

IN THE SUPREME COURT OF THE STATE OF NEVADA

* * * * *

CLA PROPERTIES LLC, A
CALIFORNIA LIMITED LIABILITY
COMPANY,

Appellant,

vs.

SHAWN BIDSAL, AN INDIVIDUAL,

Respondent.

CLA PROPERTIES LLC, A
CALIFORNIA LIMITED LIABILITY
COMPANY,

Appellant,

vs.

SHAWN BIDSAL, AN INDIVIDUAL,

Respondent.

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APPELLANT'S APPENDIX

VOLUME 25

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EXHIBIT 264

In the Matter Of:
Bidsal, Shawn vs CLA Properties, LLC

ARBITRATION DAY 1

March 17, 2021

Job Number: 735323

1 J A M S
2 * * * * *
3
4 SHAWN BIDSAL, an individual,)
5 Claimant/Counter-Respondent,)
6 v.) JAMS Ref No. 1260005736
7 CLA PROPERTIES, LLC, a)
8 California limited liability)
9 company,)
Respondent/Counterclaimant.)

10

11

12

13

14

DAY 1

15

ARBITRATION

16

BEFORE DAVID WALL, ESQ., ARBITRATOR

17

LAS VEGAS, NEVADA

18

WEDNESDAY, MARCH 17, 2021

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Reported By Mia C. O'Sullivan, RPR, NV CCR No. 964
Job No. 735323

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1 JAMS ARBITRATION,
2 taken at 3800 Howard Hughes Parkway, 11th Floor, Las
3 Vegas, Nevada, on Wednesday, March 17, 2021, at
4 8:47 a.m., before Mia C. O'Sullivan, Certified Court
5 Reporter, in and for the State of Nevada.

6

7 APPEARANCES:

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22

23 Also Present:

24

25 Shawn Bidsal
Benjamin Golshani

25

(Via Zoom)

Richard Agay, Law Offices of Rodney T. Lewin

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1 LAS VEGAS, NEVADA; WEDNESDAY, MARCH 17, 2021

2 8:47 A.M.

3 ***

4 THE ARBITRATOR: This is Bidsal versus CLA
5 Properties, LLC.

6 Appearances for the record.

7 Plaintiff?

8 MR. GERRARD: Douglas Gerrard and Jim Shapiro for
9 Shawn Bidsal.

10 THE ARBITRATOR: Who's also present?

11 MR. GERRARD: Mr. Bidsal is present.

12 MR. LEWIN: Rodney Lewin for Mr. -- for CLA
13 Properties. And Ben Golshani is also present.

14 THE ARBITRATOR: Okay. All right. A couple
15 housekeeping things before we start. One is masks are a
16 requirement at JAMS. We can socially distance to the
17 extent you find it necessary. Witnesses, other than the
18 parties or party representatives, will be appearing by
19 Zoom; is that right?

20 MR. GERRARD: Some may come in person.

21 THE ARBITRATOR: Okay. We're able to have a way
22 for them to be able to testify. Other than that,
23 everybody's been able to log into Zoom; right?

24 MR. LEWIN: I haven't logged into Zoom yet, Your
25 Honor, but I will figure it out.

ARBITRATION DAY 1 - 03/17/2021

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08:48:14 1 THE ARBITRATOR: You don't have to at this point

08:48:15 2 if you don't need to.

08:48:16 3 Okay. I was asked earlier -- I mean, in the

08:48:24 4 summer here in Vegas we have a coat rule. It allows

08:48:28 5 people -- if you're more comfortable in here -- I know

08:48:31 6 six or eight people in one room, it can get a little

08:48:35 7 warm. I don't care. All right?

08:48:37 8 MR. LEWIN: Thank you.

08:48:39 9 THE ARBITRATOR: So just make yourselves

08:48:40 10 comfortable.

08:48:42 11 In terms of hearing procedures, the only thing I

08:48:43 12 would throw in is with the approval of the parties,

08:48:49 13 there may be times where I need to ask questions to

08:48:52 14 clarify something in my own mind, but I won't do it if

08:48:56 15 anybody objects to that being part of the procedure.

08:48:59 16 MR. LEWIN: No objection from our side, Your

08:48:59 17 Honor.

08:49:02 18 MR. GERRARD: I don't think we have an

08:49:03 19 objection --

08:49:03 20 MR. SHAPIRO: No.

08:49:04 21 THE ARBITRATOR: And of course you can

08:49:06 22 contemporaneously object if I --

08:49:06 23 MR. GERRARD: I appreciate that.

08:49:08 24 THE ARBITRATOR: -- reach a subject that somehow

08:49:11 25 would lead -- would lead to something inadmissible. All

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08:49:11 1 right.

08:49:13 2 First order of business is going to be the MILs

08:49:18 3 that I deferred till this morning. But before I do

08:49:22 4 that, I don't know what your -- your preference is as to

08:49:33 5 Mr. Main's testimony. There was an objection filed by

08:49:38 6 his attorney last week. I sent out an email through --

08:49:43 7 through Mara here at JAMS if anybody wanted to respond

08:49:48 8 to that objection; no one did. I got an email last

08:49:51 9 night from Mr. --

08:49:51 10 MR. GERRARD: Doerr.

08:49:57 11 THE ARBITRATOR: -- Doerr for Mr. Main saying he

08:50:00 12 hadn't received any response. I hadn't either. I

08:50:02 13 figured if there was no response, there was no objection

08:50:03 14 or you guys had worked something out with Mr. Main. I

08:50:09 15 don't know if there's anything else you want to add to

08:50:12 16 the record.

08:50:13 17 MR. LEWIN: Are we on? Okay.

08:50:14 18 So we -- we didn't respond to the objection, per

08:50:16 19 se, because it's -- it appears to me that his

08:50:18 20 statement -- that he doesn't have to appear because he's

08:50:21 21 too busy, he -- it's just not sufficient. He can appear

08:50:25 22 by Zoom like everybody else.

08:50:27 23 THE ARBITRATOR: Well, no one -- no one objected

08:50:29 24 to his attorney's request to not have him present.

08:50:33 25 MR. LEWIN: Right.

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08:50:34 1 THE ARBITRATOR: I specifically sent out an email
08:50:36 2 asking for, "If anybody has a response to this, let me
08:50:41 3 know."

08:50:43 4 Absent a response, I had the same conclusion that
08:50:46 5 his attorney did, which is that no one had an objection.
08:50:49 6 So I don't know if you're going to agree to use his
08:50:52 7 deposition. Whatever you agree to is fine, but I'm --
08:50:56 8 have not stepped in to -- to address the objection in
08:51:03 9 any way because I didn't get any feedback, timely or
08:51:09 10 not, based on the email I sent out. So as it stands
08:51:12 11 now, I'm not compelling him to come.

08:51:17 12 MR. LEWIN: Well, I think in that case -- I don't
08:51:19 13 know. Maybe I can confer with them and we'll talk about
08:51:23 14 what we need to do. I think the fact that -- the fact
08:51:27 15 that -- it still should be open that he should be
08:51:29 16 ordered to appear by Zoom. There's --

08:51:31 17 THE ARBITRATOR: Nobody responded.

08:51:35 18 MR. LEWIN: Okay.

08:51:35 19 MR. GERRARD: And we're -- we're in line with
08:51:36 20 what Your Honor just stated. Obviously, we reserve the
08:51:39 21 right to use his deposition testimony since he's not
08:51:42 22 available, but other than that, we don't expect him to
08:51:45 23 testify live.

08:51:46 24 THE ARBITRATOR: Okay. If you guys can work
08:51:48 25 something out, great. Otherwise, I wouldn't otherwise

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08:51:53 1 get involved.

08:51:55 2 All right. Two motions in limine that I deferred

08:52:02 3 until this morning. First one was CLA's motion in

08:52:09 4 limine regarding Mr. Bidsal's evidence regarding taxes.

08:52:14 5 And really, although they were both -- I took them both

08:52:19 6 together, it's the other one that I really wanted to

08:52:22 7 hear argument on. But if there's anything you want to

08:52:24 8 add to what's in this particular --

08:52:27 9 MR. LEWIN: On the taxes?

08:52:28 10 THE ARBITRATOR: Yeah.

08:52:29 11 MR. LEWIN: So as I've heard throughout the

08:52:33 12 litigation and as I've seen in the trial brief in the

08:52:38 13 opposition, Mr. Bidsal intends to argue that he should

08:52:42 14 not be compelled to restore the funds that he improperly

08:52:47 15 distributed because he's already paid taxes on them.

08:52:52 16 The evidence is going to show that he was advised not to

08:52:55 17 make any distributions but he did so anyways. He

08:52:57 18 doesn't have an expert, and the fact that he -- all he

08:53:01 19 can basically say is that, you know, "I filed my K-1s

08:53:05 20 and I paid taxes." But all that's hearsay.

08:53:07 21 So without -- I don't think he should be allowed

08:53:10 22 to testify about the tax effect of his having to restore

08:53:14 23 the funds because that would be the subject of expert

08:53:18 24 testimony. And -- and the fact is, is that he is a --

08:53:24 25 not to say he's a bank robber, but if a bank robber robs

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08:53:29 1 the bank and pays taxes on the money and then is
08:53:31 2 required to restore it, the bank robber doesn't get to
08:53:33 3 say, "I get a credit because I paid taxes on it."
08:53:36 4 So I think that he's not an expert. He refused
08:53:41 5 to provide his tax returns so we could see what the tax
08:53:44 6 effect was of his -- of his use of K-1s, and I don't
08:53:48 7 think he should be allowed to testify about that
08:53:50 8 subject.
08:53:51 9 THE ARBITRATOR: Mr. Shapiro?
08:53:55 10 MR. SHAPIRO: Yes, Your Honor.
08:53:56 11 Look, number one, it's not hearsay. Mr. Bidsal
08:54:00 12 can testify about his own personal knowledge about
08:54:02 13 whatever it is he wants to testify to. They had the
08:54:02 14 opportunity to take his deposition. They did, in fact,
08:54:07 15 take his deposition. They chose not to ask that. Well,
08:54:08 16 actually, I do think they asked questions in that regard
08:54:10 17 and they have his testimony. We're obviously limited to
08:54:13 18 the documents that have been properly produced. We're
08:54:16 19 prepared to move forward based on that.
08:54:19 20 His bank robber analogy is completely
08:54:23 21 inapplicable. That's his theory of the case, but
08:54:24 22 that's -- that's certainly up for debate, and this isn't
08:54:26 23 a situation of a bank robber. It's not expert
08:54:29 24 testimony. Mr. Bidsal can testify regarding, you know,
08:54:33 25 his own taxes just like he can testify about anything

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08:54:37 1 else. And to the extent they want to make objections
08:54:39 2 when he offers any testimony, they can do so and Your
08:54:43 3 Honor can rule on it.

08:54:45 4 And then finally, they argue that we refused to
08:54:46 5 produce it, but when you look at the request for
08:54:47 6 production of documents that they attached, it's
08:54:50 7 specifically limited to income received from Green
08:54:53 8 Valley after August 2, 2017, and those documents have
08:54:56 9 been produced. And those will be introduced.

08:54:58 10 And so it's inappropriate to try and limit any of
08:55:02 11 Mr. Bidsal's testimony before we even start the
08:55:04 12 arbitration. If during the process of -- of his
08:55:06 13 testimony, they want to make --

08:55:07 14 THE ARBITRATOR: Do you need him to slow down?

08:55:07 15 THE REPORTER: It couldn't hurt.

08:55:07 16 THE ARBITRATOR: Okay.

08:55:07 17 MR. SHAPIRO: That's going to be hard, Your
08:55:15 18 Honor. I will try. I will try.

08:55:15 19 Are you hearing me loud and clear?

08:55:15 20 THE REPORTER: Hearing you loud and clear.

08:55:18 21 MR. SHAPIRO: That has never been a problem for
08:55:18 22 anyone. But okay, I will try and slow down.

08:55:26 23 So look, this really is a situation where Your
08:55:29 24 Honor just needs to hear the evidence and rule on
08:55:31 25 objections as they come. It would be inappropriate to

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08:55:35 1 say he can't testify before it starts.

08:55:37 2 THE ARBITRATOR: All right. I'm going to deny
08:55:39 3 the motion as a blanket prohibition of any information
08:55:42 4 regarding taxes. I understood part of the relevance of
08:55:45 5 it from the claimant's side to be related to the issue
08:55:52 6 of when the sale would be effective, and if it were to
08:56:00 7 be determined that the sale is effective in September of
08:56:09 8 2017, there is an effect on the way he's filed the taxes
08:56:15 9 since then.

08:56:17 10 Reserve -- I'm going to deny the motion,
08:56:18 11 reserving to you the right to object contemporaneously
08:56:22 12 to any testimony which gets into expert testimony or
08:56:27 13 otherwise runs afoul of the rules of evidence. All
08:56:27 14 right.

08:56:31 15 Let's go off the record for a moment.

08:56:39 16 (Discussion off the record.)

08:56:39 17 THE ARBITRATOR: Okay. The motion in limine
08:56:45 18 regarding the issue of tender. I've obviously reviewed
08:56:52 19 all the briefs. Anything you want to add to what's in
08:56:54 20 there?

08:56:55 21 MR. LEWIN: No, Your Honor. I think -- I think
08:56:56 22 that our briefs say it. I mean -- there is one thing
08:56:58 23 that's really -- what we have when -- in a purchase and
08:57:03 24 sale contractor, the obligations of the seller and the
08:57:06 25 buyer are mutually dependent conditions. When the

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08:57:11 1 seller repudiates the contract, the buyer does not have
08:57:16 2 to continue to reoffer and reoffer and reoffer and chase
08:57:18 3 him down.

08:57:19 4 That's something I didn't cover in our brief, the
08:57:21 5 idea of mutually dependent conditions. Once he
08:57:24 6 breached -- once he repudiated, we're done, and his
08:57:28 7 conduct after -- I mean, the ink wasn't even dry when he
08:57:31 8 was -- when he filed a motion to vacate. So once he did
08:57:33 9 that, the -- the CLA was under no further obligation to
08:57:39 10 tender anything until he came forward and indicated a
08:57:43 11 willingness to proceed. And none of his conduct
08:57:45 12 indicates that he's doing that.

08:57:47 13 THE ARBITRATOR: Mr. Shapiro?

08:57:48 14 MR. SHAPIRO: Thank you, Your Honor.

08:57:50 15 Really what he's trying to do is a summary
08:57:52 16 judgment. He -- he's trying to cut off the argument
08:57:55 17 before he can make it, and from a strategic standpoint,
08:57:59 18 that's not a bad strategy, but it's an inappropriate
08:58:01 19 strategy. That's not what the purpose of a motion in
08:58:03 20 limine is for, and you can't bootstrap a motion for
08:58:07 21 summary judgment into a motion in limine.

08:58:08 22 The reality is that at no point up to this time
08:58:12 23 has that issue been addressed by anyone. It wasn't
08:58:13 24 addressed by the arbitrator. In fact, the arbitrator's
08:58:16 25 orders said, "Mr. Bidsal, you're to convey your

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08:58:19 1 membership interest within ten days of this order." So
08:58:21 2 the arbitrator couldn't have ruled upon the tender issue
08:58:25 3 because it hadn't happened because that was part of what
08:58:28 4 was going to be the result of -- of his order.

08:58:30 5 Judge Kishner certainly didn't rule upon the
08:58:34 6 issue; it would have been inappropriate for her to do
08:58:36 7 so. But in any event, on March 10, 2020, she entered an
08:58:41 8 order staying her order to confirming the award, and so
08:58:44 9 that order is stayed pending the appeal that's still up
08:58:47 10 with this Nevada Supreme Court. And I don't believe
08:58:51 11 Your Honor has addressed it. It was in a footnote in an
08:58:54 12 order that you did previously, but that's not binding
08:58:56 13 upon the case, certainly, before any evidence has come
08:58:59 14 in. I don't believe Your Honor intended to say that the
08:59:01 15 issue of tender has been conclusively resolved.

08:59:06 16 Again, the point of a motion in limine is to
08:59:09 17 address evidentiary issues before an arbitration occurs.
08:59:15 18 In this case, number one, that's not the intent of what
08:59:18 19 they're trying to do, but number two, again, it should
08:59:21 20 be ruled on as the evidence comes in. If there's some
08:59:25 21 specific piece of evidence that they want Your Honor to
08:59:28 22 object to, or that they want to object to, they can make
08:59:30 23 the objection at the time and Your Honor can rule on it.

08:59:32 24 But they shouldn't be allowed to use a motion in
08:59:35 25 limine to preclude us from introducing evidence as a

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08:59:39 1 blanket matter or from making arguments, which is
08:59:41 2 essentially what they're attempting to do.

08:59:43 3 MR. LEWIN: Your Honor, there's no evidence here.
08:59:44 4 What's the evidence? They were ordered; we tendered. I
08:59:49 5 don't even think a tender is necessary, first of all.
08:59:52 6 We briefed that earlier -- in the earlier proceedings,
08:59:54 7 and their cases that they've -- that they submitted are
08:59:56 8 nothing more than a rehash of what they submitted
08:59:58 9 before.

09:00:00 10 Number two -- the case -- the Laperla case says
09:00:07 11 that a buyer does not have to do -- is not required to
09:00:09 12 do anything futile. They were ordered -- so they were
09:00:12 13 ordered to convey. Four days later, they filed a motion
09:00:15 14 to vacate and you have the whole history of what's
09:00:18 15 happened, including the appeal. And then we have this
09:00:21 16 arbitration. There is no evidence.

09:00:24 17 If they could -- if they can offer any evidence
09:00:26 18 that suggests that a -- somehow that they have offered
09:00:29 19 to buy -- I mean, to sell under the terms of the
09:00:32 20 arbitration award, there isn't any. So what they're
09:00:36 21 trying to do is just create an issue so that -- so that
09:00:39 22 they can throw some mud on the wall and see what sticks.

09:00:46 23 MR. SHAPIRO: Can I respond, Your Honor?

09:00:46 24 THE ARBITRATOR: Yeah. Go ahead.

09:00:50 25 MR. SHAPIRO: Mr. Lewin has acknowledged that

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09:00:55 1 this is not an appropriate motion in limine. He just
09:00:59 2 fairly argued to you that there's no evidence. Well, if
09:01:01 3 there's no evidence, then why are we even arguing the
09:01:04 4 point? If, as he claims, there is no evidence that
09:01:06 5 anyone is going to introduce on the topic, then the
09:01:09 6 entire motion in limine is moot because the point of a
09:01:11 7 motion in limine is to address evidence, and he's saying
09:01:14 8 there is none.

09:01:15 9 And that simply confirms that what he's trying to
09:01:18 10 do is bootstrap a summary judgment motion into a motion
09:01:22 11 in limine, which is inappropriate. The reality is there
09:01:24 12 is evidence. Your Honor can consider the evidence as it
09:01:26 13 comes in, he can make objections. You'll rule on those
09:01:29 14 objections and we will go through the arbitration
09:01:31 15 process. And then at the end, both sides will have an
09:01:34 16 opportunity to make the arguments that they want to make
09:01:35 17 and Your Honor will decide the issue.

09:01:38 18 MR. LEWIN: What I meant by there is no evidence
09:01:38 19 on -- there's not evidence that they were -- that they
09:01:42 20 ever tendered purportments.

09:01:42 21 THE ARBITRATOR: All right. I'm going to deny
09:01:43 22 the motion on this basis. I think it is, as Mr. Shapiro
09:01:46 23 states, more of a dispositive motion on a claim within
09:01:51 24 the amended demand for arbitration as opposed to a
09:01:56 25 motion in limine. In fairness, though, I will tell you

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09:02:00 1 this, and we'll work backwards: In terms of the issue
09:02:06 2 of a tender after the decision from Judge Haberfeld in
09:02:15 3 April of 2019, I think it's fair for you to know that
09:02:21 4 I'm not really persuaded that a tender at that point is
09:02:24 5 necessary.

09:02:25 6 I know that within days, I want to say -- I don't
09:02:32 7 know if it was a week -- within days of the final award,
09:02:37 8 there was a motion to vacate on federal court and then
09:02:43 9 state court following a determination. And I think it
09:02:48 10 would have been inappropriate for a tender to take place
09:02:52 11 while a motion to vacate is pending. When the motion to
09:02:59 12 vacate was denied, almost immediately, if I have my
09:03:02 13 dates correct, there was a motion to stay enforcement of
09:03:07 14 Judge Haberfeld's award and Judge Kishner's order
09:03:13 15 confirming that award.

09:03:14 16 At that point, with a motion to stay pending, it
09:03:16 17 would have been inappropriate for there to be a tender.
09:03:20 18 I'm just telling you -- I've denied the motion, but I'm
09:03:25 19 just telling you so that you know going in, I'm not
09:03:29 20 persuaded a tender was necessary at that point.
09:03:30 21 Certainly once a stay was in place, a tender would be
09:03:34 22 futile because there's an order of the Court staying the
09:03:37 23 final award and the direction from Judge Haberfeld that
09:03:43 24 the sale took place.

09:03:45 25 With respect to the tender back in August of

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09:03:48 1 2017 -- or September of 2017, I mean, it's fair for you
09:04:01 2 to know at this point, even while I'm denying the
09:04:04 3 motion, that what I put in that footnote in July of 2020
09:04:08 4 I still believe to be the case, based on the evidence
09:04:11 5 and the law. But, I mean, that's sort of an advisory
09:04:20 6 ruling, even though I'm denying the motion in limine.

09:04:25 7 All right.

09:04:25 8 MR. LEWIN: I have one other thing, Your Honor.

09:04:25 9 THE ARBITRATOR: Yeah.

09:04:28 10 MR. LEWIN: I'm looking at the briefs and the
09:04:30 11 evidence -- the claimant's exhibits. And it's clear now
09:04:36 12 that what's going to happen is that they're going to try
09:04:40 13 to relitigate the drafting issue, who is the -- who was
09:04:45 14 the drafter of the operating agreement. That is a --
09:04:51 15 that drafting issue was primarily litigated in the
09:04:54 16 arbitration, number one. A finding was made that
09:04:57 17 Mr. Bidsal was the principal drafter. It shouldn't be
09:05:00 18 the subject of relitigating or pre-litigation here, and
09:05:03 19 I just want to quote --

09:05:05 20 MR. GERRARD: So are we making a new motion in
09:05:08 21 limine?

09:05:08 22 THE ARBITRATOR: Yeah. I mean, obviously some
09:05:08 23 notice would have been nice. I'm aware that in Judge
09:05:12 24 Haberfeld's order, footnote 5 as well as paragraph 17, I
09:05:20 25 think, talk about who the drafter was and ended up

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09:05:24 1 indicating that it didn't really matter either way,
09:05:28 2 something along those lines, that his rulings wouldn't
09:05:30 3 be any different than if Mr. Golshani drafted it.

09:05:35 4 MR. LEWIN: Well, he says -- he actually makes a
09:05:36 5 finding in paragraph 5 -- paragraph 9 on page 5, that
09:05:40 6 Mr. Bidsal was the principal draftsman. Also on
09:05:43 7 paragraph 7 -- page 9, paragraph 17. But there's even
09:05:46 8 something more than that. Look, I know --

09:05:49 9 THE ARBITRATOR: What I said was there really
09:05:51 10 isn't a motion pending.

09:05:53 11 MR. LEWIN: Well, I would like to make a motion.

09:05:56 12 MR. GERRARD: Of course we object.

09:05:57 13 THE ARBITRATOR: We provide notice, generally,
09:05:59 14 but I'll let you be heard.

09:06:01 15 MR. LEWIN: Okay. The -- I can object on an
09:06:05 16 ongoing basis. I thought we'd just get it on the table
09:06:07 17 here because there's some issues here. But on top of --
09:06:10 18 on top of what Judge Haberfeld ruled, the agreement
09:06:17 19 provides a recital in it.

09:06:23 20 Oh, by the way, the reason -- one of the reasons
09:06:25 21 I'm making this motion is because in the -- when
09:06:28 22 Mr. Bidsal made a motion to stay, he -- they represented
09:06:33 23 that the parties' dispute in this arbitration has --
09:06:36 24 hold on a second. He says it was represented that
09:06:45 25 Bidsal is in -- quote, "Bidsal is in no way trying to

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09:06:48 1 relitigate the first arbitration. The matter is now
09:06:51 2 before the supreme court and would serve no purpose to
09:06:53 3 rehash the matter now."

09:06:55 4 That was in his -- in his motion to stay. Now --
09:06:59 5 so even if Judge Haberfeld was wrong, the main focus,
09:07:05 6 what I'm talking about now, is that there is a recital
09:07:06 7 in Article 13 of the operating agreement, which is the
09:07:08 8 subject of what we're talking about, which says, quote,
09:07:13 9 "This agreement has been prepared by David LeGrand."
09:07:17 10 That's conclusive. That's under NRS 47.2402,
09:07:23 11 establishing the conclusive truth -- conclusive
09:07:27 12 presumption of the truth of a recital in a written
09:07:29 13 contract.

09:07:29 14 And that was even recited to me by Mr. Gerrard in
09:07:32 15 one of the depositions when we were talking about the
09:07:36 16 deed in lieu, he actually said -- sorry.

09:07:43 17 THE ARBITRATOR: Are we just making a record
09:07:46 18 now --

09:07:46 19 MR. LEWIN: Well, no.

09:07:47 20 THE ARBITRATOR: -- preserving the issue?
09:07:47 21 Because nobody is on notice of this. Nobody's had a
09:07:50 22 chance to look at the application of this statute.
09:07:52 23 Nobody's had a chance to look at the transcript that
09:07:55 24 you're talking about.

09:07:56 25 We do motions in limine with deadlines so other

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09:07:57 1 people can have written motions, prepare oppositions,
09:08:00 2 and not just have to address it off the cuff without
09:08:04 3 having prepared. That's sort of -- that's sort of the,
09:08:08 4 you know, notion of fairness that goes behind the
09:08:11 5 concept of a motion in limine. So I'm -- I haven't had
09:08:14 6 a chance to look at any of this.

09:08:16 7 MR. LEWIN: Well, I think you only have to
09:08:19 8 look -- I understand that. I would, then, like to make
09:08:21 9 the motion. They can have a chance to respond. If
09:08:25 10 they -- I'll just object as we go along.

09:08:26 11 THE ARBITRATOR: That'd be fine. All right.

09:08:38 12 All right. So there was reference in claimant's
09:08:45 13 brief to things I would learn in an opening statement.
09:08:53 14 Unless you want the expansive arbitration briefs to
09:08:59 15 substitute for an opening statement, I will leave it to
09:09:01 16 you. Either way is fine with me.

09:09:04 17 MR. GERRARD: We definitely would prefer to do an
09:09:06 18 opening statement.

09:09:06 19 THE ARBITRATOR: All right. All right.

09:09:07 20 Mr. Lewin, are you ready to proceed? Anything
09:09:09 21 else before we --

09:09:10 22 MR. LEWIN: No. No, thank you.

09:09:11 23 THE ARBITRATOR: All right.

09:09:13 24 MR. GERRARD: There is one thing that we'd like
09:09:15 25 to ask for a little guidance on from the arbitrator.

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09:09:15 1 THE ARBITRATOR: Sure.

09:09:19 2 MR. GERRARD: As you know, there's -- there's
09:09:20 3 several claims that have been made. One of the claims
09:09:22 4 that is at issue in this arbitration has to do with
09:09:26 5 whether Mr. Bidsal is entitled to be paid management
09:09:31 6 fees for any time period that he was not a member. In
09:09:35 7 other words, if he was a member, then the distributions
09:09:39 8 are all that he believes he's entitled to. But if he
09:09:41 9 wasn't --

09:09:42 10 THE ARBITRATOR: Tied to the issue of when the
09:09:43 11 sale --

09:09:44 12 MR. GERRARD: Correct. Correct. The question or
09:09:46 13 what we'd like some guidance on is if we can perhaps
09:09:51 14 push that issue to the end of the arbitration. In other
09:09:55 15 words, if we put on all the evidence of the other
09:09:58 16 issues, if Your Honor decides the case in Mr. Bidsal's
09:10:01 17 favor and that he's still a member up to whatever time
09:10:05 18 they purchase or that they don't have the right to
09:10:07 19 purchase under the tender argument, then that becomes
09:10:11 20 moot; right? And so we will have wasted time putting
09:10:13 21 that evidence on for nothing.

09:10:14 22 I would prefer if we could kind of bifurcate that
09:10:16 23 issue to the end so that if Your Honor rules one way,
09:10:19 24 then we can decide, you know, just put that evidence on
09:10:22 25 at the end. Because it's a -- kind of a discrete issue

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09:10:24 1 that doesn't -- that only arises depending upon Your
09:10:28 2 Honor's decision.

09:10:29 3 THE ARBITRATOR: And it's a different expert?

09:10:31 4 MR. GERRARD: It is a different expert, yeah.

09:10:34 5 THE ARBITRATOR: Okay. Mr. Lewin, any objection
09:10:35 6 to doing it that way?

09:10:35 7 MR. LEWIN: No, except that some of the evidence
09:10:37 8 I have might -- I have some impeachment stuff that might
09:10:40 9 be available. But other than that, I think it's a smart
09:10:43 10 idea.

09:10:43 11 THE ARBITRATOR: Okay. I think that makes sense
09:10:45 12 in terms of bifurcating the issue of -- of --

09:10:52 13 MR. GERRARD: Management fees.

09:10:54 14 THE ARBITRATOR: -- management fees generally.
09:10:54 15 If there's a witness in the interim who's appearing here
09:10:56 16 who has some information to shed on that topic -- to
09:11:00 17 share on that topic, rather than call them back, we can
09:11:05 18 go ahead and deal with that and go ahead and ask those
09:11:08 19 questions. That way if somebody is appearing by Zoom
09:11:10 20 from somewhere, I don't want them to have to come back
09:11:14 21 twice. But I think that makes sense.

09:11:17 22 MR. LEWIN: Also, one other thing, Your Honor. I
09:11:20 23 brought -- we have transcripts. I brought certified
09:11:24 24 copies for Your Honor of the first arbitration, which
09:11:27 25 are all -- which are all taken under oath.

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09:11:31 1 Procedurally --

09:11:32 2 THE ARBITRATOR: You're not going to ask me to

09:11:34 3 review all those, are you?

09:11:35 4 MR. LEWIN: No, no. But if we wanted --

09:11:37 5 procedurally, if we wanted to use those transcripts or

09:11:39 6 any other transcripts for impeachment purposes, I just

09:11:44 7 want to see if it would be okay to be reading from these

09:11:48 8 transcripts.

09:11:50 9 MR. GERRARD: Obviously, we don't have any

09:11:51 10 objection to using transcripts from the arbitration for

09:11:54 11 whatever purpose they want to be used.

09:11:56 12 THE ARBITRATOR: All right.

09:11:57 13 MR. LEWIN: All right.

09:12:06 14 THE ARBITRATOR: And which one of you arranged

09:12:08 15 for the court reporter?

09:12:09 16 MR. LEWIN: I did.

09:12:10 17 THE ARBITRATOR: Okay. And you're aware --

09:12:12 18 MR. GERRARD: Yes.

09:12:14 19 THE ARBITRATOR: And the transcript is going to

09:12:15 20 be shared?

09:12:15 21 MR. LEWIN: Well, they haven't offered to pay --

09:12:18 22 they haven't offered to pay for half.

09:12:19 23 MR. GERRARD: If we decide we want the

09:12:22 24 transcript, we'll pay our share.

09:12:22 25 THE ARBITRATOR: Okay. Because the rule just

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09:12:23 1 talks about that happening in advance and you having an
09:12:27 2 opportunity to have that transcript. Okay.

09:12:48 3 All right. On behalf of claimant, opening
09:12:48 4 statement.

09:12:48 5 OPENING STATEMENT

09:12:53 6 BY MR. GERRARD:

09:12:53 7 MR. GERRARD: Okay. Thank you, Your Honor. In
09:12:54 8 2011 -- can hear you me okay? Okay. Thanks.

09:12:57 9 In 2011, Benjamin Golshani approaches cousin
09:13:01 10 Shawn Bidsal about Bidsal engaging in some joint real
09:13:05 11 estate deals. Mr. Bidsal had been in the business of
09:13:07 12 owning, operating, and managing commercial and
09:13:11 13 residential real estate for decades.

09:13:13 14 Mr. Golshani wished to benefit from Mr. Bidsal's
09:13:16 15 experience. Mr. Golshani, as you will hear, had
09:13:19 16 basically no experience in managing or operating
09:13:21 17 commercial property. Mr. Bidsal had already lined up an
09:13:25 18 opportunity to purchase an existing loan that was
09:13:28 19 secured by commercial property for \$3,850,000. That
09:13:35 20 property that was collateral to the loan was located in
09:13:38 21 Henderson, Nevada, and it was on two -- this is
09:13:40 22 important -- it was on two legal parcels of real
09:13:44 23 property. And upon those two legal parcels, there were
09:13:47 24 eight buildings and a parking lot. And I'll refer to
09:13:51 25 that as "the property."

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09:13:52 1 Mr. Bidsal agreed to give this opportunity that Page 25
09:13:56 2 he owned and controlled and had already qualified to bid
09:14:00 3 at the auction for this loan, he agreed to give this
09:14:04 4 opportunity to a new entity, Green Valley Commerce, LLC,
09:14:09 5 which is the company that's at issue in this case. And
09:14:12 6 of course that was the new entity that was to be jointly
09:14:13 7 owned by Mr. Bidsal and Golshani. And he also agreed to
09:14:17 8 contribute \$1,215,000 in cash. And Mr. Golshani's
09:14:24 9 entire participation in the company was to contribute
09:14:28 10 \$2,434,250. And then essentially, at that point in
09:14:35 11 time, although he was a member of the company, he was
09:14:37 12 going to do nothing except for collect money that was
09:14:43 13 generated by the rents from this company, assuming they
09:14:46 14 ended up owning the property.
09:14:48 15 Now, this is an interesting concept. If you look
09:14:52 16 at the operating agreement, you are going to see that
09:14:55 17 there is a definition of what the purpose of the company
09:14:57 18 was, what its business was supposed to be. And the
09:15:01 19 business of the company was supposed to be acquire a
09:15:04 20 note and then foreclose that note to try to acquire the
09:15:09 21 underlying real property and then to manage and -- and
09:15:13 22 generate rents from -- to operate and manage that real
09:15:16 23 property. The business plan of the company did not
09:15:20 24 include selling any of the real property that was at
09:15:24 25 issue. And you will see that that is extremely

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09:15:27 1 important as you go forward.

09:15:30 2 So this -- the business model and the concept

09:15:34 3 that was agreed to by the two members and ultimately

09:15:41 4 incorporated into the operating agreement was simple.

