correct?

16 A As a method to resolve the liens.

17 Q And you didn't file that quiet-title action, did you?

18 A I did not.

19 Q And those judgments remain of record on the property
20 to this day; isn't that correct?

21 A They do.

22 Q Why haven't you filed the quiet-title action?

23 A Because I don't think a quiet-title action would be
24 necessary. I think they made the same mistake that CBC did.
25 The judgments are against the Antoses individually, but at the

1 time the lien was filed, it was filed against the Antos Trust
2 property, which is a separate entity.

3 Q Well, that's --

4 A So these liens never -- those liens never should have
5 been recorded, and I think a quiet-title action is probably not
6 necessary. There's no reason to file a dozen litigations when
7 a demand would probably yield the same result.

8 Q Did you submit a demand?

9 A I have not.

10 Q You obligated yourself to file a quiet title; did you
11 not, sir?

12 A The intent was to resolve the liens, yes.

13 Q And you have not resolved those liens, have you, sir?

14 A Not yet.

15 Q Mr. Bloom, you promised Mr. Hallberg on a number of
16 occasions to pay off the note, didn't you?

17 A Upon recognizing liquidity, yes.

18 Q Well, I'm going to direct your attention to 104
19 again, this time the very first page of 104, 2717.

20 A What's the Bates number?

21 Q 2717.

22 MS. FOLEY: That's the middle of 104. 104 starts
23 [inaudible].

24 MR. MUSHKIN: I'm sorry.

25 / / /

1 BY MR. MUSHKIN:

2 Q It's the first one in the book that I'm looking at.

3 A That could not be less helpful.

4 MR. MUSHKIN: I feel the exact same way, Judge.

5 THE COURT: So, Mr. Bloom, if you want to go,
6 Mr. Gutierrez may have something for you there it looks like.

7 THE WITNESS: Okay. Should I return this book to
8 him?

9 MR. MUSHKIN: No, leave it up there.

10 THE COURT: No. You're going to gather all the books
11 you have and keep them until you're done.

12 THE WITNESS: Okay.

13 (Pause in the proceedings.)

14 MR. MUSHKIN: Your Honor, would you like to take the
15 afternoon break now?

16 THE COURT: If you think it's a convenient time.

17 How much longer do you think given the pace that is
18 currently going?

19 MR. MUSHKIN: Today is Tuesday; is that right? My
20 expectation is all week.

21 THE COURT: You can't see my face under the mask.
22 And it is a good --

23 MR. MUSHKIN: That was a yes, today is -- I'm bad
24 with days of the week.

25 THE COURT: Yeah.

1 MR. MUSHKIN: I work all seven. At least I try to do
2 a little.

3 THE COURT: Today was Tuesday.

4 MR. MUSHKIN: It's almost gone.

5 THE COURT: Uh-huh.

6 MR. MUSHKIN: My expectation that I'll be done maybe
7 by the end of Thursday.

8 MR. GUTIERREZ: And, Your Honor, I'd like to know
9 exactly what's going to take another two and a half days.

10 THE COURT: Are you going to just examine Mr. Bloom?

11 MR. MUSHKIN: Yes, sir -- yes, ma'am, absolutely.

12 THE COURT: Because at some point I'm going to tell
13 you you're done if that's how we're going.

14 MR. MUSHKIN: Well, I'm doing the best I can, Judge.

15 THE COURT: I understand, but at some point it's like
16 no matter how much difference you guys have there's only so
17 much we can do.

18 MR. MUSHKIN: Well --

19 MR. GUTIERREZ: And, Your Honor, I'd object just
20 given the limited scope of this trial. I want to make sure
21 he's addressing the issues, and obviously going till
22 Thursday --

23 THE COURT: Well, he is addressing the issues.

24 MR. GUTIERREZ: He is, but not until Thursday.

25 THE COURT: I'm not saying this is Mr. Mushkin's

1 fault.

2 MR. GUTIERREZ: Right. But --

3 THE COURT: And as --

4 MR. GUTIERREZ: -- going to till Thursday --

5 THE COURT: Wait. I don't know that you heard me,
6 Mr. Gutierrez, but I almost granted the 50(a) motion.

7 MR. GUTIERREZ: Understood.

8 THE COURT: The only reason I didn't grant the 50(a)
9 motion is there's a case, I don't remember if it's published or
10 not, that says I'm not supposed to weigh evidence at the 50(a)
11 stage. So I didn't.

12 MR. GUTIERREZ: Understood.

13 THE COURT: But if I had weighed evidence at the
14 50(a) stage, we wouldn't still be here.

15 MR. GUTIERREZ: Understood, Your Honor, and --

16 THE COURT: So --

17 MR. GUTIERREZ: And these are serious issues that we
18 take serious. We want to make sure the record is complete, but
19 I want to make sure that the record is limited to what we are
20 actually addressing --

21 THE COURT: Absolutely.

22 MR. GUTIERREZ: -- in this case.

23 THE COURT: The five issues that we're addressing --

24 MR. GUTIERREZ: Absolutely.

25 THE COURT: -- plus the preliminary injunction.

1 But at some point, Mr. Mushkin, for purposes of the
2 limited trial we have on this issue, we're beating a dead
3 horse. That's all I'm trying to say.

4 MR. MUSHKIN: Your Honor...

5 THE COURT: I'm going to take the afternoon break and
6 let you guys think and talk.

7 MR. MUSHKIN: Thank you, Your Honor. Fifteen
8 minutes?

9 THE COURT: Sure.

10 (Proceedings recessed at 2:41 p.m., until 2:50 p.m.)

11 (Pause in the proceedings.)

12 THE COURT: Okay. Keep going.

13 MR. MUSHKIN: Your Honor, I'm going to try and get
14 through this as quickly as I can.

15 THE COURT: I know you tried cases in front of Stu
16 Bell and Sally Loehrer before. So...

17 MR. MUSHKIN: You know, Your Honor, I have and --

18 (Pause in the proceedings.)

19 BY MR. MUSHKIN:

20 Q Okay. Mr. Bloom, you contracted to pay the HOA dues;
21 is that correct?

22 A Spanish Heights did, yes.

23 Q And you failed to do that for a period of time,
24 didn't you?

25 A Spanish Heights did.

1 Q They failed?

2 A Yes.

3 Q In fact, the HOA was going to go to foreclosure;
4 correct?

5 A Nobody would have allowed it to go to foreclosure.

6 Q Well, you didn't pay it, did you?

7 A No.

8 Q In fact, my client had to pay it the day before the
9 sale, didn't he?

10 A I don't remember it being the day before the sale,
11 no.

12 Q Well, isn't it true, Mr. Bloom, that you were trying
13 to steal position on title by letting that accrue and then
14 buying it at an auction?

15 A No, that's not true.

16 Q Why didn't you pay the HOAs?

17 A I don't remember the circumstances, but, no, that is
18 not --

19 Q Thank you.

20 A -- I was not looking to steal title --

21 Q You don't remember. I appreciate that, sir. okay.

22 And do you know what the amount of the HOA notice of
23 default was?

24 A I do not.

25 Q It was -- would you be surprised if it was \$8,507.83?

1 A Not necessarily.

2 Q Let's take a look at 3230. It's in Exhibit 4.

3 (Pause in the proceedings.)

4 THE WITNESS: So it's not in my Exhibit 4, and I
5 don't know that Mr. Gutierrez had it either.

6 MR. MUSHKIN: That's all right. We'll put it on the
7 Elmo. I'm such an expert.

8 BY MR. MUSHKIN:

9 Q Do you see this email on January --

10 THE COURT: You've got to lower it a little bit.
11 Thank you.

12 MR. MUSHKIN: I've got to look up.

13 BY MR. MUSHKIN:

14 Q All right. Do you see that email?

15 A I do.

16 Q And that's your email address, Jay Bloom at F 100
17 LLC, dot, com?

18 A Yes.

19 Q And it goes to Alan Hallberg. Do you see that?

20 A I do.

21 Q Below is the email that you respond to. There's one
22 from Alan to you.

23 A Okay.

24 Q It says,

25 It looks like the HOA dues are owing,

1 and the association is taking action. Would
2 you please take care of this. Please let me
3 know if you'd like to chat first.

4 And what was your response, sir?

5 A The response in the email was,

6 I'll take care of this. I prepaid for a
7 period of time and forgot about it when the
8 property -- when the prepay ran out. It went
9 to NOD. Easy fix.

10 Q You didn't fix it though, did you, sir?

11 A I think they advanced it to the payoff.

12 Q Sir, my question is you did not take care of the HOA
13 dues, did you?

14 A Mr. Mushkin, could you pull up your mask, please.

15 Q No. I'm asking you a question. My mask is fine.

16 THE COURT: Pull your mask back over your nose,
17 please.

18 MR. MUSHKIN: It was over my nose.

19 THE COURT: No, it wasn't. It had fallen down.

20 MR. MUSHKIN: Only to there.

21 THE COURT: All right.

22 BY MR. MUSHKIN:

23 Q Mr. Bloom, you did not take care of the HOA dues, did
24 you, sir?

25 A I spoke with CBC, and CBC --

1 Q Sir, it's a yes-or-no answer.

2 A Yes.

3 Q Show me the payment, sir.

4 A It wasn't by payment. It was by arrangement with
5 CBC.

6 Q What?

7 A I spoke with CBC, and we made an arrangement where
8 they would pay it and add it to the balance.

9 Q That they would pay it?

10 A Yes.

11 Q Do you have that in writing anywhere?

12 A It was evidenced by the actions of the parties.

13 Q Oh, I see.

14 My question again, sir, you did not pay the HOA dues,
15 did you?

16 A I paid a great number of HOA dues.

17 Q Sir, I'm referring to the HOA dues represented in the
18 notice of default. You did not pay those dues, did you?

19 A Those particular dues, no.

20 Q Thank you.

21 MR. MUSHKIN: We may be here that long, Judge.

22 THE COURT: I'm just telling you I understand,
23 Mr. Mushkin, but...

24 BY MR. MUSHKIN:

25 Q Is it fair to say that SHAC made no payments pursuant

1 to these agreements until May of 2020?

2 A No.

3 Q SHAC never had a bank account until April 30th,
4 2020; correct?

5 A Correct.

6 Q So how would SHAC make payments?

7 A SHAC was due rent from SJC and assigned its rent
8 payments to satisfy the obligations directly. So it did it by
9 way of assignment of rents receivable.

10 Q Who assigned what rents to who?

11 A SHAC assigned SJC rents to SHAC's obligations.

12 Q Sir. I'm asking a real simple question. You're
13 making this a lot harder.

14 Isn't it true that SHAC did not make any payments
15 pursuant to this agreement until May of 2020 when they opened
16 their bank account? It's a yes-or-no answer.

17 A No, that's not true.

18 Q Isn't it true that others made payments on behalf of
19 SHAC until April -- until May of 2020?

20 A Others made payments to SHAC obligations on behalf of
21 SHAC obligations in satisfaction of their obligations to SHAC.
22 So SJC owed Spanish Heights rent. Spanish Heights assigned
23 those rent receivables to satisfy Spanish Heights obligations
24 to pay them.

25 Q I'm not asking about assignment, sir. I'm asking who

1 made payments, and isn't it true that all the payments made up
2 until May of 2020, all payments made to CBC I were made by a
3 party other than SHAC?

4 A Yes.

5 Q Thank you. Do you recall my asking in the deposition
6 for proof of the hundred thousand and repairs?

7 A Not offhand, but I'm not specifically denying that
8 you asked that.

9 Q And do you also recall I'll leave a blank in the
10 transcript for you to add whatever you have not produced up
11 until now? Do you recall that?

12 A No, but I'm sure you said that.

13 Q I'm going to direct your attention -- are you
14 acknowledging that you made that statement, sir, with the deny
15 or don't deny? Which is your answer? Did you recall it, or do
16 you not recall?

17 A You're referencing a statement that you made. I
18 didn't make that statement.

19 Q I'm asking if you recall hearing it, sir?

20 A Okay. Sort of. Vaguely.

21 Q Have you produced everything you have showing that
22 you made a hundred thousand in repairs?

23 It says, I'd have to go back and check to see what
24 production I gave to the attorneys.

25 Question, I'll leave a blank in the transcript for

1 you to add whatever you have not produced up until now.

2 Do you see that?

3 A I see that.

4 Q Did you produce anything subsequent to your
5 deposition?

6 A I don't know if the production of the home automation
7 repairs was prior to or subsequent to my deposition and other
8 expenses.

9 Q Are you saying you don't know?

10 A I don't know if it was prior to or subsequent.

11 Q We've gone through the produced receipts. You saw
12 those earlier?

13 A I did.

14 Q Did you provide anything in addition to those
15 receipts?

16 A Yes.

17 Q Pursuant to the depo?

18 A I provided things in addition to the receipts. I
19 don't remember if it was pursuant to the depo or prior to the
20 depo.

21 Q Where are those documents, sir?

22 A They've been provided.

23 Q Where? Show me them.

24 A Well, I don't see them in the exhibits beyond the
25 HVAC repairs.

1 Q So there aren't any, are there, sir?

2 A There are.

3 Q Where are they?

4 A They're not --

5 Q There have been no other --

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

7 MR. MUSHKIN: Sorry. I thought he was done, Judge.

8 THE COURT: Mr. Bloom, could you finish, please.

9 THE WITNESS: They're not in the exhibits, but there
10 are more documents.

11 BY MR. MUSHKIN:

12 Q But you have not produced them in this case?

13 A I provided them to counsel. I don't see them. They
14 didn't make the exhibit pack.

15 Q So you answered a question that said that -- we were
16 talking about SJCVC as the investor member and the covenants
17 that you agreed to upon entering into and taking management of
18 SHAC.

19 And your response to that was, When you say "you,"
20 you mean SJCVC? And your answer is, Yes, sir.

21 And then you add, Subject to modification of the
22 parties subsequent to this agreement, yes. Okay.

23 And I ask you, Are you aware of any modifications
24 other than the amended forbearance agreement?

25 Do you recall that question?

1 A If you could put it on the Elmo, it would be helpful.

2 Q Do you recall that question?

3 A I don't specifically recall that question.

4 Q I'm asking you today, are you aware of any written
5 modifications to the documents other than the amended
6 forbearance agreement?

7 A No.

8 Q I asked you a question:

9 Did you ever have any agreement from
10 Mr. Antos that you were not obligated to do
11 what you promised Mr. Antos in the operating
12 agreement.

13 Do you recall that question?

14 A I do not.

15 Q Well, I'm going to ask it now. Do you have any
16 agreement from Mr. Antos that you were not obligated to do what
17 you promised Mr. Antos in the operating agreement?

18 A No.

19 Q Do you remember what your response was to that
20 question at the time of your deposition?

21 A I do not.

22 Q Your answer was, Mr. Antos directed me to speak to
23 CBC.

24 A Okay.

25 Q Why did you answer that way at the deposition?

1 A By "that way," you mean truthful?

2 As I said at the beginning of this trial, the
3 beginning of my testimony, I spoke to Mr. Antos maybe once.
4 Every other time he directed me to speak to CBC.

5 Q So in answer to the question, Did you have any
6 agreement from Mr. Antos that you were not obligated to do what
7 you promised in the operating agreement, you responded,
8 Mr. Antos directed me to speak to CBC?

9 A Apparently. That's what the transcript says --

10 Q And you believe that to be a truthful answer --

11 A I don't recall that.

12 Q -- to the question?

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

15 MR. MUSHKIN: Well, I didn't finish my question
16 first.

17 THE COURT: Sir, were you done with your answer?

18 THE WITNESS: I'm not sure what the question was at
19 this point.

20 THE COURT: Okay. Could you start over.

21 BY MR. MUSHKIN:

22 Q Did you ever have a written agreement from Mr. Antos
23 that you were not obligated to do what you promised Mr. Antos
24 in the operating agreement?

25 A Is that the end of the question?

1 Q Yes.

2 A No.

3 Q When I asked that question at your deposition you
4 answered, Mr. Antos directed me to speak to CBC.

5 Why did you give that answer?

6 A It's a truthful answer. That's --

7 Q Well -- sorry.

8 A That's what I -- that's what I recalled in the moment
9 in response to that question.

10 Q It's not responsive to the question, is it, sir?

11 A You know, I'm not sure that it isn't.

12 Q Thank you.

13 A I'm not sure that it is.

14 Q Thank you, Mr. Bloom. So I asked you a question, and
15 I'm asking it to you again today. Are there other
16 modifications other than the amended forbearance agreement?

17 A None that I can recall in the moment.

18 Q When I asked you that question, your answer was as
19 follows: There are potentially other email communications
20 which would be subsequent modifications, and then there are
21 telephone conversations.

22 Is it your testimony that the contracts can be
23 modified by an email?

24 A I would think they could.

25 Q You believe they can. Okay. And I asked you,

1 Doesn't it say in the operating
2 agreement as well as the forbearance
3 agreement that all modifications must be in
4 writing, signed by the parties?

5 A I believe so.

6 Q Thank you. Why did you tell me you don't know at the
7 time of your deposition to the same question?

8 A Pull your mask up. Thank you.
9 Could you repeat that.

10 Q The question is,

11 Doesn't it say in this document that all
12 modifications must be in writing?

13 Your answer is, I don't know.

14 I answered -- I asked you the same question just now,
15 and you said yes. Why did you say I don't know at the time of
16 your deposition?

17 A Well, I think we just reviewed the document, and I
18 saw it here. I think.

19 Q There are no amendments to the operating agreement.
20 Is that fair?

21 A No. No.

22 Q There are no amendment -- isn't it true there are no
23 amendments to the operating agreement?

24 A Yes, I believe that's the case.

25 Q Now, when I asked you that question, you equivocated,

1 and your answer was,

2 There are no formal amendment to the
3 operating agreement, but the agreement terms
4 are modified by the amendment to the
5 forbearance agreement, which we've
6 acknowledged, and emails that occurred
7 between the parties.

8 Right? That was your answer?

9 A I'll accept your representation, but I don't have the
10 transcript in front of me.

11 Q Didn't you just testify that you rarely had any
12 conversations with Mr. Antos?

13 A Yes.

14 Q And Mr. Antos and you are the only parties to the
15 operating agreement; right?

16 A Correct.

17 Q The operating agreement is referenced in the
18 forbearance agreement; right?

19 A Correct.

20 Q And the same covenants appear in both the 150, the
21 quiet title, all those things that were under investor.
22 Remember, those appear in the forbearance agreement; correct?

23 A I believe so.

24 Q Okay. And -- but in your answer it says,

25 But the agreement terms are modified by

1 the amendment to the forbearance agreement
2 and emails occurred between the parties.

3 Have you produced any emails with Mr. Antos?

4 A I don't believe so.

5 Q Thank you. There's no modification by emails to the
6 operating agreement; correct?

7 A None that I can recall as I sit here today.

8 Q I may have covered this already, but you were aware
9 that Preferred Restaurant Brands and KCI were parties to the
10 note before you entered into the agreement on September 27th;
11 correct?

12 A Well, the language was included in the document, no,
13 it was not.

14 Q Well, when I asked you that question -- let me read
15 the two questions I asked you:

16 Are you talking about paragraph 1 that it says that
17 the note -- sorry.

18 I'll represent to you that it's CBC I, but I don't
19 really care. And then it talks about the original note on June
20 22nd, 2012, and its origination. Do you see that?

21 Can't hear you. Are you talking about paragraph 1,
22 which it says the notes have been executed by KC Investments
23 and Preferred Brands?

24 Your answer, yes. Yes, I see that.

25 Question, and you saw that at the time you entered

1 into the agreement. Is that also true?

2 Do you know what your answer was?

3 A I do not.

4 Q Well, I'm going to ask you now: Did you see the KCI
5 and Preferred names at the time you entered into the agreement?