09:15:41 5 You wouldn't believe that from what you've heard from

09:15:45 6 CLA and from Mr. Golshani. They've done everything in

09:15:48 7 their power to muddy the waters so that they can take a

09:15:51 8 simple concept and try to rewrite history to take

09:15:55 9 advantage of Mr. Bidsal. But the simple concept was

09:16:01 10 that all income, gain, loss, deduction, and credits,

09:16:06 11 essentially everything that a business can have, was

09:16:08 12 supposed to be allocated and distributed equally between

09:16:12 13 the two members, which would be 50 percent to Mr. Bidsal

09:16:16 14 and 50 percent to CLA properties.

09:16:18 15 Now, this was the general rule. It's very

09:16:21 16 carefully and explicitly set out in the operating

09:16:25 17 agreement. But CLA apparently doesn't understand that.

09:16:29 18 They think that the general rule is not for a 50-50

09:16:32 19 split of everything and 50-50 allocation of everything.

09:16:35 20 The only exception to this general rule was if the

09:16:40 21 company sold all or substantially all of the company's

09:16:45 22 property or they engaged in a complete cash out

09:16:51 23 refinancing, either of which would result in sufficient

09:16:53 24 money to return to the members the cash that they had

09:16:55 25 originally contributed.

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09:16:57 1 And this is an important concept because the way
09:17:00 2 that this agreement was designed was that they were
09:17:02 3 going to generate rents from this property and they were
09:17:06 4 going to split all the money that they collected 50-50.
09:17:09 5 And only if there was a large event, which would
09:17:14 6 essentially be a liquidation of the company's assets,
09:17:17 7 would there then trigger some special allocation
09:17:21 8 language that is contained in the operating agreement
09:17:23 9 Exhibit B.

09:17:23 10 That special allocation language is very
09:17:27 11 important because, as Your Honor, I'm sure, is aware
09:17:29 12 from past experience, special allocations are exactly
09:17:32 13 that. Under the Internal Revenue Code, they're an
09:17:36 14 exception to the general rule. The general rule is that
09:17:39 15 profits and all of the losses, credits, everything is
09:17:41 16 going to be divided equally in accordance with the
09:17:44 17 percentage ownership interest, which in this case was
09:17:47 18 50-50.

09:17:49 19 THE ARBITRATOR: All right.

09:17:50 20 You weren't trying to misrepresent --

09:17:53 21 MR. LEWIN: I'm sorry. I apologize. The first
09:17:55 22 thing on my notes was to try not to misrepresent that.
09:17:58 23 I took an old -- an old version of that, and -- but the
09:17:59 24 operating agreement says what it is. It says 50-50.

09:18:04 25 THE ARBITRATOR: All right.

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09:18:04 1 MR. GERRARD: We believe it was a mistake,
09:18:05 2 obviously.
09:18:06 3 So the point here is that only in the event that
09:18:11 4 there was a sale of all of the property was there going
09:18:15 5 to be a trigger of this special allocation language, and
09:18:20 6 the special allocation language would then require that
09:18:22 7 after expenses were paid, that the money from this
09:18:27 8 cashout refinancing or sale of all of the business
09:18:31 9 assets would be used to first pay back the original cash
09:18:35 10 that the parties had put into the deal.
09:18:37 11 Now, this is not an unusual concept. In real
09:18:40 12 estate development deals, it happens all the time where
09:18:43 13 there's, you know, "This is what we're going to do with
09:18:45 14 the operations, and under certain conditions if there's
09:18:48 15 a sale or we generate a lot of money through a
09:18:52 16 refinance, then we're going to give the members back the
09:18:55 17 original cash they contributed. And then we'll go back
09:18:58 18 to the -- to the usual allocation and distribution."
09:19:01 19 So what you're going to see is that, as a result
09:19:07 20 of this business plan of the company, the parties were,
09:19:15 21 without question, operating under this plan. And you
09:19:20 22 can see from the course of performance -- this company
09:19:23 23 was formed in 2011. And from 2011 all the way through
09:19:29 24 2016 -- so for five years -- they operated in exactly
09:19:33 25 this fashion. Without complaint. Without Mr. Golshani

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09:19:37 1 ever saying one word about, you know, something being
09:19:41 2 askew. And he received every year all of the tax
09:19:45 3 returns, the K-1s, everything that would demonstrate
09:19:49 4 exactly how these distributions and allocations were
09:19:51 5 being made.

09:19:52 6 In addition, the company's own accountants -- an
09:19:55 7 outside CPA firm, very reputable CPA here in town -- was
09:20:01 8 following this operating agreement in the manner that I
09:20:03 9 just described. So what ultimately happened is that the
09:20:09 10 parties also decided that they were going to implement a
09:20:15 11 buy/sell arrangement in the operating agreement so that
09:20:18 12 in the event that they wished to part company, there was
09:20:21 13 a way that one member could buy out the other member.

09:20:25 14 Now, you're going to see something very
09:20:27 15 interesting. The company was formed back in May of
09:20:30 16 2011. And over a course of many months, an operating
09:20:34 17 agreement was being circulated that was drafted
09:20:39 18 principally by Mr. LeGrand, an attorney that, you know,
09:20:41 19 supposedly represented the company, but that's very
09:20:44 20 questionable based upon his conduct as to who he was
09:20:48 21 actually representing.

09:20:49 22 But what we do know for certain is that as of
09:20:54 23 September of that year, that operating agreement still
09:20:58 24 had not been signed. And in September, a new version of
09:21:01 25 the operating agreement was circulated, and in that

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09:21:05 1 version of the operating agreement, this buy/sell
09:21:05 2 language -- the formula that we're dealing with -- it
09:21:08 3 still didn't even exist. It wasn't even in the
09:21:11 4 operating agreement.

09:21:12 5 You'll see from Mr. LeGrand's billing records and
09:21:15 6 his notes that at the end of November 2011, like
09:21:19 7 November 29th and 30th of 2011, he had discussions with
09:21:23 8 Mr. Golshani, and that the result of those discussions
09:21:27 9 was that this formula for a buy/sell was inserted into
09:21:33 10 the operating agreement. That formula did not come from
09:21:35 11 Mr. Bidsal; it came from Mr. Golshani. And the records
09:21:38 12 of Mr. LeGrand demonstrate that, as do the emails.

09:21:44 13 So what did the formula do? Well, the formula
09:21:47 14 essentially followed the same simple business model that
09:21:50 15 we just described. The idea behind the formula was if
09:21:54 16 one member buys out the other, the selling member is
09:21:57 17 supposed to get his 50 percent of all of the
09:22:02 18 appreciation on the property that was owned by the
09:22:05 19 company.

09:22:05 20 So if the company property had been purchased for
09:22:09 21 a half a million dollars and it depreciated to
09:22:11 22 \$1 million, then there would be appreciation of
09:22:14 23 \$500,000, and he was supposed to get his half of that
09:22:17 24 \$500,000. And then in addition to that, under the
09:22:20 25 formula, the selling member was supposed to get back the

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09:22:23 1 original cash that they contributed.

09:22:25 2 Now, isn't that interesting how similar that
09:22:29 3 formula is to the business model of the company? The
09:22:32 4 business model of the company was "We're going to share
09:22:34 5 all profits and all appreciation on all property 50-50,
09:22:38 6 and the only exception to that is if we generate enough
09:22:43 7 money from one sell to pay back the cash that we
09:22:46 8 originally contributed, we're going to do that."

09:22:48 9 It's exactly the same as the formula for a
09:22:51 10 buyout. It has the same concept of sharing 50-50 with a
09:22:55 11 return at some point of the money that a member had
09:22:59 12 contributed originally.

09:23:01 13 So this concept is not complicated. You're going
09:23:05 14 to see all kinds of things and all kinds of mental hoops
09:23:09 15 and gyrations that CLA's expert is going to try to jump
09:23:15 16 through to try to turn a simple concept into something
09:23:17 17 that it's not, to try to change the very clear intent of
09:23:21 18 the language into something that it's not. But the
09:23:24 19 history of the company is going to be probably the most
09:23:27 20 compelling evidence. What actually happened rather than
09:23:30 21 what they're trying to do to rewrite history is probably
09:23:34 22 going to be the most persuasive evidence.

09:23:36 23 Now, keep in mind the company was formed -- and
09:23:40 24 these are kind of important dates -- May 26, 2011. From
09:23:46 25 May 26, 2011 till September 22nd of 2011, the only asset

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09:23:51 1 of the company was a promissory note. That's the only
09:23:54 2 thing it owned. On September 22, 2011, the company was
09:23:59 3 successful in completing a deed in lieu of foreclosure
09:24:03 4 agreement with the borrower under the loan. The
09:24:07 5 borrower agreed to deed the property to the company.
09:24:09 6 And to transfer the company, all the rents and all the
09:24:13 7 security deposits that it had collected and that it was
09:24:16 8 holding.

09:24:17 9 In exchange, the company agreed to give a
09:24:19 10 complete release of the underlying debt obligation,
09:24:23 11 including any deficiency claims. Mr. Bidsal then had a
09:24:28 12 record of survey created to subdivide the two legal
09:24:34 13 parcels into nine legal parcels. Prior to October 7,
09:24:40 14 2011, which was the date that record of survey was
09:24:43 15 recorded, the company could have only sold all or
09:24:49 16 substantially all of its real property as it was only
09:24:51 17 comprised of two legal parcels. And -- and that's
09:24:56 18 important because under NRS Chapter 278.590, you're not
09:25:03 19 permitted to sell less than a legal parcel of property
09:25:05 20 under Nevada law.

09:25:06 21 Now, that's consistent with the language that was
09:25:07 22 being placed into Exhibit B of the operating agreement
09:25:11 23 that talked about how these distributions were going to
09:25:14 24 be made. Because at the time that that language was
09:25:17 25 inserted into the operating agreement, the company only

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09:25:21 1 owned one asset, which was a note. But it was
09:25:24 2 contemplated at that time, or it was thought at that
09:25:26 3 time, that they were ultimately going to be able to
09:25:29 4 convert that into ownership of the property, but that
09:25:32 5 ownership was only going to be two parcels. So if you
09:25:35 6 sold the property of the company, you'd have to sell all
09:25:38 7 or substantially all of it, because that's all that it
09:25:42 8 was.

09:25:44 9 So it's important that all of the language in
09:25:48 10 Exhibit B, the operating agreement, was drafted on or
09:25:50 11 before September 16 of 2011. And of course, that was at
09:25:55 12 a time when the company only owned one asset. Probably
09:26:00 13 the most important fact of this case is that the
09:26:03 14 language of the operating agreement did not contemplate
09:26:10 15 subdividing the property into individual lots and then
09:26:14 16 selling those lots one at a time. It simply did not
09:26:19 17 contemplate that.

09:26:21 18 Now, between September of 2012 and August of
09:26:25 19 2013, the company sold three different buildings in
09:26:30 20 three different individual sales. Mr. Bidsal and
09:26:35 21 Mr. Golshani both agreed to each of those sales. None
09:26:39 22 of those sales triggered the special allocation language
09:26:43 23 found in Exhibit B to the operating agreement. Why?
09:26:46 24 Because they were not sales of all or substantially all
09:26:49 25 of the company's assets. Because, again, the operating

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09:26:52 1 agreement simply didn't contemplate subdividing the
09:26:56 2 property and selling it off building by building. And
09:26:59 3 as a result, when money was generated from these sales,
09:27:03 4 Mr. Bidsal discussed this issue with Mr. Golshani.

09:27:07 5 And then, to be fair -- because under the
09:27:10 6 operating agreement there would be no need for him to
09:27:14 7 share any of the money as a repayment of the original
09:27:17 8 capital contributions because the special allocation
09:27:22 9 language had not been triggered. But he also didn't
09:27:24 10 think that was fair because he thought that what was
09:27:26 11 contemplated was that as property was sold, that there
09:27:29 12 should be a paydown of the original cash that had been
09:27:32 13 contributed.

09:27:33 14 So rather than taking the position that he wasn't
09:27:38 15 going to pay anything back, he obviously didn't believe
09:27:41 16 that there had been any trigger of the special
09:27:44 17 allocation language, but he believed that there should
09:27:48 18 be a repayment of some portion of the money that had
09:27:50 19 been paid in. Well, at the time that these lots were
09:27:53 20 divided, for tax purposes, the company in its taxes
09:27:57 21 allocated a portion of the purchase price for the
09:28:00 22 original note to each of the new nine parcels that the
09:28:06 23 property had been subdivided into. And for tax
09:28:10 24 purposes, they applied essentially the original basis
09:28:13 25 paid for the note. They divided that basis between nine

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09:28:17 1 different properties now, and --

09:28:19 2 THE ARBITRATOR: Eight, really, but --

09:28:21 3 MR. GERRARD: Well, there's -- there's eight --

09:28:22 4 THE ARBITRATOR: At least the cost segregation

09:28:25 5 report --

09:28:26 6 MR. GERRARD: Eight properties and a parking lot,

09:28:26 7 which makes nine parcels.

09:28:28 8 THE ARBITRATOR: Right. But I don't think a

09:28:30 9 value was really put on the parking lot.

09:28:32 10 MR. GERRARD: It was.

09:28:32 11 THE ARBITRATOR: Oh, it was?

09:28:35 12 MR. GERRARD: Sure. And later there was a cost

09:28:37 13 segregation study, as Your Honor just talked about,

09:28:38 14 which attempted to take the numbers that had been used

09:28:41 15 in the 2011 tax return of the company and to see whether

09:28:46 16 that was fairly and appropriately allocated amongst the

09:28:50 17 lots. And there was a very large study that was done

09:28:52 18 that nobody has objected to that essentially confirmed

09:28:55 19 what had been done and gave numbers allocating a portion

09:29:00 20 of that value to each of the nine parcels.

09:29:05 21 So as each of these parcels were sold off, what

09:29:09 22 Mr. Bidsal did is he took the basis associated with each

09:29:14 23 of those properties -- its allocable share of the

09:29:17 24 original purchase price of the note -- and that basis

09:29:21 25 portion, he divided that money 70-30 from the proceeds

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09:29:25 1 of the sale and gave Mr. Golshani and his company, CLA,
09:29:30 2 70 percent of that, and he took 30 percent of it so that
09:29:33 3 it would be a prorated paydown of the original money
09:29:37 4 that they'd put in. If all properties were sold,
09:29:41 5 eventually it would have resulted in a complete payoff
09:29:43 6 of the original cash that they had contributed under
09:29:45 7 that scenario.

09:29:48 8 You'll see evidence that that's exactly what was
09:29:50 9 discussed with Mr. Golshani. Mr. Golshani admits it in
09:29:53 10 an email that that's what was discussed, was that
09:29:56 11 ultimately this would result in a paydown of -- of
09:29:58 12 everything. Mr. Golshani now, in his attempt to rewrite
09:30:03 13 history, is claiming, "Oh, no. I never agreed to that,
09:30:06 14 and it was always supposed to have been a 70-30 paydown
09:30:10 15 based upon all of the proceeds from each sale."

09:30:13 16 But of course what happened is, in an effort to
09:30:16 17 be fair, Mr. Bidsal paid only the basis portion 70-30,
09:30:22 18 and the appreciation -- which is the same under this
09:30:27 19 business model that they had -- the appreciation was
09:30:30 20 divided 50-50.

09:30:30 21 And that was always the business plan of this
09:30:33 22 company, was that any appreciation of the property --
09:30:35 23 it's in the formula -- was supposed to be divided 50-50.
09:30:39 24 So what you see is Mr. Bidsal trying to follow the
09:30:44 25 spirit of what he understood was trying to be

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09:30:47 1 accomplished by the operating agreement, even though the
09:30:49 2 operating agreement didn't contemplate what it was that
09:30:53 3 was being done by the company.

09:30:55 4 Now, one interesting part about this is that each
09:30:58 5 time that a distribution was made 70-30 of the allocable
09:31:03 6 portion of the original purchase price associated with
09:31:08 7 each parcel that was sold, there was a breakdown of how
09:31:10 8 those calculations were arrived at that was prepared by
09:31:13 9 Mr. Bidsal. And that breakdown was provided to
09:31:16 10 Mr. Golshani along with his distribution checks. So
09:31:20 11 Mr. Golshani would see the breakdown. He would also see
09:31:25 12 two checks; one was a check for 50 percent of the
09:31:27 13 appreciation, and one was a check for his 70 percent of
09:31:31 14 the basis. And that happened every time a building was
09:31:36 15 sold. Three different times it happened. Three
09:31:38 16 different times Mr. Golshani received this breakdown.

09:31:42 17 Also, each year, all that information was
09:31:45 18 contained in the company's tax return. The company's
09:31:48 19 tax return makes it crystal clear that allocation of all
09:31:53 20 gain was being done 50-50 by the outside accountant
09:31:56 21 because that's what the operating agreement says. The
09:31:59 22 special allocation language had never been triggered.
09:32:02 23 That was recognized by Jim Main, the outside accountant,
09:32:05 24 and so he prepared the tax returns allocating all gain
09:32:08 25 on a 50-50 basis because that's what the operating

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09:32:11 1 agreement requires. But the distributions followed this
09:32:15 2 schedule each time that was provided by Mr. Bidsal to
09:32:18 3 Mr. Golshani.

09:32:19 4 The fascinating thing about this case that you'll
09:32:22 5 see, Your Honor, is that Mr. Bidsal was completely
09:32:25 6 transparent about every single thing that he was doing.
09:32:29 7 And Mr. Golshani was receiving all this information and
09:32:34 8 accepting it without objection and proceeding forward.
09:32:37 9 He's just happy he's getting a big check, you know,
09:32:40 10 every, you know -- several times a year, he's getting
09:32:45 11 distribution checks, and he's just happy as a clam.

09:32:47 12 Everything changed in 2016. In 2016, there began
09:32:53 13 to be a breakdown in the relationship between
09:32:56 14 Mr. Golshani and Mr. Bidsal. And that resulted,
09:33:00 15 ultimately, in Mr. Bidsal no longer wanting to do
09:33:04 16 business with Mr. Golshani. He didn't have the same
09:33:07 17 feelings towards him that he'd had at the beginning. He
09:33:10 18 didn't want to be a partner with him anymore, and so he
09:33:13 19 made an overture to buy out, under the formula in the
09:33:17 20 agreement, Mr. Golshani's interest.

09:33:20 21 Now, Mr. Bidsal didn't expect that he was -- you
09:33:25 22 know, he made an offer to purchase, but expected that
09:33:26 23 they were going to determine what the fair market value
09:33:28 24 was by getting appraisals. He stated that it was his
09:33:31 25 estimate that the value was \$5 million. There's been

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09:33:34 1 another entire arbitration on that issue where,
09:33:37 2 ultimately, the arbitrator decided that that estimate
09:33:41 3 that Mr. Bidsal gave is going to be determined to be the
09:33:43 4 fair market value for this formula. That's not what's
09:33:48 5 at issue in this case. What's at issue in this case is
09:33:50 6 how did CLA respond to that?

09:33:53 7 Now, Your Honor said that this -- you believe
09:33:56 8 this tender issue has probably been resolved. Well, I
09:34:00 9 would respectfully encourage Your Honor to rethink that
09:34:02 10 issue. There is a whole series of cases that came out
09:34:10 11 of these HOA super priority lien issues that arose after
09:34:14 12 the recession in 2008-2009. And what happened as a
09:34:19 13 result of that is that our Nevada Supreme Court
09:34:22 14 redefined and sharpened its statements about what is
09:34:26 15 required for an actual tender. And the interesting
09:34:30 16 thing about those cases is, is what was happening and
09:34:34 17 comparing that to what you're going to see happen in
09:34:37 18 this case.

09:34:37 19 In those HOA super priority lien cases, what was
09:34:42 20 happening is, is that an HOA would send out a notice of
09:34:45 21 a lien -- a notice of assessment lien -- and then
09:34:47 22 ultimately to the lenders that had deeds of trust on
09:34:50 23 these properties, they would send out a notice of
09:34:52 24 default of the assessment lien and a notice of sale.
09:34:55 25 And when those statutory notices were received, these

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09:34:59 1 lenders, most of whom were the largest lenders in our
09:35:03 2 company -- Bank of America, JP Morgan Chase -- they
09:35:06 3 would take those and they would -- in thousands of them,
09:35:11 4 they hired an outside law firm, and that outside law
09:35:16 5 firm wrote a letter on behalf of the bank and sent it to
09:35:16 6 the HOA.

09:35:20 7 And the letter said in each case, "We don't know
09:35:24 8 what the exact amount is that we have to pay to satisfy
09:35:27 9 this HOA super priority portion of the lien. We believe
09:35:32 10 we're only responsible for the super priority portion of
09:35:34 11 the lien, even though the lien is greater -- there's a
09:35:36 12 sub priority portion and a super priority portion -- we
09:35:38 13 don't know what that amount is. But whatever it is, we
09:35:43 14 promise to pay it, and we're good for it. We're Bank of
09:35:46 15 America. We have all the money in the world."

09:35:50 16 What ultimately happened is when those cases made
09:35:53 17 their way to the supreme court, our Nevada Supreme Court
09:35:58 18 said, "That's not a sufficient tender. It's not
09:36:01 19 sufficient just to make an offer to pay, even showing
09:36:05 20 that you have the ability to perform."

09:36:07 21 Which is exactly what happened in those cases.
09:36:09 22 There was an offer to pay made by a bank with clearly
09:36:12 23 the ability to perform. Our supreme court said, "That's
09:36:17 24 not enough. You have to actually make payment. If
09:36:21 25 you're wrong about what the amount actually should have

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09:36:24 1 been, that will get sorted out down the road. But you
09:36:28 2 actually have to make the payment of what you believe is
09:36:30 3 the right amount."

09:36:31 4 And when the banks made a payment in the amount
09:36:35 5 that they thought was the right amount, if it turned out
09:36:37 6 that they were right, it was considered to be a valid
09:36:40 7 tender and that they had satisfied their obligations to
09:36:44 8 redeem. And if they were wrong, then it was determined
09:36:47 9 that they hadn't tendered sufficient amount. So they
09:36:50 10 bore the risk. They bore the risk of making the right
09:36:53 11 payment amount. They could always overpay and then make
09:36:57 12 an argument later that they should be entitled to get
09:36:58 13 some of the money back.

09:37:00 14 But the requirement that the Supreme Court of
09:37:03 15 Nevada said, in very clear language, is the standard for
09:37:06 16 tender in Nevada of any obligation -- any performance
09:37:11 17 obligation -- is you have to actually make a payment of
09:37:13 18 money. You can't just make a promise to pay and show
09:37:19 19 that you have the ability to perform.

09:37:21 20 Well, that's exactly what's happened in this
09:37:23 21 case. When CLA received this letter requesting that --
09:37:29 22 Mr. Bidsal's request to purchase the property or to
09:37:33 23 purchase the interest of CLA, how did they respond?
09:37:36 24 They responded by providing a letter. No money. They
09:37:40 25 never made any payment of any money at any time, and the

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09:37:44 1 letter that they sent back didn't state what they
09:37:46 2 thought the actual purchase price was. And as you'll
09:37:50 3 see, up to the date of this arbitration, there's never
09:37:55 4 been a letter sent by CLA saying, "Here's the amount
09:38:01 5 that we owe and here's the payment of it."

09:38:03 6 There's two things missing for them to perform
09:38:06 7 under the terms of the operating agreement. Number one,
09:38:09 8 they've never stated what the amount is that they
09:38:12 9 actually intend to pay. They've never stated what that
09:38:16 10 is. And number two, they've never paid. Whatever the
09:38:18 11 amount is that they believe is the accurate amount,
09:38:22 12 they've never made a payment. So our Nevada Supreme
09:38:27 13 Court has said, "That's not adequate. If you haven't
09:38:31 14 paid the money, you haven't performed."

09:38:32 15 Why is that important in this case? Well, you're
09:38:34 16 going to see in the evidence under the operating
09:38:36 17 agreement that Mr. Bidsal, as soon as he got this
09:38:39 18 response back, said, "Look, I don't agree that
09:38:44 19 \$5 million is the -- is the price."

09:38:46 20 But you're not ever going to see in any email or
09:38:50 21 in any evidence that comes before Your Honor that
09:38:53 22 Mr. Bidsal said, "You absolutely have no right to
09:38:58 23 purchase my interest, and I'm not going to accept any
09:39:00 24 money that you pay me."

09:39:00 25 He did say, "I'm not going to open an escrow

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09:39:05 1 until you can tell me what the actual terms are," you
09:39:07 2 know. But they never made a payment. If they'd made a
09:39:11 3 payment, Mr. Bidsal would have accepted the money, would
09:39:14 4 have told them he thought that was a partial payment,
09:39:16 5 and he would have deposited it into an escrow. But that
09:39:18 6 never, ever happened.

09:39:21 7 Why is that important in the case? Well, because
09:39:23 8 under the terms of the operating agreement, it's very
09:39:26 9 specific about what is supposed to happen. They're
09:39:29 10 supposed to close escrow within 30 days. So if they
09:39:32 11 were really planning to perform, it doesn't matter what
09:39:35 12 Mr. Bidsal was telling them. They had an obligation
09:39:37 13 under the operating agreement to pay what the amount was
09:39:39 14 that they thought that the formula was within 30 days,
09:39:43 15 and they never did it.

09:39:45 16 It's fundamental law in this state and in every
09:39:49 17 other state that until the purchase is completed, you
09:39:51 18 continue to own the property that was being sold.
09:39:54 19 There's never been a completion of this purchase.
09:39:57 20 There's never been any money ever, at any time, paid,
09:40:01 21 and that's the performance that the operating agreement
09:40:03 22 requires. It requires CLA to pay money.

09:40:07 23 They might have an argument that if they had
09:40:11 24 performed by paying the money, that they were entitled
09:40:15 25 to the membership interest of Mr. Bidsal at some point

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09:40:17 1 in time -- the date that they paid the money, if it
09:40:19 2 turned out that the amount that they paid was the right
09:40:22 3 amount. They assume that risk, just like our Nevada
09:40:25 4 Supreme Court has stated in these tender cases. But
09:40:28 5 they paid nothing. And as a result, my client had no
09:40:31 6 obligation to transfer his membership interest, because
09:40:35 7 until there's a payment, there's no obligation. And of
09:40:37 8 course that never happened.

09:40:38 9 So what does that mean? It means Mr. Bidsal is
09:40:41 10 still a member of the company. He's never been, you
09:40:46 11 know, he's -- nothing has ever changed because they
09:40:49 12 never paid -- they never performed under the operating
09:40:50 13 agreement. It's fascinating that CLA says, "Well,
09:40:52 14 Mr. Bidsal breached the agreement." Well, how?

09:40:55 15 I mean, he was clearly within his rights to claim
09:40:58 16 that he didn't think that the \$5 million was the
09:41:01 17 appropriate fair market value and to send that to
09:41:05 18 arbitration. But they were within their rights to, you
09:41:09 19 know, put the money up that they thought was the right
09:41:12 20 amount of money so they could say, "We performed. Now
09:41:14 21 we own your interest." Did they do that? No.

09:41:18 22 So you're going to see in this case that as a
09:41:23 23 result of -- of the -- of their never having made any
09:41:28 24 payment, even after the subsequent arbitration -- I
09:41:32 25 mean, Your Honor just gave us your thoughts on that, and

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09:41:35 1 I appreciate and respect them, but I think that the
09:41:38 2 essential element that perhaps is missing from that
09:41:40 3 analysis is there still is a requirement of performance.

09:41:44 4 I mean, even if Mr. Bidsal had repudiated -- as
09:41:47 5 you just heard CLA's counsel say -- which, of course, we
09:41:51 6 don't agree with. He didn't ever repudiate. He never
09:41:52 7 said, "I'm not going to sell you the interest ever, and
09:41:56 8 I'm not going to accept your money." That doesn't
09:41:58 9 exist. There is no evidence of that at all.

09:42:00 10 But the point is, even if there is -- even if
09:42:03 11 there was something like that that occurred, Your Honor
09:42:07 12 is well aware of specific performance law. If you want
09:42:11 13 to specifically perform your rights, you still have to
09:42:14 14 perform. Until you perform, you have no rights. And
09:42:17 15 they have never performed.

09:42:19 16 So obviously, we think the evidence will show
09:42:25 17 that they've lost their right to purchase the interest.
09:42:27 18 But if they haven't -- if Your Honor for any reason
09:42:29 19 determines that they haven't lost the right -- until
09:42:31 20 they perform, Mr. Bidsal continues to be a member and
09:42:35 21 has all the rights incumbent upon that membership under
09:42:40 22 the operating agreement, including the right to all the
09:42:42 23 distributions.

09:42:43 24 Now, I close by saying this: The intent of the
09:42:47 25 parties that is expressed in the operating agreement is

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09:42:51 1 inconsistent with the improbable and unreasonable
09:42:58 2 interpretation of the agreement that's now being
09:43:00 3 advanced by CLA.

09:43:01 4 However, the intent of the parties expressed in
09:43:04 5 the operating agreement is completely consistent with
09:43:06 6 the reasonable manner in which distributions and
09:43:09 7 allocations were made from the outset of this company's
09:43:14 8 existence without complaint by CLA, and is totally
09:43:17 9 consistent with the tax returns and with the associated
09:43:21 10 Schedule K-1s that were attached to each of those tax
09:43:25 11 returns that were sent to CLA. And they're totally
09:43:29 12 consistent with the manner in which the company's
09:43:31 13 outside accountant prepared the company's tax returns.

09:43:34 14 The evidence in this case will, Your Honor, draw
09:43:37 15 a stark contrast between the reasonable, fair, and very
09:43:42 16 transparent manner in which Bidsal treated CLA over the
09:43:46 17 course of many years, and the unreasonable and
09:43:51 18 self-serving manner in which CLA has tried to manipulate
09:43:55 19 the ambiguous language of the operating agreement to
09:43:58 20 take advantage of Bidsal once the relationship
09:44:01 21 deteriorated. And that, in a nutshell, is what this
09:44:04 22 case will be about.

09:44:06 23 Thank you, Your Honor.

09:44:07 24 THE ARBITRATOR: All right. Thank you.

09:44:08 25 Mr. Lewin?

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09:44:08 1 MR. LEWIN: Thank you.

09:44:08 2 OPENING STATEMENT

09:44:08 3 BY MR. LEWIN:

09:44:08 4 MR. LEWIN: Your Honor, what we are showing in

09:44:17 5 this arbitration is that there is actually little that

09:44:19 6 you can rely on of what Mr. Bidsal says. I'm going to

09:44:23 7 highlight some of those points, just in response to what

09:44:26 8 Mr. Gerrard just talked about.

09:44:29 9 Mr. Bidsal claims that Mr. Golshani was taking

09:44:34 10 advantage of him. Exactly the opposite is true. You

09:44:38 11 heard Mr. Gerrard say that Mr. Golshani approached

09:44:41 12 Mr. Bidsal, and Mr. Bidsal had already been qualified to

09:44:47 13 bid for the Green -- for the Green Valley note. Well,

09:44:51 14 the fact of the matter is Mr. Bidsal didn't have money

09:44:54 15 at that time. He actually used Mr. Golshani's credit

09:44:57 16 card. And you'll hear him testify, in order to -- when

09:45:00 17 you buy a note, it's risky. You first have to put a

09:45:05 18 deposit, somewhere between -- I think he said 25 and

09:45:08 19 30 -- \$50,000, and he asked Mr. Golshani for his credit

09:45:11 20 card so that he could qualify to bid.

09:45:15 21 Then, once you're awarded the contract, you've

09:45:18 22 got to put up 10 percent. Mr. Bidsal didn't have the

09:45:22 23 money. Mr. Golshani wired \$404,000 to tie the contract

09:45:27 24 up. And then, after they bought -- while they were in

09:45:31 25 the process of buying this note, Mr. Bidsal forms Green

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09:45:36 1 Valley, puts himself down as the only manager, even
09:45:38 2 though the deal was that they would be co-managers.
09:45:40 3 And there's not a -- and they go ahead and they
09:45:43 4 buy Green Valley and they buy another property called
09:45:47 5 Country Club. And from June till December, when the
09:45:54 6 operating agreements were signed, Mr. Golshani had
09:45:56 7 nothing in writing showing that he was an owner, except
09:46:00 8 that he put up \$4 million -- around \$4 million. Now,
09:46:05 9 does that sound like someone who is trying to take
09:46:07 10 advantage of Mr. Bidsal?

09:46:08 11 Then he says that the proof of how the operating
09:46:16 12 agreement is supposed to be interpreted was all the
09:46:22 13 sales -- the three sales. The first sale, Building C,
09:46:26 14 the profit was distributed in accordance with the way it
09:46:29 15 should have been, 70-30. Building C was sold for
09:46:34 16 approximately 1,025,000. You'll see the evidence on
09:46:38 17 this. About 800-some-odd thousand dollars was allocated
09:46:41 18 to buy Green Valley. The profit was roughly \$95,000.
09:46:46 19 That was distributed 70-30. That took place in 2012,
09:46:49 20 the closest in time to the operating agreement signed in
09:46:53 21 December -- I think it was December 12, we have an email
09:46:57 22 from Mr. Bidsal saying the agreements are signed.

09:46:59 23 And by the way, by that December -- by the date
09:47:02 24 those operating agreements were signed -- both of them,
09:47:05 25 by the way -- the property had been subdivided. You'll

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09:47:08 1 see that it had been recorded into the nine lots that
09:47:11 2 Mr. Gerrard correctly points out that there are.
09:47:14 3 So what happens here, you'll hear and Mr. Bidsal
09:47:18 4 is going to testify that buying a note is risky because
09:47:23 5 the borrower can go into bankruptcy, you can get hung
09:47:28 6 up, there's all kinds of issues that can take place.
09:47:31 7 And if you don't perform and buy it, either the borrower
09:47:33 8 can back out, force him to back out, or he could have
09:47:35 9 backed out. And my client was on the hook for
09:47:37 10 approximately \$4 million in cash, and at least with
09:47:40 11 respect to Green Valley, \$2.8 million-plus.
09:47:44 12 Now, the issue is, in terms of -- the deal is --
09:47:52 13 the buyout provision is exactly the way Mr. Gerrard puts
09:47:54 14 it. The idea was at a point when there's a mandatory
09:47:57 15 buyout, the selling person was supposed to get
09:48:01 16 50 percent of the profits. But as Mr. Bidsal himself
09:48:03 17 will testify, this deal sort of evolved as time went on.
09:48:07 18 And the idea -- and in terms of the formula, which
09:48:11 19 required originally the cost of -- the COP, the cost of
09:48:16 20 purchase -- and then with the unreturned capital, it
09:48:19 21 evolved where they would -- where they were returning
09:48:21 22 the unreturned capital from sales, the capital that had
09:48:25 23 been redistributed.
09:48:26 24 That's a little bit different than what the
09:48:28 25 formula says, but we agree that's what took place.

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09:48:31 1 Mr. Bidsal has said that -- not only his brief, you're
09:48:35 2 going to hear him testify about that. In other words,
09:48:37 3 Mr. Bidsal's 1.2 million -- \$1,215,000 is reduced by the
09:48:42 4 amount of capital that is returned to him. That's why
09:48:45 5 he's fighting so hard here. He's fighting so hard
09:48:48 6 because he's concerned about that unreturned capital
09:48:52 7 figure going down below what he, you know -- what he
09:48:55 8 thinks it should be because he's been receiving returns
09:48:57 9 of capital all along. Wrongfully, in the terms of
09:49:01 10 profits, but he received the -- but he still has
09:49:06 11 received returns of capital.