6 A I don't recall seeing that.

7 Q At the time of your deposition you answered yes. Why
8 are you answering differently today?

9 A Well, I think during my deposition I made a mistake.

10 Q So at the time of your deposition I asked you this
11 question: Pursuant to the terms hereunder, SHAC intends to
12 acquire the property and make certain payments to CBC and other
13 parties pursuant to the terms of this forbearance agreement.

14 Do you recall that provision in the forbearance
15 agreement?

16 A I'm sorry. Are you asking a question now, or are you
17 reading the transcript?

18 Q I am asking you a question. Pursuant to the terms of
19 the agreement, the terms hereunder, SHAC intends to acquire the
20 property and make certain payments to CBC and other parties
21 pursuant to the terms of this forbearance agreement.

22 Is that in fact the provision within the forbearance
23 agreement?

24 A I believe so.

25 Q And did you agree to that provision at the time of

1 you signed the agreement?

2 A I believe so.

3 Q Thank you. Now, I asked you, and the question is --
4 I'll read it: And, finally, in addition amounts -- in
5 additional amounts for accrued interest, recoverable costs,
6 including reasonable attorneys' fees, certain indemnities,
7 postforbearance protection payments and other note expenses as
8 described below, and I asked you if you saw that provision.

9 Do you know what you responded?

10 A I do not.

11 Q Well, did you see the -- do you recall seeing the
12 provision at the time of your depo?

13 A No.

14 Q And have you reviewed these documents in advance of
15 today?

16 A No.

17 Q So do you -- are you able to affirm or deny that the
18 forbearance agreement covered accrued interest, recoverable
19 costs, reasonable attorneys' fees, indemnities, postforbearance
20 protection payments and other note expenses as described below.
21 That's what's covered in the forbearance agreement; correct?

22 A I believe so.

23 Q And you agree to pay all of those sums; isn't that
24 correct?

25 A Uh --

1 Q SJC?

2 A Yes.

3 Q Thank you. And, in fact, as we've shown you on the
4 preliminary title report, the CBC note is in third position.
5 That's also correct, isn't it?

6 A There is a deed of trust recorded in the third
7 position for the benefit of CBC securing a note to which the
8 Antos Trust as the pledgor has no nexus.

9 Q Now, you have now claimed that something was
10 misrepresented to you; is that correct?

11 A I believe so.

12 Q What was misrepresented?

13 A The existence of the third mortgage. There was no
14 third mortgage. It was a commercial loan to a restaurant, and
15 I only found that out through the course of this proceeding.

16 Q Well, if you only found -- the day you filed this was
17 April 9th of 2020; right?

18 A I believe about then, yes.

19 Q Okay. If you didn't find out about any of this
20 defect, why didn't you make the balloon payment on March
21 31st, 2020, as required by the amendment to the forbearance
22 agreement?

23 A I don't -- I think because we were arguing about the
24 default that you had sent two weeks prior.

25 Q Who is we?

1 A Me and MGA.

2 Q Well, I showed you the letter. You claimed there
3 couldn't be a default; right?

4 A Well, the defaults that you were claiming weren't
5 defaults.

6 Q Okay.

7 A Yeah.

8 Q Well, but you acknowledged that the document matures
9 March 31st; right? That's the end of the forbearance period?

10 A Correct.

11 Q Well, you testified that you didn't know about any
12 defect until the course of this litigation. I'm assuming that
13 was when discovery was taking place; is that fair?

14 A That's correct.

15 Q Well, then why didn't you pay on March 31st, like
16 you were obligated to?

17 A You noticed a default improperly two weeks prior.

18 Q And that's the --

19 A And it set us down this path.

20 Q And you're testifying to this Court that the notice
21 of default is a defense to payment of a matured note?

22 A Mr. Mushkin, your mask is down again.

23 There are several. We have a breach of the
24 forbearance agreement by CBC in January, February and March.

25 Q Did you notice default?

1 A Not at that time.

2 Q Okay.

3 A We didn't know about the default to notice the
4 default.

5 Q Well, if you didn't know about the default, then how
6 can that be a defense to payment on March 31st? I'm asking
7 you what you knew on March 31st that you can tell this Court
8 that's a defense to payment of this balloon payment?

9 A We knew that you noticed a default improperly.

10 Q That's all?

11 A And then we found out there were subsequent --
12 subsequently we found out other issues.

13 Q Well, but you didn't find out until sometime in May
14 or June; right?

15 A Right.

16 Q March 31st the obligation was due; right?

17 A Correct.

18 Q Now, through the course of this you spoke directly to
19 me on a number of occasions, didn't you?

20 A I did.

21 Q And, in fact, there was consent given by your counsel
22 to speak with me; isn't that correct?

23 A Correct.

24 Q What were you trying to accomplish in speaking to me?

25 A I don't recall. I think we were talking about

1 extending the forbearance.

2 Q You wanted more time; right?

3 A Correct.

4 Q And you asked that of Mr. Hallberg; correct?

5 A Correct.

6 Q And Mr. Hallberg said no; correct?

7 A Correct.

8 Q And, in fact, Mr. Hallberg told you all
9 communications were to go through my office; right?

10 A Yes.

11 Q And you communicated with Mr. Hallberg after that,
12 didn't you?

13 A I did.

14 Q You sent him an email, didn't you -- I mean a text
15 message, didn't you?

16 A Possibly.

17 Q Do you know what that -- do you remember what the
18 text message said?

19 A No. What did it say?

20 Q Do you recall?

21 A I do not.

22 Q It said, Your attorney is going to get you into
23 trouble.

24 Do you recall that?

25 A Probably. That sounds -- yes.

1 Q Okay. Now, you were instructed not to communicate
2 with him; correct?

3 A Uh --

4 Q You just said, yes, all communications through
5 counsel.

6 A It was -- it was a request to communicate with you.

7 Q Okay.

8 A That's not an instruction not to communicate with
9 him.

10 Q But then you decided you would try and interfere with
11 my relationship with my client; is that correct?

12 MR. GUTIERREZ: Objection, Your Honor.
13 Argumentative.

14 THE COURT: Overruled.

15 THE WITNESS: It was not intended to interfere with
16 your relationship. It was intended to inform your client as to
17 some of the actions you were taking are improper.

18 BY MR. MUSHKIN:

19 Q So can you tell me today what was falsely represented
20 to you?

21 A The existence of a third mortgage.

22 Q But we've just gone through it that it's the third
23 deed on the property; correct?

24 A It is a third deed, but the deed is not the
25 obligation. The deed secures an obligation, and it was an

1 obligation that didn't exist that represented that it -- which
2 was represented as a (indiscernible).

3 So when CBC says there's a third mortgage, I
4 understand that to be an obligation of the Antos Trust. What
5 came out later is that the Antos Trust never really did have
6 that obligation, that it was a commercial restaurant loan.

7 Q Well, what document revealed this to you?

8 A When we finally got the note.

9 Q Sir, you referenced a note before the documents are
10 assigned. You're creating the 11th modification.

11 A Right. Based on telephone --

12 Q You saw the note before you signed.

13 A That's not true.

14 Q Okay. Do you have any proof of that?

15 A I don't think you can prove the absence of something.
16 I mean, clearly if there was an email that said the note is
17 attached we would have provided it, but you've provided every
18 email except that critical one. The note was never provided.

19 Q Well, did you ever ask for it?

20 A No. I accepted it on face value of the
21 representation that there was a third mortgage, that the Antos
22 Trust was a borrower.

23 Q And you have now seen the documents that set forth
24 the Antos -- the certificate of borrowing. You saw that
25 document; correct?

1 A Certificate of borrowing?

2 Q The certificate of authority to borrow, sir, do you
3 recall that document?

4 A There's a certificate of trust -- I don't know which
5 document you're referring to, and I don't want to guess.

6 MS. FOLEY: 34.

7 THE COURT: Maybe it's 34.

8 BY MR. MUSHKIN:

9 Q Let's take a look at 34.

10 A Okay. So 34 is a certificate of the trust existence
11 and authority.

12 Q You got that document, didn't you, sir?

13 A In discovery.

14 Q And there's also a document that is the guarantee of
15 the trust, isn't there?

16 A Yes.

17 Q Okay.

18 A In discovery.

19 Q Tell me why you can't -- you're not obligated to pay,
20 sir.

21 A Well, it's really not as complicated as you're making
22 it. In 2014, the Antos Trust was not a borrower and not a
23 guarantor, but it issued a deed of trust. The deed of trust is
24 supposed to secure an obligation of the Antos Trust as a
25 pledgor. No obligation existed for the Antos Trust. It

1 existed for the Antoses individually and for KCI and Preferred
2 Restaurant Brands at some point either prior or subsequent. In
3 2016, there was a confirmation, but the confirmation didn't
4 create the liability, and there was an amended deed of trust,
5 but again, against no obligation of the Antos Trust. So there
6 was no obligation for the pledgor to secure.

7 In 2017, there first appears a guarantee by the Antos
8 Trust which creates the obligation, but there's no deed of
9 trust that's issued afterwards. The prior ones are defective,
10 and the subsequent one -- there is no subsequent one.

11 Q But you waived --

12 A And then the trust transferred the ownership of the
13 property.

14 Q Okay. And you've released and waived all these
15 claims, haven't you?

16 A You can't waive what you don't know about.

17 THE COURT: You don't think so?

18 THE WITNESS: Not intentionally.

19 THE COURT: Okay.

20 BY MR. GUTIERREZ:

21 Q It says right in here known or unknown, doesn't it,
22 sir?

23 A It may, but that wasn't my intent to waive something
24 that was misrepresented.

25 Q How many years have you been in the real estate

1 business, sir?

2 A Probably 20.

3 Q And your testimony doesn't change from these
4 documents. You still think you don't have to pay?

5 A Well, I think SJC has an obligation under its
6 assignment of proceeds or its security agreement under the
7 judgment, but that's a different question than whether or not
8 the property is pledged as collateral.

9 Q I didn't ask you if the property was pledged as
10 collateral. Sir, I asked you if you had to pay. You think you
11 don't have to pay?

12 A No. I think when the judgment -- when the judgment
13 is collected there's an obligation under the security agreement
14 that remains.

15 Q What about your obligation to the Antos parties?

16 A Which obligation specifically?

17 Q Well, what did you pay for the 51 percent in SHAC?

18 A Well, I put over a million dollars into that house so
19 far, maybe under a million dollars, but close to it.

20 Q Sir, that's not what you paid to the Antoses. That's
21 what you put in the house. I had asked you a very specific
22 question. What did you pay the Antoses for your 51 percent of
23 the property?

24 A The Antoses were upside down millions of dollars in
25 equity in the property. There was nothing to be paid to them

1 other than to alleviate some of their liability.

2 Q So you paid nothing to them; is that correct?

3 A They didn't have any equity. They were upside down
4 by millions.

5
6 Q Sir, I'm not asking about equity. I'm just asking
7 you simple questions. Hopefully you can answer yes or no so we
8 can get off of this merry-go-round quicker than we're going to
9 get off the way you're answering questions. Please answer yes
10 or no when I ask a yes or no question.

11 You paid the Antos parties nothing; correct?

12 A Correct.

13 Q So they have received no consideration for the
14 51 percent that you got in Spanish Heights Acquisition Company;
15 isn't that correct?

16 A That is not correct.

17 Q Tell me what you paid them.

18 A Consideration comes in forms other than direct cash
19 payments to the Antoses.

20 Q And isn't the very same thing true of the deed of
21 trust that the Antos Trust pledged for the benefit of CBC I?

22 A No.

23 Q Okay. Even though the documents recite that; no?

24 A The Antoses got specific consideration in the form of
25 relief. But the Antos Trust got no consideration for issuing

1 that deed of trust. CBC testified to it. The Antoses
2 testified to it, and, yes, there's language in the document
3 that says for consideration, but it doesn't say what
4 consideration, and the testimony both in the depositions and
5 here at trial is that no consideration had been provided.

6 Q So you know that's not what their testimony is, sir.
7 You heard Mr. Antos testify --

8 MR. GUTIERREZ: Objection.

9 BY MR. MUSHKIN:

10 Q He testified --

11 MR. GUTIERREZ: -- misstates testimony.

12 THE COURT: Overruled.

13 BY MR. MUSHKIN:

14 Q He testified that he got exactly what he wanted. He
15 got an extension of credit; correct?

16 A He got a benefit individually, but he didn't
17 testify --

18 Q And the Antos --

19 A I'm sorry. You didn't --

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

21 THE WITNESS: He did not testify that the Antos Trust
22 received a benefit. He testified that he as a beneficiary of
23 the trust individually got a benefit, and KCI got a benefit
24 because they got additional extensions of credit for their
25 working capital.

1 BY MR. MUSHKIN:

2 Q And the document itself recites that the trust and
3 its beneficiaries receive both the direct and indirect benefits
4 from the forbearance agreement; isn't that correct?

5 A Correct.

6 Q Thank you.

7 Now, you keep making an issue about this being a
8 commercial note. You always knew it was a commercial note;
9 correct?

10 MR. GUTIERREZ: Objection. Asked and answered.

11 THE WITNESS: Not correct.

12 THE COURT: Overruled.

13 BY MR. MUSHKIN:

14 Q So and when I asked you a question at your
15 deposition,

16 It is a third-position mortgage. It's
17 reported -- recorded against the property.
18 Let's go back to the first representation
19 executed by KCI Investments and Preferred
20 Brands; correct?

21 Answer, I said commercial note.

22 So you knew right from the get-go it was a commercial
23 note; isn't that correct?

24 A No, that's not what my testimony in the deposition
25 says either.

1 MR. MUSHKIN: I would bring the Court's attention to
2 page 48 of his deposition.

3 THE COURT: Okay.

4 BY MR. MUSHKIN:

5 Q Now, I asked you, And so because the Antos Trust was
6 not a borrower, you believe that's a defense to payment under
7 this agreement.

8 And Ms. Barraza objected as to form.

9 And do you know what your answer was?

10 A I do not.

11 Q To the extent it calls for a legal conclusion, I
12 would object, but that's my belief, and you can -- that you
13 can't pledge a deed of trust against a loan where there's no
14 obligation to pledgor. That's not a mortgage.

15 Do you see that?

16 A I don't have that testimony in front of me.
17 If you could slide it over.

18 Q Oh, thank you.

19 Do you see that?

20 A Yes.

21 Q And is that still your belief today?

22 A Yes.

23 Q What is the basis of that belief, sir?

24 A My experience in real estate.

25 Q Any other?

1 A My understanding of what a deed of trust comprises
2 of.

3 Q So you keep -- you said over and over again that the
4 trust owed zero, and I've shown you the documents that obligate
5 the trust. Is that still your testimony today that in view of
6 the certificate of trust that authorizes the deed of trust and
7 in view of the recitation of consideration, both direct and
8 indirect, it's still your testimony that the trust is not
9 obligated to pay anything?

10 A No.

11 Q So the trust is obligated to pay?

12 A Yes, but just not -- it didn't secure its debt with
13 the real property.

14 Q So you made a separate promise to the Antoses, both
15 individually and as the trust in the forbearance agreement;
16 correct?

17 A I didn't make promises to the trust to anybody, not
18 the trust. The Antoses own the trust or are the beneficiaries
19 of the trust.

20 Q Well, the parties -- the Antoses are a party -- the
21 trust is a party to the agreement; correct?

22 A I believe so.

23 Q And they're referred to as the Antos parties?

24 A The Antos parties I think refers to Ken and Sheila
25 Antos individually.

1 Q Oh, okay. You made a promise to them to pay the CBC
2 I note; did you not?

3 A SJC and SHAC made a promise to pay the Antos Trust
4 obligation under the deed of trust.

5 Q SHAC didn't make that promise, did they? SCJV (sic)
6 did, didn't they?

7 A I'm not clear.

8 Q In fact, you made that promise in order to get your
9 51 percent and become the irrevocable manager; isn't that
10 correct?

11 A That's not correct.

12 Q Well, then how do you become the manager? How do you
13 get your 51 percent? What did you pay for it?

14 A All the other aspects of the agreement.

15 Q And you didn't perform any of them, did you?

16 A Yes, I did.

17 Q You didn't get a quiet title, did you?

18 A I did pay the utilities. I did pay the repairs. I
19 did pay the improvements. I did pay the first and second for
20 almost a year now. Yeah, there's --

21 Q Sir --

22 A -- there's material performance under the contract.

23 Q Those promises you made to CBC I, sir, you have not
24 fulfilled a single promise you made to the Antoses, have you?

25 A What promises do you think I made to the Antoses?

1 Q Quiet title? No?

2 A That was to CBC.

3 Q No. It's in the operating agreement, sir.

4 A So are the other performance issues that I --

5 Q Exactly. You made a separate promise to the
6 Antoses --

7 A Your mask is --

8 Q -- and the Antos Trust to retire this obligation;
9 isn't that true?

10 A So you said --

11 Q Yes or no, sir?

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

13 THE WITNESS: Can you ask the question again.

14 BY MR. MUSHKIN:

15 Q No, I can't. You heard it.

16 A No. I was hearing something different.

17 THE COURT: You're going to have to repeat it,
18 please, Mr. Mushkin.

19 BY MR. MUSHKIN:

20 Q Isn't it true that you made a promise to the Antos
21 parties to pay the CBC I obligation?

22 A SJC did.

23 Q Thank you.

24 Now, I asked you a question, and the question is --
25 the first question is, well, how much do you think the note is

1 off?

2 The balance that is owed by the trust is zero. They
3 are not a borrower. They are not a guarantor.

4 Do you recall that question and answer, sir?

5 A Not specifically, but I agree with it.

6 Q But that's false, isn't it?

7 A No.

8 Q We've shown you the guarantee of the trust.

9 A This proceeding is the first time I've seen it.

10 Q It recites all over these documents, doesn't it, that
11 the Antos Trust owes this money?

12 A Well, it didn't prior to this document, which was the
13 2017 document. The Antos Trust did not owe this money in 2014
14 when it issued the deed, the deed of trust, and it didn't in
15 2016 when it reconfirmed the deed of trust.

16 Q So what? What's the effect?

17 A The effect is the deed of trust is to secure, to
18 provide security for an obligation under a different
19 instrument.

20 Q Is it executed wrong?

21 A Well, I don't know if it's executed wrong or not. It
22 just doesn't exist.

23 Q So you're just claiming this defect based upon your
24 testimony. You have no other document to support it; is that
25 correct?

1 A All of these documents support it.

2 Q Sir?

3 A They have the 2014 -- we have the 2000 --

4 THE COURT: Let him finish. Thank you.

5 THE WITNESS: We have the 2014 deed of trust. We
6 have the note and the 10 amendments, none of which add the
7 Antos Trust as a guarantor or a borrower. The first time the
8 Antos Trust has a nexus to the note is in 2017, the year after
9 it issued the deed of trust. So the deed of trust, when it was
10 issued and when it was reconfirmed in 2014 and 2016 had no
11 obligation to secure. There was nothing for the pledgor to
12 secure.

13 Q So it doesn't matter that Mr. Antos is obligated as a
14 guarantor, and he's the beneficiary? That has no consequence
15 to you?

16 A That's defeats the purpose of trust.

17 Q And where do you come up with this understanding of
18 trust law, sir?

19 A I mean, I think it's plain on the face; right? The
20 Antos Trust would have to be a borrower or a guarantor to have
21 an obligation for which it could secure.

22 Q Do you know what a living trust is, sir?

23 A Somewhat.

24 Q What is it?

25 A It's a -- it's an instrument that's used by

1 individuals to safeguard assets and separate assets from
2 themselves individually.