09:49:08 12 What happens in the buyout, however, is that --
09:49:08 13 and this is -- I'm not going to relitigate what took
09:49:17 14 place in the first arbitration because Judge Haberfeld
09:49:17 15 has already made findings that I'm sure Your Honor has
09:49:20 16 read -- that he's had seller's remorse, his testimony
09:49:21 17 was outcome determinative -- he saw Mr. Bidsal for what
09:49:27 18 he is, a person who twists the truth to meet what he
09:49:27 19 wants.

09:49:31 20 But the way the buyout works is as follows: A
09:49:35 21 member gives -- he goes and gets an estimate of the fair
09:49:37 22 market value of all of the assets of the company. So
09:49:40 23 the company value, not just properties. That
09:49:43 24 includes -- that would include all appreciation of the
09:49:46 25 company because it's a point in time. In other words,

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09:49:48 1 if a property was worth -- if there's only one property
09:49:51 2 and you bought it for a million but it's now worth
09:49:54 3 2 million, certainly the FMV of that property would be
09:49:57 4 2 million the way a person would consider, because that
09:50:00 5 is the value to the company.

09:50:03 6 That includes -- so the way the selling partner
09:50:07 7 gets his 50 percent under those circumstances is that he
09:50:12 8 makes an evaluation. He's under no pressure whatsoever;
09:50:15 9 he can take whatever time, do whatever resources, he can
09:50:18 10 get appraisals, he can talk to brokers. He makes an
09:50:21 11 offer. As it turns out, Mr. Bidsal had received some
09:50:24 12 advice from brokers about three months before he made
09:50:27 13 his offer that the value of the Green Valley properties
09:50:32 14 were 6 million. So he made an offer of 5.

09:50:37 15 THE ARBITRATOR: Are you including the Greenway
09:50:40 16 properties?

09:50:40 17 MR. LEWIN: Including everything. So Greenway,
09:50:41 18 when you value the assets of the company, you value them
09:50:46 19 at a point in time. You don't value the cost. It's the
09:50:48 20 value of the assets. That's how you get the value of
09:50:51 21 the share. Remember, we're buying a company value, and
09:50:54 22 that should include everything. Cash on hand, value of
09:50:57 23 the properties.

09:50:57 24 If the company had -- just think about it. If
09:51:00 25 the company had only cash on hand, the value of -- if

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09:51:04 1 the company, Green Valley, only had \$5 million in cash
09:51:09 2 on hand and Mr. Bidsal made an offer, if he said it was
09:51:15 3 \$5 million, that would be the value. The value of the
09:51:18 4 property is no different.

09:51:22 5 So that's the way he gets his 50 percent. That's
09:51:25 6 sort of the end result of how you get your 50 percent.
09:51:27 7 In the meantime, what happens is that the parties had
09:51:31 8 agreed that if there's capital transactions, the capital
09:51:34 9 should be returned.

09:51:35 10 Now, you will hear his expert say that is the
09:51:39 11 common -- that is a common fact. You're not going to
09:51:42 12 hear any expert say that this proposal -- that you only
09:51:45 13 get your capital back on a sale of -- basically, a
09:51:47 14 liquidation sale, that's the only time you get your
09:51:52 15 capital back. You're not going to hear any expert say
09:51:54 16 that, even though Mr. Gerrard said that that's common.
09:51:57 17 You're not going to hear that.

09:51:59 18 So Mr. Bidsal, at a point in time -- you know,
09:52:04 19 he's a real estate entrepreneur, and he's very smart.
09:52:11 20 And he has called Mr. Golshani a novice. Well, I know
09:52:17 21 that they kept saying that Mr. Golshani, who drafted
09:52:20 22 portions of the agreement -- you wonder why Mr. Bidsal,
09:52:24 23 who's the expert -- the real estate expert -- would be
09:52:28 24 having Mr. Golshani draft it to begin with. But that's
09:52:32 25 not how it took place.

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09:52:33 1 The evidence -- if we get into drafting, which I
09:52:36 2 don't want to get into, but if we get into it, you're
09:52:38 3 going to hear -- you're going to see where they -- where
09:52:39 4 Mr. Bidsal has admitted that Mr. Golshani was -- they
09:52:45 5 massaged the language together. He was -- he asked
09:52:47 6 Mr. Golshani to write it up, he looked it over, made
09:52:51 7 some suggestions. Mr. Golshani becomes a sort of
09:52:55 8 pseudo-stenographer.

09:52:55 9 And then at the last moment, when -- they gave it
09:52:58 10 to LeGrand, who's the lawyer for both parties at that
09:53:06 11 time. LeGrand sends the final draft of the operating
09:53:09 12 agreement, says he's revised it. Bidsal tells him that
09:53:11 13 he's going to make some revisions, and the agreement --
09:53:13 14 the agreement mysteriously changes after he has it in
09:53:16 15 his hands and it's signed by both parties. There's no
09:53:21 16 further involvement by Mr. Golshani. But I don't think
09:53:22 17 we're going to get into it because, as I said, it's
09:53:22 18 already been decided. And we also have a recital, which
09:53:24 19 Mr. Gerrard has talked about, in a deposition.

09:53:31 20 So what happens is that Mr. Golshani and
09:53:35 21 Mr. Bidsal -- Mr. Golshani really liked Mr. Bidsal. He
09:53:40 22 began to notice that the distributions were different.
09:53:51 23 In other words, his -- Mr. Bidsal's capital account was
09:53:55 24 going down and his capital account was going up. And so
09:53:58 25 he asked Mr. Bidsal, "What's the story?" And he says

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09:54:02 1 he'll look into it.

09:54:03 2 And, look, we've heard -- you've seen how

09:54:05 3 Mr. Bidsal has said how busy he is and that he manages

09:54:09 4 30, 40 different properties, and he'll testify about

09:54:13 5 that, but -- and he's always too busy. He can't get

09:54:15 6 it -- he can't deliver records to Mr. Golshani. He's

09:54:17 7 too busy, he's running around, says, "I'll get to it."

09:54:19 8 There's always a stall. It's a stall.

09:54:20 9 Finally, in 2015, Mr. Golshani, he gets tired of

09:54:25 10 dealing with this, and he writes him. He said, "I think

09:54:27 11 you're over-distributing yourself -- to yourself."

09:54:30 12 And he says -- gets a little -- tells him, "No,

09:54:33 13 I'm not. But I'll talk it over with Jim Main."

09:54:37 14 Mr. Golshani tries to reach -- contact Jim Main.

09:54:40 15 He's unable to reach him until much later, and

09:54:45 16 ultimately when he does reach Jim Main, he says,

09:54:50 17 "Bidsal's overshoot -- over distributing to himself."

09:54:54 18 He questions -- he sends an email to him, more or

09:54:56 19 less contemporaneously, and he says, "Jim Main says

09:54:59 20 you're over-distributing yourself," and that is the --

09:55:06 21 yeah. Mr. Bidsal says, "No, I'm not."

09:55:08 22 So the first complaint that Mr. Golshani raises

09:55:13 23 in 2000 -- he starts talking to him about it, but the

09:55:15 24 first written documentation of it is in 2015 -- 2016.

09:55:20 25 Then they -- so we're going to find out that evolution

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09:55:28 1 to the offer. And I don't intend to go through it in
09:55:31 2 that much detail, but I just wanted to make a comment on
09:55:38 3 the Exhibit B.

09:55:41 4 It is not a secret that this Exhibit B is not a
09:55:47 5 fine work of art, so to speak. There's -- you've got
09:55:51 6 paragraphs that are misnumbered; you've got language
09:55:54 7 that appears to have words missing. But the critical
09:55:59 8 issue in terms of Exhibit B, which is a writing, is that
09:56:06 9 it talks about capital transactions. And a capital --
09:56:10 10 and they want to -- what they want to say is that
09:56:12 11 there's no capital transactions unless you're basically
09:56:17 12 selling substantially all of the assets. We'll get into
09:56:20 13 what that means, if it means anything. In theory, it
09:56:26 14 means you could be selling accounts receivable along
09:56:30 15 with properties.

09:56:32 16 But you will hear evidence about how -- what
09:56:35 17 capital transactions is supposed to mean, and I point
09:56:39 18 out, not to repeat the length of what we put in our
09:56:43 19 brief, but "capital transactions" is plural, number one.
09:56:46 20 Number two, you could -- when they first got -- when
09:56:49 21 they first obtained title to the property in September,
09:56:56 22 there were two parcels. So you could sell one parcel,
09:57:01 23 but does that mean that the capital doesn't come back?
09:57:02 24 Three, when they signed the agreement, there are nine
09:57:04 25 parcels. And four, that the intention was always

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09:57:09 1 between them, is that when we sell an asset, we get our
09:57:13 2 capital back. We get our capital back. And that is not
09:57:18 3 unusual, as their expert will testify.

09:57:24 4 Now, just to touch -- again, to touch base -- I
09:57:28 5 don't know how far to go with this tender issue. We
09:57:31 6 briefed it. The cases that Mr. Gerrard talks about in
09:57:35 7 his brief are not applicable, number one. Number two,
09:57:37 8 the cases that he does talk about, even though not
09:57:39 9 applicable, say that the -- a buyer is not required to
09:57:44 10 do a futile act. Number three, when -- when
09:57:47 11 Mr. Golshani had met with Mr. Bidsal to try to work out
09:57:51 12 the purchase price, he said he'd get back to him. Never
09:57:55 13 got back to him. He said, "I want to open up the escrow
09:57:57 14 so we can close the deal." Mr. Bidsal refused. He
09:58:01 15 said, "No, we disagree. I'm not going to proceed."

09:58:05 16 It wasn't just his disagreement about the
09:58:06 17 purchase price because that was never an issue. There
09:58:09 18 was never an issue about the purchase price that was
09:58:12 19 raised. And if it was raised -- this is an argument
09:58:14 20 that should have been raised, you know, before award --
09:58:20 21 before Judge Haberfeld, if that was their defense. By
09:58:22 22 not raising it, is it assumed -- it's assumed in that
09:58:26 23 arbitration award.

09:58:27 24 Number five, just to make it clear, there's no
09:58:30 25 sense in opening an escrow and putting money in if he's

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09:58:35 1 not going to proceed in his -- and I have his
09:58:36 2 counterclaim here. His counterclaim wasn't that they
09:58:37 3 couldn't decide on the purchase price. It was that he
09:58:38 4 had the right to the -- to an appraisal, and that the
09:58:41 5 fair market value of \$5 million didn't count. So
09:58:44 6 there's nothing to do. If you don't start with the
09:58:46 7 \$5 million, there's nothing else to do.

09:58:55 8 Talking about the distributions -- just to touch
09:58:58 9 base on the distributions. The laws of specific
09:59:04 10 performance are -- I think are pretty clear. If I'm
09:59:10 11 going to buy a bank for \$5 million -- that's cash in the
09:59:19 12 bank -- and we have a dispute about whether or not my
09:59:25 13 option to buy is effective. And in the meantime, the --
09:59:32 14 Mr. Bidsal, as the seller, takes out \$1 million, and
09:59:36 15 then he's basically diminishing the value of what I'm
09:59:40 16 buying.

09:59:42 17 So my client was agreeing to buy the assets of
09:59:47 18 Green Valley at the time. If there was a dispute about
09:59:50 19 the purchase price -- it wasn't something that was made
09:59:52 20 up after the fact -- the point should have been raised
09:59:57 21 at the time, not the -- not going into escrow. Say, "We
09:59:59 22 have a dispute about the purchase price, and there's a
10:00:02 23 mandatory arbitration provision in this contract that
10:00:05 24 says that that dispute goes to arbitration."

10:00:08 25 And then they could have gone to -- go to

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10:00:10 1 arbitration in 2017, and the dispute could have been
10:00:15 2 resolved with a -- before -- perhaps you, if you were in
10:00:18 3 the business in 2017 -- or some other arbitrator. Or in
10:00:21 4 front of Judge Haberfeld -- about what that dispute was.
10:00:23 5 But he never raised a dispute.

10:00:25 6 And if you take the literal terms -- take
10:00:28 7 literally the formula, you use the cost of -- use the
10:00:36 8 COP, which is the cost of purchase of the Green Valley
10:00:39 9 properties, you split it by 50 percent --

10:00:42 10 THE ARBITRATOR: The properties or the note?

10:00:44 11 MR. LEWIN: Well, the note. Well, in this case,
10:00:47 12 it would be -- in this case, at the time of the -- at
10:00:50 13 the time in 2017 -- well, okay. Let me go back.

10:00:53 14 Here's what happens with the note: The note was
10:00:54 15 purchased for the 4 -- not the number that Mr. Bidsal
10:00:59 16 said it was purchased for -- a little bit over
10:01:02 17 \$4,458,000, approximately, with closing costs.

10:01:06 18 Mr. Bidsal allocated it to some lower figure, I
10:01:10 19 think 3,000,009-something and some change. That note
10:01:13 20 was then -- that note was exchanged for the title of the
10:01:20 21 property. So it's an interesting transaction. Was
10:01:23 22 there actually a purchase, or was there just a
10:01:26 23 substitute? Was there collateral? Actually, when they
10:01:28 24 bought the note, they actually bought an interest in the
10:01:30 25 property. The note was secured by interest in the

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10:01:32 1 property. So all they did was -- all they did was
10:01:34 2 obtain the interest that they already owned under the
10:01:38 3 note and deed of trust.

10:01:40 4 So we don't have any -- there is no closing
10:01:45 5 statement, and I've been pondering why there isn't any
10:01:48 6 closing statement for the note. The only closing
10:01:51 7 statement that exists has to do with the cash that was
10:01:53 8 transferred under the deed in lieu, which is like
10:01:57 9 345,000 or some number like that. So I've been
10:02:01 10 pondering why wasn't there a closing statement for that.

10:02:05 11 Of course, that was all under Mr. Bidsal's
10:02:07 12 control, and I've concluded in my -- I've concluded that
10:02:09 13 really because when they bought the note, they
10:02:12 14 already -- they obtained a deed of trust, a UCC security
10:02:16 15 interest, an assignment of the leases and the rents, and
10:02:20 16 therefore, they basically had an interest in the
10:02:22 17 property, and all they did was convert their -- convert
10:02:25 18 those documents into an interest in the property. So in
10:02:28 19 reality, what they -- the purchase price for the note
10:02:33 20 would have been the COP for the property as well.

10:02:37 21 Now, you can separate it and say it was two
10:02:39 22 different transactions. I don't think it was two
10:02:41 23 separate transactions the way -- simply because there
10:02:45 24 was no -- there was really no documents that have been
10:02:47 25 provided to them. They're in control. They've never

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10:02:50 1 provided us a closing statement.

10:02:52 2 But under the -- but if there was a dispute

10:02:54 3 about -- so under the formula -- the formula is

10:02:58 4 straightforward, if you assume that the cost of the

10:03:06 5 properties were -- was the cost of the note. And in any

10:03:11 6 case, they've agreed -- we've agreed to use a -- and

10:03:17 7 Mr. Bidsal, you'll hear, agrees -- you'll see -- you'll

10:03:20 8 hear him agree that the actual cost of the note was the

10:03:24 9 cost of the properties. And that was 4,048,000, I

10:03:32 10 believe. You'll see -- you'll hear the testimony about

10:03:33 11 it.

10:03:34 12 So there's really no dispute about that. So

10:03:37 13 that's why they never raised it. So after the

10:03:40 14 arbitrator's award, they -- Mr. Bidsal scrambled and

10:03:43 15 tried to find some other dispute, and then he called

10:03:46 16 this arbitration. But even then, he never really

10:03:48 17 identified what the dispute was.

10:04:02 18 I'm talking about what could have been decided

10:04:07 19 regardless of whether they raised -- could have been

10:04:10 20 decided in 2017, but for his repudiation of his

10:04:15 21 obligation to sell -- was an arbitration such as this to

10:04:21 22 decide what should be the purchase price, if there was

10:04:25 23 ever one. And that could have been decided without all

10:04:31 24 the -- with all -- without the years of litigation

10:04:32 25 concerning his obligation to sell. Could have been an

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10:04:36 1 easy -- easier arbitration, and the date of the sale
10:04:42 2 should relate back to the date that the sale should have
10:04:44 3 closed. Because all, then, what you're talking about is
10:04:49 4 the amount of money that has to be paid. But that --
10:04:53 5 that was repudiated by Mr. Bidsal. He refused to
10:05:00 6 proceed.

10:05:00 7 They say that we never asserted an amount. As a
10:05:09 8 matter of fact, in opposition of a motion to stay, we
10:05:10 9 did set forth a formula and what we felt like had to be
10:05:14 10 paid. And I've included that as one of our exhibits.

10:05:21 11 So just to come to a conclusion, when Mr. Bidsal
10:05:30 12 was asked about why he made his \$5 million offer, he
10:05:36 13 said he didn't want to manage the property anymore. The
10:05:39 14 fact of the matter, he was trying to get the property
10:05:42 15 cheap. And that's proven. And now he's fighting
10:05:47 16 desperately to try to avoid that.

10:05:52 17 The evidence is going to show that Mr. Bidsal
10:05:56 18 over-distributed, and -- he began over-distributing to
10:06:00 19 himself. He's misinterpreted Exhibit B. It's like the
10:06:08 20 Queen of Hearts; it's not what it is, it's what I say it
10:06:10 21 is. His interpretation is not only grammatically but
10:06:14 22 factually opposite of what Exhibit B should be
10:06:19 23 interpreted to say. And if anyone has been taken
10:06:23 24 advantage of during this entire time period, it's
10:06:27 25 Mr. Golshani, who's got still his -- still has more than

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10:06:31 1 70 percent of the capital up, and he's been --

10:06:33 2 Mr. Bidsal holds on to that property and just refuses to

10:06:38 3 give it up.

10:06:38 4 Thank you very much, Your Honor.

10:06:40 5 THE ARBITRATOR: All right. You want to take a

6 break before the first witness?

7 MR. SHAPIRO: I'm good to go, but, I mean, I'm

8 not the one to ask. I can go for a long time without

9 taking a break.

10 THE ARBITRATOR: There might be a reason I'm

11 asking too.

12 MR. GERRARD: Yes, let's take a break.

10:10:33 13 THE ARBITRATOR: Let's go off the record.

10:10:33 14 ***

10:10:33 15 (RECESS TAKEN FROM 10:06 A.M. TO 10:15 A.M.)

10:15:40 16 ***

10:15:40 17 THE ARBITRATOR: Okay. First witness. And,

10:15:42 18 Plaintiff, I think that's you.

10:15:42 19 MR. GERRARD: Yes. Our first witness, we call

10:15:44 20 Ben Golshani.

10:15:45 21 THE ARBITRATOR: All right.

10:15:49 22 MR. LEWIN: Go sit over there.

23 THE ARBITRATOR: Mr. Golshani, will you raise

24 your right hand, please.

25 ///

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1 Whereupon,

2 BENJAMIN GOLSHANI,

3 having first been called as a witness, was duly sworn

4 and testified as follows:

5 THE ARBITRATOR: All right. Your name is

6 Benjamin --

7 THE WITNESS: Golshani.

8 THE ARBITRATOR: Golshani.

10:16:28 9 THE WITNESS: G-O-L-S-H-A-N-I.

10:16:45 10 THE ARBITRATOR: All right. Mr. Gerrard.

10:16:47 11 MR. GERRARD: Thank you, Your Honor.

10:16:47 12 EXAMINATION

10:16:47 13 BY MR. GERRARD:

10:16:49 14 Q. Mr. Golshani, would you please open up in the

10:16:52 15 binder of exhibits in front of you to Exhibit No. 1, Tab

10:16:56 16 No. 1.

10:17:13 17 Do you have that in front of you, sir?

10:17:16 18 A. Pardon me?

10:17:16 19 Q. Do you have that exhibit in front of you?

10:17:18 20 A. Yes.

10:17:18 21 Q. Have you seen this document before?

10:17:20 22 A. I may have. It looks familiar.

10:17:25 23 Q. Okay. So this document states that, for a

10:17:29 24 purchase price of \$3,850,000, that the seller of a

10:17:35 25 certain promissory note, which is identified here as

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10:17:37 1 GCCFC 2007-GG11 Sunset Office, LLC, would sell this note
10:17:46 2 to the buyer that's identified as Real Equities, LLC.
10:17:51 3 Do you see where I'm looking?
10:17:52 4 A. Yes.
10:17:52 5 Q. Okay. Now, you're not in any way associated with
10:17:56 6 Real Equities, LLC, are you?
10:17:57 7 A. Pardon me?
10:17:58 8 Q. You're not associated with Real Equities, LLC,
10:18:01 9 are you?
10:18:01 10 A. No.
10:18:01 11 Q. And you understand that Real Equities, LLC is
10:18:04 12 Mr. Bidsal's company; correct?
10:18:09 13 A. Probably.
10:18:09 14 Q. And Mr. Bidsal --
10:18:09 15 MR. LEWIN: You need to speak up, Ben, please.
10:18:09 16 BY MR. GERRARD:
10:18:12 17 Q. And Mr. Bidsal owns that company. You have no
10:18:15 18 interest in it of any kind; correct?
10:18:17 19 A. No, I don't have interest.
10:18:19 20 Q. And Mr. Bidsal originally had tied up the
10:18:22 21 opportunity to purchase this promissory note for
10:18:27 22 \$3,850,000 before you had ever paid one penny; correct?
10:18:30 23 A. Not correct.
10:18:30 24 Q. So are you saying that you had an agreement for
10:18:34 25 the purchase and sale of this note? You had a

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10:18:37 1 contractual right to purchase it prior to Mr. --
10:18:41 2 or prior to the purchase taking place?
10:18:42 3 MR. LEWIN: Objection. Argumentative.
10:18:45 4 THE ARBITRATOR: Overruled.
10:18:46 5 A. We together.
10:18:49 6 BY MR. GERRARD:
10:18:49 7 Q. Sir, it's just a yes or no. Did you have a
10:18:51 8 written contract that stated that you or any company
10:18:56 9 that you owned had the right to purchase this note?
10:19:01 10 A. No.
10:19:02 11 Q. Let's take a look, sir, at Exhibit No. 2. Let me
10:19:12 12 know when you're there, sir.
10:19:13 13 A. I'm there.
10:19:14 14 Q. Okay. This Exhibit 2 is an assignment and
10:19:25 15 assumption of agreements, and it's entered on May 31,
10:19:29 16 2011 between Real Equities, LLC, and Green Valley
10:19:34 17 Commerce, LLC. Do you see that?
10:19:34 18 A. Yes.
10:19:34 19 Q. And you recognize Green Valley Commerce, LLC, as
10:19:38 20 being the limited liability company that you owned
10:19:42 21 50 percent and Mr. Bidsal owned 50 percent of; correct?
10:19:44 22 MR. LEWIN: Objection as to time.
10:19:46 23 THE ARBITRATOR: He just said --
10:19:48 24 A. Mr. Bidsal owned the Green Valley?
10:19:48 25 ///

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10:19:50 1 BY MR. GERRARD:

10:19:50 2 Q. You recognize Green Valley Commerce, LLC, as

10:19:54 3 being an entity that you own 50 percent of -- or your

10:19:57 4 company, CLA, owned 50 percent of --

10:19:58 5 A. Okay.

10:19:59 6 Q. -- and that Mr. Bidsal owned 50 percent of;

10:20:01 7 correct?

10:20:01 8 A. Mm-hm.

10:20:02 9 Q. Is that a yes?

10:20:02 10 A. Yes.

10:20:03 11 Q. And you can see here that this is an agreement

10:20:05 12 that transfers the rights to purchase this promissory

10:20:09 13 note from Real Equities, LLC, a company owned by

10:20:12 14 Mr. Bidsal, to Green Valley Commerce, LLC; correct?

10:20:15 15 A. Yeah. They were our agent.

10:20:18 16 Q. Sir, again, I'm not ask -- I didn't ask you for

10:20:18 17 an explanation.

10:20:20 18 Is that a correct statement?

10:20:21 19 A. Yes.

10:20:21 20 Q. Okay. And there would be no reason for Real

10:20:27 21 Equities, LLC, to transfer its rights to purchase this

10:20:30 22 promissory note to Green Valley Commerce, LLC, unless

10:20:35 23 Real Equities had that right to begin with; correct?

10:20:36 24 MR. LEWIN: Objection. Calls for conclusion --

10:20:39 25 THE ARBITRATOR: Overruled.

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10:20:43 1 MR. LEWIN: Calls for speculation and conclusion.

10:20:43 2 THE ARBITRATOR: Overruled.

10:20:46 3 BY MR. GERRARD:

10:20:46 4 Q. Go ahead, sir.

10:20:46 5 There would be no reason for this transfer --

10:20:48 6 right? -- if Real Equities didn't already own the rights

10:20:50 7 to purchase the note.

10:20:51 8 A. Probably yes.

10:20:52 9 Q. Okay. And ultimately, as you understand, after

10:20:56 10 the transfer of this opportunity from Real Equities to

10:21:02 11 Green Valley Commerce, LLC, Green Valley Commerce

10:21:04 12 actually exercised its right and purchased the note;

10:21:08 13 correct?

10:21:09 14 A. That's correct.

10:21:09 15 Q. Now, sir, you've never been involved in any

10:21:14 16 auction to purchase a promissory note secured by real

10:21:17 17 property, have you?

10:21:18 18 A. I have.

10:21:19 19 Q. When?

10:21:19 20 A. This one.

10:21:21 21 Q. Okay. And are you saying that you were the one

10:21:23 22 that went through the process to get qualified to bid

10:21:26 23 for this note, or was that Mr. Bidsal?

10:21:27 24 A. No, it was together.

10:21:29 25 Q. Okay. Did -- do you understand what the process

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10:21:32 1 is to qualify?

10:21:33 2 A. Of course.

10:21:33 3 Q. Okay. So in order to qualify to bid, the bidding

10:21:38 4 entity or person has to show evidence that they have the

10:21:42 5 funds already available to purchase the note; correct?

10:21:45 6 A. Yes.

10:21:45 7 Q. Okay. You never provided any evidence to Real

10:21:50 8 Equities, LLC, for Real Equities, LLC, to get qualified

10:21:55 9 to bid, did you?

10:21:55 10 A. Yes, I did.

10:21:55 11 Q. You did?

10:21:56 12 A. I gave them my proof of fund.

10:21:58 13 Q. Well, hold on --

10:21:58 14 A. And they send it --

10:21:59 15 Q. Sir, you --

10:21:59 16 MR. LEWIN: Wait a second. Wait a second.

10:21:59 17 BY MR. GERRARD:

10:22:03 18 Q. No. No, you're not answering my question.

10:22:04 19 THE ARBITRATOR: Okay. Hold on. All right.

10:22:06 20 Here's the thing: This is sort of like what we

10:22:09 21 call cross-examination, because you're an adverse party.

10:22:13 22 Okay? So if you're asked a closed-ended or yes-or-no

10:22:19 23 question, the law basically says you have a few options.

10:22:25 24 You can answer yes, no, I don't know, I don't recall, or

10:22:33 25 I can't answer that yes or no.

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10:22:36 1 He has the right to have me enforce that because

10:22:40 2 it's cross-examination. And the same as Mr. Lewin would

10:22:43 3 if Mr. Bidsal testified. So the explanation part,

10:22:51 4 you're not allowed to give unless he asks for it.

10:22:54 5 You'll be able to give it once Mr. Lewin gets to

10:22:57 6 question you.

10:22:57 7 All right? You with me?

10:22:59 8 THE WITNESS: May I say yes or no with an

10:23:00 9 explanation, or I shouldn't?

10:23:02 10 THE ARBITRATOR: You can say that, and then if he

10:23:05 11 wants the explanation, he'll ask for it.

10:23:05 12 THE WITNESS: Okay.

10:23:05 13 THE ARBITRATOR: All right.

10:23:08 14 BY MR. GERRARD:

10:23:08 15 **Q. So, again, sir, let's be clear about this. The**

10:23:12 16 **money that you gave, you gave to Green Valley Commerce,**

10:23:17 17 **LLC; correct?**

10:23:18 18 A. You didn't ask about the money.

10:23:20 19 **Q. Sir, yes or no?**

10:23:21 20 A. Proof of fund.

10:23:22 21 THE ARBITRATOR: This is a new question.

10:23:24 22 A. It's a new question. Okay.

10:23:25 23 BY MR. GERRARD:

10:23:25 24 **Q. The money that you gave, you gave that money to**

10:23:30 25 **Green Valley Commerce, LLC; correct?**

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10:23:32 1 A. No.

10:23:32 2 Q. So you didn't give it to Green Valley Commerce?

10:23:35 3 A. No.

10:23:36 4 Q. Okay. Are you saying that you contributed money

10:23:40 5 to a company that you didn't have any ownership interest

10:23:42 6 in, Real Equities, LLC?

10:23:44 7 A. I deposit in escrow.

10:23:46 8 Q. An escrow that was open between the seller and

10:23:51 9 Green Valley Commerce, LLC; correct?

10:23:52 10 A. Correct. Yep.

10:23:53 11 Q. Okay. So your contribution of that money, again,

10:23:56 12 was on behalf of Green Valley Commerce, LLC; correct?

10:24:00 13 A. Yes, sir.

10:24:00 14 Q. You never contributed any money to Real Equities,

10:24:03 15 did you?

10:24:03 16 A. No.

10:24:04 17 Q. And so when Real Equities qualified to bid on

10:24:07 18 this -- for this note, it did so with its own money;

10:24:11 19 correct?

10:24:11 20 MR. LEWIN: Objection. Lacks foundation.

10:24:12 21 A. No.

10:24:13 22 BY MR. GERRARD:

10:24:13 23 Q. How would you know, sir? Did you -- were you the

10:24:16 24 one that went to the company -- to the auction site and

10:24:22 25 corresponded with them and provided information to them,

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10:24:24 1 or was that Mr. Bidsal?

10:24:25 2 MR. LEWIN: Objection. Compound.

10:24:27 3 THE WITNESS: May I explain?

10:24:28 4 THE ARBITRATOR: Overruled.

10:24:30 5 And the question was how do you know, so yes.

10:24:32 6 THE WITNESS: Because the way it works, the

10:24:38 7 auction requires proof of funds. And at that time, he

10:24:43 8 asked me to give him the proof of funds, which is

10:24:48 9 under -- was under my name. I gave it to him, and then

10:24:51 10 he sent it to them. That was how we qualified.

10:24:54 11 Q. Okay. So you -- listen carefully to my question.

10:24:58 12 Did you ever communicate with the auction site yourself?

10:25:01 13 A. Yes.

10:25:02 14 Q. Who did you communicate with?

10:25:03 15 A. I don't remember, but there was a gentleman by

10:25:08 16 the name of Kevin that we became friends.

10:25:11 17 Q. You became friends with somebody named Kevin?

10:25:14 18 A. Yeah.

10:25:14 19 Q. And then you're telling me that this is the

10:25:17 20 person that worked with the auction site?

10:25:18 21 A. He was working there and then he was very

10:25:23 22 helpful.

10:25:24 23 Q. So, sir, did you contribute any money ever to

10:25:28 24 Real Equities, LLC?

10:25:28 25 A. No.

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10:25:29 1 Q. Okay. Take a look at Exhibit 3, please. Do you
10:25:38 2 have that in front of you, sir?
10:25:59 3 A. Yeah.
10:25:42 4 THE WITNESS: May I have a water?
10:25:42 5 BY MR. GERRARD:
10:25:42 6 Q. You ready?
10:26:00 7 A. Yeah.
10:26:00 8 Q. Okay. You recognize this as being the escrow
10:26:04 9 closing statement for the acquisition of the promissory
10:26:06 10 note?
10:26:06 11 A. Correct.
10:26:07 12 Q. Now, through this transaction, you were -- Green
10:26:13 13 Valley Commerce, LLC, was not obtaining any ownership
10:26:16 14 interest in real property, was it?
10:26:19 15 MR. LEWIN: Objection. This calls for a legal
10:26:21 16 conclusion.
10:26:22 17 THE ARBITRATOR: If he knows.
10:26:24 18 A. Green Valley wasn't, with an explanation.
10:26:28 19 BY MR. GERRARD:
10:26:28 20 Q. All that Green Valley was obtaining was a note
10:26:32 21 that was secured by a deed of trust against real
10:26:34 22 property; correct?
10:26:35 23 A. Yeah. Green Valley was obtaining a property.
10:26:40 24 Q. Okay. Do you know --
10:26:41 25 MR. LEWIN: Wait. Excuse me --

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10:26:41 1 THE ARBITRATOR: You said it was obtaining a
10:26:41 2 property?

10:26:45 3 THE WITNESS: Yeah. The loan is a property. We
10:26:47 4 looked at it like that. We knew that this loan was in
10:26:53 5 default and we had planned to go to acquire -- buy the
10:26:59 6 note and then acquire the property and subdivide. All
10:27:03 7 of that we had discussed.

10:27:05 8 THE ARBITRATOR: Okay.
10:27:06 9 BY MR. GERRARD:

10:27:06 10 Q. All right, sir, please just --

10:27:10 11 A. We considered the note to be a property.

10:27:10 12 THE ARBITRATOR: It was sort of my question. So
10:27:10 13 go ahead.

10:27:11 14 BY MR. GERRARD:

10:27:11 15 Q. Please just answer my question. This is a very
10:27:14 16 specific question. Do you believe that a deed of
10:27:17 17 trust -- a security interest -- gives you title to real
10:27:21 18 property?

10:27:21 19 A. Yes.

10:27:23 20 Q. Okay. But through this escrow transaction, all
10:27:30 21 that you acquired -- all that Green Valley Commerce,
10:27:34 22 LLC, acquired was a promissory note secured by a deed of
10:27:37 23 trust; correct?

10:27:40 24 A. The way I looked at it, we looked at it, it
10:27:44 25 was -- it was a property which was a loan. It was a

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10:27:46 1 loan, yes.

10:27:47 2 Q. It was a note; correct?

10:27:48 3 A. Yes, it was a note.

10:27:50 4 Q. And the amount of the purchase price that was

10:27:53 5 paid by -- the portion of the purchase price that you

10:27:56 6 put up money to pay was \$2,430,000 -- I'm sorry,

10:28:02 7 \$2,834,000 -- let me get the right number here because

10:28:02 8 it's cut off there.

10:28:10 9 The portion of the money that you put up to close

10:28:13 10 this acquisition was \$2,834,250; correct?

10:28:19 11 A. No. To close, I paid 2,400,030. I had paid

10:28:27 12 another 404, 10 percent down. After you win the

10:28:34 13 auction, they need you to wire immediately 10 percent,

10:28:38 14 and I did that.

10:28:38 15 Q. All right.

10:28:38 16 A. And that's what it says here.

10:28:40 17 Q. All right. So the total amount that you paid to

10:28:43 18 acquire your interest in this company was \$2,834,250;

10:28:50 19 correct?

10:28:50 20 A. I think so, yes.

10:28:51 21 Q. Okay. And Mr. Bidsal contributed his right to

10:28:55 22 acquire this note, and he also contributed cash of

10:29:00 23 \$1,215,000; correct?

10:29:02 24 A. No. Not correct.

10:29:03 25 Q. That's not correct?

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10:29:04 1 A. No.

10:29:05 2 Q. He didn't put up cash of 1,215,000?

10:29:09 3 A. He did put the cash.

10:29:09 4 Q. Okay.

10:29:11 5 A. But he didn't --

10:29:12 6 Q. Sir, again, it's a yes or no. I don't need your

10:29:13 7 explanation.

10:29:13 8 A. I apologize, but you said --

10:29:18 9 Q. Sir, again, it's a yes or no.

10:29:19 10 THE ARBITRATOR: Hold on. So he says no. The

10:29:22 11 answer's no.

10:29:23 12 BY MR. GERRARD:

10:29:23 13 Q. Okay. So --

10:29:25 14 A. With an explanation, if you want it.

10:29:28 15 Q. So you agree that Mr. Bidsal put up cash of

10:29:31 16 1,215,000?

10:29:33 17 A. Yes.

10:29:34 18 Q. Correct?

10:29:34 19 And we've just looked at documents that show that

10:29:36 20 he transferred his rights to acquire this note, haven't

10:29:36 21 we?

10:29:40 22 A. He had to, yes.

10:29:41 23 Q. Okay. All right. Sir, let's take a look now at

10:29:47 24 Exhibit No. 4. Do you have that in front of you, sir?

10:29:55 25 A. Yes.

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1 Q. Okay. So this exhibit is the file-stamped
2 articles of organization that formed Green Valley
3 Commerce, LLC, on May 26, 2011; correct?
4 A. Yes.
5 Q. And at the time that Green Valley Commerce was
6 formed, there was no operating agreement in existence at
7 that date, was there?
8 A. There was talk of it, but no. You're right.
9 There was not.
10 Q. Okay. And ultimately there was an operating
11 agreement that was arrived at and agreed to by the
12 parties; correct?
13 A. Could you repeat? There was an ultimately --
14 Q. Sure.
15 Ultimately, there was an operating agreement that
16 was agreed to by both of the parties?
17 A. Yes, sir.
18 Q. Correct?
19 A. Yes, sir.
20 Q. Would you open up to Exhibit 5, please?
21 Do you have that in front of you, sir?
22 A. Yes.
23 Q. Okay. So first of all, look at the bottom
24 right-hand corner of every page. Do you see your
25 initials on the bottom right-hand corner of each page?

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10:30:58 1 A. Yes.

10:30:58 2 Q. And you initialed every page of this document

10:31:02 3 except for the one you signed; correct?

10:31:03 4 A. I think so, yes.

10:31:05 5 Q. And then let's take a look at page number -- let

10:31:18 6 me find it here. It's page number 21.

10:31:28 7 A. Okay.

10:31:29 8 Q. Do you see your signature there?

10:31:34 9 A. Yes, sir.

10:31:35 10 Q. Okay. So do you recall what the date was when

10:31:39 11 you signed this agreement?

10:31:39 12 A. It was late December of 2011.

10:31:46 13 Q. Okay. So you sign this in December of 2011. If

10:31:51 14 you look at the first page, it has an effective date of

10:31:55 15 June 15 of 2011; correct?

10:31:56 16 A. Yes.

10:31:56 17 Q. So you intended all of the provisions of this

10:32:00 18 agreement to be effective as of June 15, 2011; correct?

10:32:04 19 A. No.

10:32:04 20 Q. So did you sign this agreement, sir?

10:32:06 21 A. Yes.

10:32:07 22 Q. Okay. And at the time that you signed the

10:32:10 23 agreement, did you understand that you were binding

10:32:12 24 yourself to the terms of this agreement?

10:32:13 25 A. Yes.

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10:32:14 1 Q. And you signed and initialed the first page of
10:32:19 2 this operating agreement that states that this agreement
10:32:21 3 is effective June 15, 2011; correct?

10:32:24 4 A. Yes. I agree.

10:32:26 5 Q. So would you have signed that document if you
10:32:28 6 didn't -- if that wasn't your expectation that it would
10:32:31 7 be effective as of June 15, 2011?

10:32:33 8 A. I would not sign if I not -- but I have
10:32:38 9 explanation.

10:32:39 10 Q. Well, sir, it's a simple question. Would you
10:32:41 11 have signed --

10:32:41 12 A. Okay. No, I wouldn't. I have an explanation, if
10:32:44 13 you want it.

10:32:44 14 Q. Sir, I'm not interested in your explanation.

10:32:47 15 A. No problem.

10:32:47 16 Q. Would you have signed this document stating that
10:32:53 17 it was effective as of June 15, 2011 if you didn't
10:32:56 18 expect it to be effective as of that date?

10:32:58 19 A. You're right. I would sign.

10:33:00 20 Q. Did you understand that it was going to be
10:33:03 21 effective as of June 15, 2011?

10:33:04 22 A. Yes. Yes, sir.

10:33:05 23 Q. All right. Sir, before you signed this document,
10:33:07 24 did you read it in its entirety?

10:33:09 25 A. Yes.

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10:33:11 1 Q. And did you understand what you were reading?

10:33:14 2 A. I think so.

10:33:14 3 Q. Okay. And if there had been any provision in

10:33:19 4 this agreement that you disagreed with, you certainly

10:33:21 5 could have told Mr. Bidsal that you were not willing to

10:33:25 6 sign it because it didn't accurately state what your

10:33:28 7 intent was; correct?

10:33:28 8 A. We had such a good relationship that --

10:33:31 9 Q. Again, sir, it's just yes or no.

10:33:32 10 A. Say again.

10:33:33 11 Q. You could have told Mr. Bidsal that you didn't

10:33:36 12 think that this agreement accurately reflected your

10:33:39 13 intent --

10:33:39 14 A. I could have.

10:33:39 15 Q. -- before signing it; correct?

10:33:41 16 A. Yes.

10:33:41 17 Q. Okay. And you understand that once you sign

10:33:44 18 this, you're bound by the terms of the agreement; right?

10:33:45 19 A. Yes.

10:33:45 20 Q. So let's take a look at some of the provisions in

10:33:50 21 this agreement. First of all, let's look at the very

10:33:52 22 first page under Definitions. Do you have that open,

10:34:00 23 sir?

10:34:00 24 A. All right.

10:34:04 25 Q. And in the definitions, there's a defined term

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10:34:11 1 that says "business of the company." Do you see where
10:34:12 2 I'm looking? Under Section -- Article 1, Section 1?
10:34:17 3 A. Yes.
10:34:17 4 Q. And it says that the "Business of the company
10:34:19 5 shall mean acquisition of secured debt, conversion of
10:34:24 6 such debt into fee simple title by foreclosure, purchase
10:34:28 7 or otherwise, and operation and management of real
10:34:31 8 estate."
10:34:32 9 Do you see that?
10:34:32 10 A. Yes.
10:34:33 11 Q. Okay. And when you signed this agreement, did
10:34:36 12 you understand that that was what the business of this
10:34:38 13 company was going to be?
10:34:39 14 A. The important part, yes.
10:34:43 15 Q. Okay. And that -- if you thought that there was
10:34:47 16 some other aspect of the business of this company that
10:34:49 17 was important, you would have certainly made sure that
10:34:51 18 that was listed here in this definition; correct?
10:34:53 19 A. Well, no. For example, when --
10:34:56 20 Q. Sir, it's just yes or no. If you thought that
10:34:59 21 there was some other important aspect of what this
10:35:02 22 business was supposed to do, you would have made sure
10:35:04 23 that that was included in this definition; correct?
10:35:07 24 A. I didn't pay attention, if you're asking me.
10:35:10 25 Q. And this definition does not say anything about

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10:35:13 1 selling real property, does it?

10:35:14 2 A. To me, management -- part of management can be

10:35:18 3 selling.

10:35:19 4 Q. So you think "management" and "selling" mean the

10:35:21 5 same thing?

10:35:22 6 A. No. But a part of --

10:35:25 7 Q. Again, sir, it's just yes or no. Do you think

10:35:27 8 "management" and "selling" mean the same thing?

10:35:29 9 A. Somehow, yes.

10:35:32 10 Q. All right. Let's take a look at the next page of

10:35:37 11 this operating agreement on page 2. Do you see at the

10:35:41 12 top there is a definition of "member"?

10:35:43 13 A. Which --

10:35:47 14 Q. Page 2.

10:35:47 15 A. Of the operating agreement?

10:35:49 16 Q. Yes. We're still on Exhibit 5. I'll let you

10:35:53 17 know if we move from that. We're on page 2 of the

10:35:55 18 operating agreement.

10:35:58 19 A. Okay.

10:35:58 20 Q. Do you see at the top of that page there's a

10:36:01 21 definition of "member"?

10:36:01 22 A. Yes.

10:36:02 23 Q. And it says, "Member shall mean a person who has

10:36:05 24 a membership interest in the limited liability company."

10:36:08 25 Do you see that?

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10:36:08 1 A. Yes.

10:36:09 2 Q. And then the next definition says, "Membership

10:36:10 3 Interest shall mean, with respect to a member, the

10:36:13 4 percentage of ownership interest in the company of such

10:36:17 5 member (may also be referred to as interest). Each

10:36:20 6 member's percentage of membership interest in the

10:36:22 7 company shall be as set forth in Exhibit B."

10:36:25 8 Do you see where I'm reading?

10:36:25 9 A. Yes.

10:36:25 10 Q. So let's look at Exhibit B. That's the last page

10:36:29 11 of that document. Do you see at the top of the page

10:36:36 12 where it lists the members' percentage interest?

10:36:38 13 A. Yes.

10:36:38 14 Q. And under -- according to that information,

10:36:40 15 Mr. Bidsal is a 50 percent owner of this company;

10:36:44 16 correct?

10:36:44 17 A. Correct.

10:36:44 18 Q. And you're -- through your company, CLA

10:36:47 19 Properties -- a 50 percent owner; correct?

10:36:49 20 A. Yes.

10:36:49 21 Q. Now, that's pretty important information; right?

10:36:52 22 A. I think so, yes.

10:36:54 23 Q. And if that was inaccurate, you would have never

10:36:58 24 signed this agreement; right?

10:36:59 25 A. Well, I explain.

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10:37:03 1 Q. Again, yes or no, sir? Would you have signed
10:37:05 2 this agreement if that information was not accurate?
10:37:08 3 A. Well, I did sign this agreement and this was not
10:37:11 4 accurate and we discussed that before --
10:37:13 5 Q. Okay. Sir, again, I don't need your explanation.
10:37:17 6 Okay? Please just answer my questions. When your
10:37:19 7 attorney asks you questions, you can give your
10:37:21 8 explanations.
10:37:22 9 When you signed this agreement and initialed the
10:37:25 10 bottom of this page, you obviously saw that the
10:37:27 11 ownership interest was 50 percent Mr. Bidsal, 50 percent
10:37:31 12 CLA Properties; correct?
10:37:32 13 A. No, I didn't see it.
10:37:33 14 Q. You're saying you didn't see that?
10:37:35 15 A. No. I didn't pay attention to it.
10:37:40 16 Q. All right, sir. So let's move on.
10:38:14 17 Let's go back to the operating agreement, and I'd
10:38:25 18 like you to look at Section -- it's Article 5,
10:38:53 19 Section 3. It's on page 10 of the operating agreement.
10:39:01 20 Let me know when you're there.
10:39:04 21 THE ARBITRATOR: Section 4?
10:39:05 22 MR. GERRARD: Yeah -- Section 3 of Article 5.
10:39:12 23 THE ARBITRATOR: Section 3, I think, is just the
10:39:13 24 one sentence. Is that the one you're looking for?
10:39:16 25 Section 4, even though it's in a different font, is --

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10:39:18 1 is a different section.

10:39:21 2 MR. GERRARD: Yeah, I understand.

10:39:22 3 THE ARBITRATOR: Okay.

10:39:26 4 BY MR. GERRARD:

10:39:26 5 Q. And, sir, when you look at Section 3, do you see

10:39:29 6 where it has a heading that says "Right of first refusal

10:39:34 7 for sales of interests by members. Payment of purchase

10:39:37 8 price."

10:39:37 9 Do you see this?

10:39:38 10 A. Yes.

10:39:38 11 Q. And then do you see the language that appears

10:39:41 12 after that in Section 4 and in Section 4.1?

10:39:44 13 A. Yes.

10:39:47 14 Q. Okay. Do you recall what the -- when this

10:39:51 15 language was added to the operating agreement?

10:39:53 16 A. Do you mean a date?

10:39:58 17 Q. Sure.

10:39:59 18 A. Probably -- from the beginning it had a buy/sell

10:40:18 19 agreement.

10:40:19 20 Q. Well, sir --

10:40:19 21 A. And when they started, I don't remember --

10:40:21 22 Q. You don't remember the date?

10:40:23 23 A. No.

10:40:23 24 Q. Let's see if I can help you. Let's take a look

10:40:27 25 at Exhibit 91.

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10:40:30 1 THE ARBITRATOR: That may be a different binder.

10:40:33 2 BY MR. GERRARD:

10:40:33 3 Q. Yeah, and we'll give you that binder right now.

10:40:36 4 And that's -- that's in --

10:40:36 5 THE ARBITRATOR: Mr. Golshani, it's a different

10:40:38 6 notebook. You got it over there?

10:40:40 7 MR. GERRARD: He's going to give it to him right

10:40:41 8 here. That's -- that's Binder 4 of ours. That's the

10:40:44 9 first binder of -- of the --

10:40:46 10 MR. SHAPIRO: So I don't have the witness binder

10:40:47 11 for 91. That was one that you brought.

10:40:52 12 MR. LEWIN: You didn't bring a witness binder? I

10:40:54 13 brought my own binder, but I didn't bring a witness

10:40:54 14 binder for yours.

10:40:57 15 MR. GERRARD: Well, this was one of your

10:40:58 16 exhibits.

10:40:59 17 THE ARBITRATOR: It's one of your exhibits is

10:41:01 18 what he's saying.

10:41:02 19 MR. LEWIN: Oh. Oh, thank you. In that case --

10:41:02 20 MR. GERRARD: So do you have that binder, then?

10:41:02 21 MR. LEWIN: There's a witness --

10:41:14 22 MR. GERRARD: Right behind you, there.

10:41:14 23 THE ARBITRATOR: Who's Richard A-G-A-Y?

10:41:17 24 MR. LEWIN: That's someone from my -- Richard

10:41:19 25 Agay from my office.

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10:41:20 1 THE ARBITRATOR: Okay. Do you want him in?

10:41:22 2 MR. LEWIN: No. No.

10:41:24 3 THE ARBITRATOR: He's trying to get into the

10:41:25 4 Zoom.

10:41:25 5 Let's go off the record, please.

10:41:25 6 (Discussion off the record.)

10:43:05 7 (Richard Agay now present via Zoom.)

10:43:05 8 THE ARBITRATOR: Okay. Present is -- another

10:43:07 9 person present is going to be Richard A-G-A-Y.

10:43:13 10 MR. LEWIN: He's an attorney with my office.

10:43:17 11 He's actually of counsel with my office, but he works

10:43:18 12 with me.

10:43:26 13 THE ARBITRATOR: All right. Mr. Golshani, you

10:44:15 14 realize you're under oath, right?

10:44:16 15 THE WITNESS: Yes, sir.

10:44:17 16 THE ARBITRATOR: All right. You have Exhibit 91

10:44:19 17 in front of you?

10:44:20 18 THE WITNESS: Yes.

10:44:20 19 THE ARBITRATOR: Mr. Gerrard.

10:44:20 20 MR. GERRARD: Okay. Thank you, Your Honor.

10:44:21 21 BY MR. GERRARD:

10:44:21 22 Q. All right. Mr. Golshani, you see in front of you

10:44:25 23 Exhibit 91 is an email from David LeGrand dated

10:44:29 24 September 16, 2011. Now, as of September 16, 2011, the

10:44:33 25 operating agreement had not been signed; correct?

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10:44:35 1 A. Correct.

10:44:36 2 Q. And you can see that this email was addressed to

10:44:38 3 Mr. Bidsal and to yourself, Benjamin Golshani; correct?

10:44:41 4 A. Yes.

10:44:42 5 Q. And it says, "Shawn --

10:44:46 6 MR. LEWIN: I have an objection to the content of

10:44:49 7 this email. It's irrelevant.

10:44:51 8 THE ARBITRATOR: This is your exhibit.

10:44:53 9 MR. LEWIN: Yes, but I haven't -- I put it in

10:44:54 10 there, but I wasn't planning on offering it unless we

10:44:58 11 got into drafting issue. I laid out exhibits regarding

10:45:02 12 possible drafting issues.

10:45:04 13 But the exhibit -- paragraph 13 of the operating

10:45:08 14 agreement on page 2028 sets forth that the operating

10:45:13 15 agreement was prepared by David LeGrand. Therefore, the

10:45:19 16 only purpose of this testimony -- as I can see, the only

10:45:22 17 relevance would be to try to show that Mr. Golshani is

10:45:26 18 the drafter, and that is a conclusive -- under Nevada

10:45:30 19 law, that recital is conclusive.

10:45:32 20 THE ARBITRATOR: Okay. Where did you say? On

10:45:32 21 page 28?

10:45:34 22 MR. LEWIN: Page 28 -- no. Page 20, Your Honor,

10:45:35 23 Article 13, Section 1.

10:45:39 24 MR. SHAPIRO: I'd like to respond when you're

10:45:40 25 ready, Your Honor.

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10:45:42 1 THE ARBITRATOR: Hold on.

10:45:44 2 MR. LEWIN: Well -- yeah. Also, just to -- we

10:45:45 3 talked earlier. That issue has been decided by Judge

10:45:50 4 Haberfeld -- who's the drafter.

10:45:51 5 THE ARBITRATOR: Okay.

10:45:52 6 MR. GERRARD: Your Honor, I know that Mr. Shapiro

10:45:53 7 wants to talk about what happened in the past, but this

10:45:56 8 is not recital. Yes, Nevada law does say that recitals

10:45:59 9 are conclusively presumed. This document's recitals

10:46:02 10 were on the first page, and there are only two -- there

10:46:05 11 was only one recital in this document. This is not a

10:46:08 12 recital.

10:46:09 13 MR. LEWIN: It has the effect of a recital. You

10:46:11 14 can call it -- it has the effect of a recital no matter

10:46:15 15 how you characterize it.

10:46:15 16 MR. GERRARD: No, that's -- that --

10:46:19 17 MR. SHAPIRO: Your Honor, Mr. Lewin raised this

10:46:21 18 before, and the decision of Your Honor was that it was

10:46:24 19 going to be addressed at the time it came up. Now,

10:46:28 20 after that decision -- after Your Honor made that ruling

10:46:32 21 that you would address it when it came up, we had

10:46:36 22 opening arguments. Mr. Gerrard gave opening arguments

10:46:41 23 on behalf of the claimant; Mr. Lewin gave opening

10:46:43 24 arguments on behalf of the counter-claimant. In those

10:46:47 25 open -- opening arguments by Mr. Lewin, he discussed at

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10:46:50 1 length the drafting of the operating agreement.

10:46:53 2 That was part of his opening argument, so to the

10:46:56 3 extent that he wants to argue it's irrelevant, he's

10:46:59 4 waived it. He's put it at issue by spending -- and I

10:47:02 5 was writing it down and starred it because he spent a

10:47:05 6 considerable amount of time as part of his opening

10:47:07 7 arguments about the drafting.

10:47:09 8 So he can't have it both ways. He can't say,

10:47:12 9 "This is -- this is part of our case. We're going to

10:47:14 10 talk about this, but the other side can't." He's opened

10:47:16 11 the door. If there even is a legitimate objection, he's

10:47:20 12 already opened the door and we should be allowed to

10:47:20 13 introduce it, Your Honor, and then decide what you want

10:47:23 14 to do with it.

10:47:24 15 THE ARBITRATOR: The door's not generally

10:47:25 16 opened -- the door is generally opened via evidence, not

10:47:29 17 opening statement. And opening statements, of course,

10:47:33 18 are not evidence. But, I mean, why hasn't this -- why

10:47:41 19 isn't this already -- let me ask it this way.

10:47:46 20 What's the effect of Judge Haberfeld's somewhat

10:47:50 21 extensive discussion and findings on this issue in his

10:47:56 22 April 5, 2019 award?

10:47:59 23 MR. SHAPIRO: I went and looked at his award, his

10:48:02 24 ruling. His ruling simply states that Bidsal was the

10:48:05 25 drafter of the document in general. Which, by the way,

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10:48:09 1 is contrary to what Mr. Lewin is trying to argue the
10:48:12 2 document says itself. But that was Mr. Haberfeld's
10:48:15 3 ruling. He does not talk about specific provisions, and
10:48:19 4 where we're going today deals with specific provisions.

10:48:24 5 MR. GERRARD: And more importantly goes to
10:48:25 6 timing -- goes to timing of when those provisions were
10:48:27 7 inserted.

10:48:28 8 THE ARBITRATOR: Timing for when it's inserted is
10:48:30 9 different than who drafted it. I don't think it's
10:48:32 10 before me to determine who drafted the buy/sell
10:48:38 11 provision or the formula in 4.1.

10:48:49 12 But I understood the question that was asked when
10:48:52 13 the objection was raised was regarding timing, that this
10:48:57 14 was September and the operating agreement wasn't signed
10:49:05 15 until December of 2011. And the question that led to
10:49:08 16 this exhibit was: Do you remember when the Section 4
10:49:15 17 and 4.1 of the operating agreement were inserted?

10:49:20 18 And Mr. Golshani said, "I don't remember," and
10:49:22 19 then this document was presented, and that's where we
10:49:24 20 were.

10:49:24 21 So I'm going to overrule the objection as it's
10:49:28 22 being used now.

10:49:28 23 BY MR. GERRARD:

10:49:33 24 Q. Right. So Mr. Golshani -- so when you received
10:49:34 25 this email on September 16, 2011, it had attached to it

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10:49:41 1 the modified version of the operating agreement;
10:49:44 2 correct?
10:49:49 3 A. I don't see -- it says it has an attachment.
10:49:51 4 Q. Sure. So look behind that. There's --
10:49:53 5 A. I see. I'm not sure if that was the attachment.
10:49:56 6 Q. Well, what it references is the -- is the
10:50:01 7 operating agreement, and what you have attached is -- to
10:50:04 8 this email that's produced by your attorney -- is the
10:50:07 9 operating agreement; correct?
10:50:10 10 A. I've had the document presented to me with
10:50:15 11 attachments and later on --
10:50:17 12 Q. Sir, again, I don't need your explanation. Is
10:50:20 13 this the document -- this operating agreement that has
10:50:25 14 been produced as an attachment to this email as produced
10:50:28 15 by your attorney -- do you have some reason to believe
10:50:30 16 that this is not the operating agreement that was
10:50:32 17 attached to the email on September 16, 2011?
10:50:35 18 A. I have no way of proving that the attorney
10:50:39 19 attached this to this email.
10:50:41 20 Q. Okay. So what you're saying is you don't know
10:50:43 21 one way or the other?
10:50:43 22 A. Yes.
10:50:44 23 Q. Okay. So let's take a look at the operating
10:50:46 24 agreement that is attached as an exhibit -- or, excuse
10:50:50 25 me, was attached as an attachment to this email by your

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10:50:55 1 attorney. And I'd like you to open up in that operating
10:50:59 2 agreement to section number --

10:51:04 3 THE ARBITRATOR: Give him a page number.

10:51:07 4 MR. GERRARD: Yeah, I'm looking for it.

10:51:08 5 MR. LEWIN: 10?

10:51:12 6 MR. GERRARD: It's page 10 of the agreement.

10:51:19 7 MR. SHAPIRO: Bates stamp at the bottom, Doug?

10:51:22 8 MR. GERRARD: I'm just looking -- yes. It's --
10:51:23 9 the Bates stamp is CLAARB21064.

10:51:30 10 THE WITNESS: 64 or 5?

10:51:32 11 MR. GERRARD: I'm starting at 64.

10:51:32 12 THE ARBITRATOR: CLAARB2001065?

10:51:38 13 MR. GERRARD: 4. 1064. We're going to move to
10:51:41 14 1065 in a minute.

10:51:43 15 THE ARBITRATOR: Okay.

10:51:44 16 BY MR. GERRARD:

10:51:44 17 Q. Okay. Do you have that in front of you, sir?

10:51:45 18 A. Yes.

10:51:46 19 Q. Okay. Do you still have Exhibit 5 open in front
10:51:51 20 of you as well?

10:51:52 21 THE ARBITRATOR: In the other book.

10:51:52 22 BY MR. GERRARD:

10:51:54 23 Q. In the other binder. Right there.

10:51:54 24 A. Yes, sir.

10:51:55 25 Q. Okay. So in that other binder, we have at the

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10:51:59 1 bottom of page 9 of Exhibit 5 -- Exhibit 5, there is an Page 93
10:52:05 2 Article 5 that's titled Membership Interest. Do you see
10:52:09 3 that? Page 9.
10:52:14 4 A. Page 9 of operating agreement?
10:52:15 5 Q. Yes. Do you see in Article 5 that's titled
10:52:22 6 Membership Interest?
10:52:23 7 A. Membership Interest, yes.
10:52:26 8 Q. Okay. And then in the exhibit that's in front of
10:52:29 9 you, which is Exhibit 91, you also see at the bottom of
10:52:32 10 this page I just had you open to, Article 5, Membership
10:52:32 11 Interest; right?
10:52:37 12 MR. LEWIN: Objection. Irrelevant.
10:52:37 13 A. Yes.
10:52:37 14 MR. LEWIN: Wait. Please. Stop. No, please
10:52:39 15 wait until I -- take a breath before.
10:52:39 16 THE ARBITRATOR: Overruled.
10:52:43 17 MR. LEWIN: Are we going to go into the terms --
10:52:44 18 I'm just wanting to get some guidelines as to what --
10:52:46 19 where we're going with this.
10:52:47 20 THE ARBITRATOR: The objection's overruled.
10:52:50 21 MR. LEWIN: Okay.
10:52:50 22 BY MR. GERRARD:
10:52:50 23 Q. Okay, sir. So you see that we're at the same
10:52:52 24 place in both documents; correct?
10:52:53 25 A. Uh-huh.

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10:52:54 1 Q. Okay. So then let's take a look at the next page
10:52:57 2 of Exhibit 91. That's page CLAARB21065. Are you there,
10:53:08 3 sir?

10:53:08 4 A. Yes.

10:53:08 5 Q. Okay. Now, on this page, we have a Section 2 --
10:53:14 6 right? -- and then underneath that we have a Section 3?

10:53:17 7 A. Yes.

10:53:18 8 Q. And Section 3 says "Right of first refusal for
10:53:21 9 sales of interests by members."

10:53:23 10 Do you see that?

10:53:23 11 A. Section 3, yes.

10:53:24 12 Q. Okay. Now, take a look at Section 3 of Article
10:53:33 13 4 -- 5. I'm sorry. Article 5 in Exhibit 5. Okay. So
10:53:39 14 that's page 10 of Exhibit 5.

10:53:39 15 A. Uh-huh.

10:53:42 16 Q. Does the language under that Section 3 heading
10:53:44 17 look to be the same as the language under the Section 3
10:53:47 18 heading in Exhibit 91?

10:53:49 19 A. About, yeah.

10:53:50 20 Q. It does?

10:53:51 21 A. Yes.

10:53:52 22 MR. LEWIN: Objection -- never mind.

10:53:54 23 BY MR. GERRARD:

10:53:54 24 Q. So look at the language underneath Section 3.
10:53:57 25 There's an entire paragraph under Section 3 heading in

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10:54:01 1 **Exhibit 91; correct?**

10:54:03 2 THE ARBITRATOR: Well, you said "the headings."

10:54:06 3 MR. GERRARD: Did I? That's why I'm asking right

10:54:07 4 now. I'm not sure if I -- let me ask again, make it

10:54:07 5 clear.

10:54:07 6 THE ARBITRATOR: Okay.

10:54:10 7 BY MR. GERRARD:

10:54:10 8 **Q. Look at the heading for Section 3 in Exhibit 91,**

10:54:15 9 **and then underneath it, there is language underneath the**

10:54:19 10 **heading. Does that language look to be the same as the**

10:54:22 11 **language under the heading of Section 3 in Exhibit 5?**

10:54:25 12 MR. LEWIN: Objection. The document speaks for

10:54:27 13 itself.

10:54:28 14 Wait.

10:54:28 15 THE ARBITRATOR: I mean, it does. I don't know

10:54:34 16 if you're going to walk through every one and see if it

10:54:36 17 looks the same, but --

10:54:38 18 MR. GERRARD: Well, we just have to establish

10:54:39 19 foundation for all the questions that are coming.

10:54:41 20 THE ARBITRATOR: Well, the fact that the document

10:54:42 21 speaks for itself, and that's the objection, suggests

10:54:46 22 that that foundation's been satisfied.

10:54:46 23 MR. GERRARD: Okay.

10:54:46 24 BY MR. GERRARD:

10:54:47 25 **Q. Sir, look down at Section 4.1 and Section 4.2 of**

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10:54:55 1 **Exhibit 5.**

10:55:03 2 A. Compare 4.1 and 4.2?

10:55:04 3 **Q. Yes.**

10:55:05 4 A. Okay.

10:55:05 5 **Q. Do you see any of the language in Section 4.1 or**

10:55:09 6 **4.2 of Exhibit 5 in Exhibit 91?**

10:55:12 7 MR. LEWIN: Same objection, Your Honor.

10:55:23 8 THE ARBITRATOR: Sustained.

10:55:23 9 But, I mean, the foundation's laid.

10:55:26 10 MR. GERRARD: Okay.

10:55:26 11 BY MR. GERRARD:

10:55:27 12 **Q. And, sir, look in -- in Section 4.2 --**

10:55:30 13 MR. LEWIN: We will stipulate that this -- that

10:55:33 14 the agreement that's attached to this September email is

10:55:35 15 different than the email that was -- the document that

10:55:38 16 was actually signed.

10:55:40 17 MR. GERRARD: I appreciate that, but we have the

10:55:42 18 right to present our case, sir.

10:55:43 19 THE ARBITRATOR: Well, right. The only

10:55:44 20 difference is whether the witness was aware of it --

10:55:47 21 that there's a difference. So that -- unless you're

10:55:50 22 stipulating to that as well, then he's got a right to

10:55:50 23 explore that.

10:55:54 24 MR. LEWIN: You mean at the time -- at the time

10:55:55 25 when he signed the October --

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10:56:01 1 MR. GERRARD: At the time of Exhibit 91, which Page 97
10:56:03 2 was September --
10:56:04 3 MR. LEWIN: If the -- if the issue is whether
10:56:06 4 Mr. Golshani was aware when he signed the effective
10:56:11 5 operating agreement in December of 2011 that it had
10:56:15 6 different language than the one that's attached to this
10:56:18 7 email, we'll stipulate to that.
10:56:20 8 MR. GERRARD: That's not the issue.
10:56:20 9 MR. LEWIN: Well, then, how is it relevant, then?
10:56:24 10 MR. GERRARD: The issue is what language was in
10:56:25 11 the operating agreement on September 16, 2011. Are you
10:56:28 12 willing to stipulate to that, Mr. Lewin? That your
10:56:33 13 client was aware of what -- this language, and that the
10:56:35 14 formula that's in Exhibit 5 was not in the agreement as
10:56:39 15 of September 16, 2011?
10:56:41 16 MR. LEWIN: Your Honor, I object to that. That's
10:56:43 17 irrelevant. The agreement that they signed is the
10:56:44 18 agreement that they signed. The negotiations that led
10:56:47 19 up to the agreement are also --
10:56:49 20 THE ARBITRATOR: I understand that. I understand
10:56:50 21 that. But you -- your objections to this point have
10:56:53 22 been the document speaks for itself.
10:56:53 23 MR. LEWIN: Right.
10:56:55 24 THE ARBITRATOR: So if the document that is
10:56:57 25 Exhibit 91 doesn't contain, for instance, a formula, the

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10:57:01 1 document speaks for itself.

10:57:02 2 MR. LEWIN: Exactly.

10:57:03 3 THE ARBITRATOR: I've sustained that objection
10:57:05 4 based on that. So the foundation that there's a
10:57:08 5 difference with respect to these provisions between the
10:57:13 6 one that was attached to the September email as opposed
10:57:16 7 to the one that was signed in December is established
10:57:19 8 because the documents speak for themselves.

10:57:22 9 MR. LEWIN: I agree.

10:57:23 10 THE ARBITRATOR: All right.

10:57:24 11 BY MR. GERRARD:

10:57:24 12 Q. All right. Now, sir, let's look at Exhibit 6.

10:57:40 13 And I'd like you -- let me know when you have that open.

10:57:43 14 Do you have that open, sir?

10:57:43 15 A. Yeah.

10:57:45 16 Q. Okay. Turn to the third page of Exhibit 6.

10:57:48 17 A. Third page with David LeGrand?

10:58:01 18 Q. Yeah. There's a bill -- billing statement from
10:58:03 19 David LeGrand to Green Valley Commerce for the invoice
10:58:09 20 period ending December 10, 2011. Do you see that?

10:58:11 21 A. December 10?

10:58:14 22 Q. Yes. Right at the top. It says "Invoice for
10:58:17 23 period ending December 10, 2011"; correct?

10:58:20 24 A. Yes.

10:58:21 25 Q. Okay. And if you look down, there's an entry

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10:58:24 1 there for November 30, 2011. Do you see that entry?

10:58:27 2 A. Yes.

10:58:28 3 Q. Do you see where I --

10:58:33 4 THE ARBITRATOR: He said yes.

10:58:35 5 MR. GERRARD: Oh, I didn't hear him.

10:58:36 6 A. Yes, sir.

10:58:36 7 BY MR. GERRARD:

10:58:36 8 Q. Okay. And that says "T/C" -- which usually means

10:58:41 9 telephone conference -- "Ben Golshani regarding OPAG" --

10:58:45 10 which refers to the operating agreement -- "revised

10:58:47 11 draft operating agreement incorporating client buy/sell

10:58:52 12 provisions and email same."

10:58:53 13 Do you see that?

10:58:54 14 A. Yes.

10:58:54 15 Q. Do you know whether the formula -- the buy/sell

10:58:58 16 formula that is in Exhibit 5 -- if it was placed in the

10:59:02 17 draft of that agreement at any time prior to November 30

10:59:05 18 of 2011?

10:59:07 19 A. I don't remember.

10:59:08 20 Q. Okay. And then let's take a look at the first

10:59:15 21 page of Exhibit 6. The first page of Exhibit 6 is a

10:59:26 22 November 29 email from David LeGrand to you and

10:59:30 23 Mr. Bidsal; correct?

10:59:31 24 A. That's what it says.