3 Q Do you know that a revocable living trust has no
4 separate existence?

5 A No.

6 Q Do you know that a revocable living trust has no tax
7 return?

8 THE COURT: Separate and apart from the trustors.

9 BY MR. MUSHKIN:

10 Q Separate and apart from the trustors?

11 A Okay.

12 Q But you stand by your testimony that somehow the
13 trust cannot obligate itself under this deed of trust. Is that
14 your testimony?

15 MR. GUTIERREZ: Objection. Misstates the testimony.

16 THE COURT: Overruled.

17 THE WITNESS: That's my understanding that the trust
18 would have to obligate itself and is not obligated by an
19 obligation of the guarantors by an obligation of the
20 beneficiaries of the trust outside of the trust itself.
21 Otherwise every trust would be subject to obligations of the
22 beneficiaries' pledges.

23 Q But you clearly promised the Antoses to pay this
24 debt; correct?

25 A SJC has an obligation under its agreement when it

1 collects the judgment to pay the debt.

2 Q Where does it say that, that you only have the
3 obligation --

4 A I think it's in the.

5 Q -- when it collects its judgment?

6 A I think it's in the forbearance agreement.

7 Q Show me. It's Exhibit 1.

8 A Or maybe the -- where's the security agreement?
9 Which exhibit?

10 Security agreement, Exhibit 10. I'm going to look at
11 that for a second.

12 THE COURT: Okay. Thank you for telling us.

13 THE WITNESS: All right. It's not that document.
14 I'd have to go through the documents to find it.

15 BY MR. MUSHKIN:

16 Q Mr. Bloom, there's nowhere in any of these documents
17 that says that the sole remedy for CBC or its successors is
18 collection under that judgment, is there?

19 A I don't think it's the sole remedy.

20 Q In fact --

21 A CBC has cumulative remedies.

22 Q Thank you.

23 A So they can look to KCI. They can look to Preferred
24 Restaurant Brands. They can look to the Antoses individually.

25 Q And they can look to the property that was secured by

1 a deed of trust. Thank you, sir.

2 A No, they cannot.

3 Q That's -- I'm talking about the third. The agreement
4 by SJCv to pay off the third within 24 months is a condition to
5 the conveyance of the property to SHAC; isn't that correct?

6 Do you know what your answer was?

7 A What's that?

8 Q Well, what's your answer today?

9 A Today, my answer today is there was no third.

10 Q Okay. With the caveat that there is no third, and it
11 was misrepresented, the commercial note to KCI was
12 misrepresented by CBI as constituting a third mortgage and two,
13 subject to the extension by the parties. Yes.

14 Do you see that answer?

15 A I don't have the transcript in front of me.

16 THE COURT: Could you put it on the Elmo, please.
17 That's lovely. Thank you.

18 MR. MUSHKIN: Sorry, Judge.

19 THE COURT: That's all right.

20 BY MR. MUSHKIN:

21 Q So the first caveat is there is no third; right?

22 A Correct.

23 Q And you're claiming it was misrepresented as a
24 commercial note; right?

25 A No. It was misrepresented as a mortgage when, in

1 fact, it was a commercial note.

2 Q And, in fact, it is a third mortgage; isn't it, sir?
3 It's the third deed of trust on the property?

4 A No. It's a commercial loan to a restaurant. It's
5 not a mortgage. There is a deed of trust by an entity that
6 owns the property that's not party to the commercial loan to
7 the restaurant. It's very different from a third mortgage.

8 Q So then why did you say yes at the end of this
9 answer?

10 A Can you put it back up so I can see it.

11 Q You had caveats, and then you said, yes, but the
12 conveyance is subject to the condition that SJCV pay off the
13 note.

14 That's not what I'm talking about. It's talking
15 about the payment of the third. The agreement by SJCV to pay
16 off the third within 24 months is a condition to the conveyance
17 of the property to SHAC; isn't that correct?

18 And then you give me a bunch of caveats, and then
19 ultimately you say yes; isn't that correct?

20 A Okay.

21 Q So the payment of the CBC obligation was a condition
22 precedent to the transfer of property to SHAC. That is a true
23 statement; correct?

24 A Had there been a third mortgage, yes.

25 Q That's not what I said, sir. I said the payment of

1 the obligation to CBC I is a condition to precedent -- the
2 eventual payment is a condition precedent to the transfer of
3 the real property from the Antos Trust to SHAC?

4 A I don't think it's a condition precedent.

5 Q Then why did you say yes?

6 A Well, because I still think that SJC has an
7 obligation. It's just the house isn't pledged as collateral.
8 Those are two separate issues that you're conflating.

9 Q When I asked you if you agreed to pay those balloon
10 payments, do you know what your answer was?

11 A I do not.

12 Q The answer -- what's your answer today? Are you
13 obligated? Is SJC obligated to pay those balloon payments?

14 A I think so.

15 Q If you're obligated to make those payments, why
16 haven't you made them?

17 A Because I think the payments are going to be made out
18 of the liquidity event that was discussed.

19 Q Where in this -- well, you -- let's talk about that
20 for a minute, Mr. Bloom. You provided Mr. Hallberg with
21 various emails saying you were about to pay him, didn't you?

22 A Correct.

23 Q Why didn't you pay him?

24 A Because the liquidity events that were referenced in
25 those emails didn't come to pass.

1 Q Well, but you didn't reference liquidity events in
2 all the emails, did you?

3 A I think I did.

4 Q Well, let's take a look at 2717. It's part of 104.
5 Do you see that email?

6 A I do.

7 Q That's from you, isn't it?

8 A I believe so.

9 Q And it's to Mr. Hallberg, and it's dated January
10 22nd of 2018.

11 A Correct.

12 Q I'll read the relevant part:

13 Hi, Alan. All parties are en route to
14 or have already arrived in Hong Kong.
15 Closing this week for funding the hedge fund
16 which is buying out our judgment out of their
17 management fees. Subscription agreements
18 drafted and being reviewed today and
19 tomorrow. Signatures this week. Funding by
20 February 16th, Chinese new year is the
21 goal.

22 I have not yet seen the prefunded
23 interest check. I am looking at a month end.
24 I'm supposed to pick up a check from someone
25 for 260 K this week against which I will

1 issue a CBC check.

2 Talking a little bit.

3 Did you send that email?

4 A I believe so.

5 Q Did you ever send CBC a check?

6 A No.

7 Q Why?

8 A I believe that was a litigation funding source that
9 was -- there had been discussions about funding against the
10 judgment, and ultimately they didn't fund.

11 Q Did you ever tell Mr. Hallberg that you didn't have
12 the money?

13 A I believe so.

14 Q When?

15 A We had numerous phone conversations, but it would
16 have been on or about that following week, whatever the day was
17 in the email.

18 Q Did you ever send him an email?

19 A I don't recall. It would have been an email or a
20 telephone call. Those were our two primary methods of
21 communicating.

22 Q So let's take a look at 2913.

23 THE COURT: And this is still in 104?

24 MR. MUSHKIN: Yes, ma'am. Still in 104.

25 THE COURT: Just checking.

1 BY MR. MUSHKIN:

2 Q I'll try and make it a little easier for you by
3 putting it up here.

4 A All right. Okay.

5 Q Have you ever seen this document?

6 MS. FOLEY: You need to move it --

7 MR. MUSHKIN: Oops. Sorry.

8 BY MR. MUSHKIN:

9 Q Have you ever seen this email before?

10 A (No audible response.)

11 Q Do you see that?

12 A I do.

13 Q And do you see that it references a complete set of
14 executed documents from the closing this morning?

15 A I see that.

16 Q And did you get a complete set of documents?

17 A I got a set of documents.

18 Q Thank you. So I'd like to direct your attention to
19 2929. Have you ever seen this document?

20 A I don't believe I have.

21 THE COURT: Drop it down a little.

22 THE WITNESS: The other direction.

23 THE COURT: Does that help, sir?

24 THE WITNESS: It does. Okay.

25 / / /

1 BY MR. MUSHKIN:

2 Q And can you see that this is March of '18?

3 A I do.

4 Q And this is regarding hazard insurance; is that
5 correct?

6 A Yes.

7 Q Thank you.

8 (Pause in the proceedings.)

9 THE COURT: Mr. Gutierrez, put your mask back on.

10 MR. GUTIERREZ: I was getting a mint, Your Honor.
11 I'm sorry.

12 BY MR. MUSHKIN:

13 Q Now, in regards to the insurance, there was quite a
14 back and forth on this issue; is that correct?

15 A I believe so.

16 Q And for a while you had insurance in your personal
17 name; is that correct?

18 A I gave -- yes.

19 Q And then it was after I became into the case and gave
20 you several written demands you ultimately went and got
21 insurance in the name of SHAC; is that correct?

22 A Well, after your first written request, I asked the
23 insurance company to modify the policy, and ultimately they
24 did.

25 Q Thank you. And that was in March of 2020; correct?

1 A Could be.

2 Q Thank you. I would direct your attention to 3226 of
3 104.

4 A I don't believe I have that in my packet.

5 Q I'm just going to show you the first page.

6 Have you ever seen this document before?

7 A If you can scroll down.

8 Yes.

9 Q And that is a recorded notice of default for failure
10 to pay HOA assessments; is that correct?

11 A Correct.

12 Q You never did pay that, did you?

13 A No. I believe CBC paid that.

14 Q Thank you. Now, you promised on more than one
15 occasion to pay that, didn't you?

16 A Not that I can recall. I think I had conversations
17 with Mr. Hallberg, and they agreed to pay it, and add it to the
18 balance.

19 Q Well, don't you recall the email I just showed you
20 that said I'll take care of it?

21 A Oh. I'm sorry. I'm thinking of the taxes.

22 Q No. This is the assessments.

23 A Right.

24 Q You agreed to take care of it, didn't you?

25 A I believe so.

1 Q And then let's look at 3233, and this is to Ken
2 Antos.

3 I indicated to Alan I would take care of
4 this. I don't think I mentioned today. I'm
5 jammed up the rest of the week. The NOD file
6 provides no less than 90 days pursuant to
7 NRS 116. I'll probably have time to cure it
8 next week.

9 Do you see that?

10 A I do.

11 Q You didn't cure it, did you, sir?

12 A No.

13 Q That would be a no? You did not cure that, did you?

14 A That's correct.

15 Q Okay. Now let's take a look at the next one, and
16 that's 3255. Do you see that? Do you recall seeing it?

17 A I don't recall seeing it, but that's my email
18 address.

19 Q And it says the liquidity expected on March 5th and
20 any, slash, all other sources. Do you see that?

21 A I do.

22 Q Isn't it true that you represented to Mr. Hallberg
23 that you had multiple sources for payment of this obligation?

24 A That's correct.

25 Q But in your deposition, why did you keep answering,

1 when I asked this that you intended to pay only from the
2 collection of the note?

3 A Can you show me in the deposition what you're
4 referring to?

5 Q No. I'm asking you a question.

6 A Well, you're referencing the deposition. So I'd like
7 to confirm that that's the testimony.

8 BY MR. MUSHKIN:

9 Q Sir, I --

10 THE COURT: Sir, do you recall one way or the other?
11 If you don't recall, that's fine.

12 THE WITNESS: I don't. I don't recall.

13 THE COURT: Okay.

14 MR. MUSHKIN: That's fine. The deposition has been
15 published.

16 We published the deposition. Is that correct, Your
17 Honor?

18 THE COURT: Both volumes.

19 MR. MUSHKIN: Oh, yes.

20 MR. GUTIERREZ: So objection. Is there a cite that
21 he has for (Indiscernible) or is he not going to --

22 THE COURT: He doesn't have to give him one.

23 MR. GUTIERREZ: Okay. I just want to make sure that
24 the record is accurate of what he's referencing.

25 (Pause in the proceedings.)

1 BY MR. MUSHKIN:

2 Q Mr. Bloom, I like to direct your attention to 3341,
3 part of Exhibit 4 -- 104.

4 Can you read that?

5 A I can.

6 Q And this is March 28th of '19. You're in the
7 property about 18 months at this point; right? August of '17
8 to March of '19?

9 A Okay.

10 Q Is there any mention in here of applying to assume or
11 refinance the mortgage?

12 A No.

13 Q And did any of these sources of income come through,
14 Mr. Bloom?

15 A Not yet.

16 Q And you don't have five and a half million dollars
17 available to you today to retire this note, do you?

18 A I would have to free it up.

19 Q I didn't hear you, sir.

20 A I would have to free it up.

21 Q You don't have \$5 million of cash available to pay
22 this note today, do you, sir?

23 A Not in liquidity.

24 Q Thank you. I want to direct your attention to 3349.
25 Do you see that?

1 A I do.

2 Q And you're forwarding an email from Andersen Law
3 Firm; is that correct?

4 A Correct.

5 Q And who are the Andersen Law Firm?

6 A The Andersen Law Firm is local counsel here in Vegas
7 for First 100. They represented First 100 as a judgment
8 creditor in our judgment debtor's bankruptcy petition.

9 Q And you were never able to collect anything; is that
10 correct?

11 A Not yet.

12 Q Thank you. Now, you claim to have some sort of
13 copper powder; is that correct?

14 A Correct.

15 Q Where is it?

16 A It's in a storage facility here in Las Vegas.

17 Q What's the address?

18 MR. GUTIERREZ: Objection, Your Honor. Relevance.

19 THE COURT: Sustained.

20 MR. MUSHKIN: Well, Your Honor, I have a security
21 interest.

22 THE COURT: The address -- well, but if you want
23 access to that, we'll go through a different kind of procedure,
24 if you have a judgment debtor exam. I understand you have a
25 security interest, but that doesn't mean you get the location

1 of it at this point in time.

2 BY MR. MUSHKIN:

3 Q Isn't it true that that isotope was stored in your
4 home in the garage?

5 A It has been on occasion.

6 Q And it was recently moved; is that fair?

7 A It's moved in between my home and storage locations.

8 Q And have you managed to sell any of that?

9 A Not yet.

10 Q Why?

11 MR. GUTIERREZ: Objection. Relevance.

12 THE COURT: Overruled.

13 THE WITNESS: It's a fairly rare isotope that has a
14 handful of end users and very rare. Very little of it exists.
15 So it's extremely valuable, but it's not very liquid. It's not
16 like gold or silver.

17 Q How do you know this?

18 A Because we've been dealing with this for years trying
19 to liquidate it.

20 Q So I'm going to direct your attention to 3372,
21 another email from you to Mr. Hallberg. Who is Benjamin Wei?

22 A Benjamin Wei is somebody out of San Francisco that
23 contacted me that he was a victim in a transaction of our
24 judgment debtor, and he read about our judgment.

25 Q So you represent to Mr. Hallberg in April of '19

1 that, We seized 861 million in copper and found 321 million --

2 I take it MM means million; correct?

3 A Correct.

4 Q -- in Bitcoin.

5 A Correct.

6 Q Have you been able to -- do you still have the
7 Bitcoin?

8 A We found it on a computer that our judgment debtor
9 had in a Bitcoin wallet. We have not been able to access it.

10 Q So you didn't find 320 million in Bitcoin, did you?
11 MR. GUTIERREZ: Objection. Misstates the testimony.
12 THE COURT: Overruled.

13 You can explain.

14 THE WITNESS: Yes. We found a significant sum of
15 Bitcoin in our judgment debtor's cryptocurrency wallet, and
16 we're trying to access it.

17 BY MR. MUSHKIN:

18 Q You have not been able to access it until now, have
19 you, up through today?

20 A As of today we have not accessed it.

21 Q And when did you find it?

22 A Sometime around the date of that email.

23 Q Back in April of '19?

24 A Correct.

25 Q So, Mr. Bloom, do you recall our discussion at your

1 deposition about the commission agreement for the sale of this
2 property of the house to SHAC?

3 A Not really.

4 Q And do you recall that I asked you who was obligated
5 to pay the commission? Do you recall that?

6 A I don't.

7 Q And do you recall testifying that the seller was
8 obligated to pay the commission?

9 A I don't recall that testimony.

10 Q You don't recall any of it?

11 A Not that particular line of questions.

12 Q And you don't recall me pointing out the commission
13 agreement to you where it says that the buyer is to pay the
14 commission on the transaction?

15 A I'm not denying that the conversation took place.
16 Clearly there's a record on the transcript. I just don't
17 recall it.

18 Q You don't recall any of this?

19 A No.

20 Q Do you know today who is supposed to pay the
21 commission for the sale of the property to SHAC?

22 A I'm not sure.

23 Q I'm going to show you 3412.

24 Do you recall receiving this?

25 A I don't recall receiving it, but that's my email

1 address.

2 Q Isn't it true that as of November 29th of '19 you
3 were in arrears --

4 MS. FOLEY: The book's going to fall. Mike, the
5 book's going to fall.

6 BY MR. MUSHKIN:

7 Q You were in arrears pursuant to the --

8 THE COURT: Good catch.

9 MR. GUTIERREZ: Great catch. That was good.

10 MR. MUSHKIN: Thank you, Karen. That would have gone
11 everywhere.

12 BY MR. MUSHKIN:

13 Q You were in arrears under the forbearance agreement
14 of \$70,360.94?

15 A I don't believe so. I think that relates to a
16 prepayment that was coming up.

17 Q The email says.

18 Per our earlier call, here's what I'm
19 coming up with. Let me know if there's
20 anything -- if you're arriving at the same
21 number.

22 Do you see that?

23 A No. You took the page away.

24 Q Do you see it now?

25 A I do.

1 Q Did you respond to this in any way?

2 A Can you slide it down a little.

3 Yeah. So this is definitely for prepayments of rents
4 at the end of the second extension -- or at the end of the
5 second year of the initial term. I don't know if I responded
6 or not.

7 Q Sir, this isn't for prepayments. This shows that
8 you're in arrears as of 11/29/19, of 70,360.94; isn't that
9 correct?

10 A No, it's not arrears. It's 11/29/19, is the email,
11 and it's amounts owing to 3/31 of 2020. So that's a
12 prepayment. That's for the next however many months.

13 Q Well, that's 25 of it. Fair?

14 A That's 25 of it, and the amount owing --

15 Q And the amount owing is 70,000; correct?

16 A For a prepayment.

17 Q No. It says you're in arrears. Amount owing to
18 12/27/19, forty-four, six, seventy-nine, sixty-eight.

19 A But the email is dated prior to 12/27/19.

20 Q I appreciate that, sir. So your December payment
21 would be 8,600 -- \$8,560.42, and you were in arrears four
22 months at that time, weren't you?

23 A So we were at the end of the second year's
24 prepayment, and we were discussing an extension and a continued
25 prepayment for the extension.

1 Q It's a yes or no. You were in arrears four months as
2 of the date of that email; correct, sir?

3 A No.

4 Q Explain it to me.

5 A Okay. I had prepaid for the second year, and we went
6 through a period of several months figuring out what we were
7 going to do, and this was for under the extension rents that
8 would be due, both from the period of the end of the prepay to
9 the current point and forward as future prepayments. But, no,
10 it wasn't arrears because we didn't have a controlling document
11 at that point.

12 Q Sir, this is 11/29 of '19; correct?

13 A Right.

14 Q And as of that time, it says you owe forty-four, six,
15 seventy-nine, sixty-eight, through 12/27 of '19; isn't that
16 correct?

17 A Correct.

18 Q So there's one month that's not technically due, but
19 there are four months approximately that are in arrears as of
20 11/29/19; isn't that correct?

21 A Yeah. I had prepaid the year through -- I guess it
22 would be July or August.

23 Q Thank you.

24 A All right. So --

25 Q So by November you were in arrears four months?

1 That's correct, isn't it, sir?

2 A No, it's not arrears because we were figuring out
3 what we were going to do to structure it. Once we had an
4 agreement, then it became rent due at the point of the
5 agreement.

6 Q Sir?

7 A And then the agreement contemplated forward rent, as
8 had been the case for the prior two periods.

9 Q Mr. Bloom, you had a forbearance agreement for 24
10 months; correct?

11 A Correct.

12 Q And you had paid only through July of the second
13 year; correct?

14 A Which would be the end of the 24th month.

15 Q No, sir. The 24 months goes farther, doesn't it?
16 Doesn't it go until August?

17 A Well, then it would've been through August.

18 Q So from August on you're in default; is that fair?

19 A Until we signed the extension.

20 Q Until you signed the extension. Thank you very much.
21 So can you locate in your book 3417.

22 A Yes.

23 Q And you see this is a redline; is that correct?

24 A I do.

25 Q I direct your attention to paragraph 5.

1 A Which page?

2 Q 3418.

3 A Okay.

4 Q And a condition to extension, membership pledge
5 agreement executed by SJCV and Antos Trust shall remain in
6 effect, and the execution of this amendment shall not be
7 considered a waiver by CBC of the rights under the membership
8 pledge agreement. Do you see that?

9 A I do.

10 Q Do you see any redline changes to that?

11 A I do not.

12 Q Thank you. And you see on page 8 where it says
13 options to extend have terminated? B1.

14 A Yes.

15 Q Do you see any redline there?

16 A I do.

17 Q Where?

18 A The last sentence of B1 where it says the parties
19 acknowledge the conditions to which the options were subject
20 have been satisfied, and the SJC options have been exercised.

21 Q Right.

22 A That's the top of Bates page --

23 Q Okay. There's one word, not have been exercised.
24 Those are the changes; right?

25 A Right.

1 Q Okay. Nothing about substitute security or anything
2 like that; right?

3 A No.

4 Q Thank you. And do you recall when you executed the
5 amended forbearance agreement?

6 A I do not.

7 Q All right. Now let's take a look at March 18th
8 exhibit -- that's 3456. Can you pull that one up.

9 A Okay.

10 Q And it's sort of in the middle of the page. It says,
11 Just an update. We had a visit this
12 week from representatives. The Chinese
13 government for the purchase of copper
14 isotopes. They wanted it and wanted it to
15 physically verify that the quantity we
16 represented actually existed.

17 The second bullet point.

18 We are 30 to 60 days out from
19 \$180 million investment tax credit
20 monetization on 4100 mobile solar generators
21 worth 150 K each.

22 Final,

23 I am negotiating refinancing of all
24 three loans now. We are with the recent Fed
25 rate drop to zero percent, it's getting

1 easier to negotiate this refinance.

2 As you may or may not be aware, 5116
3 Spanish Heights Drive, two doors over on the
4 same side of the street, comparable, just
5 sold for 4,950,000 on 12/20/19, after 203
6 days on the market. I really believe that an
7 amicable resolution is around the corner
8 which will provide a hundred percent recovery
9 for CBC Partners despite the property being
10 upside down in equity by 2 million, and it is
11 a much shorter time frame than would be
12 otherwise realized through an adversarial
13 action, and I'm willing to bear all costs
14 from April forward in order to prevent CBC no
15 longer need front any money during these
16 final months.

17 I look forward to hearing back from you
18 soon and hopefully with acceptance of this
19 proposal.

20 Do you see that?

21 A I do.

22 Q Did you get the tax credit monetization?

23 A We did not.

24 Q Did you sell the isotope to the Chinese government?

25 A Not yet.

1 Q And did you refinance the loans?

2 A No.

3 Q And have you provided any evidence of effort to so
4 refinance?

5 A No.

6 Q Thank you.

7 All right. I'm going to show you 3459. This is
8 March 20 of 2020. Do you recall sending this email?

9 A I don't, but that's my email address, and I'm sure I
10 sent it.

11 Q So the negotiations for further extension have broken
12 down at this point; is that correct?

13 A I believe so.

14 Q And you've been advised to communicate solely with my
15 office; is that correct?

16 A I had been requested to communicate with you for
17 questions.

18 Q And here you are communicating with Alan again:

19 Hi, Alan. You know, sometimes the
20 universe just works in our favor. We were
21 just approached by SPAC on NASDAQ with
22 200 million in cash. They formed in 2018 and
23 have a deadline to close the acquisition no
24 later than June 10th, 2020, or the SPAC is
25 going to be dissolved with millions in

1 penalties. They are -- they had an
2 acquisition that just fell through, and they
3 are pursuing us pretty aggressively. I am on
4 with their co-CEOs. One is out of Sac
5 (phonetic) and more recently Steve Cohen's
6 family office, and as I'm typing this
7 email --

8 I'm sorry. I may have skipped -- no.

9 I'm in touch with their co-CEOs. One is
10 out of Sac and more recently Steve Cohen's
11 family office as I am typing this email.

12 So as the property -- so as to the
13 property, as there is a moratorium on any
14 foreclosure activity right now, nothing is
15 happening for the next 90 days I would
16 venture. Even a nonjudicial foreclosure
17 would require 90-day notice of default
18 starting after the moratorium is lifted and
19 then an additional 30-day notice if opposed.
20 It could be forced to a judicial foreclosure,
21 and then a foreclosure start might force a
22 Chapter 11 restructure for Spanish Heights
23 Acquisition Company, which would cause a cram
24 down and hurt your ability to sell the note
25 or force reduction on the face value.

1 Either I can pay the first and second
2 for the next three months under an extension
3 or CBC can absent an extension. Either way
4 it looks like I will have the funds from SPAC
5 if nothing else by June.

6 I'm trying to get CBC every dollar, and
7 I'm hoping that CBC acts rationally in its
8 own best interest. It would seem to me that
9 if you are looking to sell the note an
10 extension and resultant performing note would
11 sell better than a nonperforming note which
12 is upside down in equity and subject to cram
13 down. Help me help you.

14 Talk soon, buddy.

15 Did you write that email?

16 A I believe I did.

17 Q And did you ever get the 200 million in cash?

18 A This doesn't say that I was getting 200 million in
19 cash?

20 Q It says, We were approached by SPAC on NASDAQ with
21 200 million in cash. That's what it says, sir.

22 A Right. So and SPAC is a "spack." It's a special
23 purpose acquisition company. It's an entity that goes public
24 and raises cash and looks for a venture. So that's not
25 intended to say that I had \$200 million coming to me from the

1 SPAC, but that that entity had \$200 million in cash.

2 Q Did you get any money from the SPAC?

3 A No. We didn't fit their profile for --

4 Q Thank you.

5 A And by the way, this email was in response to Alan's
6 email 15 minutes earlier. So this was not in spite of
7 instructions not to contact Alan.

8 Q All right. We've already gone over the July 21, '17,
9 email. I don't want to repeat that.

10 You don't dispute that you owe the property taxes;
11 correct?

12 A That SHAC owes the property taxes.

13 Q Sorry. SHAC owes them. You don't dispute that, do
14 you?

15 A I do not.

16 Q Okay. Now, let's take a look at 3626. No, I take
17 that back -- oh, yes, that is correct.

18 Would you take a look at 3627.

19 Do you see where at the second paragraph you offer
20 \$150,000 one-year reserve?

21 A I do.

22 Q And then do you see the list of items that set forth
23 that amount?

24 A I do.

25 Q Almost one forty-three, five, thirty-nine,

1 twenty-two?

2 A I do.

3 Q And did you ever provide that reserve?

4 A This was that security account that we referenced
5 earlier. So this was an initial proposal from July of 2017
6 that ultimately turned into a prepayment instead.

7 Q The answer is no, you never provided it, did you?

8 A There was nothing to reserve against. It was
9 prepaid.

10 Q Now, you know in March -- I'm sorry, in December
11 of '19, you agreed again to create the reserve account in the
12 amended forbearance agreement. You acknowledge that; right?

13 A That's what the document reflects --

14 Q Thank you.

15 A -- but that's different than the parties agreed to.

16 Q And you never did create that 150,000 reserve, did
17 you?

18 A As with the prior year, we prepaid the year. So
19 there was no requirement to establish a reserve. And, in fact,
20 Bank of America wouldn't let us.

21 Q That would be a yes, you never funded the account,
22 did you?

23 A Correct.

24 Q I may have asked you this. You don't -- did you tell
25 me you didn't recall who was to pay the commission?

1 A I did not. I don't recall.

2 Q You do not recall?

3 A No.

4 Q Do you know who Gavin Ernstone is?

5 A I do.

6 Q And do you recall the testimony and the deposition
7 where I took you through the commission agreement where it said
8 that the buyer is to pay the commission?

9 A I don't really have a very good recollection of that
10 conversation, but I --

11 Q Do you have any reason to dispute that the commission
12 agreement says that the buyer will pay?

13 A No.

14 Q So you do not dispute it?

15 A I do not dispute it.

16 Q Thank you. Though you testified that it was the
17 seller's obligation.

18 A I would imagine that was my understanding at the time
19 of the testimony.

20 Q Okay.

21 A Or at least my recollection during the testimony.

22 Q Now, are you aware that there were arrears on the
23 first and second as well?

24 A At what point in time?

25 Q At the time in September, '17.

1 A No, I don't think I was. At the time we entered the
2 agreements?

3 Q Well, it's true that CBC undertook to make the
4 payments on the first and second; correct?

5 A That's my understanding.

6 Q And do you recall why they did that?

7 A They represented it as a protective advance.

8 Q Wasn't it true that they had contacted City National
9 and asked them for a standstill?

10 A I don't know about the conversations with City
11 National.

12 Q You didn't receive the emails?

13 A Not that I recall. If you have a specific exhibit
14 you want to look at, I'd be happy to.

15 Q I just want your recollection, sir.

16 A Not that I recall.

17 Q Mr. Bloom, do you know how much is due on the second
18 loan on the property?

19 A Approximately.

20 Q Approximately what?

21 A Just under 600,000.

22 Q Would \$584,079.35 sound right?

23 A At some point in time. It's been --

24 Q Yeah, I agree. Do you know when that's due and
25 payable?

1 A I believe March 31st.

2 Q So now the second is due and payable; is that
3 correct?

4 A Not yet.

5 Q No, as of March, the loan will be due and payable;
6 correct?

7 A I believe so.

8 Q And have you made arrangements to pay that off?

9 A I'm in discussions with the bank about having
10 somebody purchase the note from me.

11 Q But you haven't paid it off? You haven't made
12 arrangements to pay it off?

13 A No. I've made arrangements to purchase it.

14 Q And do you have good funds in your possession of
15 \$584,079.35?

16 A The entity that I made arrangements to purchase it
17 does, yes.

18 Q I'm not asking if the entity does, sir. I'm asking
19 if you do.

20 A I have access to capital to purchase that note.

21 Q Where?

22 A Through my relationships.

23 Q Oh. And but do your relationships know the number of
24 judgments that you have against you personally?

25 A That would be zero and, yes.

1 Q Zero?

2 A Yes.

3 Q You don't have a tax lien?

4 A The tax lien was paid.

5 Q Your testimony to this Court today is that all your
6 tax liens are paid?

7 A To the best of my knowledge.

8 Q Okay. Now, do you know in '17 that there were tax
9 arrears?

10 A On this property?

11 Q Yeah, on this property.

12 A I'm not sure. I'm not sure if I knew it at the time.

13 Q Isn't it true that City National advanced money to
14 pay the prior property taxes?

15 A I believe so, but I don't know for what period of
16 time.

17 Q Thank you.

18 THE COURT: So we've got 13 minutes until we break.
19 We're coming back at 9:30 tomorrow, and if we don't finish
20 tomorrow, we're coming back Tuesday at 10:00.

21 MR. MUSHKIN: Today is Tuesday; right? Yeah?

22 THE COURT: Wednesday --

23 MR. MUSHKIN: Today is Wednesday?

24 THE COURT: -- is tomorrow?

25 MR. MUSHKIN: Wednesday is tomorrow. We don't get

1 Thursday?

2 THE COURT: Oh, yeah, you get Thursday.

3 Is today Tuesday?

4 MR. MUSHKIN: Stop doing this to me. Stop it. I
5 confuse easily.

6 THE COURT: I am --

7 MR. GUTIERREZ: I thought she pulled Thursday from
8 us.

9 MR. MUSHKIN: What's going on here?

10 THE COURT: So tomorrow you're 9:30, and Tuesday -- I
11 mean Thursday, Thursday it looks like -- what's that thing
12 that's on there Thursday? Is that a special setting on 9:30 on
13 Thursday?

14 THE CLERK: No, that's empty, Judge.

15 THE COURT: It's empty?

16 THE CLERK: Yeah.

17 MR. MUSHKIN: It's a fake out.

18 THE COURT: 9:30 on Wednesday and Thursday, and then
19 if you don't finish on Thursday --

20 MR. MUSHKIN: I will finish.

21 THE COURT: Then you will be Tuesday at 9:30.

22 MR. MUSHKIN: What happened to Friday?

23 THE COURT: Friday I have a personal appointment in
24 the morning, and I can't move it. I tried.

25 MR. MUSHKIN: No problem. Whatever you want, Judge.

1 THE COURT: Okay.

2 MR. MUSHKIN: And if you'd like to end, it's a good
3 point to break right now if you'd like to thirteen minutes --

4 THE COURT: No, I'd like to use 11 more minutes.

5 MR. MUSHKIN: I will be happy to use 11 more minutes.

6 BY MR. MUSHKIN:

7 Q Mr. Bloom, would you turn to 1232. That's going to
8 be in a prior book. You have the second book. You need to go
9 to the first book of emails.

10 A Do you have an exhibit number?

11 Q It's part of 104, and it's 001232. Do you see that
12 email?

13 A I'm turning to it now. Okay.

14 Q So in Item 1, it asks, it says,

15 If I understand correctly, once a
16 judgment is domesticated in any given
17 jurisdiction, there's an automatic stay.

18 Do you see your answer? Is that your answer in red?

19 A I believe so.

20 Q How do you come to know that when you domesticate a
21 judgment there's 120 day stay?

22 A Somebody -- well, somebody must have told me that,
23 one of the attorneys that was working on the collection of the
24 judgment.

25 Q Then down a little farther it says,

1 At the time of the writ service, the
2 defendant has approximately three weeks to
3 mount a defense based upon the assets covered
4 by the writ being exempt. Is this basically
5 correct?

6 You say,

7 Correct. An important note is that
8 during the period the account is frozen, and
9 all funds -- and should funds be released,
10 the financial institution assumes liability
11 for any funds.

12 Do you see that?

13 A I do.

14 Q And where did you learn that?

15 A That would have been from one of the attorneys that
16 was working on the collection of the judgment.

17 Q Okay. Then it says.

18 Offshore the judgment has been
19 domesticated in Hong Kong.

20 Is that right?

21 A I think that was a question by Alan.

22 Q Are these your responses, sir?

23 A Yeah. What you read, Offshore the judgment has been
24 domesticated in Hong Kong, which is in black, would be part of
25 Alan's initial email.

1 Q Correct. And your response is in red; is that right?

2 A Correct.

3 Q Did you get anything in Hong Kong?

4 A No.

5 Q And then it says.

6 And is pending in Bahrain. An attempt
7 that would be made to summary judgment in the
8 Cayman Islands.

9 Do you see that?

10 A Correct.

11 Q Was that ever done?

12 A We were unable to recover assets from there.

13 Q So these are representations that you made to CBC in
14 July of 17; is that correct?

15 A That's correct.

16 Q Thank you. You drafted the operating agreement; is
17 that correct?

18 A Yes.

19 Q And did you have counsel?

20 A No.

21 Q And you provided a K-1 from First 100 Holdings; is
22 that correct?

23 A Entirely possible. I do have a --

24 Q Thank you. Okay. You represented to Mr. Hallberg
25 that there was \$6 million in -- verified in a Morgan Stanley

1 account; is that correct?

2 A What are you referencing?

3 Q I'm just asking for your recollection.

4 MR. GUTIERREZ: Your Honor, objection. Vague.

5 THE COURT: If you remember, sir.

6 Overruled.

7 THE WITNESS: No, I don't represent -- I don't recall
8 that representation.

9 BY MR. MUSHKIN:

10 Q And didn't you represent to Mr. Hallberg that somehow
11 the money had been transferred from Morgan Stanley to bank
12 Muscat (phonetic). Does that refresh your recollection?

13 A I think you're talking about we found -- our
14 investigators found our judgment debtor had money at Merrill
15 Lynch and that he transferred it from a Merrill Lynch account.
16 We're not sure where it went, but our investigators found that
17 he had money at Bank Muscat as well.

18 Q And were you able to collect any of that money?

19 A No.

20 Q Now, are you sure you didn't have counsel during this
21 time?

22 A I had not retained counsel for this, no.

23 Q I'd like to direct your attention to 1340. In the
24 middle of the page.

25 THE CLERK: I'm sorry. Mr. Mushkin, what's the Bates

1 again?

2 MR. MUSHKIN: 1340.

3 And if it's all right with you, Judge, I'll end with
4 this question.

5 THE COURT: That would be lovely.

6 MR. MUSHKIN: Mr. Bloom, I'd like you to look at the
7 middle of the page where it says from Jay Bloom to Alan
8 Hallberg dated August 1, 2017.

9 BY MR. MUSHKIN:

10 Q Okay. Below is Mr. Hallberg's email to you that I
11 believe you're responding to, and it starts out,

12 Just got out of my meeting. We're okay
13 to proceed on the terms as we discussed.

14 And you say,

15 That's great. Please let me know when
16 your attorneys would like to speak with ours.

17 Mr. Bloom?

18 A Yes.

19 Q You sure you didn't have counsel?

20 A Yeah, I don't believe I retained counsel for
21 preparing these documents for this transaction.

22 Q So why did you misrepresent that to Mr. Hallberg?

23 A It's not a representation.

24 Q It isn't a representation when it says would like to
25 speak with ours?

1 A Yeah, no. I was considering getting counsel.

2 Q Oh, I see.

3 A And then subsequently I decided to do it myself.

4 Q I see.

5 A And Mr. Hallberg's attorneys, CBC's attorneys
6 certainly had an opportunity to speak to counsel.

7 Q And in spite of all the emails to Mr. Gutierrez, he
8 wasn't your attorney?

9 A No.

10 Q Okay.

11 A Not on this matter.

12 Q Okay. How many members are there to First 100?

13 A 40 or 50.

14 Q What type of entity is First 100?

15 A It's a limited liability company.

16 Q And is it registered with the Securities and Exchange
17 Commission?

18 MR. GUTIERREZ: Objection. Relevance, Your Honor.

19 THE COURT: Overruled.

20 THE WITNESS: It filed a what's called a Reg D 506
21 exemption, safe harbor exemption.

22 MR. MUSHKIN: Thank you.

23 Judge, I promise that was the last question for
24 today. It will be the last question for today.

25 THE COURT: All right. How long do you think you're

1 going to need in addition to tomorrow? Tomorrow is Wednesday.

2 MR. MUSHKIN: I will finish -- I believe I will
3 finish my examination of Mr. Bloom tomorrow without a problem.

4 THE COURT: Okay. Thank you.

5 And then what additional evidence do you think?
6 Because I know Mr. Hallberg is leaving on Thursday.

7 MR. MUSHKIN: I have about 5 or 10 minutes with
8 Mr. Hallberg. That's about it.

9 THE COURT: Okay.

10 MR. MUSHKIN: Just to confirm certain documents and
11 this and that. I mean, with cross-examination I guess it could
12 be an hour.

13 THE COURT: And then after that?

14 MR. MUSHKIN: That's it.

15 THE COURT: All right. Mr. Gutierrez, you're going
16 to do some examination of Mr. Bloom after Mr. Mushkin finishes.
17 You might ask some follow-up questions. Mr. Mushkin then
18 rests.

19 Do you have additional witnesses you think you're
20 going to call in a rebuttal case?

21 MR. GUTIERREZ: Not at this time, Your Honor.

22 THE COURT: So you guys think you'll be done on.
23 Thursday?

24 MR. GUTIERREZ: Yes. Yeah, I think so.

25 (Proceedings recessed for the evening at 4:44 p.m.)