10:59:35 25 Q. And it says "Ben, attached please find the

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10:59:41 1 revised OPAG with the right of first refusal language.

10:59:44 2 I look forward to our call in an hour."

10:59:47 3 Do you see that?

10:59:47 4 A. Yes.

10:59:47 5 Q. Do you recall discussing that right of first

10:59:51 6 refusal language with Mr. LeGrand on November 29, 2011?

10:59:55 7 MR. LEWIN: Objection, Your Honor. It's

10:59:57 8 irrelevant what discussions he had. The agreement -- he

11:00:00 9 signed an agreement. Only relevance on this is to try

11:00:03 10 to prove drafting.

11:00:05 11 MR. GERRARD: No, it's not. It's, you know --

11:00:07 12 it's quite apparent that the timing of when this

11:00:12 13 language was placed in the operating agreement matters

11:00:14 14 because what the language talks about are things that

11:00:19 15 changed based upon what other events were going on

11:00:22 16 during that same time frame. So --

11:00:24 17 THE ARBITRATOR: For the timing perspective, I'm

11:00:27 18 going to allow it at this point.

11:00:27 19 MR. LEWIN: Okay.

11:00:29 20 THE ARBITRATOR: So the objection is overruled.

11:00:31 21 MR. GERRARD: Okay.

11:00:33 22 BY MR. GERRARD:

11:00:33 23 Q. So Mr. Golshani, the language that we just looked

11:00:37 24 at in Exhibit 5 in the operating agreement that is the

11:00:40 25 right of first refusal language contained in Section 4

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11:00:48 1 and 4.1 and 4.2 of the operating agreement, isn't it
11:00:53 2 true, sir, that that language was not placed into the
11:00:55 3 operating agreement until November 30th of 2011?
11:00:59 4 A. I don't know. And I have an explanation.
11:01:04 5 Q. And isn't it true, sir, that that language --
11:01:07 6 that that specific formula and that those definitions
11:01:10 7 for the formula were put into the operating agreement at
11:01:14 8 your specific request?
11:01:15 9 MR. LEWIN: Objection, Your Honor. It's
11:01:19 10 irrelevant. Now it's going directly to drafting.
11:01:22 11 MR. GERRARD: It's not irrelevant. It doesn't
11:01:22 12 matter who drafted the document. If he requested it, he
11:01:25 13 requested it, and that's relevant. It's relevant to
11:01:28 14 what was going on at the time, and it's relevant to what
11:01:32 15 happened in this operating agreement and in the company.
11:01:36 16 MR. LEWIN: The relevance would be that there was
11:01:40 17 an operating agreement -- a draft that was sent, and
11:01:42 18 then there was one that was signed. That's all that
11:01:47 19 there is. We've got the timing established. Now
11:01:51 20 they're just trying to get in about who's drafting the
11:01:54 21 agreement, which has already been discussed at length
11:01:57 22 between us here.
11:01:57 23 THE ARBITRATOR: Okay. Well, part of what we're
11:01:58 24 here for or what I'm tasked to determine is the parties'
11:02:02 25 intent with respect to certain terms within the formula.

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11:02:05 1 And so I think that the area of inquiry currently is Page 102
11:02:13 2 foundational for that purpose. So I'm going to allow it
11:02:15 3 and overrule the objection.
11:02:17 4 MR. LEWIN: Okay.
11:02:18 5 BY MR. GERRARD:
11:02:18 6 Q. Go ahead, sir, and answer the question.
11:02:20 7 A. What's the question?
11:02:20 8 Q. Isn't it true, sir, that you are the one that
11:02:23 9 specifically requested that the formula that's in
11:02:25 10 Section 4.1 and 4.2 of the operating agreement be
11:02:31 11 inserted in the document?
11:02:32 12 A. No. It's not true.
11:02:34 13 Q. Okay. All right. Let's take a look now at
11:02:46 14 Section 4.1 of Exhibit 5.
11:02:55 15 MR. LEWIN: Exhibit 1 to what?
11:02:58 16 MR. GERRARD: Section 4.1 of Article 5 of the
11:03:00 17 operating agreement. Page 10.
11:03:04 18 MR. LEWIN: Are we talking about the operative
11:03:06 19 operating agreement?
11:03:07 20 MR. GERRARD: Exhibit 5, yeah.
11:03:09 21 THE ARBITRATOR: Let's go off the record for a
11:03:22 22 second.
11:03:23 23 (Discussion off the record.)
11:03:23 24 THE ARBITRATOR: Back on the record.
11:03:23 25 ///

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11:03:23 1 BY MR. GERRARD:

11:03:23 2 Q. All right. Sir, do you have Exhibit 5 in front

11:03:27 3 of you? Again, it's Section 4.1.

11:03:30 4 A. Yes.

11:03:31 5 Q. Okay. Do you see in Section 4.1 there's some

11:03:34 6 definitions; correct?

11:03:35 7 A. Yes.

11:03:36 8 Q. And the first definition that I want to look at

11:03:38 9 is the one that's called "COP."

11:03:41 10 A. Yes.

11:03:41 11 Q. Do you see where I'm looking?

11:03:43 12 A. (Moved head.)

11:03:43 13 Q. Is says "COP means cost of purchase as it

11:03:49 14 specified in the escrow closing statement at the time of

11:03:53 15 purchase of each property owned by the company."

11:03:55 16 Do you see that?

11:03:55 17 A. Yes.

11:03:56 18 Q. Okay. So are you aware of any escrow closing

11:04:01 19 statement for any real property owned by the company,

11:04:07 20 other than the Greenway property?

11:04:08 21 A. It doesn't say "real property."

11:04:10 22 Q. Sir, it's a yes or no. Are you aware of any

11:04:14 23 escrow closing statement for the purchase of any real

11:04:23 24 property owned by the company presently, other than the

11:04:27 25 Greenway property?

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11:04:28 1 A. It doesn't say "real property."
11:04:30 2 Q. Sir, yes or no?
11:04:31 3 A. Your question -- repeat your question and I'll
11:04:36 4 answer it yes or no.
11:04:37 5 Q. Sure, no problem. I'll repeat it again.
11:04:39 6 Are you aware of any escrow closing statement for
11:04:43 7 the purchase of any real property owned by the company
11:04:48 8 at any time other than the purchase of the Greenway
11:04:51 9 property?
11:04:52 10 A. Yes.
11:04:52 11 Q. You are aware of one?
11:04:54 12 A. Yes.
11:04:54 13 Q. Okay. And what escrow statement is that?
11:04:57 14 A. It's the Greenway statement.
11:04:58 15 Q. Okay. And that's the only one; correct?
11:05:01 16 A. That's the only one, with an explanation.
11:05:05 17 Q. Okay.
11:05:06 18 A. For the record --
11:05:07 19 Q. I don't need your explanation, sir.
11:05:09 20 A. Okay. For real property.
11:05:11 21 Q. Yes.
11:05:12 22 A. Yeah. For other properties, no, there isn't.
11:05:14 23 Q. Okay. There is also an escrow closing statement
11:05:17 24 that we already looked at for the purchase of a note;
11:05:20 25 correct?

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11:05:21 1 A. Yes. That is correct.

11:05:23 2 Q. Okay. Let's take a look at Section 4.2 on

11:05:37 3 page 11. Right above the heading 4.3, there's a

11:05:50 4 paragraph that says "The specific intent of this

11:05:52 5 provision." Do you see where I'm looking?

11:05:54 6 A. Yes.

11:05:54 7 Q. Okay. And right above that, there's a formula.

11:05:58 8 Do you see the formula that I'm looking at?

11:05:58 9 A. Yes.

11:05:59 10 Q. Okay. That formula says "FMV." You understand

11:06:03 11 that to be fair market value; correct?

11:06:04 12 A. Uh-huh.

11:06:05 13 Q. Is that a yes?

11:06:06 14 A. Yes.

11:06:06 15 Q. And it says "minus COP." You understand that to

11:06:10 16 be the defined term we just looked at, cost of purchase,

11:06:12 17 right?

11:06:12 18 A. Cost of purchase property.

11:06:15 19 Q. Okay.

11:06:15 20 A. Any property.

11:06:16 21 Q. And then it says -- sir, and then it says time --

11:06:18 22 well, it says "times .05"; correct?

11:06:21 23 A. Yes.

11:06:21 24 Q. Okay. And then it says "plus capital

11:06:25 25 contribution of the offering members at the time of

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11:06:29 1 purchasing the property."

11:06:31 2 Do you see where I'm reading?

11:06:32 3 A. Yes.

11:06:33 4 Q. Okay. You made an offer to purchase this

11:06:36 5 property from Mr. Bidsal, didn't you?

11:06:43 6 A. I made --

11:06:44 7 Q. You made an offer to purchase his interest in

11:06:47 8 this limited liability company; correct?

11:06:50 9 A. I made a counter-offer. I didn't make an offer.

11:06:51 10 Q. So you -- okay. Well, you still offered to

11:06:53 11 purchase; correct?

11:06:54 12 A. According to operating agreement, it says it's a

11:07:00 13 counter-offer.

11:07:01 14 Q. Sir, I'm not -- I'm not trying to quibble with

11:07:04 15 you over whether or not it's a counter-offer or an

11:07:06 16 offer. You did offer to purchase Mr. Bidsal's interest;

11:07:10 17 correct?

11:07:10 18 A. I can't answer the question. I don't know what

11:07:14 19 you're asking or what you're trying to accomplish.

11:07:20 20 Q. So is it your testimony that you've never offered

11:07:23 21 to purchase Mr. Bidsal's interest?

11:07:25 22 A. I -- my testimony is I don't understand your

11:07:28 23 question. Your question is vague for me.

11:07:31 24 Q. You don't understand --

11:07:32 25 A. Because the operating agreement here says he

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11:07:35 1 offers, I counter. And I say I counter. You're asking
11:07:38 2 me if I offered. Page 107

11:07:40 3 Q. Do you understand that a counter-offer is still
11:07:42 4 an offer?

11:07:43 5 A. If you say so. I'm not an attorney, and I don't
11:07:48 6 want to, you know, speculate on what is what.

11:07:48 7 Q. Okay.

11:07:53 8 A. That's why I'm trying to adhere to what I know.

11:07:56 9 Q. That's fair enough. I don't want you to say
11:07:58 10 something you're not comfortable with. Let's find --
11:08:03 11 find my other binder here.

11:08:08 12 Okay. So do you recall that the date of your
11:08:31 13 counter-offer, as you've referred to it, was on August 3
11:08:42 14 of 2017?

11:08:44 15 A. Probably.

11:08:47 16 Q. Does that sound right to you?

11:08:48 17 A. Sounds right.

11:08:50 18 Q. Okay. On August 3 of 2017, the capital
11:08:54 19 contribution that had been -- well, let me strike that.

11:09:02 20 Let's go back to the formula. I'm sorry.

11:09:07 21 Looking at the formula on page 11, the capital
11:09:14 22 contribution of the offering member is determined at the
11:09:18 23 time of purchasing the property -- the property of the
11:09:21 24 company; correct?

11:09:22 25 A. Yes.

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11:09:24 1 Q. Okay. So at the time that the company acquired
11:09:29 2 its property -- which was the promissory note -- that's
11:09:32 3 the only thing it ever purchased; right?

11:09:34 4 A. And the Greenway.

11:09:35 5 Q. Okay. So let's talk about first the time of
11:09:37 6 acquisition of the note. At that date, the capital
11:09:41 7 contribution of Mr. Bidsal was \$1,215,000; correct?

11:09:46 8 A. On that date, yes. So did the COP.

11:09:52 9 Q. And on the date that the company acquired the
11:10:00 10 real property through the deed in lieu of foreclosure
11:10:04 11 agreement -- which was in September of 2011 -- at that
11:10:06 12 date, Mr. Bidsal's capital contribution was also
11:10:13 13 \$1,215,000; correct?

11:10:16 14 A. I think so. Yes.

11:10:22 15 Q. Okay. All right. Let's now take a look at
11:10:29 16 page 12 of Exhibit 5.

11:10:36 17 Let me know when you have that in front of you,
11:10:38 18 sir.

11:10:38 19 A. I have it.

11:10:39 20 Q. Okay. So when we look at page 12, there is a
11:10:49 21 Section 5. It says "Participation in distribution of
11:10:52 22 profit."

11:10:53 23 Do you see where I'm looking?

11:10:54 24 A. Section 5.

11:10:54 25 Q. Yes.

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11:10:58 1 A. "Participation" -- yeah. "Participation" -- Page 109
11:11:01 2 and -- "in distribution of profit," yes.
11:11:03 3 Q. Okay. And the language here says "Each member's
11:11:06 4 participation in the distribution shall be in accordance
11:11:09 5 with Exhibit B, subject to the tax provisions set forth
11:11:12 6 in Exhibit A."
11:11:14 7 Do you see where I'm reading?
11:11:15 8 A. Correct.
11:11:16 9 Q. Okay. So let's look at --
11:11:17 10 THE ARBITRATOR: This is apparently the second in
11:11:21 11 sequence Section 5 of Article --
11:11:26 12 MR. GERRARD: Right. It's not a well-drafted
11:11:27 13 document.
11:11:27 14 THE ARBITRATOR: All right.
11:11:30 15 BY MR. GERRARD:
11:11:36 16 Q. All right. So now let's take a look at page 17.
11:11:42 17 And at the top of page 17, there is a No. 1 and it has a
11:11:49 18 heading "Tax provisions."
11:11:50 19 Do you see that?
11:11:51 20 A. Yes.
11:11:51 21 Q. And that says "The provisions of Exhibit A,
11:11:55 22 attached hereto are incorporated by reference as if
11:11:57 23 fully rewritten herein."
11:11:59 24 Do you see that?
11:11:59 25 A. (No audible response.)

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11:12:05 1 Q. I'm sorry. I didn't hear your answer.

11:12:06 2 A. Yes, sir.

11:12:06 3 Q. Okay. All right. So let's take a look at

11:12:09 4 Exhibit A. It's incorporated into this agreement by the

11:12:12 5 language you just -- we just looked at. So Exhibit A

11:12:16 6 starts at page 22.

11:12:18 7 A. Okay.

11:12:21 8 Q. And let's take a look first at Section 4.1.1.

11:12:28 9 This language says "A single capital account shall be

11:12:32 10 maintained for each member (regardless of the class of

11:12:35 11 interests owned by such member and regardless of the

11:12:38 12 time or manner in which such interests were acquired."

11:12:40 13 Do you see where I'm reading?

11:12:42 14 A. Is it 4.1.1.1?

11:12:43 15 Q. 4.1.1.

11:12:46 16 A. Oh, okay.

11:12:48 17 Q. Do you see where I'm reading?

11:12:50 18 A. Yes, sir.

11:12:50 19 Q. And then it goes on to say that those capital

11:12:53 20 accounts have to be maintained "in accordance with the

11:12:55 21 accounting rules of Section 704(b) of the Code."

11:12:59 22 Do you see where I'm reading?

11:13:00 23 A. Yes.

11:13:00 24 Q. And then the last sentence of this paragraph says

11:13:04 25 "In general, under such rules, a member's capital

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11:13:07 1 account shall be" -- and then we go down to 4.1.1.1, and
11:13:12 2 it says a capital account will be "increased by (i), the
11:13:17 3 amount of money contributed by the member to the
11:13:19 4 company."

11:13:21 5 In this case, that means your capital account
11:13:22 6 would be increased by the 1 million -- I'm sorry --
11:13:27 7 \$2,834,250 you've contributed; correct?

11:13:33 8 A. Correct.

11:13:33 9 Q. And then it goes down, and you could see where
11:13:35 10 there's a small Roman No. 2, and it says it will also be
11:13:41 11 increased by "the fair market value of property that
11:13:44 12 would be contributed by the member."

11:13:46 13 Do you see that?

11:13:47 14 MR. LEWIN: Objection, Your Honor. I think we
11:13:52 15 can all see the document. So if -- is he going to be --

11:13:52 16 MR. GERRARD: I'm not sure what the objection is.

11:14:00 17 MR. LEWIN: The document speaks for itself.

11:14:00 18 THE ARBITRATOR: All right. That part's
11:14:01 19 sustained. But to the extent it's -- whether
11:14:03 20 Mr. Golshani understands if that's the point, then the
11:14:06 21 question would be a little different, but.

11:14:06 22 MR. GERRARD: Okay.

11:14:06 23 BY MR. GERRARD:

11:14:08 24 Q. So you understand that your capital account would
11:14:11 25 be increased by money you contribute and by the value of

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11:14:15 1 property you contribute; correct?

11:14:16 2 A. Yes.

11:14:16 3 MR. LEWIN: Objection. That's calls for -- oh,

11:14:16 4 wait. Excuse me.

11:14:18 5 That calls for an expert opinion.

11:14:20 6 THE ARBITRATOR: Overruled.

11:14:22 7 BY MR. GERRARD:

11:14:22 8 Q. And you never contributed any property; you just

11:14:24 9 contributed cash to this company; correct, sir?

11:14:26 10 A. Probably, yes.

11:14:26 11 Q. Okay.

11:14:33 12 A. I'm not sure.

11:14:33 13 Q. Okay. And then No. 3, it says that your capital

11:14:37 14 account would be increased by "allocations to the member

11:14:40 15 of company income and gain (or item thereof), including

11:14:45 16 income and gain exempt from tax."

11:14:47 17 Do you see that?

11:14:47 18 A. Yes.

11:14:47 19 Q. Okay. So do you understand that that means that

11:14:51 20 any -- if there's company property that sold and there's

11:14:54 21 a gain from that sale, that your capital account would

11:14:58 22 be increased by your share of that gain?

11:15:00 23 MR. LEWIN: Objection. Excuse me. He's now

11:15:03 24 stating an expert opinion as to what the meaning of this

11:15:06 25 tax provision is.

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11:15:08 1 THE ARBITRATOR: I disagree. He's asking
11:15:08 2 Mr. Golshani his understanding.
11:15:08 3 MR. LEWIN: All right.
11:15:09 4 BY MR. GERRARD:
11:15:09 5 Q. Okay. Now let's look at 4.1.1.2. Here, it says
11:15:15 6 that your capital account will be decreased by certain
11:15:15 7 things.
11:15:15 8 A. Uh-huh.
11:15:19 9 Q. The first one says it'll be decreased by the
11:15:21 10 amount of money distributed to you by the company.
11:15:25 11 Do you see that?
11:15:26 12 A. Correct.
11:15:27 13 Q. Okay. It says it also will be decreased by the
11:15:31 14 fair market value of property distributed by the company
11:15:34 15 to you. Now, there's never been any property of the
11:15:36 16 company distributed to you, has there?
11:15:39 17 A. I don't think so.
11:15:39 18 Q. Okay. And then No. 3, it'll be decreased by
11:15:44 19 allocations to you of expenditures of the company that
11:15:49 20 are not deductible in computing its tax. And No. 4,
11:15:53 21 it'll be decreased by allocations to you of loss and
11:15:56 22 deduction.
11:15:58 23 A. Okay.
11:15:58 24 Q. Have you received allocations of losses and
11:16:00 25 deductions from this company?

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11:16:02 1 A. I don't think so.

11:16:08 2 Q. Okay. Have you looked at your tax returns each

11:16:10 3 year -- the K-1 that you receive -- to determine that?

11:16:11 4 A. To determine what?

11:16:15 5 Q. Do determine how your capital account has gone up

11:16:18 6 and down?

11:16:18 7 A. Somewhat, yes.

11:16:20 8 Q. Okay. Now let's look at the next page, which is

11:16:24 9 page 23 of 28, and we'll look at the language there in

11:16:28 10 5.1. Let me know when you're there, sir.

11:16:35 11 A. Yeah. Go ahead.

11:16:36 12 Q. Okay. So 5.1 talks about allocations of profits

11:16:39 13 and losses, and it says, quote, "Each member's

11:16:43 14 distributive share of income, gain, loss, deduction, or

11:16:47 15 credit (or items thereof) of the company as shown on the

11:16:51 16 annual federal income tax return prepared by the

11:16:54 17 company's accountants or as finally determined by the

11:16:58 18 United States Internal Revenue Service or the courts,

11:16:59 19 and as modified by the capital accounting rules of

11:17:02 20 Section 704(b) of the Code and the income tax

11:17:05 21 regulations thereunder, as implemented by Section 8.5

11:17:11 22 hereof, as applicable, shall be determined as follows."

11:17:14 23 A. Can I mark this, by the way?

11:17:16 24 Q. No.

11:17:17 25 A. Okay.

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11:17:17 1 Q. Thanks. So you -- you can see that your share of
11:17:20 2 income, gain, loss, deduction, or credit is supposed to
11:17:24 3 be determined according to these rules in 5.1; correct?

11:17:26 4 A. That's right. My what? Can you repeat?

11:17:29 5 Q. Yeah.

11:17:29 6 Your share of income, gain, loss, deduction, or
11:17:33 7 credit from this company is supposed to be determined in
11:17:36 8 accordance with 5.1.1; correct?

11:17:40 9 A. Hold on a second.

11:17:52 10 Correct.

11:17:52 11 Q. Okay. So let's look at 5.1.1. It says "Items of
11:17:57 12 income, gain, loss, deduction, or credit (or items
11:18:01 13 thereof) shall be allocated among the members in
11:18:06 14 proportion to their capital P, Percentage, capital I,
11:18:10 15 Interest, as set forth in Exhibit B, subject to the
11:18:14 16 preferred allocation schedule contained in Exhibit B."

11:18:17 17 Do you see where I'm reading?

11:18:18 18 A. Yes.

11:18:18 19 Q. Okay. So let's look at Exhibit B. It's the last
11:18:22 20 page of that document that you have in front of you.

11:18:28 21 Do you want to flip to Exhibit B?

11:18:30 22 A. Yeah.

11:18:30 23 Q. So it says that -- in 5.1.1.1, we just read that
11:18:41 24 items of income, gain, loss, deduction, or credit will
11:18:44 25 be allocated in proportion to the capital P, Percentage,

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11:18:47 1 capital I, Interest, set forth in Exhibit B.

11:18:50 2 Do you see the Exhibit B where it says members'

11:18:45 3 capital P, Percentage, capital I, Interest?

11:18:53 4 A. Yes.

11:18:54 5 Q. And it shows Mr. Bidsal's interest at 50 percent

11:18:57 6 and CLA at 50 percent; correct?

11:18:59 7 A. Yes.

11:18:59 8 Q. So according to this, subject to the remainder of

11:19:04 9 Exhibit B, all items of income, gain, loss, deduction,

11:19:08 10 or credit of this company is supposed to be allocated

11:19:12 11 amongst the members, 50 percent to Mr. Bidsal and 50

11:19:14 12 percent to CLA Properties; correct?

11:19:16 13 A. No. Not correct.

11:19:17 14 Q. Okay. And now let's take a look at the language

11:19:22 15 here in Exhibit B.

11:19:32 16 Now, in Exhibit B where it says -- at the top of

11:19:43 17 the page there's a heading that says "Preferred

11:19:45 18 allocation and distribution schedule."

11:19:48 19 Do you see where I'm reading? Yes?

11:19:50 20 A. Yes, sir.

11:19:50 21 Q. Okay. Do you know when this language was

11:19:54 22 inserted into the operating agreement?

11:19:56 23 A. I'm not sure.

11:19:58 24 Q. Okay. Now, if we go back to Exhibit 91 -- if you

11:20:08 25 still have it in front of you, let's go to the last page

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11:20:16 1 of Exhibit 91. Remember, Exhibit 91 was circulated on
11:20:22 2 September 16, 2011; correct?
11:20:24 3 A. Yes.
11:20:24 4 Q. So let's look at the last page of Exhibit 91,
11:20:31 5 which is the Exhibit B to the operating agreement at
11:20:34 6 that point in time; correct?
11:20:35 7 A. Okay.
11:20:43 8 Q. Do you have that in front of you, sir?
11:20:46 9 A. Yes.
11:20:46 10 Q. Okay. Do you see the -- that preferred
11:20:48 11 allocation and distribution schedule language there that
11:20:52 12 we just looked at in Exhibit 5?
11:20:54 13 A. Yes.
11:20:54 14 Q. And the language is the same, isn't it?
11:20:56 15 A. I'm not sure, I haven't --
11:20:58 16 Q. Okay. And -- but it does show that there was
11:21:01 17 language that was added. You can see the red lining
11:21:04 18 that shows the underlined portion of the document at the
11:21:08 19 bottom of Exhibit B.
11:21:09 20 A. I don't see a red line.
11:21:11 21 Q. Well, obviously it's printed in black and white.
11:21:14 22 What I'm saying is the red line shows up underlined.
11:21:18 23 A. Where are you --
11:21:19 24 Q. Look at the last paragraph.
11:21:20 25 A. Last paragraph, yeah.

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11:21:20 1 Q. Do you see where that's all underlined?

11:21:22 2 A. All right. Yeah.

11:21:22 3 Q. So that's showing that that's something that's

11:21:25 4 been added in this version of the agreement. So this

11:21:28 5 last paragraph of Exhibit B that states "It is the

11:21:33 6 express intent of the parties."

11:21:35 7 Do you see where I'm reading?

11:21:36 8 A. I see that it says "deleted by Ben," but next --

11:21:45 9 Q. Sir, I'm asking you: Do you see the last

11:21:47 10 paragraph that's underlined that says "It is the express

11:21:51 11 intent of the parties"?

11:21:52 12 A. Yes.

11:21:52 13 Q. Okay. So -- and that paragraph is underlined;

11:21:56 14 correct?

11:21:56 15 A. Correct.

11:21:56 16 Q. Okay. So as of the date of this circulated

11:22:02 17 document, which was September 16 of 2011, this express

11:22:12 18 intent language in the last paragraph was being added at

11:22:15 19 that point in time; correct?

11:22:15 20 A. I'm not sure. Because this document, I'm not

11:22:22 21 sure if it belongs to that email.

11:22:22 22 Q. Okay. All right. But if it belonged to that

11:22:25 23 email, then as of that date, this is language that's

11:22:28 24 being added on that date; correct?

11:22:29 25 A. Yes.

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11:22:29 1 Q. And then at the top of that Exhibit B in
11:22:33 2 Exhibit 91 --
11:22:34 3 A. I'm sorry. It doesn't say "added"; it says
11:22:38 4 "formatted."
11:22:38 5 Q. Okay. I appreciate that, sir. But if you look
11:22:40 6 at the top --
11:22:41 7 A. Because you said "added." I apologize.
11:22:42 8 Q. At the top of the page, the rest of the language
11:22:46 9 that talks about the preferred allocation and
11:22:49 10 distribution schedule, that all looks the same as what
11:22:51 11 it is in Exhibit 5; correct?
11:22:53 12 MR. LEWIN: Objection. Document speaks for
11:22:55 13 itself.
11:22:56 14 THE ARBITRATOR: It does.
11:22:57 15 MR. GERRARD: If you want to stipulate to that,
11:22:59 16 that's fine.
11:23:02 17 THE ARBITRATOR: Except for the underline. I
11:23:03 18 mean the underlined portion of that paragraph.
11:23:05 19 MR. GERRARD: Right.
11:23:07 20 THE ARBITRATOR: So the document does speak for
11:23:09 21 itself on that count.
11:23:09 22 MR. GERRARD: Okay.
11:23:11 23 MR. LEWIN: But wait a second. I just want to
11:23:13 24 understand. Exhibit 5 is operating -- the signed
11:23:16 25 operating agreement; right?

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11:23:18 1 MR. GERRARD: Correct.

11:23:19 2 MR. LEWIN: Okay. All right. So the foundation

11:23:21 3 for his question is false.

11:23:26 4 MR. GERRARD: I don't understand the -- I don't

11:23:27 5 understand the objection.

11:23:29 6 THE ARBITRATOR: Explain.

11:23:29 7 MR. LEWIN: Well, because he's saying everything

11:23:30 8 else is the same. It's not. Look at the percentage

11:23:32 9 interest.

11:23:33 10 THE ARBITRATOR: Okay. He's talking about --

11:23:35 11 MR. GERRARD: I said the language of the

11:23:37 12 preferred allocation and distribution schedule.

11:23:39 13 MR. LEWIN: Then I misunderstood. I apologize.

11:23:41 14 THE ARBITRATOR: All right.

11:23:44 15 BY MR. GERRARD:

11:23:44 16 **Q. All right. So, Mr. Golshani, as of September 16**

11:23:48 17 **of 2011, the only property that was owned by the company**

11:23:53 18 **was a promissory note; correct?**

11:23:55 19 A. As of what?

11:24:00 20 **Q. September 16, 2011?**

11:24:03 21 A. Yes.

11:24:03 22 **Q. The only property owned by the company was a**

11:24:06 23 **promissory note; correct?**

11:24:06 24 A. The only property, yes. It was a promissory

11:24:11 25 note.

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11:24:11 1 Q. Okay. Thank you.

11:24:11 2 All right. Let's go back to Exhibit 5.

11:24:13 3 A. Exhibit 5, okay.

11:24:15 4 Q. Let's look at the last paragraph of Exhibit B.

11:24:34 5 This is that express intent language that appears to

11:24:39 6 have been added on September 16, 2011.

11:24:44 7 A. Correct. Okay.

11:24:46 8 Q. Do you have that in front of you, sir?

11:24:47 9 A. Yes.

11:24:47 10 Q. Okay. So this language states "It is the express

11:24:52 11 intent of the parties that cash distributions of profits

11:24:56 12 refers to distributions generated from operations

11:24:59 13 resulting in ordinary income. In contrast to" -- do you

11:25:03 14 know what the words "in contrast to" means?

11:25:06 15 A. It means it's different than the other one.

11:25:11 16 Q. Okay. It says "In contrast to cash distributions

11:25:14 17 arising from capital transactions or nonrecurring

11:25:19 18 events, such as a sale of all or a substantial portion

11:25:23 19 of the company's assets or cash out financing."

11:25:26 20 Do you see that language?

11:25:27 21 A. I see that language, but --

11:25:28 22 Q. Sir, just yes or no. Do you see the language?

11:25:30 23 A. Yeah.

11:25:31 24 Q. Okay. And at the time that you signed this

11:25:35 25 operating agreement, you consented to that specific

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11:25:37 1 intent language; correct?

11:25:38 2 A. Yes, sir.

11:25:39 3 Q. Okay. And -- all right. Let's now move to

11:26:01 4 Exhibit --

11:26:05 5 A. I'm sorry. When I said --

11:26:06 6 Q. Sir, there's no question pending.

11:26:08 7 A. Can I make a --

11:26:08 8 Q. No.

11:26:11 9 THE ARBITRATOR: Mr. Lewin will have the right to

11:26:15 10 clear up anything that you want to clear up when he asks

11:26:17 11 you questions. All right?

11:26:19 12 THE WITNESS: All right. Thank you.

11:26:21 13 BY MR. GERRARD:

11:26:21 14 Q. All right. Let's take a look at Exhibit 7 in the

11:26:24 15 binder that's in front of you.

11:26:43 16 Actually, before we go there, let's look at

11:26:45 17 Exhibit -- yeah. Okay. Exhibit 7. Let's go to Exhibit

11:26:49 18 7, and I'd like you to turn in Exhibit 7 to the page

11:26:54 19 that has a Bates label at the bottom that says

11:26:58 20 BIDSAL001411. It's towards the very back. Let me know

11:27:08 21 when you have that, sir.

11:27:11 22 MR. LEWIN: I need a page. My copy doesn't have

11:27:14 23 the Bates stamp.

11:27:15 24 MR. GERRARD: Oh, it doesn't?

11:27:16 25 MR. LEWIN: No.

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11:27:18 1 MR. GERRARD: Well, it is Exhibit B to this
11:27:20 2 document. It's a record of survey.
11:27:35 3 MR. LEWIN: August 2, 2011 record of survey?
11:27:35 4 MR. GERRARD: Yes. Do you have that?
11:27:35 5 MR. LEWIN: Got it.
11:27:38 6 MR. GERRARD: It doesn't say August 2nd.
11:27:38 7 BY MR. GERRARD:
11:27:40 8 Q. All right. So let's go to this document, sir.
11:27:44 9 Do you have that you in front of you?
11:27:46 10 A. I do.
11:27:48 11 MR. LEWIN: Let me check. I want to see what
11:27:51 12 he's looking at.
11:27:53 13 THE WITNESS: You want to share with me?
11:27:57 14 MR. LEWIN: No, I just want to see what it says.
11:27:57 15 THE WITNESS: It says --
11:27:58 16 MR. LEWIN: Survey. All right. That's it.
11:27:58 17 THE WITNESS: Record of survey.
11:27:59 18 BY MR. GERRARD:
11:27:59 19 Q. All right. If you look at the bottom right-hand
11:28:02 20 corner of that record of survey -- first of all, do you
11:28:05 21 recognize what's being depicted on that record of
11:28:07 22 survey?
11:28:07 23 A. I think so, yes.
11:28:08 24 Q. Okay. And you -- you've seen this before;
11:28:12 25 correct?

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11:28:12 1 A. Yes.

11:28:12 2 Q. And it shows -- on that record of survey, it

11:28:17 3 shows seven buildings and then -- that are all

11:28:22 4 identified as separate parcels, and then a common area

11:28:26 5 parcel, which is everything that's in between; correct?

11:28:30 6 THE ARBITRATOR: Seven or eight?

11:28:27 7 A. No. It is eight.

11:28:30 8 BY MR. GERRARD:

11:28:30 9 Q. Sorry. Eight, yes. Eight buildings and then a

11:28:33 10 common area parcel; correct?

11:28:35 11 A. I don't see -- yeah. Okay. You mean the -- on

11:28:41 12 the -- on the drawing? On the --

11:28:42 13 Q. Yes.

11:28:42 14 A. Not the list of it.

11:28:44 15 Q. Yes.

11:28:44 16 A. Okay.

11:28:45 17 Q. Do you see in the bottom right-hand corner of

11:28:50 18 this document, do you see the date that it was recorded?

11:28:50 19 A. Yes.

11:28:51 20 Q. It says dated October 7, 2011?

11:28:54 21 A. Yes.

11:28:55 22 Q. And then it has a recording stamp or number where

11:28:59 23 you can find it in the recorder's book at 20111007? Do

11:29:07 24 you see that?

11:29:07 25 A. Where do you see that?

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11:29:10 1 Q. Bottom right-hand corner. So it says "10/7/11."
11:29:13 2 A. That I see.
11:29:14 3 Q. And then right underneath that it says "file
11:29:16 4 185"?
11:29:16 5 A. Yes, I do. Yeah, the official record --
11:29:20 6 Q. Yeah. And then it says "of surveys official
11:29:24 7 records book No. 20111007"; correct?
11:29:28 8 A. Yeah.
11:29:29 9 Q. So do you understand that the record of survey
11:29:33 10 that subdivided this real property was created or
11:29:39 11 recorded -- so creating this -- creating the separate
11:29:43 12 parcels occurred on October 7 of 2011. Do you
11:29:46 13 understand that?
11:29:46 14 A. Correct. Yes.
11:29:47 15 Q. Okay. Now let's look at Exhibit 8. Let me know
11:30:02 16 when you have that.
11:30:03 17 A. Okay.
11:30:04 18 Q. Okay. Do you have that, sir?
11:30:05 19 A. Yes.
11:30:06 20 Q. All right. Exhibit 8 -- one second. Exhibit 8
11:30:13 21 has -- is a document called deed in lieu agreement. Do
11:30:16 22 you see that?
11:30:16 23 A. Yes.
11:30:17 24 Q. And you recognize this as being the agreement
11:30:20 25 pursuant to which the company obtained its interest in

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11:30:23 1 the real property; correct?