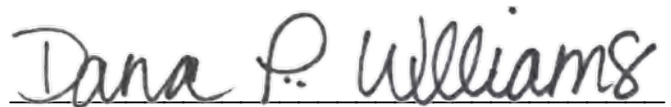
CERTIFICATION

I CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT FROM THE AUDIO-VISUAL RECORDING OF THE PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.

AFFIRMATION

I AFFIRM THAT THIS TRANSCRIPT DOES NOT CONTAIN THE SOCIAL SECURITY OR TAX IDENTIFICATION NUMBER OF ANY PERSON OR ENTITY.

DANA L. WILLIAMS
LAS VEGAS, NEVADA 89183

A handwritten signature in dark ink, reading "Dana L. Williams", is written over a horizontal line.

DANA L. WILLIAMS, TRANSCRIBER

02/07/2021

DATE

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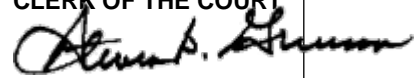
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<p>Y</p> <p>year [21] 12/7 19/17 20/9 21/8 22/9 104/7 104/16 105/25 106/5 106/15 110/18 192/20 195/8 201/20 214/5 215/5 215/21 216/13 223/20 224/18 224/18</p> <p>year's [3] 105/7 107/1 214/23</p> <p>years [13] 6/9 19/17 56/24 98/7 109/22 110/8 110/21 111/3 112/8 112/21 113/8 185/25 210/18</p> <p>yell [1] 34/13</p> <p>yes [197] 3/9 5/4 6/1 6/12 6/15 8/13 8/15 9/21 12/11 15/7 17/9 18/8 18/22 19/1 19/11 19/21 20/12 21/8 21/11 23/7 24/2 24/18 25/9 25/9 26/1 27/16 30/21 37/22 37/24 43/16 47/12 47/18 50/16 52/15 53/18 56/11 57/2 59/3 60/4 60/24 62/21 64/9 64/16 64/19 67/15 68/6 69/1 69/3 69/4 70/16 71/2 72/13 72/21 72/25 73/4 74/16 75/2 76/9 76/12 76/13 76/14 76/17 77/2 79/19 80/5 80/17 80/19 81/3 81/20 82/5 82/7 85/4 86/1 88/10 92/11 93/6 93/10 95/9 97/11 98/1 100/19 100/24 102/18 103/2 105/7 105/9 105/10 106/1 106/25 107/20 108/1 108/10 108/12 108/14 109/8 109/11 109/14 109/18 110/15 110/18 114/15 114/22 115/6 115/22 116/3 116/18 117/1 117/20 118/4 119/15 119/19 119/25 121/7 124/3 125/23 129/3 136/21 136/22 139/9 139/11 141/24 143/22 144/2 146/6 146/10 146/16 146/18 146/22 147/13 148/1 148/8 150/16 153/1 154/6 154/12 157/12 157/17 158/23 159/11 159/11 161/22 162/2 163/18 165/1 165/2 165/10 166/16 167/4 168/16 169/20 169/22 172/1 173/15 173/24 174/13 175/24 175/24 176/7 178/2 178/18 181/10 181/25 182/4 184/16 187/7 187/9 187/10 188/2 190/20 190/22 191/12 192/16 193/11 193/12</p>	<p>198/13 199/8 199/11 199/19 199/24 200/5 202/24 204/6 204/18 205/8 207/19 211/14 215/1 216/22 217/14 223/17 224/21 227/17 227/25 228/2 232/18 234/18 236/24</p> <p>yes-or-no [4] 80/17 103/2 165/1 166/16</p> <p>yesterday [6] 3/20 35/8 40/20 41/10 90/12 91/7</p> <p>yet [14] 29/9 29/11 29/12 38/13 52/3 63/16 68/15 157/14 201/22 208/15 209/11 210/9 219/25 227/4</p> <p>yield [1] 157/7</p> <p>you [1474]</p> <p>you'd [7] 3/12 51/2 69/17 76/6 164/3 230/2 230/3</p> <p>you'll [2] 5/7 236/22</p> <p>you're [67] 3/7 5/5 13/8 17/8 25/1 32/15 35/22 50/20 60/11 62/16 63/15 63/17 63/22 64/10 71/22 74/2 74/4 83/1 84/20 89/16 91/4 110/25 115/21 120/23 120/24 122/6 129/16 129/16 129/18 129/18 130/17 130/18 130/18 139/8 148/4 152/20 152/23 158/10 158/11 159/13 166/12 167/17 179/20 183/10 184/5 184/19 184/21 187/9 193/17 194/23 198/23 200/8 200/15 207/3 207/6 208/6 209/2 213/20 214/8 214/17 216/18 229/10 233/13 234/11 235/25 236/15 236/19</p> <p>you've [21] 45/6 46/19 48/4 74/9 81/12 83/15 92/8 109/7 110/16 117/3 125/14 127/6 135/19 149/12 163/10 169/6 171/13 183/17 185/14 188/20 220/14</p> <p>young [1] 25/1</p> <p>your [322]</p> <p>yourself [3] 15/21 156/14 157/10</p> <hr/> <p>Z</p> <p>zero [7] 28/12 74/18 191/4 194/2 218/25 227/25 228/1</p> <p>zero percent [1] 218/25</p>			<p>PA0696</p>
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EXHIBIT “F”



1 FFCL

2
3 **DISTRICT COURT**

4 **CLARK COUNTY, NEVADA**

5 SPANISH HEIGHTS ACQUISITION
6 COMPANY, LLC, a Nevada Limited Liability
7 Company; SJC VENTURES HOLDING
8 COMPANY, LLC, d/b/a SJC VENTURES,
9 LLC, a Delaware Limited Liability Company,

10 Plaintiffs,

11 v.

12 CBC PARTNERS I, LLC, a foreign Limited
13 Liability Company; CBC PARTNERS, LLC, a
14 foreign Limited Liability Company; 5148
15 SPANISH HEIGHTS, LLC, a Nevada Limited
16 Liability Company; KENNETH ANTOS AND
17 SHEILA NEUMANN-ANTOS, as Trustees of
18 the Kenneth & Sheila Antos Living Trust and
19 the Kenneth M. Antos & Sheila M. Neumann-
20 Antos Trust; DACIA, LLC, a foreign Limited
21 Liability Company; DOES I through X; and
22 ROE CORPORATIONS I through X,
23 inclusive,

24 Defendants.

Case No. A-20-813439-B

Dept. No.: XI

**FINDINGS OF FACT AND
CONCLUSIONS OF LAW**

25 5148 SPANISH HEIGHTS, LLC, a Nevada
26 limited liability company; and CBC
27 PARTNERS I, LLC, a Washington limited
28 liability company,

Counterclaimants,

v.

SPANISH HEIGHTS ACQUISITION
COMPANY, LLC, a Nevada Limited Liability
Company; SJC VENTURES, LLC, a Delaware
limited liability company; SJC VENTURES
HOLDING COMPANY, LLC, a Delaware
limited liability company; JAY BLOOM,
individually and as Manager, DOE

1 DEFENDANTS 1-10; and ROE
2 DEFENDANTS 11-20,
3 Counterdefendants.

4 FINDINGS OF FACT AND CONCLUSIONS OF LAW

5 This matter having come on for preliminary injunction and consolidated non-jury trial on
6 related issues pursuant to NRCP 65(a)(2)¹ before the Honorable Elizabeth Gonzalez beginning
7 on February 1, 2021, February 2, 2021 , February 3, 2021,² and March 15, 2021; Plaintiffs
8 SPANISH HEIGHTS ACQUISITION COMPANY, LLC, (“Spanish Heights”)³ and SJC
9 VENTURES HOLDING COMPANY, LLC, d/b/a SJC VENTURES, LLC (“SJCVC”) appearing
10 by and through their representative Jay Bloom and their counsel of record JOSEPH A.
11 GUTIERREZ, ESQ. and DANIELLE J. BARRAZA, ESQ. of the law firm of MAIER
12

13
14
15 ¹ Pursuant to NRCP 65(a)(2), the parties have stipulated that the following legal issues surrounding the
16 claims and counterclaims are advanced for trial to be heard in conjunction with the hearing on the preliminary
17 injunction hearing:

- 18 a) Contractual interpretation and/or validity of the underlying “Secured Promissory Note” between
19 CBC Partners I, LLC, and KCI Investments, LLC, and all modifications (Counterclaim First, Fourth,
20 Ninth, and Twelfth Claim for Relief);
21 b) Interpretation and/or validity of the claimed third-position Deed of Trust and all modifications
22 thereto, and determination as to whether any consideration was provided in exchange for the Deed of Trust
23 (Counterclaim First, Fourth, Ninth, and Twelfth Claim for Relief);
24 c) Contractual interpretation and/or validity of the Forbearance Agreement, Amended Forbearance
25 Agreement and all associated documents/contracts (Counterclaim First, Fourth, Ninth, and Twelfth Claim
26 for Relief);
27 d) Whether the Doctrine of Merger applies to the claims at issue (Amended Complaint Fourth,
28 Seventh Cause of Action); and
e) Whether the One Action Rule applies to the claims at issue (Amended Complaint Third Cause of
Action).

The injunctive relief claims are contained in the Amended Complaint Sixth Cause of Action.

² The Court was advised on February 3, 2021, that Spanish Heights filed for bankruptcy protection. The Court suspended these proceedings and stayed the matter for 30 days as to all parties for Defendants to seek relief from the stay. As no order lifting the stay has been entered by the Bankruptcy Court, nothing in this order creates any obligations or liabilities directly related to Spanish Heights; however, factual findings related to Spanish Heights are included in this decision. The term “Plaintiffs” as used in these Findings of fact and Conclusions of Law is not intended to imply any action by this Court against the debtor, Spanish Heights.

³ As a result of the bankruptcy filing, Spanish Heights did not participate in these proceedings on March 15, 2021.

1 GUTIERREZ & ASSOCIATES and Defendants CBC PARTNERS I, LLC, CBC PARTNERS,
2 LLC, appearing by and through its representative Alan Hallberg (“Hallberg”); 5148 SPANISH
3 HEIGHTS, LLC, KENNETH ANTOS and SHEILA NEUMANN-ANTOS, as Trustees of the
4 Kenneth & Sheila Antos Living Trust and the Kenneth M. Antos & Sheila M. Neumann-Antos
5 Trust; DACIA, LLC, (collectively “Defendants”) all Defendants appearing by and through their
6 counsel of record MICHAEL R. MUSHKIN, ESQ. and L. JOE COPPEDGE, ESQ. of the law
7 firm of MUSHKIN & COPPEDGE; the Court having read and considered the pleadings filed by
8 the parties; having reviewed the evidence admitted during the trial; having heard and carefully
9 considered the testimony of the witnesses called to testify and weighing their credibility; having
10 considered the oral and written arguments of counsel, and with the intent of rendering a decision
11 on the limited claims before the Court at this time, pursuant to NRCp 52(a) and 58; the Court
12 makes the following findings of fact and conclusions of law:

15 **I. Procedural Posture**

16 On April 9, 2020, the original complaint was filed and a Temporary Restraining Order
17 was issued without notice by the then assigned judge.⁴

19 Spanish Heights and SJCV initiated this action against CBC PARTNERS I, LLC, CBC
20 PARTNERS, LLC, 5148 SPANISH HEIGHTS, LLC, KENNETH ANTOS AND SHEILA
21 NEUMANN-ANTOS, as Trustees of the Kenneth & Sheila Antos Living Trust and the Kenneth
22 M. Antos & Sheila M. Neumann-Antos Trust (“Antos Trust”); DACIA, LLC, with the First
23 Amended Complaint being filed on May 15, 2020.

25 By Order filed May 29, 2020, the Court granted Plaintiffs’ Motion for Preliminary
26 Injunction on a limited basis that remained in effect until after expiration of the Governor’s
27

28 ⁴ This matter was reassigned to this department after an April 13, 2020, Request for Transfer to Business Court was made by the Defendants.

1 Emergency Directive 008.

2 On June 10, 2020, defendants CBC PARTNERS I, LLC, CBC PARTNERS, LLC, and
3 5148 Spanish Heights, LLC, filed their answer to the first amended complaint.

4 Defendants CBC PARTNERS I, LLC, and 5148 Spanish Heights, LLC, have also filed a
5 counterclaim against plaintiffs, and Jay Bloom.

6
7 On September 3, 2020, Defendant Antos Trust filed an answer and counterclaim against
8 SJCVC, which SJCVC answered on September 28, 2020.⁵

9 **II. Findings of Fact**

10 1. This action involves residential real property located at 5148 Spanish Heights
11 Drive, Las Vegas, Nevada 89148, with Assessor's Parcel Number 163-29-615-007 ("Property").

12 2. The original owners of the Property were Kenneth and Sheila Antos as joint
13 tenants, with the original deed recorded in April 2007.

14 3. On or about October 14, 2010, Kenneth M. Antos and Sheila M. Neumann-Antos
15 (collectively, "Antos") transferred the Property to Kenneth M. Antos and Sheila M. Neumann-
16 Antos, as Trustees of the Kenneth and Shelia Antos Living Trust dated April 26, 2007 (the
17 "Antos Trust", and together with "Antos", the "Antos Parties").

18 4. Nonparty City National Bank is the beneficiary of a first-position Deed of Trust
19 recorded on the Property.

20 5. Nonparty Northern Trust Bank is the beneficiary of a second-position Deed of
21 Trust recorded on the Property.

22 6. The Property is currently owned by Spanish Heights⁶ which has entered into a
23
24

25
26
27 _____
28 ⁵ The Antos have a pending motion for summary judgment.

⁶ The manager of Spanish Heights is SJCVC.

1 written lease agreement with SJC.V.⁷

2 7. Although the Property is residential, it is not owner occupied, but is occupied by
3 Jay Bloom (“Mr. Bloom”) and his family.

4 8. On or about June 22, 2012, nonparty KCI entered into a Secured Promissory Note
5 (the “Note”) with CBC Partners I, LLC, a Washington limited liability company (“CBCI”).
6

7 9. The Note memorialized a \$300,000 commercial loan that CBCI made to Antos’
8 restaurant company KCI to be used for the restaurant business.

9 10. On or around June 22, 2012, Kenneth and Sheila Antos, in their individual
10 capacities, signed a “Guaranty” in which they personally guaranteed payment of the Note.
11

12 11. The Note was secured by a “Security Agreement” dated June 22, 2012, where the
13 security interest includes KCI’s intellectual property, goods, tools, furnishings, furniture,
14 equipment and fixtures, accounts, deposit accounts, chattel paper, and receivables.

15 12. The Property was not included as collateral for the original Note.

16 13. The Note was modified and amended several times.

17 14. On November 13, 2013, a Fourth Modification to Secured Promissory Note
18 (“Fourth Modification”) was executed.
19

20 15. Paragraph 4 of the Fourth Modification amended Paragraph 6.12 of the Note as
21 follows:

22 6.12 Antos Debt. Permit guarantor Kenneth M. Antos (“Antos”) to incur,
23 create, assume or permit to exist any debt secured by the real property
24 located at 5148 Spanish Heights Drive, Las Vegas, Nevada 89148.

25 16. Along with the Fourth Modification, the Antos Trust provided a Security
26 Agreement with Respect to Interest in Settlement Agreement and Mutual Release (the “Security
27

28 ⁷ The manager of SJC.V. is Bloom.

1 Agreement”).

2 17. This Security Agreement not only granted a security interest in a Settlement
3 Agreement, but also contained certain Representations, Warranties and Covenants of the Antos
4 Parties, including:

5 3.3 Sale, Encumbrance or Disposition. Without the prior written consent
6 of the Secured Party, Antos will not (a) allow the sale or encumbrance of
7 any portion of the Collateral and (b) incur, create, assume or permit to
8 exist any debt secured by the real property located at 5148 Spanish
9 Heights Drive, Las Vegas, NV 89148, other than the first and second
position deeds of trust or mortgages...

10 18. KCI was acquired by Preferred Restaurant Brands, Inc. formerly known as Dixie
11 Foods International, Inc. (“Dixie”).

12 19. The Note was assumed by Dixie with the Antos Parties continuing to guaranty the
13 obligation.

14 20. On or about October 31, 2014, a Seventh Modification to Secured Promissory
15 Note and Waiver of Defaults (“Seventh Modification”) was entered.

16 21. CBCI determined that prior to extension of additional credit; additional security
17 was required to replace a previously released security interest in other collateral.
18

19 22. Paragraph 18(f) of the Seventh Modification provided for a condition precedent:

20 Execution and delivery by Kenneth M. Antos and Sheila M. Neumann-
21 Antos, as Trustees of the Kenneth and Sheila Antos Living Trust dated
22 April 26, 2007, and any amendments thereto (the “Antos Trust”) to Lender
23 of a Deed of Trust on the real property located at 5148 Spanish Heights
24 Drive, Las Vegas, Nevada 89148 (the “Real Property”), in form and
substance satisfactory to Lender in its sole discretion.

25 23. On or about December 17, 2014, the Antos Trust delivered to CBCI a Certificate
26 of Trust Existence and Authority (“Certificate of Trust”).

27 24. The Certificate of Trust provides in part:

28 Kenneth M. Antos and Sheila M. Neumann-Antos, as trustees (each, a

1 “Trustee”) acting on behalf of the Trust, are each authorized and
2 empowered in the name of the Trust without the approval or consent of the
other Trustee, the beneficiaries, or any other person:

3 To execute and deliver a Deed of Trust, Assignment of Rents,
4 Security Agreement and Fixture Filing (the “Deed of Trust”), to
5 secure (i) obligations owing to Lender by KCI Investments, LLC, a
6 Nevada limited liability company, and Preferred Restaurant
7 Brands, Inc., a Florida corporation (individually and collectively,
8 “Borrower”), (ii) that certain Secured Promissory Note dated as of
9 June 22, 2012, in the maximum principal amount of \$3,250,000.00
10 (the “Note”) executed by Borrower in favor of Lender, (iii) that
11 certain Guaranty dated June 22, 2012, executed by the Grantors as
12 individuals and not in their capacity as trustees, and (iv) the other
13 documents and instruments executed or delivered in connection
14 with the foregoing.

15 25. The Certificate of Trust further provides:

16 The Deed of Trust and Lender’s provision of credit under the terms of the
17 Note will directly and indirectly benefit the Trust and its beneficiaries.

18 The Trustees of the Trust have the authority to enter into the transactions
19 with respect to which this Certificate is being delivered, and such
20 transactions will create binding obligations on the assets of the Trust.

21 26. On or about December 29, 2014, a Deed of Trust, Assignment of Rents, Security
22 Agreement and Fixture Filing (the “Deed of Trust”) was recorded against the Property in the
23 Clark County Recorder’s Office as Instrument No. 201412290002856 for the purpose of
24 securing the Note.

25 27. The revocable trust indirectly benefitted from this additional credit that was
26 issued to Antos and his business by CBCI.

27 28. The Deed of Trust is subordinate to the first mortgage to City National in the
28 principal amount of approximately \$3,240,000.00 with a monthly payment of \$19,181.07, and a
second mortgage to Northern Trust Bank in the principal amount of approximately \$599,000.00
with monthly payments of \$3,034.00.

29 29. On or about April 30, 2015, a Ninth Modification to Secured Promissory Note

1 and Waiver of Defaults (“Ninth Modification”) was executed.

2 30. Paragraph 14(c) of the Ninth Modification provides for a condition precedent as
3 follows:

4 Execution by the Trustees of the Kenneth and Sheila Antos Living Trust
5 dated April 26, 2007, and any amendments thereto, and delivery to Lender
6 of the Correction to Deed of Trust Assignment of Rents, Security
7 Agreement and Fixture Filing, in form and substance satisfactory to
8 Lender.