11:30:24 2 A. Yes.

11:30:24 3 Q. And at the top of this agreement on the first

11:30:29 4 paragraph, first page, it says "Deed in lieu agreement

11:30:31 5 is executed September 22, 2011."

11:30:34 6 Do you see where I'm reading?

11:30:35 7 A. Yes.

11:30:36 8 Q. So prior to September 22 of 2011, the company,

11:30:43 9 Green Valley Commerce, LLC, only owned a promissory

11:30:45 10 note; correct?

11:30:46 11 A. Yes.

11:30:47 12 Q. Okay. So let's take a look at who the parties

11:30:52 13 are to this agreement. It says that there's a party

11:30:57 14 called Green Valley Commerce, LLC. That's your company;

11:31:01 15 correct?

11:31:01 16 A. Yes.

11:31:02 17 Q. And that company is referred to in this agreement

11:31:05 18 as capital L "Lender"; correct?

11:31:10 19 Do you see in the first paragraph?

11:31:11 20 A. The -- are you talking about the bank? Who is --

11:31:14 21 Q. No. Green Valley Commerce, LLC -- which is the

11:31:17 22 company owned by CLA and Mr. Bidsal -- is identified as

11:31:20 23 the lender in this agreement; correct?

11:31:21 24 A. Yes.

11:31:22 25 Q. And then there's a company called Green Valley

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11:31:27
11:31:32
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11:31:46
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11:32:24
11:32:25

1 Commerce Center, LLC, which is identified as the
2 borrower under this agreement; correct?
3 A. Yes.
4 Q. Okay. And then if we read down in the recitals
5 at paragraph No. 1, it says "recitals," and then there's
6 a -- the first recital, A, says that "the borrower holds
7 title to real property located in Clark County, Nevada,
8 described in Exhibit A."
9 Do you understand that the property described in
10 Exhibit A -- you can turn there, if you need to. It's
11 at the very back -- it's divided into two parcels;
12 correct? Parcel 1 and Parcel 2?
13 A. That's right.
14 Q. And those two parcels are the property that was
15 ultimately acquired by your company, Green Valley
16 Commerce, LLC; correct?
17 A. Correct.
18 Q. Okay.
19 A. At that date, actually.
20 Q. Right. So let's go back to the first page again.
21 A. All right.
22 Q. And in the recitals under 1(B), there's a
23 Roman -- Romanette numeral 1, small (i), right?
24 A. Yes.
25 Q. And it says -- it's describing a loan and this

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11:32:20 1 Roman -- Romanette (i) says "A deed of trust note dated
11:32:36 2 July 17, 2007 in the original principal amount of
11:32:39 3 \$8,050,000."
11:32:40 4 Do you see where I'm reading?
11:32:41 5 A. Yes.
11:32:42 6 Q. And that's the note that had been purchased by
11:32:46 7 Green Valley Commerce back in May; correct?
11:32:51 8 A. Back in July 3.
11:32:54 9 Q. July 3? That's the day you're saying that it
11:32:56 10 closed?
11:32:57 11 A. June 3. I apologize.
11:32:59 12 Q. I apologize. I didn't jot that date down, so let
11:33:03 13 me just look real quick. So your closing -- okay. So
11:33:06 14 you said June 3; correct?
11:33:07 15 A. I think so, yes.
11:33:08 16 Q. Okay. And that matches up with the closing
11:33:11 17 statement we looked at in Exhibit 3, the June 3, 2011
11:33:14 18 date; correct?
11:33:15 19 A. (Moved head.)
11:33:17 20 Q. All right. So let's go back to the deed in lieu
11:33:20 21 agreement, Exhibit 8. So in this document, it describes
11:33:31 22 at 1(b)(i) the deed of trust note, and then right
11:33:36 23 underneath that in (ii) it describes a deed of trust,
11:33:40 24 assignment of rents, security agreement, and fixture
11:33:43 25 filing dated July 17, 2007, and it calls that the deed

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11:33:46

1 of trust. Do you see where I'm reading?

11:33:48

2 A. Yes.

11:33:48

3 Q. And then if we look at 1(c), it says, "The

11:33:53

4 borrower desires to convey the property to the lender in

11:33:58

5 consideration of a release of the borrower parties, as

11:34:03

6 defined below, from liability and covenant not to sue

11:34:07

7 and respect of the loan, and the lender desires to

11:34:09

8 accept the conveyance and to grant the release and

11:34:12

9 covenant."

11:34:12

10 Do you see where I read?

11:34:13

11 A. Yes, sir.

11:34:14

12 Q. Do you think that accurately describes what this

11:34:16

13 deed in lieu agreement was?

11:34:18

14 MR. LEWIN: Objection. Calls for -- that's vague

11:34:21

15 and compound. Calls for an inadmissible conclusion.

11:34:25

16 MR. GERRARD: I'm happy to ask a different way.

11:34:25

17 THE ARBITRATOR: All right. Let's do that.

11:34:26

18 BY MR. GERRARD:

11:34:26

19 Q. Do you believe that this paragraph accurately

11:34:32

20 describes what your understanding was of what the

11:34:35

21 purpose of this agreement was to accomplish?

11:34:38

22 A. It's a part of it.

11:34:39

23 Q. Well, this says that the -- that your company was

11:34:42

24 going to receive a conveyance of property and in

11:34:46

25 exchange for that, you were going to give up your rights

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11:34:49 1 under the note and deed of trust; correct?

11:34:52 2 A. Yes.

11:34:52 3 Q. Okay.

11:34:54 4 A. That's what it says here.

11:34:55 5 Q. And let's look at the next page, Section 2.1.

11:35:05 6 Let me know when you're there.

11:35:07 7 A. Okay.

11:35:07 8 Q. And the Section 2.1 says "absolute conveyance."

11:35:12 9 And it says, "The borrower acknowledges and agrees that

11:35:15 10 the conveyance of the property to the lender is an

11:35:17 11 absolute conveyance of all the right, title, and

11:35:20 12 interest in and to the property."

11:35:21 13 Do you see where I'm reading?

11:35:23 14 A. Yes.

11:35:23 15 Q. Now, there would be no need for a conveyance if

11:35:26 16 you already owned the property; correct?

11:35:29 17 A. I'm not sure, you know, how it works very well.

11:35:35 18 Q. Okay. Let's take a look at Section 2.7 on

11:35:39 19 page 4. Section 2.7 says "borrower party release."

11:35:52 20 It says "In consideration of the releases and

11:35:54 21 agreements of the borrower, ANH and Silver Springs, set

11:35:58 22 forth in this agreement and in the transfer documents,

11:36:00 23 such releases and agreements being acknowledged to be of

11:36:04 24 valuable consideration, lender" -- that's your

11:36:05 25 company -- right? -- you and Mr. Bidsal's company -- "on

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11:36:07 1 behalf of itself and each of the lender parties has
11:36:10 2 executed and delivered to the borrower concurrently with
11:36:13 3 this agreement that certain release of borrower and
11:36:16 4 guarantors by lender and covenant not to sue dated as of
11:36:20 5 the date hereof."

11:36:21 6 Do you see where I'm reading?

11:36:22 7 A. Yes, sir.

11:36:22 8 Q. So your understanding of this paragraph is that
11:36:25 9 your company was giving a complete release to the
11:36:29 10 borrower and all the guarantors? That's what they were
11:36:33 11 getting in exchange for what they were giving; correct?

11:36:35 12 A. Correct.

11:36:35 13 Q. Okay.

11:36:37 14 A. On this -- on this matter, yes.

11:36:39 15 Q. All right.

11:36:39 16 A. That's what it says here.

11:36:41 17 Q. Now let's look down at Section 2.10 on the same
11:36:46 18 page.

11:36:46 19 A. Okay.

11:36:47 20 Q. And here there is a heading called "Collected
11:36:51 21 rents."

11:36:51 22 Do you see where I'm reading?

11:36:52 23 A. Yes.

11:36:53 24 Q. Okay. And here where it says "Collected rents,"
11:36:57 25 it says "Upon the execution of this agreement, borrower

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11:37:03 1 shall transfer to lender the amount of \$295,258.93,
11:37:10 2 which amount represents the net rents from the property
11:37:15 3 that have not previously been paid to the lender or to
11:37:18 4 lender's predecessor in interest for the period
11:37:21 5 beginning October 1, 2000, and ending September 21,
11:37:25 6 2011."

11:37:26 7 Do you see where I'm reading?

11:37:26 8 A. Yes.

11:37:27 9 Q. So according to this, the owner of the property
11:37:31 10 had collected rents before this agreement was entered
11:37:34 11 into?

11:37:34 12 A. Correct.

11:37:35 13 Q. Right?

11:37:36 14 And those rents were going to be turned over to
11:37:41 15 your company as the new owner of the property; correct?

11:37:43 16 A. Correct.

11:37:44 17 Q. Okay. And then if you look at the next
11:37:53 18 paragraph, which is 2.11 on the next page, this is
11:38:01 19 titled "Security deposits"; correct?

11:38:03 20 A. Yes.

11:38:05 21 Q. And here it says "Upon execution, borrower shall
11:38:10 22 transfer to lender and" -- it says "and amount equal to
11:38:15 23 \$74,549.01, which represents the security deposits held
11:38:21 24 by borrower in connection with the leases described on
11:38:23 25 the rent roll attached hereto as Exhibit E."

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11:38:27 1 Do you see where I'm reading?

11:38:27 2 A. Yeah.

11:38:27 3 Q. So these are commercial properties that were

11:38:29 4 being rented out to tenants; correct?

11:38:30 5 A. (Moved head.)

11:38:33 6 THE ARBITRATOR: It that yes?

11:38:33 7 A. Yes.

11:38:33 8 BY MR. GERRARD:

11:38:35 9 Q. And so those tenants had provided security

11:38:38 10 deposits to the owner of the property, who was the

11:38:41 11 former borrower under your loan; correct?

11:38:44 12 A. Yes, sir.

11:38:44 13 Q. And so as a part of this deed in lieu agreement,

11:38:48 14 that former owner is going to be turning over to your

11:38:51 15 company as the new owner all of those security deposits

11:38:54 16 that it was holding; correct?

11:38:55 17 A. That's right.

11:38:55 18 Q. Okay. All right. Let's take a look at Exhibit

11:39:00 19 No. 9, please. Do you recognize Exhibit No. 9?

11:39:10 20 A. Yes, sir.

11:39:12 21 Q. And this is the escrow closing statement

11:39:15 22 associated with the deed in lieu of foreclosure

11:39:19 23 agreement; correct?

11:39:19 24 MR. LEWIN: Hold on one second, please. I'll

11:39:32 25 stipulate that it's a closing statement. But what it's

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11:39:35 1 a closing statement about, I think there's no
11:39:38 2 foundation.

11:39:39 3 THE ARBITRATOR: Well, he hasn't asked anything
11:39:41 4 yet.

11:39:42 5 MR. LEWIN: Well, no. He asked his question and
11:39:44 6 his question says it's associated with the deed in lieu
11:39:46 7 agreement. So it presumes -- it assumes the fact
11:39:50 8 that -- there's no foundation --

11:39:51 9 THE ARBITRATOR: Well, he was asking a question,
11:39:53 10 so.

11:39:53 11 MR. LEWIN: Okay. All right.

11:39:53 12 BY MR. GERRARD:

11:39:53 13 Q. All right, sir. So you can look at this
11:39:55 14 document. It identifies a property at 3 Sunset Way and
11:40:00 15 gives two parcel numbers -- right? -- 161-32-810-001 and
11:40:06 16 002? Do you see -- in Henderson, Nevada. Do you see
11:40:08 17 that?

11:40:08 18 A. Correct.

11:40:09 19 Q. And that's the property that ultimately Green
11:40:14 20 Valley Commerce -- your and Mr. Bidsal's company --
11:40:15 21 obtained title to through the deed in lieu agreement;
11:40:18 22 correct?

11:40:18 23 A. That's right.

11:40:19 24 Q. Okay. And then if we look down below that, it
11:40:22 25 identifies a buyer. The buyer is Green Valley Commerce,

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11:40:26 1 LLC. That is your company; correct?

11:40:28 2 A. Yes.

11:40:29 3 Q. And then below that, it identifies a seller,

11:40:34 4 Green Valley Commerce Center, LLC. Do you see that?

11:40:35 5 A. Correct.

11:40:36 6 Q. Those are the same parties that we just saw in

11:40:39 7 the deed in lieu of foreclosure agreement; correct?

11:40:41 8 A. Yes.

11:40:41 9 Q. And then if we look down a little further, it

11:40:45 10 shows the date on here of September 22, 2011; correct?

11:40:48 11 A. Correct.

11:40:49 12 Q. And that matches up with the date we saw in

11:40:53 13 Exhibit 8 in the deed in lieu of foreclosure agreement;

11:40:55 14 correct?

11:40:55 15 A. Yes.

11:40:56 16 Q. So then if we look down at what is shown here --

11:41:00 17 you can look in the -- at the top of the document in the

11:41:08 18 first column, it says "seller credit, 369,807.94." Do

11:41:14 19 you see that number?

11:41:15 20 A. 369, did you say?

11:41:19 21 Q. Yes.

11:41:19 22 A. Yeah. I see that.

11:41:20 23 Q. Okay. And then it shows -- on the left column

11:41:24 24 under "seller charge," it shows what makes up that

11:41:27 25 number; correct?

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11:41:27 1 A. Yes.

11:41:28 2 Q. And it's made up of \$74,549.01 in security

11:41:33 3 deposits; correct?

11:41:34 4 A. Yes.

11:41:35 5 Q. And then below that it's made up of \$295,258.93

11:41:39 6 in net rents; correct?

11:41:42 7 A. Net rent to them.

11:41:43 8 Q. Isn't this what -- isn't that what it says?

11:41:45 9 A. Yeah, I know.

11:41:46 10 Q. It says "net rents"?

11:41:48 11 A. Yeah. But it's --

11:41:49 12 Q. Okay. All I'm asking, what does it say? Does it

11:41:51 13 say "net rents"?

11:41:52 14 A. It says "net rent."

11:41:52 15 Q. Okay.

11:41:54 16 A. But no --

11:41:55 17 Q. And those -- those rents were transferred to your

11:41:57 18 company through this closing of the deed in lieu

11:42:00 19 agreement; correct?

11:42:01 20 A. It -- it was transferred, not as a --

11:42:04 21 Q. Sir, it's just yes or no.

11:42:04 22 A. Yes.

11:42:06 23 Q. Were the rents transferred or not?

11:42:07 24 A. The rent they made, it was transferred. The

11:42:10 25 rent -- the money they --

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11:42:10 1 Q. Sir --

11:42:12 2 A. -- receive as rent, they transferred to us.

11:42:14 3 Q. Okay.

11:42:14 4 A. That's what you want to hear?

11:42:16 5 Q. Well, yeah. I'm just saying --

11:42:16 6 A. Okay.

11:42:18 7 Q. -- this document states what was being

11:42:20 8 transferred --

11:42:22 9 A. No problem.

11:42:20 10 Q. -- and it says "net rents"; correct?

11:42:22 11 A. No problem.

11:42:23 12 Q. Okay. And that's consistent with the deed in

11:42:26 13 lieu of foreclosure agreement that also identified the

11:42:30 14 same number and called it "collected rents"; correct?

11:42:32 15 A. Yes.

11:42:32 16 Q. Okay.

11:42:33 17 A. To them.

11:42:33 18 Q. All right. And then let's take a look at

11:42:36 19 Exhibit 10. Turn to Exhibit 10, please.

11:42:50 20 A. Okay.

11:42:51 21 Q. Okay. And this document has -- is a grant

11:42:55 22 bargain sell deed; correct?

11:42:55 23 A. Yes, sir.

11:42:59 24 Q. And it was recorded on September 22, 2011;

11:43:01 25 correct? Do you see the stamp at the top right-hand

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11:43:06 1 corner?

11:43:07 2 A. I'm looking at it. I'm trying to find it.

11:43:08 3 Q. The fourth line down in that stamp. Do you see a

11:43:11 4 date?

11:43:11 5 A. That's correct, yeah.

11:43:12 6 Q. Okay. And if you look at the legal description

11:43:16 7 of what was attached, this matches up with what we were

11:43:20 8 looking at in the deed in lieu agreement; correct?

11:43:23 9 A. I have no way of knowing, but I think it is, yes.

11:43:26 10 Q. Okay. Well, you don't have any reason to believe

11:43:28 11 that you didn't get an actual deed of the property from

11:43:32 12 the former owner to your company on September 22, 2011,

11:43:36 13 do you?

11:43:36 14 A. I have reason to believe, yes.

11:43:38 15 Q. You have a reason to believe that that's what

11:43:40 16 happened; correct?

11:43:40 17 A. Yes.

11:43:41 18 Q. Okay. And of course, there would be no need for

11:43:44 19 there to be a deed recorded if you already had and owned

11:43:47 20 a title interest in the property; correct?

11:43:53 21 MR. LEWIN: Objection. Calls for a legal

11:43:54 22 conclusion.

11:43:55 23 THE ARBITRATOR: Sustained.

11:43:55 24 MR. GERRARD: Okay.

11:43:55 25 ///

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11:43:57

1 BY MR. GERRARD:

11:43:57

2 Q. All right. So now let's go back to Exhibit 9 for

11:44:02

3 just one minute. Exhibit 9, do you see any purchase

11:44:09

4 price for this property listed in this escrow closing

11:44:16

5 statement?

11:44:16

6 A. On this one?

11:44:19

7 Q. Yes.

11:44:20

8 A. On this one, no.

11:44:22

9 Q. Okay. And so when we look back at the -- at

11:44:29

10 Exhibit 5 where we had the definition for cost of

11:44:38

11 purchase, that definition stated cost of purchase means

11:44:53

12 "cost of purchase as it specified in the escrow closing

11:44:58

13 statement at the time of purchase of each property owned

11:45:01

14 by the company."

11:45:02

15 A. Correct.

11:45:02

16 Q. So this escrow closing statement is the statement

11:45:06

17 that was in existence that was associated with the

11:45:11

18 transfer of the title of the property -- the real

11:45:14

19 property from its former owner to your company; correct?

11:45:18

20 A. No. What operating agreement is calling for --

11:45:24

21 Q. Sir, I didn't ask you what the operating

11:45:26

22 agreement says. I asked you if this escrow closing

11:45:30

23 statement that is Exhibit 9 was the escrow closing

11:45:33

24 statement that was associated with the grant bargain

11:45:35

25 sale deed, which is Exhibit 10, through which your

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11:45:39 1 company obtained title to the property that it owned
11:45:44 2 from that point on?
11:45:45 3 A. My -- our company obtained title to the property
11:45:50 4 at the first escrow.
11:45:52 5 Q. You mean at this escrow?
11:45:53 6 A. No. First one, before.
11:45:53 7 Q. Okay. So you're saying --
11:45:55 8 A. On June 3.
11:45:56 9 Q. Okay. So what -- what deed was there in June
11:45:59 10 that gave you title to any real property?
11:46:02 11 A. We are not talking about real property. It says
11:46:05 12 "property" on COP reading. It doesn't say "real -- real
11:46:10 13 property."
11:46:10 14 Q. Okay. So let's -- let's talk about the
11:46:12 15 property -- the real property that is in the company.
11:46:14 16 Okay?
11:46:15 17 A. Uh-huh.
11:46:15 18 Q. The real property that the company owned or owns
11:46:20 19 now and has owned since September of 2011 was received
11:46:25 20 through the grant bargain sale deed, which is
11:46:27 21 Exhibit 10; correct?
11:46:28 22 A. We can talk about --
11:46:29 23 Q. Is that yes or no, sir? Did it receive it
11:46:31 24 through this deed or not?
11:46:32 25 A. The real property?

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11:46:34 1 Q. Yes.

11:46:35 2 A. The real property was sent -- we acquired through

11:46:41 3 the second escrow.

11:46:42 4 Q. Through this deed; correct? Through the second

11:46:45 5 escrow and this deed?

11:46:46 6 A. Which was -- which was a continuation of first

11:46:48 7 escrow.

11:46:49 8 Q. Okay. So if you look at the escrow closing

11:46:53 9 statement that is at Exhibit 8 -- I'm sorry, 9. That

11:47:05 10 escrow closing statement does not list any cost of

11:47:10 11 purchase for the property, does it?

11:47:12 12 MR. LEWIN: Objection. The document speaks for

11:47:14 13 itself.

11:47:15 14 THE ARBITRATOR: Overruled. You may answer.

11:47:22 15 THE WITNESS: What's the question?

11:47:23 16 BY MR. GERRARD:

11:47:23 17 Q. The escrow statement that is Exhibit 9 does not

11:47:26 18 list any cost of purchase of any property, does it?

11:47:29 19 A. It's not supposed to. No, it doesn't.

11:47:32 20 Q. Okay. All right. Let's take a look now at

11:47:35 21 Exhibit 12, please. Do you have that in front of you,

11:47:45 22 sir?

11:47:45 23 A. Yes.

11:47:46 24 Q. Okay. So Exhibit 12 is the 2011 tax return for

11:47:51 25 Green Valley Commerce, LLC; correct?

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11:47:53 1 A. Yes.

11:47:53 2 Q. And let's take a look at the page which has the

11:48:01 3 Bates number at the bottom, 2336, which is Schedule K of

11:48:05 4 the tax return.

11:48:07 5 A. Okay.

11:48:08 6 Q. Let me know when you're there.

11:48:09 7 A. I am.

11:48:10 8 Q. Got that?

11:48:11 9 A. Yes.

11:48:11 10 Q. Okay. So if we look at this, you can see that --

11:48:20 11 hold on for just one second.

11:48:21 12 MR. GERRARD: Hey, Jim?

11:48:24 13 MR. SHAPIRO: Yeah?

11:48:25 14 MR. GERRARD: Do you have -- can you do share

11:48:27 15 screen and pull up the calculator on your --

11:48:31 16 MR. SHAPIRO: Yep. I actually have to join the

11:48:31 17 Zoom call.

11:48:31 18 MR. GERRARD: Okay. But I just want -- I mean,

11:48:34 19 so that you can, yes. Oh, you're not on --

11:48:34 20 MR. LEWIN: What's the Bates stamp number you're

11:48:34 21 looking for?

11:48:34 22 MR. SHAPIRO: It's okay. I'll jump on real

11:48:36 23 quick.

11:48:36 24 MR. GERRARD: Exhibit 12.

11:48:38 25 MR. LEWIN: Number -- what page is that number?

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11:48:38 1 MR. GERRARD: Right now, we're looking at Bates
11:48:43 2 label number 2336, which is Schedule K of the tax
11:48:45 3 return.
11:48:58 4 THE ARBITRATOR: And, Mr. Gerrard --
11:48:58 5 MR. GERRARD: I'm asking him to pull up a
11:49:00 6 calculator because we're going to add some numbers, so.
11:49:00 7 THE ARBITRATOR: I understand. That's fine. In
11:49:00 8 10 to 15 minutes, pick a spot where it makes sense to
11:49:00 9 take a break for lunch.
11:49:07 10 MR. GERRARD: Okay.
11:49:07 11 MR. SHAPIRO: All right. I am trying to join
11:49:07 12 now.
11:49:10 13 MR. GERRARD: You know, this is a good place,
11:49:11 14 Your Honor. We're moving into a new area.
11:49:11 15 THE ARBITRATOR: You want to do it now?
11:49:11 16 MR. GERRARD: Sure.
11:49:15 17 THE ARBITRATOR: All right. We'll take a lunch
11:49:27 18 and recess at this time.
11:49:27 19 ***
11:49:27 20 (RECESS TAKEN FROM 11:49 A.M. TO 12:25 P.M.)
12:25:01 21 ***
12:25:01 22 THE ARBITRATOR: Mr. Golshani, do you realize
12:25:05 23 you're still under oath?
12:25:07 24 THE WITNESS: Yes, sir.
12:25:07 25 THE ARBITRATOR: All right.

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12:25:07 1 BY MR. GERRARD:

12:25:09 2 Q. Mr. Golshani, would you please look at the binder

12:25:11 3 that has been placed in front of you.

12:25:11 4 MR. GERRARD: Which is our Binder 3, Judge.

12:25:11 5 BY MR. GERRARD:

12:25:17 6 Q. And I'd like you to look at exhibit --

12:25:17 7 A. Which exhibit?

12:25:38 8 Q. In that binder, Exhibit 67.

12:25:38 9 Do you have that in front of you, sir?

12:26:01 10 A. I'm ready. Yes, sir.

12:26:03 11 Q. Okay. So you can see that Exhibit 67 is an email

12:26:07 12 from Ben -- it says "bengol7@yahoo.com."

12:26:12 13 Is that you?

12:26:12 14 A. Yes.

12:26:13 15 Q. And it says "email sent" --

12:26:16 16 THE ARBITRATOR: Hold on. I'm just going to -- I

12:26:18 17 got logged out so I'm logging back in and it's going to

12:26:18 18 be loud for a second.

12:26:18 19 Okay. Sorry.

12:26:18 20 MR. GERRARD: Okay.

12:26:35 21 BY MR. GERRARD:

12:26:35 22 Q. So this is an email that you sent to Mr. Bidsal

12:26:38 23 on September 22, 2011; correct?

12:26:41 24 A. Correct.

12:26:41 25 Q. And it says, "Shawn E. Azis (phonetic), enclosed

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12:26:48 1 please find a rough draft of what I came up with. I
12:26:51 2 tried to make it reciprocal. See if you like it.
12:26:53 3 Comments are appreciated."
12:26:55 4 And let's look at what you sent him that's
12:26:59 5 attached to this Exhibit 67. You see the document
12:27:02 6 that's attached here is Exhibit 62 -- Exhibit 67? Do
12:27:12 7 you see it?
12:27:13 8 A. Yeah.
12:27:13 9 Q. Okay. And you can see that about two thirds of
12:27:19 10 the way down the page -- that first page under what's --
12:27:21 11 your draft language says Section 7.1, "purchase or sale
12:27:26 12 procedure," we see the formula that ultimately made its
12:27:30 13 way into the operating agreement of this company;
12:27:32 14 correct?
12:27:33 15 MR. LEWIN: Objection, Your Honor. This only --
12:27:36 16 again, this goes to drafting.
12:27:41 17 MR. GERRARD: Well, I do agree that it does have
12:27:43 18 something to do with drafting, but mostly it has to do
12:27:45 19 with his understanding of this language.
12:27:48 20 THE ARBITRATOR: Okay. Overruled.
12:27:48 21 BY MR. GERRARD:
12:27:49 22 Q. So, sir, this is the -- this is where the formula
12:27:53 23 came from that made its way to the operating agreement;
12:27:56 24 correct?
12:27:57 25 A. No. The formula came from the negotiations we

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12:28:01 1 had. I put it down here.

12:28:03 2 Q. Sir, if -- let's go back to the email, the first

12:28:07 3 page of Exhibit 67. It says, "Please -- enclosed please

12:28:11 4 find a rough draft of what I came up with."

12:28:15 5 "I" meaning you; correct?

12:28:16 6 A. Yes.

12:28:16 7 Q. So you're the one that came up with this language

12:28:19 8 that's attached; correct?

12:28:20 9 A. Yeah, but there was --

12:28:21 10 Q. Sir, it's a yes or no.

12:28:22 11 MR. LEWIN: Objection.

12:28:22 12 BY MR. GERRARD:

12:28:23 13 Q. You did or you didn't.

12:28:25 14 MR. LEWIN: I'm sorry. This -- again, whatever

12:28:25 15 the -- the formula is the formula. The drafting of it

12:28:32 16 is irrelevant.

12:28:32 17 THE ARBITRATOR: Right. But the understanding of

12:28:34 18 the formula is key, and I think that's what --

12:28:37 19 MR. LEWIN: But -- but he doesn't have to look at

12:28:37 20 this document. He can look at the document -- the

12:28:38 21 document they signed.

12:28:39 22 THE ARBITRATOR: Understood. All right.

12:28:41 23 Overruled.

12:28:42 24 MR. SHAPIRO: Your Honor, it also goes to

12:28:44 25 credibility. He previously testified he didn't draft

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12:28:47 1 it, and yet this directly contradicts that.

12:28:49 2 THE ARBITRATOR: It doesn't -- that wouldn't make

12:28:52 3 something otherwise inadmissible admissible. But I've

12:28:56 4 already overruled the objection, so.

12:28:58 5 BY MR. GERRARD:

12:28:58 6 Q. So again, sir, you're the one that came up with

12:29:01 7 this language and sent it Mr. Bidsal; correct?

12:29:03 8 A. No.

12:29:04 9 Q. And I assume that since you sent an email saying

12:29:10 10 "please find rough draft of what I came up with" that

12:29:14 11 you would have gained a thorough understanding of what

12:29:16 12 it meant before you sent it; correct?

12:29:18 13 A. I had understanding, but --

12:29:20 14 Q. Again, sir, it's yes or no.

12:29:21 15 A. I'm sorry. What is the question?

12:29:22 16 Q. Sure. Before you sent this language to

12:29:24 17 Mr. Bidsal, I assume you would have had a thorough

12:29:28 18 understanding of what it meant; correct?

12:29:29 19 A. Yes.

12:29:30 20 Q. Okay. So now let's take a look at Exhibit

12:29:56 21 No. 12.

12:30:01 22 A. Same binder?

12:30:02 23 THE ARBITRATOR: No. It's back to that tax

12:30:04 24 return you were looking at before lunch.

12:30:04 25 ///

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12:30:06 1 BY MR. GERRARD:

12:30:06 2 Q. Just let me know when you're there, sir.

12:30:17 3 A. Yes, I am.

12:30:18 4 Q. Okay. So I asked you to look at the page that

12:30:20 5 was marked CLA Bidsal 0002336. Let me know when you're

12:30:26 6 there.

12:30:26 7 A. I'm there.

12:30:28 8 Q. Okay. So this is Schedule K of the tax return

12:30:35 9 for Green Valley Commerce, LLC.

12:30:35 10 A. Correct.

12:30:36 11 Q. And let's look at line two. Shows net rental

12:30:40 12 real estate income of \$169,225. Do you see that?

12:30:45 13 A. I see that.

12:30:46 14 Q. And then underneath that on line 5, it shows

12:30:49 15 interest income \$311,265. Do you see that?

12:30:53 16 A. That's what it says.

12:30:55 17 Q. Okay. So if you total those two numbers

12:31:01 18 together --

12:31:03 19 MR. GERRARD: Can you put those numbers up, Jim?

12:31:05 20 MR. SHAPIRO: All right. What do you want me to

12:31:08 21 do?

12:31:08 22 MR. GERRARD: 169,225 and 311,265. Add those

12:31:13 23 numbers together.

12:31:13 24 BY MR. GERRARD:

12:31:16 25 Q. Does -- and you can see that that comes up to

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12:31:18 1 **\$480,490. Do you see that?**

12:31:23 2 THE ARBITRATOR: He doesn't have the screen.

12:31:25 3 MR. GERRARD: Oh, he doesn't. You're right.

12:31:25 4 BY MR. GERRARD:

12:31:25 5 **Q. It's behind you, sir.**

12:31:28 6 THE ARBITRATOR: They just put -- they just added

12:31:28 7 those two numbers at the top of that page on the screen

12:31:32 8 behind you --

12:31:36 9 BY MR. GERRARD:

12:31:36 10 **Q. If you turn around --**

12:31:38 11 THE ARBITRATOR: -- and it added up to that --

12:31:40 12 next question.

12:31:41 13 BY MR. GERRARD:

12:31:41 14 **Q. Okay. So now, sir, let's turn to the next page,**

12:31:46 15 **and let's look at Schedule M-1.**

12:31:49 16 A. Okay.

12:31:49 17 **Q. Do you have that in front of you?**

12:31:53 18 A. Yes.

12:31:53 19 **Q. Do you see that number on line No. 1, net income,**

12:31:57 20 **\$480,490?**

12:31:59 21 A. I do.

12:31:59 22 **Q. So you can see that's made up of the two numbers**

12:32:01 23 **that we added up on -- from Schedule K; correct?**

12:32:04 24 A. Yes.

12:32:04 25 **Q. And then if we look below, in Schedule N-2, it**

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12:32:12 1 says "analysis of partnerships -- of partners' capital Page 150
12:32:14 2 accounts."
12:32:15 3 Do you see where I'm looking?
12:32:16 4 A. Yes.
12:32:17 5 Q. And it shows capital contributed, \$4,049,250. Do
12:32:22 6 you see that?
12:32:22 7 A. Yes.
12:32:22 8 Q. Okay. And I can add those numbers up for you if
12:32:25 9 you want me to, but again, that's the 2,834,250 that you
12:32:29 10 contributed in cash and the \$1,215,000 that Mr. Bidsal
12:32:35 11 contributed in cash. That adds up to the \$4,049,250.
12:32:40 12 A. Okay.
12:32:40 13 Q. Okay?
12:32:41 14 A. All right.
12:32:42 15 Q. Now, look to the right side in Item -- Line Item
12:32:47 16 No. 6. It shows distributions. Do you see where I'm
12:32:49 17 looking?
12:32:50 18 A. Yes.
12:32:50 19 Q. And the distributions show cash being distributed
12:32:54 20 in the -- in the year 2011 of \$530,000; correct?
12:32:57 21 A. On No. 1, sure.
12:33:01 22 Q. Schedule M-2, line 6A.
12:33:05 23 A. Line...
12:33:07 24 Q. Says "distributions cashed, 530,000"?
12:33:11 25 A. It's line 8, actually. It's correct, yes.

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12:33:14 1 THE ARBITRATOR: No, above it.

12:33:14 2 THE WITNESS: Above it?

12:33:14 3 BY MR. GERRARD:

12:33:14 4 Q. Line 6A.

12:33:17 5 A. Line 6A. Yes, sir. I'm sorry.

12:33:18 6 Q. Okay. All right. Now let's turn back -- a few

12:33:21 7 pages back to the Bates number page that ends in 2340.

12:33:28 8 THE ARBITRATOR: That's forward.

12:33:32 9 MR. GERRARD: What did you say?

12:33:32 10 THE ARBITRATOR: That's forward.

12:33:34 11 MR. GERRARD: That's back. We were on page 2337.

12:33:36 12 We're going to 2340.

12:33:38 13 MR. SHAPIRO: So continue forward is what he's

12:33:40 14 saying.

12:33:42 15 MR. GERRARD: Oh.

12:33:42 16 THE ARBITRATOR: Okay. We found it.

12:33:42 17 BY MR. GERRARD:

12:33:49 18 Q. All right. So ignoring my semantics, here we are

12:33:51 19 on page 2340. This is your K-1 for the year 2011, CLA

12:33:57 20 Properties, LLC; correct?

12:33:58 21 A. Correct.

12:33:59 22 Q. So let's look up on line 2 of that return of your

12:34:07 23 Schedule K-1. Do you see where there was net rental

12:34:10 24 income allocated to you of \$84,613?

12:34:14 25 A. I see that.

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12:34:14 1 Q. Okay. And you understand that that number is
12:34:20 2 half of the number that we saw on Schedule K, the
12:34:25 3 \$169,225 that shows up as the net rental real estate
12:34:31 4 income?

12:34:31 5 A. Correct.

12:34:32 6 Q. So you received an allocation of half of that;
12:34:35 7 correct?

12:34:36 8 A. Correct.

12:34:36 9 Q. And then underneath that at line 5, it shows that
12:34:40 10 you received an allocation of \$155,633, which was half
12:34:46 11 of the line item we saw in line 5 of Schedule K;
12:34:49 12 correct?

12:34:49 13 A. Correct.

12:34:50 14 Q. So you received an allocation, according to this,
12:34:54 15 of 50 percent of all the money that was generated or
12:34:57 16 received or held by the company in the year 2011;
12:35:02 17 correct?

12:35:02 18 A. It looks like it.

12:35:03 19 Q. And then you have -- we looked on Schedule M-2
12:35:07 20 that there were distributions made of 530,000, and on
12:35:11 21 your Schedule K-1, line 19, it shows that you received
12:35:16 22 \$265,000 in distributions; correct?

12:35:20 23 A. Looks like it. That's what it says, yes.

12:35:21 24 Q. That's exactly 50 percent of the 530,000 that was
12:35:24 25 distributed; correct?

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12:35:26 1 A. Probably, yes.

12:35:27 2 Q. Okay. And you received this tax return and this

12:35:33 3 K-1 after it was prepared in 2012; correct?

12:35:36 4 A. I think so, yes.

12:35:39 5 Q. And then you also received the K-1 that's the

12:35:43 6 next document in this exhibit, which is Mr. Bidsal's

12:35:47 7 K-1; correct?

12:35:47 8 A. Yes.

12:35:47 9 Q. And you can see that he received an allocation of

12:35:53 10 50 percent of all of the income and received a

12:35:56 11 50 percent of all the distributions; correct?

12:35:58 12 A. Yes, sir.

12:35:59 13 Q. And after you received this document, you didn't

12:36:02 14 object to it in any manner, did you?

12:36:04 15 A. At that time, no.

12:36:05 16 Q. Okay. Let's take a look now at Exhibit 13. Do

12:36:16 17 you have that in front of you, sir? Yes? You have that

12:36:21 18 in front of you?

12:36:21 19 A. Which exhibit?

12:36:23 20 Q. 13.

12:36:23 21 A. I have it.

12:36:25 22 Q. So Exhibit 13 is the seller's closing statement,

12:36:30 23 and it identifies the property being sold as 1 and 3

12:36:36 24 Sunset Way, Building C, Henderson, Nevada. Do you see

12:36:38 25 that?

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12:36:38 1 A. Yes, sir.

12:36:39 2 Q. So this is the escrow closing statement for the

12:36:41 3 sale of Building C; correct?

12:36:43 4 A. Correct.

12:36:43 5 Q. And if we look at this escrow closing statement,

12:36:48 6 it shows that after all the closing costs have been

12:36:51 7 deducted that the remaining balance of this property was

12:36:54 8 \$898,629; correct?

12:36:58 9 A. Correct.

12:36:59 10 Q. Okay. Now, do you recall what the allocable

12:37:39 11 share of -- of the purchase price for the promissory

12:37:47 12 note had been allocated for tax purposes to this

12:37:51 13 building?

12:37:52 14 MR. LEWIN: Objection. Vague.

12:37:53 15 A. I don't remember.

12:37:54 16 BY MR. GERRARD:

12:37:54 17 Q. You don't remember? Let's take a look at the

12:37:56 18 last page of Exhibit 18, please.

12:37:59 19 A. Exhibit 18?

12:38:00 20 Q. Yes.

12:38:01 21 A. Cost segregation?

12:38:06 22 Q. Yeah. Exhibit 18 is the cost segregation study;

12:38:11 23 correct?

12:38:11 24 A. Yes.

12:38:11 25 Q. So turn to the last page.

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12:38:17 1 A. I am.

12:38:17 2 Q. You see the last page has the allocated numbers

12:38:21 3 for each of the buildings; correct?

12:38:28 4 A. Yes, sir.

12:38:28 5 Q. And Building C is what is referred to here as

12:38:32 6 parcel 50; correct?

12:38:33 7 A. 50, yes.

12:38:34 8 Q. And you can see that the allocable -- the amount

12:38:39 9 allocated to Building C from the original purchase price

12:38:42 10 paid for the note was \$293,763.47 for the building and

12:38:50 11 \$78,010.24 for the land; correct?

12:38:53 12 A. I don't see that.

12:38:54 13 Q. Look at where it says No. 50.

12:38:57 14 A. No. 50.

12:38:58 15 Q. And then follow it cross under the column that

12:39:02 16 says "building" when the line across from No. 50 --

12:39:05 17 A. You are talking about 2011? That's 2011.

12:39:11 18 Q. Sir, I'm just asking --

12:39:13 19 A. Okay.

12:39:13 20 Q. -- if this form shows --

12:39:15 21 A. On the left column, you're right. 293,763.78 --

12:39:22 22 47, and the land 78,010.24.

12:39:26 23 Q. Okay. And if you add those two numbers

12:39:28 24 together -- we can do it for you if you want, but that

12:39:31 25 comes up to \$371,773.71. So now let's take a look --

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12:39:40 1 THE ARBITRATOR: What was it, again?

12:39:45 2 MR. GERRARD: 371,773.71.

12:39:45 3 THE ARBITRATOR: Okay.

12:39:45 4 BY MR. GERRARD:

12:39:47 5 Q. Now let's go back to Exhibit No. 13. So

12:39:59 6 Exhibit 13, you can see, shows that the -- the net sales

12:40:09 7 proceeds from the sale of Building C was \$898,629.23;

12:40:16 8 correct?

12:40:16 9 A. Yes.

12:40:17 10 Q. So if we subtract the allocable portion of the

12:40:21 11 basis from the purchase of the promissory note

12:40:24 12 associated with Building C -- that's the number of

12:40:26 13 371,773.71 -- from this number of 898,629.23, we get a

12:40:35 14 number of \$526,855. That would be the amount of

12:40:43 15 appreciation -- the amount this property had

12:40:46 16 appreciated -- from the time that it was purchased until

12:40:49 17 the time that Building C was sold; correct?

12:40:51 18 MR. LEWIN: Objection. Question's without

12:40:54 19 foundation.

12:40:56 20 MR. GERRARD: Well, I just asked him a foundation

12:40:57 21 question.

12:40:58 22 THE ARBITRATOR: Overruled.

12:41:00 23 BY MR. GERRARD:

12:41:00 24 Q. Go ahead, sir.

12:41:01 25 A. That's -- that's not the right calculation

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12:41:04 1 because you changed the cost at 2012 when they did the

12:41:11 2 cost segregation. Under cost segregation, Mr. Bidsal

12:41:17 3 offered another table.

12:41:18 4 Q. Okay. Well, we just looked at the table --

12:41:20 5 A. No.

12:41:21 6 Q. -- that was attached to the cost segregation

12:41:24 7 study, didn't we?

12:41:24 8 A. The --

12:41:25 9 Q. That's the last page of the cost segregation

12:41:27 10 study, wasn't it?

12:41:27 11 A. No, it's not. The number --

12:41:28 12 Q. Sir, listen. Listen to my question.

12:41:28 13 MR. LEWIN: Wait. Wait.

12:41:31 14 THE WITNESS: I'm sorry. I apologize.

12:41:33 15 BY MR. GERRARD:

12:41:33 16 Q. Is the page we just looked at, the last page of

12:41:37 17 Exhibit 18, is that the last page of the cost

12:41:12 18 segregation study?

12:41:40 19 A. I know this is --

12:41:42 20 Q. Yes or no, sir?

12:41:43 21 A. No. It is the last, but it's --

12:41:45 22 Q. Okay. That's my only question. And we just took

12:41:48 23 the number from that last page of the cost segregation

12:41:52 24 study, didn't we?

12:41:52 25 MR. LEWIN: Objection. The -- okay. The

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12:41:55 1 question's without foundation because --

12:41:57 2 MR. GERRARD: Sir, don't -- please don't testify.

12:41:59 3 This is an objection. What's your objection?

12:42:00 4 THE ARBITRATOR: Let him state the objection.

12:42:00 5 I'll handle that part.

12:42:00 6 MR. GERRARD: I'm sorry.

12:42:04 7 MR. LEWIN: It's vague because there's numerous

12:41:12 8 columns in there called "segregation." That's what the

12:42:07 9 confusion is.

12:42:09 10 THE ARBITRATOR: Okay. So --

12:42:12 11 THE WITNESS: May I say something?

12:42:14 12 THE ARBITRATOR: No.

12:42:14 13 MR. GERRARD: Okay. So --

12:42:18 14 THE ARBITRATOR: Mr. Gerrard, do you understand

12:42:18 15 that?

12:42:19 16 MR. GERRARD: Yeah, I understood. He's saying

12:42:21 17 it's vague.

12:42:22 18 THE ARBITRATOR: Well, he's saying there's

12:42:23 19 essentially three sets of calculations for -- or numbers

12:42:27 20 for building and land and we haven't said what those

12:42:33 21 are.

12:42:44 22 BY MR. GERRARD:

12:42:44 23 Q. Okay. Well, let's look at the last column.

12:42:46 24 Okay? The last page of Exhibit 18. Just to make sure

12:42:51 25 that we're all on the same page, let's calculate -- so

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12:42:56 1 if you look at line 50, go all the way across to where
12:43:00 2 it says "new assets." Do you have that in front of you?
12:43:00 3 A. Which one are you --
12:43:06 4 Q. Last -- last page.
12:43:07 5 THE ARBITRATOR: Same one we were looking at
12:43:08 6 before. Cost seg report.
12:43:08 7 THE WITNESS: Okay.
12:43:12 8 BY MR. GERRARD:
12:43:12 9 Q. Okay. So if we add those two numbers together --
12:43:16 10 MR. GERRARD: Jim, you want to add those up?
12:43:19 11 We have 324,223.97.
12:43:25 12 MR. SHAPIRO: 3 --
12:43:29 13 MR. GERRARD: 324,223.97.
12:43:29 14 MR. SHAPIRO: Okay.
12:43:30 15 MR. GERRARD: That shows -- for the building and
12:43:31 16 land shows as 74,969.83.
12:43:40 17 MR. SHAPIRO: So that comes out to 399,193. I
12:43:40 18 can share that. Hold on. Share. Why is it not
12:43:54 19 cooperating? Did I get locked out?
12:43:54 20 THE ARBITRATOR: Shouldn't have.
12:43:54 21 MR. GERRARD: It's still showing you on my
12:43:58 22 screen.
12:43:58 23 MR. SHAPIRO: Oh, there we go, I got it.
12:44:02 24 BY MR. GERRARD:
12:44:02 25 Q. Okay. So that number shows \$399,193.80. So if

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12:44:13 1 you use that column of numbers, then the -- then the
12:44:17 2 basis associated with Building C is higher by
12:44:21 3 approximately almost \$30,000 than it was if we used the
12:44:25 4 columns -- the two numbers in the first column.

12:44:30 5 But let's use the numbers in the last column,
12:44:33 6 then, the 399,193.80. According to that new asset
12:44:40 7 column, that would be the basis associated with Building
12:44:44 8 C; correct?

12:44:45 9 A. I'm not sure.

12:44:46 10 Q. Okay. Well, let's go back to the -- once again,
12:44:53 11 the Exhibit 13. The sales proceeds available -- the net
12:44:59 12 sales proceeds from the sale of Building C was 898 --

12:45:04 13 MR. GERRARD: Jim, let's plug this in.

12:45:05 14 898,629.23 minus --

12:45:17 15 MR. SHAPIRO: I just did it. You get a negative
12:45:18 16 on the 399. So the difference between -- whoops. I did
12:45:23 17 749. All right. I'll start over.

12:45:26 18 MR. GERRARD: Let's try it again. 898,629.23.

12:45:27 19 MR. SHAPIRO: 898,629 --

12:45:34 20 MR. GERRARD: It's not showing anything on your
12:45:38 21 calculator.

12:45:38 22 MR. SHAPIRO: You're right. Hold on. Now
12:45:42 23 it's -- all right. Let me pull up the calculator and
12:45:44 24 share that. Okay. So what's the number?

12:45:52 25 MR. GERRARD: So it's -- it would be 898,629.23.

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12:45:56 1 898,629 --

12:45:56 2 MR. SHAPIRO: 898,629.23.

12:46:07 3 MR. GERRARD: -- minus 399,193.8.

12:46:13 4 MR. SHAPIRO. .80?

12:46:15 5 MR. GERRARD: Uh-huh. And what's that number?

12:46:18 6 \$499,435.43. Okay.

12:46:18 7 BY MR. GERRARD:

12:46:24 8 Q. So if we use that last column of numbers, then

12:46:28 9 the difference between the basis of that property that

12:46:32 10 had been allocated to Building C and the sales proceeds,

12:46:35 11 meaning the net appreciation between those two numbers,

12:46:38 12 would be \$499,435, roughly; correct?

12:46:43 13 A. It seems so, yeah.

12:46:45 14 Q. Okay. And that money could have been distributed

12:46:50 15 to the members; correct?

12:46:51 16 A. If -- yeah.

12:46:55 17 Q. But instead, that appreciation -- part of which

12:47:00 18 belonged to Mr. Bidsal if it was distributed and part of

12:47:03 19 which would have belonged to you if it was

12:47:06 20 distributed -- that appreciation was instead rolled into

12:47:09 21 the purchase of the Greenway property; correct?

12:47:13 22 A. I'm not very sure how it happened, but probably,

12:47:19 23 yes.

12:47:20 24 Q. So the sales proceeds from the sale of Building C

12:47:32 25 were all utilized -- well, all but a small portion of it

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12:47:36 1 was utilized to purchase another property located in
12:47:40 2 Arizona called the Greenway property; correct?
12:47:42 3 A. Correct.
12:47:43 4 Q. Okay. So instead of distributing this
12:47:46 5 appreciation and distributions to the two members, the
12:47:47 6 money was rolled into purchasing another property;
12:47:50 7 correct?
12:47:51 8 A. Yes, I think so.
12:47:52 9 Q. Right. But if that hadn't been done, the money
12:47:55 10 would have been available to be distributed; correct?
12:47:58 11 A. Probably, yeah.
12:47:58 12 Q. Okay. Let's go back to Exhibit 14 now. Let me
12:48:16 13 know when you have that in front of you, sir.
12:48:18 14 A. I have it.
12:48:18 15 Q. Okay. So Exhibit 14 is the breakdown of how that
12:48:23 16 money was distributed that was prepared by Mr. Bidsal;
12:48:26 17 correct?
12:48:27 18 A. Yes.
12:48:27 19 Q. And this was provided to you at the same time you
12:48:29 20 received your distribution checks; correct?
12:48:31 21 A. Correct.
12:48:32 22 Q. And so according to this, we can see that
12:48:38 23 Mr. Bidsal took the total amount, the 898,629.23, and
12:48:44 24 then it looks like he added in the cost of purchase and
12:48:51 25 then he subtracted out the cost of acquiring the

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12:48:54 1 **Greenway property, which is 790,000; correct?**

12:48:57 2 A. Yes.

12:48:58 3 MR. LEWIN: Objection. The document -- is this

12:49:01 4 14, general ledger statement?

12:49:06 5 MR. GERRARD: I'm not sure what the objection is.

12:49:06 6 What's the objection?

12:49:07 7 THE ARBITRATOR: He's looking at the first page.

12:49:07 8 MR. LEWIN: Pardon me.

12:49:09 9 THE ARBITRATOR: Handwritten.

12:49:10 10 MR. LEWIN: Oh, that's not the 14 I have. Okay.

12:49:13 11 THE ARBITRATOR: 14 -- is yours different?

12:49:17 12 MR. LEWIN: Mine's different. But I think I know

12:49:18 13 what he's talking about.

12:49:21 14 MR. GERRARD: It's -- is the Bates number --

12:49:22 15 MR. LEWIN: Is it the Exhibit 8 that you used in

12:49:24 16 his deposition?

12:49:25 17 MR. GERRARD: I honestly don't remember what the

12:49:27 18 exhibit number was, but it's Bidsal 1452.

12:49:29 19 THE ARBITRATOR: If you want to look over the

12:49:31 20 witness's shoulder, that's fine too.

12:49:33 21 MR. LEWIN: I have it.

12:49:34 22 MR. GERRARD: Okay. You got what it is? Okay.

12:49:34 23 BY MR. GERRARD:

12:49:36 24 **Q. All right. So again, taking the cost -- the**

12:49:42 25 **sales proceeds and net sales proceeds from the sale of**

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12:49:44 1 Building C and subtracting out those costs -- those
12:49:49 2 closing costs -- and subtracting out the cost to acquire
12:49:55 3 the Greenway property, left a net of \$52,069.05,
12:50:00 4 according to this; correct?

12:50:01 5 A. Net gain?

12:50:02 6 Q. Yes.

12:50:03 7 A. Yes, sir.

12:50:03 8 Q. And then do you remember when the Green -- when
12:50:07 9 the Building C was sold that a part of the purchase
12:50:11 10 price was a promissory note of \$75,000?

12:50:14 11 A. I don't know exactly what it was.

12:50:20 12 Q. Go ahead. Look back at Exhibit 13.

12:50:27 13 A. Okay.

12:50:28 14 Q. So you see Exhibit 13, right towards the bottom,
12:50:31 15 it says "new to Green Valley Commerce, LLC," it shows
12:50:37 16 \$75,000 and handwritten next to it, it says "loan to 2
12:50:41 17 Saints," which was the buyer?

12:50:41 18 A. Yes.

12:50:42 19 Q. Okay. So according to Mr. Bidsal's schedule that
12:50:46 20 he created in paragraph -- number -- Exhibit 14, he's
12:50:52 21 added in money that was received from payments of that
12:50:56 22 promissory note in the amount of \$43,203. Do you see
12:51:01 23 that?

12:51:01 24 A. Okay. If you say so. I'm just following --

12:51:06 25 Q. Yeah, that's fine. But you received this

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12:51:09 1 document and this is what it says; correct?

12:51:10 2 A. Yes. Yes, sir.

12:51:10 3 Q. And so it says "total gain, \$95,22.65."

12:51:17 4 Do you see that?

12:51:18 5 A. Yes.

12:51:18 6 Q. And that number is far smaller than the amount of

12:51:23 7 basis that had been attributed to that property of

12:51:26 8 \$399,193; correct? The --

12:51:30 9 A. That's what it says here.

12:51:35 10 Q. Right. Well, I mean, you know that \$95,272 is

12:51:40 11 far less than \$399,193; correct?

12:51:43 12 A. 95 is less. Yes.

12:51:45 13 Q. Okay. So there was no -- after subtracting out

12:51:49 14 the money from -- used to purchase the Greenway

12:51:51 15 property, all that was left was an amount that was

12:51:54 16 smaller than the allocable portion of the purchase price

12:51:57 17 note that had been allocated to Building C; right?

12:52:02 18 THE ARBITRATOR: In the cost seg report.

12:52:05 19 MR. GERRARD: Yes.

12:52:06 20 A. You're saying this 95 is a portion of the cost?

12:52:06 21 BY MR. GERRARD:

12:52:13 22 Q. I'm saying that the \$95,000 was less than the

12:52:17 23 \$399,000 number, which was the allocable portion of the

12:52:21 24 original note purchase price that had been allocated to

12:52:25 25 Building C.

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12:52:26 1 A. This has nothing to do with that.

12:52:28 2 Q. Sir, just answer my question. Just answer my

12:52:28 3 question.

12:52:28 4 A. What was your question?

12:52:30 5 Q. Yeah. My question is: Is that amount less? Is

12:52:32 6 the amount that was left over -- the 95,000 that's

12:52:35 7 listed here rounded off -- is that less than the

12:52:39 8 \$399,000 --

12:52:41 9 A. It is less, with an explanation.

12:52:48 10 Q. Okay. All right. So then Mr. Bidsal shows that

12:52:52 11 he -- he split that \$95,000 by sending a check to

12:52:55 12 himself for 28,581.79 and sending a check to you for

12:53:02 13 \$66,690.86; correct?

12:53:05 14 A. Correct.

12:53:05 15 Q. And you if look at the documents that are right

12:53:15 16 behind this in Exhibit 14, you can see that there is

12:53:17 17 a -- the bottom portion of a check for 66,690.86 that

12:53:23 18 was payable to Benjamin Golshani/CLA Properties, LLC.

12:53:29 19 Do you see that?

12:53:29 20 A. Which exhibit?

12:53:36 21 MR. SHAPIRO: Same exhibit.

12:53:30 22 BY MR. GERRARD:

12:53:30 23 Q. Yes. Very next page in Exhibit 14. Do you see

12:53:38 24 the check stub for a check in the amount of 66,690.86 to

12:53:43 25 CLA Properties?

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12:53:44 1 A. Yes.

12:53:44 2 Q. And a check stub for another payment on the

12:53:49 3 following page of 28,581.79 to Mr. Bidsal?

12:53:55 4 A. Yes.

12:53:55 5 Q. Okay. And you received this check and you cashed

12:54:00 6 it; correct?

12:54:00 7 A. Most likely, yes.

12:54:02 8 Q. Okay. So let's now move to Exhibit 15.

12:54:13 9 Exhibit 15 is the 2012 tax return for Green Valley

12:54:19 10 Commerce, LLC; correct?

12:54:19 11 A. Uh-huh.

12:54:20 12 Q. Is that a yes?

12:54:21 13 A. Yes. I'm sorry. I apologize.

12:54:22 14 Q. And if you look at exhibit -- at the Schedule K

12:54:29 15 to this tax return which is on page CLA Bidsal 2545 --

12:54:34 16 A. Okay.

12:54:35 17 Q. Tell me when you're there.

12:54:36 18 A. I'm here.

12:54:37 19 Q. Okay. So you can see that here on line 2, it

12:54:41 20 shows net rental real estate income of \$338,854;

12:54:48 21 correct?

12:54:48 22 A. All right.

12:54:49 23 Q. And then it shows something called interest

12:54:51 24 income of \$1,034; correct?

12:54:54 25 A. Correct.

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12:54:54 1 Q. And then it shows a deduction on line 13D of
12:55:00 2 \$51,867; correct?
12:55:03 3 A. Correct.
12:55:03 4 Q. So if you add the first two numbers and then
12:55:06 5 subtract the deduction of 51,867, that gives you a
12:55:10 6 number of \$288,021. Let's -- if you'll turn with me to
12:55:16 7 the next page, Schedule M-1.
12:55:20 8 A. Where did you get that number? 200 --
12:55:22 9 Q. If you add up the first two numbers, 338,854 and
12:55:27 10 \$1,034, and then subtract the deduction of 51,867, that
12:55:32 11 gives you 288,021.
12:55:34 12 A. Okay.
12:55:35 13 Q. If you'll turn to the next page, Schedule M-1.
12:55:38 14 Do you see the net income listed there of 288,021?
12:55:42 15 A. Yes.
12:55:42 16 Q. Okay. And then do you see to the right in
12:55:47 17 Schedule M-2, at the bottom, it shows distribution of
12:55:51 18 468,430? Do you see where I'm looking on line 6A?
12:55:57 19 A. Yes.
12:55:58 20 Q. Okay. So now let's turn back to your K-1, which
12:56:04 21 is 3 pages back. On Bates labeled document page
12:56:09 22 No. 2549. And let's compare this to Schedule K that we
12:56:17 23 just looked at.
12:56:18 24 MR. LEWIN: Your Honor, it seems like we're just
12:56:21 25 doing a lot of math here, and the documents -- if the

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12:56:23 1 document is evidence, it seems like this is -- unless he
12:56:26 2 has some specific questions, did he receive those
12:56:29 3 distributions, we don't need to be doing the mathematics
12:56:31 4 on this. The document is what it is.

12:56:34 5 MR. GERRARD: I completely disagree, Your Honor.
12:56:35 6 There's a reason for why we're going through this.

12:56:37 7 THE ARBITRATOR: The issue is all going to be
12:56:39 8 about the sales that took place, the way it was
12:56:41 9 distributed, whether Mr. Golshani was aware of it,
12:56:43 10 whether he had that information in his K-1s and in the
12:56:46 11 tax returns, and whether he approved or made any --
12:56:49 12 that's where I understand we're going, right?

12:56:51 13 MR. GERRARD: Exactly. That's exactly where
12:56:54 14 we're going.

12:56:54 15 THE ARBITRATOR: So I'll allow it.

12:56:54 16 BY MR. GERRARD:

12:56:56 17 Q. So Mr. Golshani, let's take a look now --

12:56:58 18 THE ARBITRATOR: I don't mean to skip to the end
12:57:00 19 of the mystery, but --

12:57:02 20 MR. GERRARD: Yep. You're right on -- right on
12:57:02 21 task, Your Honor.

12:57:03 22 BY MR. GERRARD:

12:57:03 23 Q. If we look at line 2 of your K-1, it shows that
12:57:06 24 you were allocated \$169,427 of net rental income, which
12:57:11 25 is half of what was shown on line 2 of Schedule K;

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12:57:14 1 correct?

12:57:15 2 A. You're talking about Exhibit 15, yeah?

12:57:22 3 Q. Yeah. Exhibit 15, your K-1, which is at

12:57:25 4 page 2549.

12:57:27 5 A. I'm looking at it, yes.

12:57:28 6 Q. Okay. So line 2 shows 169,427; correct?

12:57:34 7 A. Yes, sir.

12:57:34 8 Q. And that's half of the 338,854 shown on line 2 of

12:57:40 9 Schedule K; correct?

12:57:40 10 A. As distribution?

12:57:45 11 Q. No, that's an allocation. An allocation to you

12:57:49 12 of 50 percent of the net real estate income; correct?

12:57:55 13 A. The 334,000? I'm sorry. Tell me where you're

12:58:02 14 looking.

12:58:02 15 Q. Okay. All right. Look at schedule -- look at K

12:58:05 16 again.

12:58:05 17 A. Uh-huh.

12:58:06 18 Q. It's about -- few pages before that.

12:58:08 19 THE ARBITRATOR: Got to go back a few pages,

12:58:11 20 2545. Not K-1. 2545. Skip back and keep your finger

12:58:16 21 there.

12:58:18 22 BY MR. GERRARD:

12:58:18 23 Q. Keep your finger on Schedule K-1 that you had,

12:58:18 24 but go back to Schedule K.

12:58:22 25 A. 2544?

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12:58:23 1 Q. Which that's at page 2545.

12:58:23 2 A. Uh-huh.

12:58:24 3 Q. Do you see on line 2 it has a number?

12:58:26 4 A. Yes.

12:58:26 5 Q. 338,854?

12:58:28 6 A. Yes.

12:58:29 7 Q. And on your K-1, on line 2, you get half of that

12:58:33 8 number allocated to you?

12:58:34 9 A. Correct.

12:58:34 10 Q. Correct?

12:58:36 11 A. Correct.

12:58:36 12 Q. And then you see the number on Schedule K of

12:58:39 13 \$1,034 in interest income?

12:58:42 14 A. Yes.

12:58:42 15 Q. And on line 5 of your K-1, you get half of that

12:58:45 16 allocated to you; correct?

12:58:46 17 A. Okay.

12:58:46 18 Q. And do you see the deduction on line 13D of

12:58:54 19 Schedule K of 51,867? Not your K-1. Schedule K, which

12:59:04 20 is the page that was --

12:59:05 21 A. Oh, yeah.

12:59:06 22 Q. -- 2546.

12:59:06 23 A. 51,000, yes.

12:59:08 24 Q. 867. Now look at your K-1. Do you see line 13

12:59:12 25 where you received half of that deduction?

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12:59:14 1 A. Okay.

12:59:15 2 Q. 25,934?

12:59:17 3 A. Yes, sir.

12:59:18 4 Q. So it shows you received allocations of

12:59:21 5 50 percent of all gains and all losses. Correct?

12:59:25 6 A. Yes.

12:59:25 7 Q. And then the distributions show -- that we looked

12:59:29 8 at on Schedule K -- were \$468,430. Your K-1 says that

12:59:36 9 you received distributions of 234,215; correct?

12:59:40 10 A. Yes.

12:59:42 11 Q. And Mr. -- and Mr. Bidsal received the same

12:59:47 12 amount if you look at his K-1, which is right behind

12:59:50 13 yours. He got 50 percent of all those same amounts;

12:59:52 14 correct?

12:59:52 15 A. Yes.

12:59:52 16 Q. And you received this tax return and these K-1s

12:59:56 17 when they were prepared; correct?

12:59:58 18 A. Yeah. I believe I received it in 2013 and not

13:00:03 19 2012.

13:00:03 20 Q. Okay. All right. And you received it and you

13:00:05 21 never objected to any of the numbers that were on it,

13:00:08 22 did you?

13:00:08 23 A. At this time, I started objecting, yes.

13:00:13 24 Q. Oh, you started objecting?

13:00:15 25 A. Yeah.

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13:00:16 1 Q. In writing?

13:00:17 2 A. No.

13:00:18 3 Q. Okay, sir. All right. Let's go back to -- so

13:00:19 4 let me ask a different question, then.

13:00:21 5 When you received your tax return in 2013 for the

13:00:25 6 year 2012, you never sent any written objection of any

13:00:28 7 kind, did you?

13:00:28 8 A. No.

13:00:29 9 Q. So now let's look at Exhibit 16, please.

13:00:38 10 Exhibit 16 is a letter from Green Valley Commerce, LLC,

13:00:43 11 to you, and it has attached the K-1s for the 2012 tax

13:00:43 12 return; correct?

13:00:51 13 A. Uh-huh.

13:00:51 14 Q. Is that yes?

13:00:52 15 A. Yes, sir.

13:00:52 16 Q. And you received this letter with the attached

13:00:54 17 K-1s; correct?

13:00:54 18 A. Yes.

13:00:55 19 Q. Okay. Now let's go to Exhibit 17, please.

13:01:00 20 A. In those days, we usually --

13:01:02 21 Q. Sir, there's no question pending.

13:01:04 22 A. No, I'm just explaining -- okay.

13:01:06 23 Q. So Exhibit 17, do you have that in front of you?

13:01:09 24 A. Yes.

13:01:09 25 Q. Do you recognize this as being the closing

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13:01:12 1 statement for the sale -- I mean, sorry, for the
13:01:13 2 purchase of the Greenway property in Arizona?
13:01:17 3 A. Yes.
13:01:18 4 Q. Well, as we pointed out earlier, \$499,000 of the
13:01:28 5 money that was used to purchase this property was
13:01:31 6 appreciation from -- that was realized on the sale of
13:01:37 7 Building C; correct?
13:01:38 8 A. Yes.
13:01:38 9 Q. Okay. Let's move to Exhibit 18. We looked at
13:01:52 10 this earlier. This is the cost segregation study. You
13:01:56 11 received this when it was prepared; correct?
13:01:58 12 A. Yes.
13:01:58 13 Q. Okay. And you never objected to that at the time
13:02:03 14 you received it, did you?
13:02:04 15 A. I had some questions.
13:02:08 16 Q. Right. But you never sent any written objection
13:02:10 17 to any of the numbers --
13:02:10 18 A. No.
13:02:11 19 Q. -- in that cost segregation study, did you?
13:02:13 20 A. No.
13:02:14 21 Q. Okay. Let's now look at Exhibit 19.
13:02:25 22 A. Okay.
13:02:25 23 Q. Exhibit 19, this is the tax return for 2013 for
13:02:30 24 the company.
13:02:32 25 A. Okay.

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13:02:33 1 Q. And let's look again at Schedule K.

13:02:46 2 A. Okay.

13:02:47 3 Q. Schedule K shows -- that's of course on

13:02:53 4 page 1640. So let me know when you're there.

13:03:01 5 And then open that up and keep that page open and

13:03:04 6 also open up to page 1644, which is your K-1 for CLA

13:03:09 7 Properties. You can look at them side by side.

13:03:11 8 A. All right.

13:03:12 9 Q. Okay. So look on Schedule K. There's net rental

13:03:17 10 income of \$115,152 on line 2; correct?

13:03:21 11 A. Yes.

13:03:21 12 Q. And on your K-1 on line 2, you're allocated 50

13:03:25 13 percent of that, \$57,576; correct?

13:03:29 14 A. Okay. Yes.

13:03:30 15 Q. And then same thing on line 5, there was interest

13:03:37 16 income of \$1,426 on Schedule K, and your K-1 at line 5

13:03:42 17 you received an allocation of \$713 or half of that;

13:03:45 18 correct?

13:03:45 19 A. Yes.

13:03:46 20 Q. And then there was -- line 10, there was gain.

13:03:49 21 Gain from the sale of Building C, the \$110,290. Do you

13:03:55 22 see that?

13:03:55 23 A. Yes.

13:03:55 24 Q. And that gain, if you look on your K-1 at

13:04:00 25 line 10, you received an allocation of 50 percent of

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13:04:03 1 that or \$55,145; correct?

13:04:06 2 A. Not correct.

13:04:10 3 Q. Isn't that what it says? Does your K-1 not say

13:04:13 4 on line 10 \$55,145?

13:04:17 5 A. Yeah, but --

13:04:17 6 Q. Okay.

13:04:17 7 A. There wasn't --

13:04:17 8 Q. So -- and 55,145 is exactly 50 percent of

13:04:22 9 \$110,290; correct?

13:04:25 10 A. Yes.

13:04:25 11 Q. Okay. So this K-1 shows that you received an

13:04:31 12 allocation on the gain from the sale of Building C of

13:04:36 13 50 percent of the gain; correct?

13:04:38 14 A. It shows it here like that.

13:04:41 15 Q. Okay. And then if we look at the distribution

13:04:46 16 numbers on the bottom of K -- Schedule K, it shows

13:04:48 17 distributions were made of \$445,000; correct? The very

13:04:55 18 bottom of Schedule K, line 19A shows distributions of

13:04:59 19 445; correct?

13:04:59 20 THE ARBITRATOR: Not the K-1.

13:05:03 21 MR. GERRARD: Schedule K.

13:05:03 22 THE ARBITRATOR: Right.

13:05:03 23 BY MR. GERRARD:

13:05:03 24 Q. And then if we look at your K-1, it shows that

13:05:07 25 you received distributions of \$241,555; correct?

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13:05:12 1 A. Yes.

13:05:12 2 Q. Let's look at the next page, which is the K-1 --

13:05:17 3 THE ARBITRATOR: Which is not 50 percent.