9 31. On July 22, 2015, a Correction to Deed of Trust, Assignment of Rent, Security
10 Agreement and Fixture Filing (“Correction to Deed of Trust”) was recorded in the Clark County
11 Recorder’s Office as Instrument No. 201507220001146.

12 32. This Correction to Deed of Trust modified Paragraph One of the Deed of Trust to
13 read:

14 One: Payment of any and all amounts (collectively, the “Guarantied
15 Obligations”) due and owing by Trustor under that certain Guaranty from
16 Kenneth Antos and Sheila Antos (individually and collectively,
17 “Guarantor”) dated June 22, 2012, in favor of Beneficiary (the
18 “Guaranty”), guarantying the indebtedness evidenced by that certain
19 Secured Promissory Note (and any renewals, extensions, modifications
20 and substitutions thereof) (collectively, the “Note”), executed by KCI
21 Investments, LLC, a Nevada limited liability company, and Preferred
22 Restaurant Brands, Inc., a Florida corporation (individually and
23 collectively, “Borrower”), dated June 22, 2012, as modified, in the
24 maximum principal sum of THREE MILLION AND NO/100 DOLLARS
25 (\$3,000,000.00), together with interest thereon, late charges and collection
26 costs as provided in the Note.

27 33. On or about December 2, 2016, CBCI sold a portion of the monetary obligations
28 of the Note in the amount of \$15,000.00 to Southridge Partners II, LP.

34. On or about December 2, 2016, CBCI and KCI entered into a Forbearance
Agreement.

35. As part of the Forbearance Agreement, the Antos Trust executed a Consent,
Reaffirmation, and General Release by the Trust wherein the Antos Trust agreed

1 to join in and be bound to the terms of the Representations and Warranties
2 contained in Sections 4 and 7, and the General Release contained in
3 Section 8 of the Agreement applicable as though the Trust were a Credit
4 Party.

5 36. On or about December 2, 2016, a Tenth Modification to Secured Promissory Note
6 (“Tenth Modification”) was entered into.

7 37. Paragraph 6(e) of the Tenth Modification provides for a condition precedent as
8 follows:

9 Delivery to Lender of a duly executed First Modification to Deed of Trust,
10 Assignment of Rents, Security Agreement and Fixture Filing, by Kenneth
11 M. Antos and Sheila M. Neumann-Antos, Trustees of the Kenneth and
12 Sheila Antos Living Trust dated April 26, 2007, and any amendments
13 thereto, as trustor, related to that certain Deed of Trust, Assignment of
14 Rents, Security Agreement and Fixture Filing made December 17, 2014,
15 and recorded in the Official Records of Clark County, Nevada, on
16 December 29, 2014, as instrument number 20141229-0002856.

17 38. On December 19, 2016, the First Modification to Deed of Trust, Assignment of
18 Rents, Security Agreement and Fixture Filing was recorded in the Clark County Recorder’s
19 Office as Instrument No. 201612190002739.

20 39. On or about July 21, 2017, Mr. Bloom proposed to service the CBCI Note in
21 exchange for the ownership in the Property. Specifically, Mr. Bloom wrote,

22 My thought is that this proposal gets the 3rd lender:

- 23 • a full recovery of its Note balance plus all protective advances past and future,
- 24 • interim cash flow and
- 25 • provides interim additional full collateral where, given the current value of the
26 property, the 3rd position lender is currently unsecured.

27 As to the Seller, he:

- 28 • gets out from under a potential deficiency judgment from the 3rd position
lender and
- unburdens himself from any additional assets that may have been pledged.

40. Spanish Heights was created to facilitate this transaction.

41. On September 27, 2017, CBCI, the Antos Trust, Spanish Heights and Mr.

1 Bloom's company, SJCVC, entered into the 2017 Forbearance Agreement.

2 42. The September 27, 2017 Forbearance Agreement indicates that Mr. Bloom's
3 company Spanish Heights intends to acquire the Property and make certain payments to CBCI
4 pursuant to the terms of the 2017 Forbearance Agreement.

5 43. Mr. Bloom testified that he was not provided with a complete set of documents
6 reflecting the prior transactions between the Antos and KCI⁸ and that misrepresentations were
7 made regarding the prior transactions by CBCI.

8 44. In the 2017 Forbearance Agreement, the Antos Parties, Spanish Heights and
9 SJCVC acknowledged default and affirmed CBCI has fully performed.

10 45. The 2017 Forbearance Agreement contains an acknowledgement that the prior
11 agreements between the Antos and CBCI are valid.

12 Par. 8.7 Enforceable Amended Note and Modified Deed of Trust/No Conflicts. The
13 Amended Note and Modified Deed of Trust and the Forbearance Agreement, are legal,
14 valid, and binding agreements of Antos Parties and the SJCVC Parties, enforceable in
15 accordance with their respective terms, and any instrument or agreement required
16 hereunder or thereunder, when executed and delivered, is (or will be) similarly legal,
17 valid, binding and enforceable. This Forbearance Agreement does not conflict with any
18 law, agreement, or obligation by which Antos Parties and the SJCVC parties is bound.

19 46. In connection with the 2017 Forbearance Agreement, on November 3, 2017, the
20 Antos Trust conveyed the Property to Spanish Heights.

21 47. A lease agreement between Spanish Heights as the Landlord, and SJCVC as the
22 Tenant, was executed by both Spanish Heights and SJCVC on or around August 15, 2017.

23 48. The lease agreement between Spanish Heights and SJCVC indicates that the lease
24 term is two years, with an option for SJCVC to exercise two additional consecutive lease
25

26
27 ⁸ The Court finds that regardless of whether all of the prior transactional documents were provided to Mr.
28 Bloom, Mr. Bloom was on notice of the prior transactions. The 2017 Forbearance Agreement clearly identifies the
nature of the prior transactions in the section entitled "The Parties and Background" which begins on page 1 of the
document.

1 extensions.

2 49. Pursuant to the terms of the 2017 Forbearance Agreement, Spanish Heights was
3 to make certain payments to CBCI and other parties. In addition, a balloon payment of the total
4 amount owing, under the Note, was due on August 31, 2019.

5 50. Pursuant to the 2017 Forbearance Agreement, SJCVC affirmed all obligations due
6 to CBCI under the Note and Modified Deed of Trust.

7 51. The 2017 Forbearance Agreement provides in pertinent part, "CBCI is free to
8 exercise all of its rights and remedies under the Note and Modified Deed of Trust..."

9 52. The 2017 Forbearance Agreement states the rights and remedies are cumulative
10 and not exclusive, and may be pursued at any time.

11 53. As part of the 2017 Forbearance Agreement, there were certain requirements of
12 Spanish Heights attached as Exhibit B to the 2017 Forbearance Agreement.

13 54. Among the requirements was the understanding that the First Lien holder would
14 pay the real property taxes, that CBCI would pay the 1st and 2nd Mortgage payments to prevent
15 default, that Spanish Heights would make certain repairs and improvements to the Property,
16 Spanish Heights would maintain the Property, and Spanish Heights would pay for a customary
17 homeowner's insurance policy and all Homeowner's Association dues.

18 55. In addition to the requirements of the 2017 Forbearance Agreement, there was
19 additional security to be provided by Spanish Heights, SJCVC, and others.

20 56. Among the additional security was a Pledge Agreement, through which the
21 members of Spanish Heights pledged 100% of the membership interest in Spanish Heights.⁹

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28 ⁹ The Pledge Agreement states in pertinent part:

THIS PLEDGE AGREEMENT dated 27th (sic)(this "Agreement") is made by Kenneth & Sheila Antos

1 57. The Pledge Agreement provides in pertinent part, “Secured Party shall have the
2 right, at any time in Secured Party’s discretion after a Non-Monetary Event of Default ... to
3 transfer to or to register in the name of Secured Party or any of Secured Party’s nominees any or
4 all of the Pledged Collateral.”

5 58. Pursuant to the Pledge Agreement, upon an event of default, Pledgors (SJCVC and
6 Antos) appointed CBCI as Pledgors’ attorney-in-fact to execute any instrument which Secured
7 Party may deem necessary or advisable to accomplish the purposes of the Pledge Agreement.
8

9 59. The Pledge Agreement was signed on September 27, 2017, by the Antos and Mr.
10 Bloom as purported manager on behalf of Spanish Heights. No separate signature block for
11 SJCVC appears on the Pledge Agreement.
12

13 60. Paragraph 17 of the Pledge Agreement contained a notice provision which
14 required notice to the Pledgors to be given to Pledgors through Plaintiffs’ current counsel, Maier
15 Gutierrez & Associates.
16

17 61. As additional required security, SJCVC agreed to a Security Agreement to grant
18 CBCI a Security Interest in a Judgment described as:

19 SJCVC represents that First 100, LLC, and 1st One Hundred Holdings,
20 LLC, obtained a Judgment in the amount of \$2,221,039,718.46 against
21 Raymond Ngan and other Defendants in the matter styled *First 100, LLC,*
22 *Plaintiff(s) vs. Raymond Ngan, Defendant(s)*, Case No, A-17-753459-C in
23 the 8th Judicial District Court for Clark County, Nevada (the “Judgment”),
SJCVC represents It holds a 24,912% Membership Interest in 1st One
Hundred Holdings, LLC. SJCVC represents and warrant that no party, other

24 Living Trust (the Antos Trust”), SJC Ventures, LLC (“SJCVC”)(collectively the “Pledgors”) to CBC
25 Partners I, LLC, a Washington limited-liability company (“Secured Party” or “CBCI”).

26 ***

27 WHEREAS, Pledgors are the owners of 100%, of the membership interests (the “Membership Interests”)
28 of Spanish Heights Acquisition Company, LLC, a Nevada limited liability company (“SHAC”), which has
been organized pursuant to the terms of the Limited Liability Company Agreement of Spanish Heights
Acquisition Company, LLC.

1 than the Collection Professionals engaged to collect the Judgment, have a
2 priority to receive net Judgment proceeds attributable to SJCVC before
3 SJCVC; and that SJCVC shall receive Its interest at a minimum in pari passu
4 with other parties who hold interests in the Judgment. 1st One Hundred
5 Holdings, LLC, represents and warrant that no party, other than the
6 Collection Professionals engaged to collect the Judgment and certain other
7 creditors of 1st One Hundred Holdings, have a priority to receive net
8 Judgment proceeds prior to distributions to 1st One Hundred Holdings
9 Members; and that SJCVC shall receive Its interest at a minimum in pari
10 passu with other parties who hold interests in the Judgment.

11 62. In addition to the other consideration in the 2017 Forbearance Agreement, the
12 Antos Trust signed a Personal Guaranty Agreement, guaranteeing to CBCI the full and punctual
13 performance of all the obligations described in the 2017 Forbearance Agreement.

14 63. Pursuant to the Amendment to Forbearance Agreement and Related Agreements,
15 dated December 1, 2019 (the "Amendment to 2017 Forbearance Agreement"), SJCVC¹⁰
16 acknowledged that it pledged its membership interest in Spanish Heights as collateral for the
17 2017 Forbearance Agreement.¹¹

18 ¹⁰ An argument has been made that SJCVC did not pledge its stock under the original Pledge Agreement.
19 Given the notice provision in the original Pledge Agreement, Mr. Bloom's signature as manager on behalf of
20 Spanish Heights, rather than SJCVC, and the language of the Pledge Agreement reflecting a pledge of 100% of the
interest in membership of Spanish Heights, it appears the signature line for Mr. Bloom may have been incorrect.
Mr. Bloom is not the manager of Spanish Heights; Mr. Bloom is the manager of SJCVC, which serves as the manager
of Spanish Heights. The language in paragraphs 5 and 9 of the Amendment to the 2017 Forbearance Agreement
reaffirms SJCVC's pledge of its membership interest.

21 ¹¹ The Amendment to the 2017 Forbearance Agreement states in pertinent part:

22 WHEREAS, on or about September 27, 2017, the parties executed a Forbearance Agreement whereby
23 CBCI agreed to forbear from exercising the rights and remedies under certain loan documents executed by
24 the "Antos Parties." In addition to the Forbearance Agreement, the parties executed "Exhibit B" to the
Forbearance Agreement, a Lease Agreement, an Account Control Agreement, a Membership Pledge
Agreement, an Assignment of Rents, and a Security Agreement (collectively "the Related Agreements").

25 ***

26 5. The Membership Pledge Agreement executed by SJCVC and the Antos Trust shall remain in effect and
27 the execution of this Amendment shall not be considered a waiver of CBCI's rights under the Membership
Pledge Agreement.

28 ***

1 64. On or about December 1, 2019, CBCI, the Antos, Spanish Heights and SJC
2 entered into an Amendment to the 2017 Forbearance Agreement, extending the date of the
3 balloon payment to March 31, 2020.

4 65. The Amendment to 2017 Forbearance Agreement was signed by the Antos,
5 Bloom as purported manager on behalf of Spanish Heights, and Bloom as manager of SJC.
6

7 66. Pursuant to the Amendment to 2017 Forbearance Agreement, the Security
8 Agreement “shall remain in effect and the execution of this Amendment shall not be considered
9 a waiver of CBCI’s rights under the Security Agreement...”

10 67. Pursuant to the Amendment to 2017 Forbearance Agreement, any amendment
11 must be in writing.
12

13 68. On March 12, 2020, Spanish Hills Community Association recorded a Health and
14 Safety Lien against the Property. This Lien was for Nuisances and Hazardous Activities.

15 69. On or about March 16, 2020, CBCI mailed a Notice of Non-Monetary Defaults to
16 Spanish Heights and SJC. This Notice of Non-Monetary Default delineated the following
17 defaults:
18

- 19 1. Evidence of homeowner’s insurance coverage Pursuant to Paragraph
20 1(A)(6) of Amendment to Forbearance Agreement and Related
21 Agreements;
- 22 2. Evidence of repairs pursuant to Paragraph 3(c)(1) of Exhibit B to
23 Forbearance Agreement;
- 24 3. Evidence of Bank of America account balance of \$150,000.00
25 pursuant to Paragraph 6(c) of Exhibit B to Forbearance Agreement;
- 26 4. Opinion letter from SJC Ventures and 1st One Hundred Holdings
27 counsel regarding the Judgment and Security Agreement pursuant to
28 Paragraph 1(A)(12) of Amendment to Forbearance Agreement and
 Related Agreements;

9. The Membership Pledge Agreement executed by SJC and the Antos Trust shall remain in effect and
the execution of this Amendment shall not be considered a waiver of CBCI’s rights under the Membership
Pledge Agreement.

5. Evidence of corporate authority for SJC Ventures and 1st One Hundred Holdings pursuant to Paragraph 1(A)(13) of Amendment to Forbearance Agreement and Related Agreements; and
6. Evidence of SJC Ventures filing of applications for mortgages to refinance 5148 Spanish Heights Drive, pursuant to paragraph 1(C) of Amendment to Forbearance Agreement and Related Agreements.

70. On April 1, 2020, a Notice of Default and Demand for Payment was sent to Spanish Heights and SJCVC. This letter had a typo on the date of final balloon payment being due on March 31, 2021. This was corrected and emailed to Spanish Height's and SJCVC's counsel noting that the default date was corrected to March 31, 2020.

71. On April 1, 2020, under separate cover, counsel for CBCI sent a Notice to Spanish Heights, SJCVC, and Antos that CBCI would exercise its rights under the Pledge Agreement by transferring the pledged collateral to CBCI's nominee CBC Partners, LLC.

72. On April 1, 2020, CBC Partners received the Assignment of Company and Membership Interest of Spanish Heights from the Antos Trust.

73. On April 3, 2020, a Notice to Vacate was sent to SJCVC.

74. On April 6, 2020, CBCI sold the Note and security associated with the Note, to 5148 Spanish Heights, LLC.

75. On May 28, 2020, the Assignment of Interest in Deed of Trust was recorded in the Clark County Recorder's Office as Instrument No 202005280002508.

76. On September 15, 2020, Notice of Breach and Election to Sell Under Deed of Trust was recorded in the Clark County Recorder's Office as Instrument No 202009150001405.

77. On December 15, 2020, Notice of Trustee's Sale was recorded in the Clark County Recorder's Office Instrument No 20201215-0000746. The Sale was scheduled for January 5, 2021.

78. CBCI, through Hallberg, and Mr. Antos, both individually and as Trustee of the

1 revocable living trust as makers; confirm the original debt and the Deed of Trust as collateral for
2 the Note.

3 79. 5148 Spanish Heights, LLC, issued a new Notice of Default on January 4, 2021.

4 80. NRS 107.080 sets forth the notice requirements that were followed by 5148
5 Spanish Heights, LLC, and Nevada Trust Deed Services.

6 81. Plaintiff has shown no defect or lack of adequate statutory notice in the current
7 notice.
8

9 82. NRS 47.240 provides for conclusive presumptions relevant to certain provisions
10 of the relevant documents.¹²

11 83. Nothing in the evidence presented during these proceedings provides any basis for
12 departure from the conclusive presumptions recited in the agreements between the parties.¹³
13

14 84. At this time, CBCI has acquired the Antos interest in Spanish Heights through the
15 Pledge Agreement. The membership interest in a limited liability company is not an interest in
16

17 ¹² **NRS 47.240 Conclusive presumptions.** The following presumptions, and no others, are conclusive:

18 ***

19 2. The truth of the fact recited, from the recital in a written instrument between the parties thereto, or their
20 successors in interest by a subsequent title, but this rule does not apply to the recital of a consideration.

21 ¹³ For purposes of this proceeding, the Court applies the conclusive presumptions of NRS 47.240 to the
22 following :

23 From the Pledge Agreement:

24 WHEREAS, Pledgors are the owners of 100%, of the membership interests (the "Membership Interests")
25 of Spanish Heights Acquisition Company, LLC, a Nevada limited liability company ("SHAC"), which has
26 been organized pursuant to the terms of the Limited Liability Company Agreement of Spanish Heights
27 Acquisition Company, LLC.

28 From the Amendment to the 2017 Forbearance Agreement:

WHEREAS, on or about September 27, 2017, the parties executed a Forbearance Agreement whereby
CBCI agreed to forbear from exercising the rights and remedies under certain loan documents executed by
the "Antos Parties." In addition to the Forbearance Agreement, the parties executed "Exhibit B" to the
Forbearance Agreement, a Lease Agreement, an Account Control Agreement, a Membership Pledge
Agreement, an Assignment of Rents, and a Security Agreement (collectively "the Related Agreements").

1 real property. Title to the Property remains in Spanish Heights.

2 85. Plaintiff has not established unanimity of interest in title to the Property.

3 86. Plaintiff has not established an intent on behalf of the creditor to merge their lien
4 with equitable title.

5 87. Plaintiff has provided no evidence that the 2017 Forbearance Agreement and
6 Amendment to the 2017 Forbearance Agreement are vague or ambiguous.

7
8 88. Plaintiff has provided no evidence of fraud or misrepresentation by any
9 Defendant.

10 89. If any findings of fact are properly conclusions of law, they shall be treated as if
11 appropriately identified and designated.
12

13 **III. Conclusions of Law**

14
15 1. The legal standard for granting injunctive relief is set forth in NRS 33.010, which
16 provides:

17 Cases in which injunction may be granted. An injunction may be
18 granted in the following cases:

19 1. When it shall appear by the complaint that the plaintiff is
20 entitled to the relief demanded, and such relief or any part thereof
21 consists in restraining the commission or continuance of the act
complained of, either for a limited period or perpetually.

22 2. When it shall appear by the complaint or affidavit that the
23 commission or continuance of some act, during the litigation,
would produce great or irreparable injury to the plaintiff.

24 3. When it shall appear, during the litigation, that the
25 defendant is doing or threatens, or is about to do, or is procuring or
26 suffering to be done, some act in violation of the plaintiff's rights
27 respecting the subject of the action, and tending to render the
judgment ineffectual.

28 2. Given the current bankruptcy stay, the Court extends the existing injunctive relief

1 entered January 5, 2021, pending further order from the Bankruptcy Court.

2 3. The relevant documents, including, but not limited to, the 2017 Forbearance
3 Agreement and Amendment to Forbearance Agreement and Related Agreements, dated
4 December 1, 2019, are clear and unambiguous as a matter of law

5 4. The Note is secured by the Property.

6 5. As a condition precedent to the Fourth, Seventh, Ninth, and Tenth Modifications
7 to the Note, a Deed of Trust encumbering the Property was required.
8

9 6. The Antos Parties had authority, individually and as Trustees of the Antos Trust,
10 to encumber the Property with the Deed of Trust to CBCI.

11 7. Plaintiffs have waived any defects, acknowledged the encumbrance and agreed, in
12 writing to pay twice; first in the 2017 Forbearance Agreement and second, in the Amendment to
13 the 2017 Forbearance Agreement.
14

15 8. Plaintiffs agreed in the 2017 Forbearance Agreements to pay the amounts in
16 question by separate promise to the Antos Parties.
17

18 9. The Antos Trust received an indirect benefit from the transactions related to the
19 Deed of Trust.

20 10. Mr. Antos testified that the Property was used as security in exchange for
21 additional capital and release of other collateral from CBCI .
22

23 11. Mr. Antos agrees with CBCI that Plaintiffs have failed to perform.

24 12. NRS 107.500 is only required of owner-occupied housing.

25 13. The doctrine of merger provides that “[w]hen a greater and a less estate
26 coincide and meet in one and the same person, without any intermediate estate, the less is
27 immediately merged in the greater, and thus annihilated.” 31 C.J.S. Estates § 153.
28

1 14. Plaintiffs have made no showing of the applications of the doctrine of merger in
2 this case. As no interests have merged, and there is no showing of intent to merge

3 15. The one-action rule “does not excuse the underlying debt.” *Bonicamp v. Vazquez*,
4 120 Nev. 377, 382-83, 91 P.3d 584, 587 (2004).

5 16. The One-Action Rule prohibits a creditor from “first seeking the personal
6 recovery and then attempting, in an additional suit, to recover against the collateral.” *Bonicamp*,
7 120 Nev. at 383, 91 P.3d at 587 (2004). When suing a debtor on a secured debt, a creditor may
8 initially elect to proceed against the debtor or the security. If the creditor sues the debtor
9 personally on the debt, the debtor may then either assert the one-action rule, forcing the creditor
10 to proceed against the security first before seeking a deficiency from the debtor, or decline to
11 assert the one-action rule, accepting a personal judgment and depriving the creditor of its ability
12 to proceed against the security. NRS 40.435(3); *Bonicamp*, 120 Nev. at 383, 91 P.3d at 587
13 (2004).

14 17. The “One-Action Rule” was specifically waived by the debtor. The Deed of Trust
15 paragraph 6.21(a) states:
16

17 Trustor and Guarantor each waive all benefits of the one-action
18 rule under NRS 40.430, which means, without limitation, Trustor
19 and Guarantor each waive the right to require Lender to (i) proceed
20 against Borrower, any other guarantor of the Loan, any pledgor of
21 collateral for any person’s obligations to Lender or any other
22 person related to the Note and Loan Documents, (ii) proceed
23 against or exhaust any other security or collateral Lender may
24 hold, or (iii) pursue any other right or remedy for Guarantors’
benefit.

25 18. The 2017 Forbearance Agreement paragraph 25 gives the benefit of cumulative
26 remedies.

27 The rights and remedies of CBCI under this Forbearance
28 Agreement and the Amended Note and Modified Deed of Trust are

1 cumulative and not exclusive of any rights or remedies that CBCI
2 would otherwise have, and may be pursued at any time and from
3 time to time and in such order as CBCI shall determine in its sole
4 discretion.

5 19. The Court concludes as a matter of law that the Plaintiffs have not established
6 facts or law to support the claim that the One-Action Rule bars recovery under the defaulted
7 Note and Security documents.

8 20. The Court's Temporary Restraining Order, filed January 5, 2021, will remain in
9 place pending further order of the Bankruptcy Court.

10 21. If any conclusions of law are properly findings of fact, they shall be treated as if
11 appropriately identified and designated.

12 JUDGMENT

13 Based upon the foregoing Findings of Fact and Conclusions of Law, and other good
14 cause appearing:

15 **IT IS HEREBY ORDERED, ADJUDGED AND DECREED** that as to the
16 Claims for Declaratory Relief, the Court declares the third position Deed of Trust is a valid
17 existing obligation against the Property.


18 **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that as to the
19 Claims for Declaratory Relief, the Court declares that the Note is a valid existing obligation.
20

21 **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that as to the
22 Claims for Declaratory Relief, the Court declares that the Pledge Agreement is a valid existing
23 obligation of SJCVC.
24

25 **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that as to the
26 Claims for Declaratory Relief, the Court declares that the acquisition of a membership interest in
27 Spanish Heights does not merge the Defendants interests.
28

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that as to the Claims for Declaratory Relief, the Court declares that there has been a valid waiver of the One-Action Rule.

Dated this 6th day of April, 2021


Elizabeth Gonzalez, District Court Judge

Certificate of Service

I hereby certify that on the date filed, a copy of the foregoing Findings of Fact and Conclusions of Law was electronically served, pursuant to N.E.F.C.R. Rule 9, to all registered parties in the Eighth Judicial District Court Electronic Filing Program.

/s/ *Dan Kutinac*
Dan Kutinac, JEA

EXHIBIT “G”

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*Attorneys for Defendant and Counterclaimants
5148 Spanish Heights, LLC, CBC Partners I, LLC
and Dacia, LLC*

DISTRICT COURT

CLARK COUNTY, NEVADA

SPANISH HEIGHTS ACQUISITION
COMPANY, LLC, a Nevada Limited Liability
Company; SJC VENTURES HOLDING
COMPANY, LLC, d/b/a SJC VENTURES,
LLC, a Delaware Limited Liability Company,

Plaintiffs,

v.

CBC PARTNERS I, LLC, a foreign Limited
Liability Company; CBC PARTNERS, LLC, a
foreign Limited Liability Company; 5148
SPANISH HEIGHTS, LLC, a Nevada Limited
Liability Company; KENNETH ANTOS AND
SHEILA NEUMANN-ANTOS, as Trustees of
the Kenneth & Sheila Antos Living Trust and
the Kenneth M. Antos & Sheila M. Neumann-
Antos Trust; DACIA, LLC, a foreign Limited
Liability Company; DOES I through X; and
ROE CORPORATIONS I through X,
inclusive,

Defendants.

Case No. A-20-813439-B

Dept. No.: 11

**ORDER GRANTING IN PART
KENNETH ANTOS AND SHEILA
NEUMANN-ANTOS MOTION FOR
SUMMARY JUDGMENT**

CAPTION CONTINUES BELOW

1 5148 SPANISH HEIGHTS, LLC, a Nevada
2 limited liability company; and CBC
3 PARTNERS I, LLC, a Washington limited
4 liability company,

5 Counterclaimants,

6 v.

7 SPANISH HEIGHTS ACQUISITION
8 COMPANY, LLC, a Nevada Limited Liability
9 Company; SJC VENTURES, LLC, a Delaware
10 limited liability company; SJC VENTURES
11 HOLDING COMPANY, LLC, a Delaware
12 limited liability company; JAY BLOOM,
individually and as Manager, DOE
DEFENDANTS 1-10; and ROE
DEFENDANTS 11-20,

13 Counterdefendants.

14 **ORDER GRANTING IN PART KENNETH ANTOS AND**
15 **SHEILA NEUMANN-ANTOS MOTION FOR SUMMARY JUDGMENT**

16 This matter having come before the Court, in Chambers, on April 9, 2021, on Kenneth
17 Antos and Sheila Neumann-Antos' Motion for Summary Judgment. As no order lifting the stay
18 has been entered by the Bankruptcy Court, nothing in this order creates any obligations or
19 liabilities directly related to Spanish Heights Acquisition Company, LLC; however, factual
20 findings related to Spanish Heights Acquisition Company, LLC, are included in this decision.
21 The Court having reviewed the related briefing and considered the pleadings and papers on file
22 herein and being fully advised, finds as follows:

23 THE COURT FINDS that the Kenneth Antos and Sheila Neumann-Antos Trust, as the
24 contracting party to the Forbearance Agreement and attached Spanish Heights Acquisition
25 Company, LLC Operating Agreement, has standing to pursue the Breach of Contract claim based
26 on a breach of the terms of the various agreements, despite the Assignment of Interest in Spanish
27 Heights Acquisition Company, LLC.

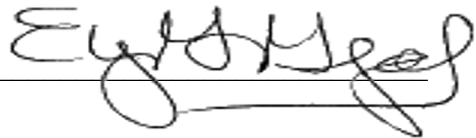
28 THE COURT FURTHER FINDS that there has been a lack of performance by

1 Plaintiff/Counterdefendant SJC Ventures Holding Company, LLC, under the Forbearance
2 Agreement and attached Spanish Heights Acquisition Company, LLC Operating Agreement,
3 entered into with Kenneth Antos and Sheila Neumann-Antos, Trustees of the Kenneth & Sheila
4 Antos Living Trust and the Kenneth M. Antos & Sheila M. Neumann-Antos Trust;

5 THE COURT FURTHER FINDS that the Court does not make any determination related
6 to what damages are appropriate related to the granting of this relief; therefore

7 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the Kenneth Antos and
8 Sheila Neumann-Antos' Motion for Summary Judgment is GRANTED IN PART as to the breach
9 of the Forbearance Agreement and attached Spanish Heights Acquisition Company, LLC
10 Operating Agreement, and the Kenneth Antos and Sheila Neumann-Antos Trust, as the
11 contracting party to the Forbearance Agreement and attached Spanish Heights Acquisition
12 Company, LLC Operating Agreement, has standing to pursue the Breach of Contract claim
13 despite the Assignment of Interest in Spanish Heights Acquisition Company, LLC.

14 Dated this 10th day of August, 2021

15 
16
17

18 **25B E1F CCD6 2FE9**
19 **Elizabeth Gonzalez**
20 **District Court Judge**

21 Respectfully Submitted by:
22 MUSHKIN & COPPEDGE

23 Read and Approved:
24 MAIER GUTIERREZ & ASSOCIATES

25 /s/Michael R. Mushkin
26 MICHAEL R. MUSHKIN, ESQ.,
Nevada Bar No. 2421
27 L. JOE COPPEDGE, ESQ.,
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6070 S. Eastern Ave., Suite 270
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28 Did Not Respond
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DANIELLE J. BARRAZA, ESQ.
Nevada Bar No. 13822
8816 Spanish Ridge Avenue
Las Vegas, Nevada 89148

Attorneys for Defendants/Counterclaimants

Attorneys for Plaintiffs/Counterdefendants

1 **CSERV**

2
3 DISTRICT COURT
4 CLARK COUNTY, NEVADA

5
6 Spanish Heights Acquisition
7 Company LLC, Plaintiff(s)

CASE NO: A-20-813439-B

8 vs.

DEPT. NO. Department 11

9 CBC Partners I LLC,
10 Defendant(s)

11 **AUTOMATED CERTIFICATE OF SERVICE**

12
13 This automated certificate of service was generated by the Eighth Judicial District
14 Court. The foregoing Order Granting Summary Judgment was served via the court's
15 electronic eFile system to all recipients registered for e-Service on the above entitled case as
16 listed below:

17 Service Date: 8/10/2021

18 MGA Docketing

docket@mgalaw.com

19 Karen Foley

kfoley@mccnvlaw.com

20 Michael Mushkin

michael@mccnvlaw.com

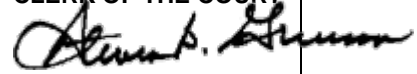
21 Kimberly Yoder

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22 Jady Hayes

jhayes@mccnvlaw.com

EXHIBIT “H”



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*Attorneys for Defendant and Counterclaimants
5148 Spanish Heights, LLC and
CBC Partners I, LLC*

DISTRICT COURT

CLARK COUNTY, NEVADA

SPANISH HEIGHTS ACQUISITION
COMPANY, LLC, a Nevada Limited Liability
Company; SJC VENTURES HOLDING
COMPANY, LLC, d/b/a SJC VENTURES,
LLC, a Delaware Limited Liability Company,

Plaintiffs,

v.

CBC PARTNERS I, LLC, a foreign Limited
Liability Company; CBC PARTNERS, LLC, a
foreign Limited Liability Company; 5148
SPANISH HEIGHTS, LLC, a Nevada Limited
Liability Company; KENNETH ANTOS AND
SHEILA NEUMANN-ANTOS, as Trustees of
the Kenneth & Sheila Antos Living Trust and the
Kenneth M. Antos & Sheila M. Neumann-Antos
Trust; DACIA, LLC, a foreign Limited Liability
Company; DOES I through X; and ROE
CORPORATIONS I through X, inclusive,

Defendants.

Case No. A-20-813439-B

Dept. No.: 11

**STATUS REPORT REGARDING
LIFTING OF BANKRUPTCY STAY**

CAPTION CONTINUES BELOW

1 5148 SPANISH HEIGHTS, LLC, a Nevada
2 limited liability company; and CBC PARTNERS
3 I, LLC, a Washington limited liability company,

4 Counterclaimants,

5 v.

6 SPANISH HEIGHTS ACQUISITION
7 COMPANY, LLC, a Nevada Limited Liability
8 Company; SJC VENTURES, LLC, a Delaware
9 limited liability company; SJC VENTURES
10 HOLDING COMPANY, LLC, a Delaware
11 limited liability company; JAY BLOOM,
12 individually and as Manager, DOE
13 DEFENDANTS 1-10; and ROE DEFENDANTS
14 11-20,

15 Counterdefendants.

16 STATUS REPORT REGARDING LIFTING OF BANKRUPTCY STAY

17 Defendants/Counterclaimants, 5148 Spanish Heights, LLC, and CBC Partners I, LLC, by
18 and through their attorney, Michael R. Mushkin, of the law firm of Mushkin & Coppedge, hereby
19 submit THIS Status Report to advise the Court that the automatic stay pursuant to 11 U.S.C. §362,
20 in Spanish Heights Acquisition Company, LLC's bankruptcy case was lifted by order of the
21 Bankruptcy Court in Case No. BK-21-10501-nmc and entered on July 27, 2021, attached hereto
22 as Exhibit A.

23 DATED this 28th day of July, 2021

24 MUSHKIN & COPPEDGE

25 /s/Michael R. Mushkin
26 MICHAEL R. MUSHKIN, ESQ.
27 Nevada Bar No. 2421
28 L. JOE COPPEDGE, ESQ.
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EXHIBIT “A”

Natalie M. Cox

Honorable Natalie M. Cox
United States Bankruptcy Judge



Entered on Docket
July 27, 2021

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*Attorneys for 5148 Spanish Heights, LLC,
CBC Partners I, LLC & CBC Partners, LLC*

UNITED STATES BANKRUPTCY COURT

DISTRICT OF NEVADA

In re:

SPANISH HEIGHTS ACQUISITION
COMPANY, LLC,

Debtor

Case No.: 21-10501-NMC
CHAPTER 11

**ORDER GRANTING RELIEF FROM
THE AUTOMATIC STAY TO
PROCEED WITH STATE COURT
LITIGATION AGAINST DEBTOR
AND NONDEBTOR PARTIES**

Motion for Relief From the Automatic Stay to Proceed With State Court Litigation
Against Debtor and Nondebtor Parties [ECF 140] filed by Secured Creditor, 5148 Spanish
Heights, LLC, a Nevada limited liability company ("Movant" or "5148"), successor-in-interest to
CBC Partners I, LLC, a Washington limited liability company ("Lender") came on for oral ruling
before this Court on July 22, 2021, at 9:30 am, the Honorable Natalie M. Cox, United States

Bankruptcy Judge, presiding. Movants were represented by Michael R. Mushkin, of Mushkin & Coppedge, and Debtor Spanish Heights Acquisition Company, LLC was represented by James D. Greene, of Greene Infuso, LLP; Secured Creditor City National Bank was represented by Andrea M. Gandara, of Holley Driggs; and Secured Creditor The Northern Trust Company, successor by merger to Northern Trust Bank, FSB was represented by Blakely E. Griffith, of Snell & Wilmer. The Court having reviewed the Motion, Opposition, Declarations, and related filings and having considered the arguments of the parties, and with good cause appearing,

IT IS HEREBY ORDERED that, for the reasons stated on the record, which the Court adopts as its findings of fact and conclusions of law pursuant to Federal Rule of Bankruptcy Procedure 7052, the Motion is GRANTED.

Respectfully submitted by:

MUSHKIN & COPPEDGE

/s/Michael R. Mushkin

MICHAEL R. MUSHKIN, ESQ.

Nevada Bar No. 2421

6070 South Eastern Avenue, Ste 270

Las Vegas, NV 89119

Approved by:

HOLLEY DRIGGS

/s/Andrea M. Gandara

RICHARD F. HOLLEY ESQ.

Nevada Bar No. 3077

ANDREA M. GANDARA, ESQ.

Nevada Bar No. 12580

400 South Fourth Street, Third Floor

Las Vegas, Nevada 89101

Approved by:

GREENE INFUSO, LLP

/s/James D. Greene

JAMES D. GREENE, ESQ.

Nevada Bar No. 2647

3030 South Jones Boulevard, Ste 101

Las Vegas, Nevada 89146

Approved by:

SNELL & WILMER LLP

/s/Blakeley E. Griffith

BLAKELEY E. GRIFFITH, ESQ.

Nevada Bar No 12386

3883 Howard Hughes Pkwy., Ste 1100

Las Vegas, Nevada 89169

LOCAL RULE 9021 CERTIFICATION

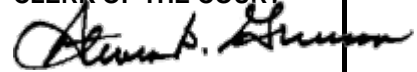
In accordance with LR 9021, counsel submitting this document certifies that the order accurately reflects the court's ruling and that (check one):

- ☐ The court has waived the requirement set forth LR 9021(b)(1).
- ☐ No party appeared at the hearing or filed an objection to the motion.
- ☒ I have delivered a copy of this proposed order to all counsel who appeared at the hearing, and any unrepresented parties who appeared at the hearing, and each has approved or disapproved the order, or failed to respond, as indicated below [list each party and whether the party has approved, disapproved, or failed to respond to the document]:

James D. Greene, Andrea M. Gandara, and Blakeley E. Griffith

☐ I certify that this is a chapter 7 or 13 case, that I have served a copy of this order with the motion pursuant to LR 9014(g), and that no party has objected to the form or content of the order.

EXHIBIT “I”



TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

SPANISH HEIGHTS ACQUISITION)
COMPANY LLC,)
)
Plaintiff,)
)
vs.)
)
CBC PARTNERS I LLC,)
)
)
Defendant.)
)
AND RELATED PARTIES)

CASE NO. A-20-813439-B
DEPT NO. XXXI

**TRANSCRIPT OF
PROCEEDINGS**

BEFORE THE HONORABLE JOANNA S. KISHNER, DISTRICT COURT JUDGE

MONDAY, NOVEMBER 15, 2021

IAN HUGHES' MOTION TO QUASH SUBPOENA

**MOTION TO QUASH TRIAL SUBPOENA AND FOR PROTECTIVE ORDER ON
ORDER SHORTENING TIME**

APPEARANCES:

FOR SJC VENTURES,
SPANISH HEIGHTS ACQUISITION,
AND JAY BLOOM:

JOSEPH A. GUTIERREZ, ESQ.

FOR DEFENDANTS AND
COUNTERCLAIMANTS:

MICHAEL R. MUSHKIN, ESQ.

RECORDED BY: FRANCESCA HAAK, COURT RECORDER
TRANSCRIBED BY: JD REPORTING, INC.

1 **LAS VEGAS, CLARK COUNTY, NEVADA, NOVEMBER 15, 2021, 2:50 P.M.**

2 * * * * *

3 THE COURT: Spanish Heights Acquisition versus CBC
4 Partners.

5 Is anybody -- I see Mr. Mushkin, and I see
6 Mr. Gutierrez. I also see that there is an Ian Hughes and a
7 Jay Bloom. Of course, this is a public courtroom. So I'm
8 going to ask the court recorder to go on the record, please.
9 And then I can give my intro blurb, please.

10 THE COURT RECORDER: We are on the record.

11 THE COURT: We're on the record. Okay. I appreciate
12 it. Thank you so very much.

13 Okay. We're on the record in Case Number 813439.
14 And just as a heads up, as you can see, you all are BlueJeans.
15 It looks like I've got a couple of people that I can see
16 audiovisually and a couple of people that I see names
17 underneath, but do not see themselves by picture.

18 This is a public courtroom regardless if people are
19 here present in court, which at present there's nobody present
20 here in court. But also it's a public courtroom.
21 Audiovisually, if people wish to get the BlueJeans link, they
22 are more than welcome to do so with caveats being that if
23 parties ask for certain things to be sealed and/or redacted.

24 If there is a confidential issue under Supreme Court
25 Rule 3, of course, the Court has to be made aware of that and

1 then would hear the reasoning for that. And then if I need to
2 ask anybody not to be a part, then I would address that only at
3 that time. But otherwise, as I said, everyone is welcome.
4 It's a public courtroom.

5 And at this juncture, it is a few moments before the
6 3:00 o'clock hour. You all know I always am on the bench
7 early, but is anyone waiting for anyone, or should we get
8 started in Case 813439, Spanish Heights Acquisition Company,
9 plaintiffs, versus CBC Partners and related counterclaims?

10 Because I didn't see counsel for the receivers.

11 Is counsel for the receiver going to be a part of
12 this? Do we know?

13 Let me go first to appearances first on behalf of SJC
14 Ventures, Spanish Heights Acquisition Company, LLC, in the --
15 and then a variety of different counterdefendants.

16 So, Mr. Gutierrez, do want to make your appearance,
17 please.

18 MR. GUTIERREZ: Yes, Your Honor. Good afternoon.
19 Joseph Gutierrez on behalf of Spanish Heights Acquisition
20 Company, LLC, and counterdefendants SJC Ventures, LLC, and Jay
21 Bloom in his individual capacity as a third-party defendant.

22 With me on the call as well is Mr. Bloom.

23 THE COURT: I'm sorry. I did not hear who you said
24 was also on the call with you.

25 MR. GUTIERREZ: Jay Bloom, third-party defendant,

1 he's also on the call.

2 THE COURT: Okay. Like I said. Everyone is welcome.
3 It's a public courtroom. Okay. Thank you.

4 Counsel on behalf of a variety of defendants and
5 counterclaimants, would you like to make your appearance,
6 please.

7 MR. MUSHKIN: Good afternoon, Your Honor. Mike
8 Mushkin, Bar Number 2421 on behalf of all defendants and
9 counterclaimants.

10 THE COURT: Okay. Wait. So you're, just so we're
11 clear, so all defendants, what we show is -- so let's make sure
12 we're clear because remember there was a little issue with how
13 our records show. Let me make sure we're on the same page.

14 So it was the Kenneth M. Antos --

15 MR. MUSHKIN: We do this every time.

16 THE COURT: I know because remember they had at one
17 point had you listed on behalf --

18 MR. MUSHKIN: I like it on both sides. That way I
19 can control the case.

20 UNIDENTIFIED SPEAKER: I changed that, Judge.

21 THE COURT: Okay. Okay. So, you're here on behalf
22 of all of defendants, and then you're also on behalf of
23 counterclaimants; correct, and then also third-party plaintiff,
24 5148 Spanish Heights, LLC; is that correct?

25 MR. MUSHKIN: That's correct, Your Honor.

1 THE COURT: Okay. Now, I saw that this does say Ian
2 Hughes has not appeared at other hearings but is listed as a
3 pro se.

4 So Mr. Hughes, is he still --

5 Well, I'm going to ask counsel. Mr. Mushkin, is he
6 still a part of this case?

7 MR. MUSHKIN: Your Honor, he was subpoenaed by
8 Mr. Gutierrez. And I believe he's here to make sure he is not
9 needed for trial on the 17th.

10 THE COURT: Okay. So let me go. Mr. Gutierrez, as I
11 recall, remember Mr. Hughes was here in the courtroom, and we
12 had the procedural issue. So, Mr. Gutierrez, should we address
13 that first? Do we need anything with regards to Mr. Hughes?

14 Go ahead, please.

15 MR. GUTIERREZ: (Video interference), Your Honor, I
16 e-mailed Mr. Hughes and told him that we withdrew the subpoena
17 and (video interference) appearance is no longer necessary. In
18 light of the settlement (video interference).

19 THE COURT: Okay. So is it correct then to state
20 that Mr. Hughes is more than welcome to stay listening in
21 because it's a public courtroom, if he wishes to do so, but he
22 has -- he is excused from any subpoena that would require his
23 attendance at a trial in Case Number 813439, or is it something
24 different?

25 Counsel, Mr. Gutierrez, please.

1 MR. GUTIERREZ: That's correct.

2 THE COURT: Okay. So, Mr. Hughes, you heard that;
3 right? It's a public courtroom. You're more than welcome to
4 listen in if you wish to, and if you have other things you need
5 to do, you're also welcome not to listen in.

6 Is there anything you need address, Mr. Hughes, or
7 should we just move forward?

8 MR. HUGHES: No, Your Honor. Thank you so much.
9 I'll leave the hearing now. Thank you for your time, Your
10 Honor.

11 THE COURT: Like I said, you're more than welcome to
12 say. It is a public courtroom.

13 Okay. It looks like some, one or two people also may
14 have additionally logged on. So let me restate what I said a
15 moment ago.

16 And that is, as we all know, it's a public courtroom
17 regardless of people are here in person. We have noted that
18 nobody is in person currently in this courtroom, but it's also
19 a public courtroom remotely. So people are more than welcome
20 to ask us for the BlueJeans link and are more than welcome to
21 listen into any hearing.

22 A couple of the ground rules, of course, with regards
23 to anyone who is not counsel or a party is, of course, they
24 have to keep themselves on mute --

25 When I say counsel or a party, that would in this

1 case also include a trustee -- I mean, a receiver and
2 receiver's counsel.

3 -- but does need to keep themselves on mute. And, of
4 course, everybody knows no one can record or take pictures or
5 anything during a hearing unless there's certain exceptions if
6 there had been a media request that had been signed. In this
7 case, there is no media request that has been signed. So
8 really we don't have those exceptions in this regard, but
9 everyone is, of course, welcome to listen in or audiovisually
10 or just audio, whatever they choose to do so.

11 So other than if we end up having a Supreme Court
12 Rule 3 issue on sealing and/or redacting or if there's some
13 confidentiality aspect that somebody asked the Court, after the
14 Court would hear any said request and any basis for said
15 request, then there may be an exception, but I don't know at
16 this juncture. So the Court takes no position on something
17 that has not yet been brought before me.

18 Without further ado, I'm going to go to counsel for
19 plaintiff/counterdefendants. Are you going to be speaking with
20 regards to this case, or is opposing counsel going to speak on
21 regards to this case?

22 And let's just make sure we're not waiting for
23 anybody else before we move forward. It is a few minutes after
24 the 3:00 o'clock hour.

25 So is anybody waiting for anybody that we should be

1 waiting -- hold off for?

2 MR. GUTIERREZ: No, there is not. Nobody elsewhere
3 waiting on. And I think at this stage Mr. Mushkin will read
4 the 14 points for the (indiscernible) points of the settlement
5 agreement.

6 THE COURT: Okay. And you all understand that this
7 is a public courtroom. So at this juncture, you know,
8 everything is available to anyone since...

9 Okay. So go ahead, Mr. Mushkin.

10 MR. MUSHKIN: Thank you, Your Honor. And we are
11 pleased to report to the Court that we have settled the matter.

12 THE COURT: Congratulations.

13 MR. MUSHKIN: Plaintiffs --

14 THE COURT: Go ahead, please.

15 MR. MUSHKIN: I'm sorry?

16 THE COURT: I said congratulations. Please feel free
17 to go ahead.

18 MR. MUSHKIN: Oh, thank you, Judge.

19 THE COURT: And you know everything is being
20 recorded.

21 MR. MUSHKIN: For whatever reason, the sun is just
22 right in my window, coming right in (indiscernible).

23 Plaintiff/counterdefendants third-party defendant SJC
24 Ventures, LLC, Spanish Heights Acquisition Company and Jay
25 Bloom, collectively referred to as plaintiffs, on the one

1 hand --

2 THE COURT: Wait.

3 MR. MUSHKIN: -- and defendant counterclaimant CBC I,
4 CBC Partners, 5148, Kenneth and Sheila Antos as trustees for
5 the Kenneth and Sheila Antos Living Trust, Kenneth and Sheila
6 Antos trust parties, Dacia, LLC, on the other hand are referred
7 to as defendants or 5148 parties.

8 THE COURT: Thank you. Mr. Mushkin, before you
9 continue --

10 MR. MUSHKIN: Your Honor --

11 THE COURT: Wait. Mr. Mushkin. Mr. Mushkin. Before
12 you continue, I just want to confirm, is nobody had requested
13 this Court that anything be sealed or treated as confidential.
14 So, but sometimes people do with regards to settlement terms.
15 I did not hear anybody say that. So this is just being
16 publicly recorded just like any other hearing, and, you know,
17 would be available. So I just want to make sure everyone
18 understood that just in case anyone did not hear me earlier,
19 like I said, it's really up to you that you --

20 MR. GUTIERREZ: And, Your Honor, on behalf of the
21 plaintiff/counterdefendant, we would prefer the terms kept
22 outside the public realm. We just would like to put on the
23 record that there is a settlement, and Mr. Bloom can confirm
24 the settlement, but we have agreed upon deal points that we can
25 submit for the Court. We'd much rather have that done (video

1 interference) off the record.

2 THE COURT: Okay. Well, the Court would have to do
3 an analysis --

4 MR. MUSHKIN: Your Honor.

5 THE COURT: -- under --

6 Well, first let me hear from Mr. Mushkin on behalf of
7 his clients, and then I'm going to have to address Supreme
8 Court Rule 3.

9 Go ahead, please, Mr. Mushkin.

10 MR. MUSHKIN: Your Honor, normally, I wouldn't have
11 an objection, but I don't think we can do so in this matter
12 because these are stated terms of claims that will then be
13 disclosed in the bankruptcy court as part of the claims under
14 the plan. So while normally I would agree with Mr. Gutierrez,
15 in this particular circumstance, these numbers are going to be
16 public as a matter of law in the federal court. No sense in
17 creating a burden (video interference). That would be my
18 point.

19 THE COURT: Okay.

20 MR. GUTIERREZ: If I could just address that, Your
21 Honor.

22 THE COURT: Sure.

23 MR. GUTIERREZ: There will be certain terms of
24 repayment in the bankruptcy, but there are other terms in here
25 that have no business being in the public record. And I'm

1 looking at the list of people that are on the hearing, I see a
2 David Ferrera (phonetic), who I understand to be a reporter.

3 And at this time my client just would rather have
4 these terms which have been agreed upon remain confidential.
5 And whatever is publicly filed in bankruptcy court can be
6 reported on then.

7 THE COURT: Okay. Remember, the Court has the
8 obligation under Supreme Court Rule 3, if any party, right, is
9 requesting something to either be sealed or redacted, which in
10 this case, since you are on, excuse me, audiovisually and it's
11 being recorded, it implicitly is what I'm hearing you say,
12 Mr. Gutierrez, is that you're requesting that part of today's
13 transcript either be sealed or recorded, or what --

14 Can you please give me the scope of your request and
15 then give me your bases for the request, particularly in light
16 of the fact that Mr. Mushkin said that these are going to be
17 disclosed terms in a public proceeding in a bankruptcy court
18 just so the Court has a full understanding because as you can
19 appreciate, I know many things about this case, but what you
20 all agreed upon, that I don't know yet.

21 Go ahead, please, sir.

22 MR. GUTIERREZ: There will be repayment terms as part
23 of the settlement agreement which will be included in the
24 bankruptcy plan as part of the final settlement.

25 THE COURT: Okay.

1 MR. GUTIERREZ: But there are other terms that have
2 been agreed upon that we believe should remain confidential
3 that won't be (video interference) disclosed in the bankruptcy
4 proceeding. And, you know, at this time we'd request those be
5 sealed or be submitted to the Court as part of the -- as part
6 of (video interference) settlement. We're memorializing the
7 terms of the final settlement. We've reached an agreement on
8 every deal point, but we'd much rather have these terms not
9 placed on the record.

10 My client can agree that he's read the deal points
11 and is agreeable to them, but placing them on public record is
12 not what we intend to do.

13 THE COURT: Okay. Well, let me walk through, you
14 know, with regards to Supreme Court Rule 3. The Court has to
15 balance, right, the public's interest in knowing, right, versus
16 does it meet one of the qualifications for it to be in this
17 case part of the transcript of today's hearing be sealed.

18 So is there -- while I appreciate your client's
19 position, I have to evaluate, right, from legal bases and the
20 factors to get considered under Supreme Court Rule 3.

21 So is there something more you wish to provide the
22 Court?

23 MR. GUTIERREZ: There are certain terms, Your Honor,
24 that my client (video interference) be kept confidential
25 (indiscernible) regarding (video interference) of the property

1 until the (video interference) is made under the agreement the
2 potential terms -- the entire agreement (video interference),
3 and there's been some other terms (video interference) in the
4 settlement agreement agreed upon that my client would not
5 rather not have (video interference) publicly.

6 And alternatively the Court can have us submit this
7 under seal (video interference) put on the record, especially
8 with somebody who is reporting this publicly. That would be
9 (video interference).

10 THE COURT: Okay. Well, let me get a quick point of
11 clarification. In this case, for this hearing, the Court did
12 not receive any media request.

13 Of course, the same thing is if you all were
14 appearing here in person in the courtroom. Anybody is welcome
15 as long as they are wearing a mask, right, and complying with
16 all the county protocols, all the administration protocols,
17 right, which is outside of this independent Court's purview.
18 As long as all of those are complied with, a person is more
19 than welcome to sit in any hearing with certain exceptions,
20 right.

21 In general, this wouldn't fall within one of those
22 exceptions, and we don't need to go into all this
23 (indiscernible) family court exceptions and other things like
24 that.

25 So if that's not the situation, right, then the Court

1 has to look at, and I appreciate sometimes are confidential
2 terms and sometimes people -- the attorneys and/or litigants,
3 if they're representing themselves determine what they wish to
4 place, quote, on the record for purposes of a resolution.
5 That's not a Court ordered or directed aspect of the
6 proceedings.

7 So I'm hearing what you're saying, Mr. Gutierrez, but
8 I'm not hearing a basis, right, with regards to the Court
9 needing, as it needs to do to balance the confidential nature.
10 Is there a way that you all could, A, do you need me to pause
11 for a second and maybe you and Mr. Mushkin speak off-line for a
12 moment. You know, call each other or e-mail or whatever you
13 need to do and speak with your client.

14 MR. MUSHKIN: Your Honor.

15 THE COURT: Go ahead, Mr. Mushkin.

16 MR. MUSHKIN: I think that Mr. Gutierrez is concerned
17 that the last two items on our settlement, all of the other
18 items will be a matter of public record in the federal court.
19 So it's not of real consequence.

20 And I think I can reword those, Joe, so that they are
21 innocuous. In other words, I will reference that there is an
22 agreement regarding the use of the property for a period of
23 time and compliance with the rules and regulations but nothing
24 more than that. If that will satisfy you, Joe, I can -- I
25 think we can just get this on the record and be done.

1 MR. GUTIERREZ: And, Your Honor, my concern was that
2 there (video interference), and then I'd (video interference)
3 kind of caught off guard --

4 THE COURT: Sure.

5 MR. GUTIERREZ: I just have to check with my client
6 as far as --

7 THE COURT: Sure.

8 MR. GUTIERREZ: -- I understand Mr. Mushkin's
9 position that some of the repayment terms are part of the
10 bankruptcy, and I'm fine if those are actually read (video
11 interference) outside Points 13 and 14.

12 THE COURT: Okay. So just so this Court --

13 MR. MUSHKIN: Does that get us there, Joe?

14 THE COURT: Sorry. Just --

15 No.

16 MR. GUTIERREZ: Yeah --

17 THE COURT: Now, remember, everything you're saying
18 now is fully being recorded on a public record. So that's why
19 the Court was asking you.

20 The Court is fine maintaining everything perfectly
21 fine in a public record because at this juncture the Court has
22 not had an analysis, right. Supreme Court rules does say any
23 person may request that the Court seal or redact the Court
24 records for a case that's subject to these rules. Usually
25 you're supposed to file a written motion, or the Court may upon

1 its own motion initiate proceedings to seal or redact a Court
2 record.

3 The motion to seal or redact a Court record must
4 disclose in its title and document code that the sealing or
5 redaction being sought. The motion must be served on all
6 parties NRCP 5. But here you have, in the middle of a hearing.
7 So the hearing kind of has a little bit of a different
8 component, right. Because you all, and I appreciate you
9 resolved things over the weekend.

10 Did you say you resolved them over the weekend -- or
11 whatever.

12 You resolved them before your hearing that was set
13 today on a couple of fully noticed public matters, and so
14 BlueJeans links are more than welcome to be given to any member
15 of the public regardless of what they do for a living, and the
16 media has full access to the courts.

17 Now, the access has got different rules depending on
18 if there is a media request signed by a Court versus just a
19 request for a BlueJeans link. Okay. So that being the case,
20 if there is a specific --

21 Is there an agreement between the parties --

22 Sorry. Mr. Gutierrez, there's a problem with both of
23 us talking at the same time. We just won't get you a nice
24 clear record.

25 So is there a request under Supreme Court Rule 3, or

1 did Mr. Mushkin's proposal meet your needs, or do we need to
2 take a brief break? What are you requesting?

3 Go ahead, sir.

4 MR. GUTIERREZ: If we can take (video interference)
5 so I can talk to my client, but my proposal would be just to
6 state that the parties -- and, Mr. Mushkin and I are agreeable
7 on the exact terms of the 14 points we've agreed upon.
8 Mr. Bloom has read them. He confirms he's agreeable to them.
9 So we don't have to read them into the record. If that's an
10 option, I think, if you could give us just maybe a few minute
11 break to talk to Mr. Mushkin and Mr. Bloom.

12 THE COURT: Sure.

13 MR. GUTIERREZ: (video interference), but for
14 purposes of this settlement, we just want to inform the Court
15 that the case is settled. And procedurally, what would happen
16 next in light of triggering the settlement agreement.

17 THE COURT: So --

18 MR. GUTIERREZ: (video interference) vacating the
19 trial and if one of the benchmarks is not met, resetting it for
20 a bench trial. So those are the types of things we were hoping
21 to discuss in court today, not (indiscernible) terms.

22 THE COURT: Okay. So, Mr. Gutierrez, if you need a
23 few moments to discuss something with your client, and,
24 Mr. Mushkin, what we can do is we can mute you from our end.
25 Make sure you mute yourself from your end, and then just you