13:05:20 4 MR. GERRARD: That's right.

13:05:20 5 BY MR. GERRARD:

13:05:21 6 Q. -- which is the K-1 for Mr. Bidsal. And he

13:05:23 7 received distributions of what? Do you see on line 19?

13:05:34 8 A. Yeah.

13:05:35 9 Q. He received distributions of \$203,445; correct?

13:05:39 10 A. That's right.

13:05:40 11 Q. So there's a difference between those two

13:05:42 12 numbers, correct, of \$38,110?

13:05:46 13 A. Yes.

13:05:47 14 Q. Okay. And if we look back at Exhibit 14 -- I

13:05:59 15 want you to flip back to Exhibit 14. 14, please.

13:06:02 16 Exhibit 14.

13:06:13 17 This is the allocation schedule that Mr. Bidsal

13:06:16 18 sent to you, and you see that the amount you got was

13:06:19 19 66,690 and the amount that Mr. Bidsal got is 28,581. If

13:06:23 20 you subtract those two numbers to find out what the

13:06:26 21 difference is, it's -- not surprisingly -- rounded up,

13:06:30 22 \$38,110.

13:06:32 23 A. However, this is dissolution of gain.

13:06:35 24 Q. That's right.

13:06:39 25 A. Okay.

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13:06:39 1 Q. Okay?

13:06:39 2 A. Yeah.

13:06:40 3 Q. So you received -- you received 70 percent of the

13:06:46 4 gain from this property, according to your Schedule K-1;

13:06:51 5 correct?

13:06:51 6 A. Correct.

13:06:52 7 Q. But you received an allocation of only 50 percent

13:06:55 8 of the gain; correct?

13:07:01 9 We just looked at that on line 10 of your K-1 in

13:07:06 10 Exhibit 19.

13:07:06 11 A. Which Bates stamp?

13:07:08 12 Q. It's 1644.

13:07:11 13 A. Uh-huh.

13:07:12 14 Q. That shows that of the \$110,290 of gain, you got

13:07:18 15 50 percent of it; correct?

13:07:19 16 A. On here. Looks like it is. That's what it says.

13:07:24 17 Q. That's right. And you received this K-1 and this

13:07:27 18 tax return when it was prepared; correct?

13:07:33 19 A. Yes.

13:07:33 20 Q. And you sent no written objection to this tax

13:07:36 21 return at that time, did you?

13:07:37 22 A. I didn't pay much attention to this.

13:07:41 23 Q. Sir, just a yes or no. I'm just asking: Did you

13:07:44 24 send a written objection when you received your 2013 tax

13:07:48 25 return?

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13:07:48 1 A. No, no. Not written.

13:07:49 2 Q. Thank you. Let's turn now to exhibit -- just for

13:07:56 3 purpose of reference, look first at Exhibit 19 we were

13:08:00 4 just looking at. Look at the last two pages of

13:08:04 5 Exhibit 19.

13:08:05 6 A. Uh-huh.

13:08:06 7 Q. Do you see that this is a tax asset detail?

13:08:09 8 A. Yes.

13:08:09 9 Q. That has a date 1-1-13 to 12-13-13?

13:08:13 10 A. Yes.

13:08:13 11 Q. And it shows a breakdown of the tax basis

13:08:16 12 attributable to each of the properties. Do you see

13:08:18 13 that?

13:08:19 14 A. Yes.

13:08:19 15 Q. Okay. And you can see that Exhibit 20, we've

13:08:22 16 just broken out --

13:08:24 17 A. May I say something?

13:08:27 18 MR. LEWIN: Nope.

13:08:27 19 THE WITNESS: Okay.

13:08:28 20 BY MR. GERRARD:

13:08:28 21 Q. So look at Exhibit 20. We've just broken out

13:08:29 22 those two pages so we can make easy reference to them.

13:08:31 23 Okay? So let's go now to Exhibit 21. So Exhibit 21 is

13:08:42 24 a letter addressed to you dated September 9, 2014, that

13:08:47 25 had attached to it all your K-1s from -- all your K-1s

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13:08:53 1 and Mr. Bidsal's K-1 from the tax year 2013; correct?

13:08:53 2 THE ARBITRATOR: It's not Mr. Bidsal's.

13:09:06 3 THE WITNESS: Schedule 20?

13:09:13 4 MR. GERRARD: You're right, Your Honor. This one

13:09:14 5 doesn't show Mr. Bidsal's, but he already testified he

13:09:16 6 got the whole return.

13:09:16 7 BY MR. GERRARD:

13:09:18 8 Q. So again, Exhibit 21 is just a letter to you;

13:09:21 9 correct? Exhibit 21?

13:09:23 10 A. Uh-huh.

13:09:23 11 Q. And you received this letter along with your K-1

13:09:26 12 for tax filing purposes; correct?

13:09:28 13 A. I doubt it. I don't think this one I received.

13:09:31 14 Q. Okay. But as you indicated earlier, when the tax

13:09:34 15 return was prepared, you received the whole tax

13:09:36 16 return --

13:09:36 17 A. Yes. In the tax return I received. You're

13:09:40 18 right.

13:09:40 19 Q. All right. Let's take a look now at Exhibit 22.

13:09:48 20 Tell me when you're there, sir.

13:09:51 21 A. I'm here.

13:09:51 22 Q. Okay. So you see Exhibit 22 is a escrow closing

13:09:56 23 statement for the sale of property identified as 3

13:09:59 24 Sunset Way, Building E. Do you see where I'm looking?

13:10:01 25 A. Yes.

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13:10:01 1 Q. Okay. So this is the escrow closing statement
13:10:06 2 for the sale of Building E; correct?
13:10:07 3 A. Yes.
13:10:08 4 Q. Okay. And let's take a look --
13:10:12 5 MR. LEWIN: Can we put a date on these so we have
13:10:13 6 a record of it?
13:10:13 7 MR. GERRARD: Sure.
13:10:13 8 BY MR. GERRARD:
13:10:16 9 Q. You can see the date on this at the top says
13:10:17 10 November 14, 2014. Correct? Do you see it, sir?
13:10:21 11 A. Yes.
13:10:22 12 Q. Okay. Do you agree with that date, that's what
13:10:25 13 it says on the top of the escrow closing statement?
13:10:27 14 A. That was right, yes.
13:10:29 15 Q. Okay. Is that a yes?
13:10:29 16 A. Yes. Yes.
13:10:30 17 Q. Okay. So now let's take a look at Exhibit 23.
13:10:41 18 Let me know when you've got that open.
13:10:43 19 A. I have it.
13:10:44 20 Q. Okay. So Exhibit 23 is the breakdown of the
13:10:48 21 distributions of the sales proceeds from the sale of
13:10:51 22 Building E that Mr. Bidsal prepared and sent to you;
13:10:53 23 correct?
13:10:54 24 A. Yes. I don't think I have received this -- this
13:10:58 25 one. But --

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13:11:00
13:11:01
13:11:02
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13:11:17
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13:11:18
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13:11:24
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13:11:34
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13:11:37
13:11:38
13:11:43
13:11:47
13:11:57
13:12:04
13:12:06
13:12:06
13:12:10
13:12:13

1 Q. Let's go ahead, sir --
2 A. Yeah, go ahead.
3 Q. Let's go ahead and look at what it says. You
4 received this document, Exhibit 23, when you received
5 the check that -- your distribution check; correct?
6 A. I looked for it. We got checks, but I didn't
7 receive this.
8 Q. You don't think you got this?
9 A. Yes.
10 Q. Okay. Let's go ahead and take a look at what it
11 says.
12 A. Okay.
13 Q. On Exhibit 23, you can see at the top it shows a
14 heading that says "cost basis." Do you see where I'm
15 looking?
16 A. Yeah.
17 Q. And let's compare that to Exhibit 20, that
18 document that we broke out from Exhibit 20. You can see
19 on Exhibit 20 there's some numbers for Building 51,
20 which is -- which was Building E; correct?
21 Are you looking at Exhibit 20, sir?
22 A. Yes.
23 Q. I'm going to compare Exhibit 20 to this
24 Exhibit 23 that we're looking at. So you got them both
25 open?

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13:12:13	1	So you can see on Exhibit 20, if you look down to	Page 183
13:12:21	2	line 14, it shows Building 51 and there's three	
13:12:23	3	numbers -- right? -- on lines --	
13:12:27	4	A. I understand.	
13:12:27	5	Q. -- 14, 15, and 16?	
13:12:29	6	A. On those lines.	
13:12:30	7	Q. And those numbers of 321,146.33, 2,524.52, and	
13:12:39	8	23,886.92, those appear on Exhibit 23; correct?	
13:12:46	9	A. Yes, sir.	
13:12:47	10	Q. And then the last number on Exhibit 23 is	
13:12:53	11	\$80,084.96, and that's attributable to the land,	
13:12:55	12	according to Exhibit 23. So let's go back to	
13:12:58	13	Exhibit 20. You go down the bottom where it says "land"	
13:13:01	14	and find the line number for 51, and you see that that	
13:13:04	15	number is \$80,084.96; correct?	
13:13:10	16	A. Okay.	
13:13:11	17	Q. So Mr. Bidsal has taken all of the numbers off of	
13:13:16	18	the tax asset detail for 2013, and he's -- you add those	
13:13:22	19	up. He's added them up and they come to \$427,640.73.	
13:13:30	20	Do you see that?	
13:13:30	21	MR. LEWIN: Objection. Is there a foundation	
13:13:32	22	that this is from Mr. Bidsal?	
13:13:34	23	MR. GERRARD: Yes, I asked him that question to	
13:13:36	24	begin with.	
13:13:39	25	MR. LEWIN: He just asked a question about the	

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13:13:40 1 document. He hasn't laid a foundation about it. Page 184

13:13:43 2 MR. GERRARD: Well, I think we did. I asked --

13:13:44 3 the first question I asked is if this is a document that

13:13:46 4 he received from Mr. Bidsal.

13:13:48 5 THE ARBITRATOR: Do you expect to be laying

13:13:50 6 foundation with Mr. Bidsal that this came from --

13:13:50 7 MR. GERRARD: Yes.

13:13:50 8 THE ARBITRATOR: Okay. So I'm going to --

13:13:52 9 MR. LEWIN: I just wanted to be prepared.

13:13:52 10 THE ARBITRATOR: Subject to a motion to strike,

13:13:54 11 that's fine. I'll allow it.

13:13:56 12 BY MR. GERRARD:

13:13:56 13 Q. You can see that those numbers add up to

13:13:58 14 426,642.73; correct?

13:14:01 15 A. Yes.

13:14:01 16 Q. So at least according to this distribution

13:14:04 17 schedule, the basis for Building E from the original

13:14:08 18 amount paid for the purchase price of the promissory

13:14:11 19 note, the allocable portion that was allocated to

13:14:16 20 Building E was 427,642.73. Do you see that?

13:14:21 21 A. I see that.

13:14:22 22 Q. Okay. And then if you look below that, you see

13:14:27 23 that there's cost of sale of \$51,000. Do you see where

13:14:32 24 I'm looking?

13:14:32 25 A. Yes.

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13:14:33 1 Q. And if you look back at Exhibit 22, you'll see
13:14:39 2 where those costs of sale are. I'm sorry, those are
13:14:41 3 commissions. If you look back at Exhibit 22, you'll see
13:14:45 4 there's commissions for 29,750 and 21,250, which add up
13:14:50 5 to \$51,000. Do you see where I'm looking?

13:14:52 6 A. Yes.

13:14:53 7 Q. And then there's some title and escrow fees,
13:14:58 8 5,804.50, and those are the next two numbers -- the next
13:15:01 9 three numbers that you see on Exhibit 22. And then
13:15:06 10 there's a prorated adjustment of 4,598.53, which is
13:15:15 11 supposed to represent the credits shown on Exhibit 22,
13:15:20 12 but there was a math error of \$250.34 on that. But you
13:15:26 13 can see Mr. Bidsal has come up with total cost of sale
13:15:29 14 of 52,205.97; correct?

13:15:32 15 A. It shows it that way.

13:15:35 16 Q. Okay. So he adds that to the allocable basis --
13:15:43 17 the historical basis for Building E, and comes with the
13:15:46 18 number of 479,848.70. Do you see where I'm looking?

13:15:51 19 A. Yes.

13:15:51 20 Q. And then he takes the sales proceeds from the --
13:15:54 21 the sale of the property, the \$850,000, and comes up
13:16:03 22 with the gain, which is the difference between those
13:16:05 23 numbers, of \$370,151.30. Do you see where I'm looking?

13:16:10 24 A. Yes.

13:16:10 25 Q. All right. So if we look below what Mr. Bidsal

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13:16:17 1 has -- you can see where it says "cash available for
13:16:20 2 distribution."
13:16:20 3 A. Uh-huh.
13:16:21 4 Q. He uses the 850-, which is the sales price for
13:16:25 5 Building E, subtracts from it what we looked at above,
13:16:27 6 which was the cost of sale of 52,205, comes up with a
13:16:31 7 number of 797,794.03. Do you see that?
13:16:34 8 A. Yes.
13:16:35 9 Q. And then below that, you see a number -- there's
13:16:39 10 two numbers and then they're -- added together, they
13:16:41 11 equal 479,848.70. Do you see where I'm looking?
13:16:41 12 A. Yes.
13:16:47 13 Q. Subtotal on return of capital?
13:16:49 14 A. Yes. Correct.
13:16:51 15 Q. Do you see where I'm looking?
13:16:52 16 A. 479,848.
13:16:55 17 Q. Okay. So that's the total amount of money that
13:16:58 18 was distributed. And if you subtract that number,
13:17:02 19 479,848.70, from the 797,794.03, you'll get the number
13:17:09 20 of \$317,946. And that number you see below there as
13:17:15 21 being the total amount of the remaining distributions.
13:17:20 22 Do you see that? 317,945.33?
13:17:24 23 A. Yes.
13:17:24 24 Q. Okay. So Mr. Bidsal has taken 479,848.70, which
13:17:30 25 is the number we saw above, which is the adjusted basis

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13:17:33 1 of Building E, and he's divided that basis amount and --

13:17:39 2 to distribute 70 percent of it to CLA Properties and

13:17:45 3 30 percent to Mr. Bidsal; correct?

13:17:47 4 A. Correct.

13:17:47 5 Q. And the 70 percent of 335,894.09 -- if you look

13:17:53 6 on the next page of Exhibit 23, you'll see the check

13:17:56 7 stub for the check that was sent to you for 335,894.09.

13:18:02 8 Do you see that?

13:18:02 9 A. I see that.

13:18:03 10 Q. And then behind that is a check stub for the 30

13:18:08 11 percent that went to Mr. Bidsal of the 143,954.61. Do

13:18:12 12 you see that?

13:18:13 13 A. I saw that.

13:18:13 14 Q. Okay. And then you also received your 50 percent

13:18:17 15 share of the gain, the 158,972.67; correct?

13:18:22 16 A. Correct.

13:18:23 17 Q. Okay. Now let's take a look at Exhibit 24.

13:18:40 18 Exhibit 24 is your 2014 tax return for Green Valley

13:18:43 19 Commerce; correct?

13:18:43 20 A. Yes.

13:18:44 21 Q. And let's look at Schedule K again, which is that

13:18:51 22 page 1815. And we're going to compare that once again

13:18:54 23 to your K-1, which is at Bates No. 1819. So let's get

13:19:03 24 both those pages together.

13:19:04 25 A. Okay.

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13:19:05 1 Q. Okay. So let me know when you're ready.

13:19:11 2 A. I'm at the Schedule K.

13:19:13 3 Q. Okay. So you've got that. And then I also want

13:19:16 4 you to open up to page 1819, which was your Schedule

13:19:16 5 K-1.

13:19:16 6 A. Okay.

13:19:19 7 Q. So you need to look at both pages at the same

13:19:24 8 time. Let me know when you've got that open.

13:19:25 9 A. I am.

13:19:26 10 Q. Okay. So you can see at the top line of Schedule

13:19:29 11 K, it shows net rental income of \$198,536. Do you see

13:19:35 12 that?

13:19:35 13 A. Correct.

13:19:35 14 Q. And on your K-1 at line 2, it shows you received

13:19:38 15 an allocation of 50 percent of that or \$99,269. Do you

13:19:43 16 see that?

13:19:43 17 A. Yes.

13:19:43 18 Q. And then we go down on Schedule K to line 10.

13:19:48 19 Here it shows that net gain from the sale of property of

13:19:54 20 \$410,691. You saw -- we saw this number earlier when we

13:20:00 21 were looking at the gain that had been calculated by

13:20:03 22 Mr. Bidsal; correct?

13:20:04 23 A. That's right.

13:20:05 24 Q. Okay. And so this gain of \$410,691 -- let's look

13:20:11 25 at your K-1 at line 10. Do you see that half of that

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13:20:19 1 410,000 or \$205,346 has been allocated to you?

13:20:25 2 A. Yeah. 205,000.

13:20:28 3 Q. Right. And that number -- so in other words,

13:20:31 4 half of the gain was allocated to you; correct?

13:20:34 5 A. Yes.

13:20:35 6 Q. And if you look -- if you look at the K-1 that's

13:20:41 7 behind the one you're looking at, you see Mr. Bidsal's

13:20:45 8 K-1, and it shows that he was allocated half of the gain

13:20:49 9 from the sale of Building E or \$205,345 correct?

13:20:54 10 A. Correct.

13:20:54 11 Q. Okay. And it shows that he was also allocated

13:20:58 12 half of the net rental income; correct?

13:21:00 13 A. That's what it shows.

13:21:02 14 Q. All right. But let's look at the distributions

13:21:04 15 now. At the bottom of Schedule K, it shows that there

13:21:07 16 were distributions of \$1,101,794. Do you see that? The

13:21:17 17 bottom of Schedule K.

13:21:18 18 A. Oh, yes.

13:21:20 19 Q. Okay. Now let's look at your K-1 again. You

13:21:23 20 received distributions of \$646,867; correct?

13:21:28 21 A. Correct.

13:21:29 22 Q. And let's look at Mr. Bidsal's K-1. He received

13:21:32 23 distributions of \$450,927; correct?

13:21:37 24 A. Correct.

13:21:37 25 Q. The difference between those two numbers is

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13:21:44 1 \$191,940. Let's look back at Exhibit 23. You look at
13:21:59 2 Exhibit 23, you see the two distributions in the
13:22:02 3 distribution breakdown that was sent to you by
13:22:05 4 Mr. Bidsal, and it shows 335,894 going to you, 143,954
13:22:10 5 going to Mr. Bidsal; correct?
13:22:11 6 A. Yes.
13:22:12 7 Q. And that -- the difference between those two
13:22:16 8 numbers is 191 -- rounded up, 191,940, which is exactly
13:22:22 9 the difference between the two distribution numbers that
13:22:25 10 we saw in your K-1 and Mr. Bidsal's K-1; correct?
13:22:29 11 A. Uh-huh. I think so.
13:22:30 12 Q. Is that a yes?
13:22:31 13 A. I think so.
13:22:31 14 Q. Okay.
13:22:32 15 A. I didn't calculate.
13:22:33 16 Q. Okay. Now, sir, you received these 2000 -- this
13:22:36 17 2014 tax return and all the K-1s when it was prepared;
13:22:41 18 correct?
13:22:41 19 MR. LEWIN: Objection. Vague as to time.
13:22:45 20 MR. GERRARD: I said when it was prepared.
13:22:45 21 MR. LEWIN: Well, that calls for speculation.
13:22:48 22 BY MR. GERRARD:
13:22:48 23 A. Go ahead, sir.
13:22:50 24 THE ARBITRATOR: Tell me why this is an important
13:22:53 25 distinction.

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13:22:53 1 MR. LEWIN: Because I have no idea when he got
13:22:55 2 the -- he says when it was prepared. We don't know when
13:22:57 3 it was prepared. That's the issue. He can just ask
13:23:00 4 when he received it.

13:23:01 5 THE ARBITRATOR: All right.

13:23:02 6 MR. LEWIN: I don't object to that.

13:23:04 7 THE ARBITRATOR: Well, but he can ask
13:23:07 8 closed-ended questions. All right. I'll ask you to
13:23:09 9 rephrase the question.

13:23:12 10 BY MR. GERRARD:

13:23:12 11 **Q. You received this 2014 tax return and all**
13:23:14 12 **associated Schedule K-1s in the year 2015 when it was**
13:23:19 13 **prepared; correct?**

13:23:19 14 A. Most likely end of 2015, I just received the tax
13:23:26 15 return. Nothing else.

13:23:27 16 **Q. Well, you received the K-1s. They were a part of**
13:23:29 17 **the tax return; correct?**

13:23:30 18 A. Yes. Part of them, of course.

13:23:31 19 **Q. And exhibit -- and when you received Exhibit 24,**
13:23:34 20 **you didn't send any written objection to anything in it,**
13:23:37 21 **did you?**

13:23:37 22 A. Exhibit 24, no. I --

13:23:37 23 **Q. All right.**

13:23:43 24 A. We were in discussion.

13:23:44 25 **Q. Sir, I just -- I just need you to answer my**

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13:23:46 1 question, please. And the answer, you said, was no? Page 192

13:23:49 2 A. I'm not sure. Maybe. I'd have to check.

13:23:52 3 Q. Are you aware of any written objection to the

13:23:55 4 allocations shown in the 2014 tax return that was sent

13:24:01 5 in the year 2015?

13:24:03 6 A. I don't remember, but I think I am. Yeah.

13:24:06 7 Q. Okay. Let's look at Exhibit 25, please. Do you

13:24:15 8 have Exhibit 25 in front of you, sir?

13:24:16 9 A. I have.

13:24:17 10 Q. Okay. So Exhibit 25 is the escrow closing

13:24:22 11 statement for the sale of Building B; correct?

13:24:25 12 A. Yes.

13:24:26 13 Q. And this shows a sale price of \$617,760; correct?

13:24:33 14 A. Correct.

13:24:33 15 Q. And net after the cost of sale of \$620,401.59;

13:24:41 16 correct?

13:24:41 17 A. Correct.

13:24:41 18 Q. Okay. And you approved the sale of Building B

13:24:43 19 and the sale of Building E and the sale of Building C

13:24:46 20 before they were sold; correct?

13:24:47 21 A. Yes, I have.

13:24:49 22 Q. Okay. All right. Let's turn to Exhibit 26,

13:24:55 23 please. And do you recall receiving this -- this

13:25:06 24 distribution breakdown calculation from Mr. Bidsal after

13:25:11 25 the sale of Building B?

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13:25:13 1 A. I don't remember I -- if I received this or not.

13:25:16 2 Q. Okay. You don't remember one way or the other?

13:25:20 3 A. Yes.

13:25:20 4 Q. All right. Let's look at Exhibit 26 at the

13:25:25 5 numbers that are at the top of the page. Again, let's

13:25:28 6 go back and compare them to Exhibit 20. So you can see

13:25:35 7 that there is -- the first line says "cost basis" on

13:25:40 8 Exhibit 26, and this is what would be referred to as

13:25:46 9 Building 49 on the tax asset detail on Exhibit 20;

13:25:52 10 correct? Building E was what we refer to as Parcel 49;

13:25:57 11 correct?

13:25:57 12 A. B.

13:25:59 13 Q. I'm sorry. Building B was what we referred to

13:26:02 14 as --

13:26:03 15 A. 49.

13:26:03 16 Q. -- 49; correct?

13:26:04 17 A. Are you looking at Exhibit 26?

13:26:07 18 Q. So look at Exhibit 20 compared to Exhibit 26. So

13:26:11 19 Exhibit 20 --

13:26:12 20 A. On 20.

13:26:12 21 Q. Keep your hand on Exhibit 26.

13:26:15 22 A. Yes. Okay.

13:26:16 23 Q. So you can see, if you look at Building 49 --

13:26:20 24 which is at lines 6, 7, and 8 -- you see the numbers

13:26:24 25 216,258.40, 605.42, and 15,873.38.

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13:26:32 1 A. Correct. Page 194

13:26:32 2 Q. You see those same numbers on Exhibit 26;

13:26:35 3 correct?

13:26:35 4 A. Yes.

13:26:36 5 Q. And then at the bottom of Exhibit 20, the land

13:26:39 6 value for No. 49 is 54,091.72; correct?

13:26:44 7 A. Correct.

13:26:45 8 Q. And that same number appears on Exhibit 26?

13:26:48 9 A. Yes.

13:26:49 10 Q. Right? So Mr. Bidsal takes those numbers and he

13:26:52 11 adds them up and he comes up with a basis for

13:26:57 12 Building E --

13:26:58 13 THE ARBITRATOR: You mean B.

13:27:02 14 MR. GERRARD: Oh, it's B? I think you're right.

13:27:07 15 It's Building --

13:27:07 16 THE ARBITRATOR: E.

13:27:11 17 MR. GERRARD: E.

13:27:11 18 MR. SHAPIRO: Says it right at the top.

13:27:13 19 MR. GERRARD: Yeah.

13:27:26 20 THE ARBITRATOR: Well, I know, but.

13:27:26 21 MR. GERRARD: So the order that they were sold --

13:27:27 22 you're right. You're right. I think -- I think that

13:27:29 23 this says E on it --

13:27:32 24 MR. SHAPIRO: Judge, the witness needs a break.

13:27:35 25 THE WITNESS: Can I be excused for one minute?

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13:27:35 1 THE ARBITRATOR: Sure.

13:27:39 2 MR. GERRARD: You're right, Judge. It is

13:27:41 3 Building B, and I think he just used the same format and

13:27:42 4 just didn't change the E to a B.

13:27:59 5 THE ARBITRATOR: Right.

13:27:59 6 MR. GERRARD: Because B was the last -- B was the

13:27:59 7 last sale.

13:27:59 8 We'll wait for him.

13:28:00 9 THE ARBITRATOR: Okay. Let's go off the record.

13:28:01 10 ***

13:28:01 11 (RECESS TAKEN FROM 1:28 P.M. TO 1:32 P.M.)

13:32:19 12 ***

13:32:19 13 THE ARBITRATOR: Okay. Mr. Golshani, you realize

13:32:20 14 you're still under oath?

13:32:22 15 THE WITNESS: Yes. I apologize again.

13:32:24 16 THE ARBITRATOR: No problem. No problem.

13:32:25 17 BY MR. GERRARD:

13:32:25 18 Q. All right. Let's go back to Exhibit 26.

13:32:27 19 A. Okay.

13:32:28 20 Q. So Exhibit 26, we looked at the basis numbers

13:32:34 21 that have been allocated by the company to Building B

13:32:42 22 and they came up to 286,828.92; correct?

13:32:47 23 A. That's what it says.

13:32:47 24 Q. And then it looks like Mr. Bidsal subtracted

13:32:50 25 depreciation of 36,443 to come to a number -- adjusted

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13:32:56 1 basis number of 250,385.92. Do you see that?

13:33:01 2 A. Yes.

13:33:01 3 Q. Okay. And then it looks like there's a cost of

13:33:04 4 sale that he's listed there that you can compare to

13:33:09 5 Exhibit 25, and you can see that those come up to

13:33:14 6 33,740.61; correct?

13:33:17 7 A. Yes, sir.

13:33:18 8 Q. So he adds those numbers -- the cost of sale --

13:33:21 9 back into the adjusted basis number, comes up with an

13:33:24 10 adjusted total basis for this sale of this Building B of

13:33:29 11 \$284,126.53; correct?

13:33:33 12 A. Correct.

13:33:34 13 Q. And then if you subtract that number -- all

13:33:46 14 right. So I'll -- let's just go down. And then you see

13:33:47 15 he's got the sales price listed there \$617,760; correct?

13:33:52 16 A. Yes.

13:33:52 17 Q. And then the difference between those two

13:33:57 18 numbers, between the 284,126.53 and the 617,760 is -- he

13:34:04 19 shows there as being \$333,633.47. Do you see that?

13:34:11 20 A. That's what it shows, yes.

13:34:13 21 Q. Okay. So he's showing that that would be the

13:34:15 22 gain number. So then he takes the adjusted basis number

13:34:18 23 of 284,126.53, and you can see that he does a return of

13:34:24 24 capital number where he divides that number 70 percent

13:34:29 25 to CLA Properties and 30 percent to Mr. Bidsal. Do you

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13:34:33 1 see where he's done that?

13:34:34 2 A. Yes.

13:34:35 3 Q. So there was a \$198,888.57 sent to you and

13:34:45 4 \$85,237.96 sent to him; correct?

13:34:47 5 A. That's what it says, yes.

13:34:48 6 Q. Okay. And if we look right behind this document,

13:34:53 7 do you see a check -- if you go back three pages, do you

13:34:56 8 see a check for 198,888.57 to CLA Properties?

13:35:04 9 A. Yes.

13:35:07 10 Q. And you received that check and cashed it;

13:35:09 11 correct?

13:35:10 12 A. I think so, yes.

13:35:11 13 Q. And then there's a check behind that for

13:35:13 14 85,237.96 that went to Mr. Bidsal. Do you see that?

13:35:23 15 The last page of this exhibit.

13:35:25 16 A. Yes.

13:35:25 17 Q. And then the gain that he calculated on the sale

13:35:30 18 of Building B of \$333,633.47, he then divided that

13:35:39 19 50 percent to himself and 50 percent to CLA Properties,

13:35:42 20 each of you getting \$166,816.74; correct?

13:35:49 21 A. Yeah, that's what it shows.

13:35:50 22 Q. And you received a check for that amount that is

13:35:53 23 shown as the -- as two pages after this Bates -- it's

13:36:02 24 cut off the bottom. You can see the two pages behind

13:36:04 25 this distribution schedule is a check to yourself and to

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13:36:11 1 CLA for 166,816.74; correct?

13:36:15 2 A. That's what it shows, yes.

13:36:17 3 Q. Okay. And so you received this distribution

13:36:20 4 schedule and these checks and cashed the checks;

13:36:23 5 correct?

13:36:23 6 A. I think so, yes, sir.

13:36:25 7 Q. And now let's look at Exhibit 27.

13:36:28 8 THE ARBITRATOR: This is August 2015, right?

13:36:31 9 MR. GERRARD: Yes.

13:36:32 10 THE ARBITRATOR: Okay.

13:36:34 11 BY MR. GERRARD:

13:36:34 12 Q. Now let's look at Exhibit 27. So here we have

13:36:47 13 the company's tax return for the year 2015; correct?

13:36:51 14 A. Yes.

13:36:52 15 Q. And let's take a look at the Schedule K, which is

13:36:58 16 on page 2308. And again, we're going to compare that to

13:37:03 17 your K-1, which is at page 2312. So get those two open,

13:37:10 18 please. Let me know when you're ready.

13:37:18 19 A. Okay.

13:37:19 20 Q. So on Schedule K, you can see at line 2 that the

13:37:23 21 company had \$229,956 in rental income for the year 2015;

13:37:30 22 correct?

13:37:30 23 A. That's what it shows, yes.

13:37:31 24 Q. And on line 2 of your K-1, it shows that you

13:37:34 25 received an allocation of half of that, or \$114,978;

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13:37:40 1 correct?

13:37:40 2 A. Uh-huh.

13:37:41 3 Q. Is that yes?

13:37:41 4 A. Yes. Yes.

13:37:42 5 Q. And then if we look down on Schedule K at

13:37:44 6 line 10, it shows a gain from the sale of property.

13:37:48 7 This was from the sale of Building B; correct?

13:37:49 8 A. Yes.

13:37:50 9 Q. And this shows a gain of \$333,160; correct?

13:37:55 10 A. Correct.

13:37:56 11 Q. And if we look on line 10 of your K-1, it shows

13:38:00 12 that you received an allocation of 50 percent of that or

13:38:03 13 \$166,580; correct?

13:38:06 14 A. Correct.

13:38:07 15 Q. And if we look at the K-1 right behind yours, you

13:38:11 16 can see that Mr. Bidsal received an allocation of

13:38:16 17 50 percent of the net rental income and an allocation of

13:38:20 18 50 percent of the gain from the sale of Building B;

13:38:22 19 correct?

13:38:23 20 A. Yeah, that's what it says.

13:38:24 21 Q. Okay. Now if we look at the distribution number

13:38:31 22 on Schedule K, it shows there are total distributions of

13:38:34 23 \$907,760; correct?

13:38:37 24 A. 907,760, yeah.

13:38:41 25 Q. Right. And it shows on your Schedule K-1 at

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13:38:44 1 line 19 that you received \$510,705 of that; correct?

13:38:49 2 A. Correct.

13:38:50 3 Q. And it shows on Mr. Bidsal's K-1 that he received

13:38:56 4 \$397,055 of that; correct?

13:38:56 5 A. Correct.

13:38:56 6 Q. And those two numbers are not equal, are they?

13:39:01 7 A. No, they're not.

13:39:02 8 Q. And if you take the difference between those two

13:39:07 9 numbers, you'll see that that difference is \$113,650.

13:39:18 10 And if we look back at Exhibit No. 26, you can see that

13:39:28 11 that equals the difference between the two numbers that

13:39:31 12 were distributed at 198,888.57 to you of the basis in

13:39:37 13 the property and 85,237.96 to Mr. Bidsal.

13:39:41 14 So it appears from this tax return that -- you

13:39:45 15 can see that you are allocated 50 percent of the gain

13:39:49 16 from the sale of this property, but you received a

13:39:51 17 distribution of 70 percent of the basis of the property

13:39:55 18 and 50 percent of the gain; correct?

13:39:59 19 A. It appears so, yes.

13:40:00 20 Q. Okay. And you received this tax return and all

13:40:06 21 the K-1s when it was prepared in the year 2016; correct?

13:40:11 22 A. Yes. In 2016.

13:40:16 23 Q. Okay. And you didn't send any written objection

13:40:21 24 to this 2015 tax return when you received it, did you?

13:40:26 25 A. I think I did.

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13:40:28 1 Q. Okay. Well, let's take a look at Exhibit No. 29. Page 201
13:40:49 2 Exhibit 29 is a letter to you with your K-1 that was
13:41:04 3 sent March 14, 2017; correct?
13:41:06 4 A. It looks like it.
13:41:11 5 Q. Okay. All right. Let's look at Exhibit 36,
13:41:16 6 please.
13:41:17 7 A. Yes, sir.
13:41:26 8 Q. Let me know when you've got that open.
13:41:29 9 A. I got it.
13:41:30 10 MR. LEWIN: I don't have it open. Just a second.
13:41:33 11 MR. GERRARD: Okay. Just let me know, Rod, when
13:41:35 12 you're ready. There's a lot of stuff here.
13:41:45 13 MR. LEWIN: Okay. 36?
13:41:48 14 MR. GERRARD: Yes.
13:41:51 15 MR. LEWIN: All right.
13:41:56 16 BY MR. GERRARD:
13:41:56 17 Q. Exhibit 36 is an email from you to Mr. Bidsal
13:41:59 18 dated -- the first page of Exhibit 36 is an email from
13:42:03 19 you to Mr. Bidsal dated April 22, 2016. Do you see
13:42:06 20 that?
13:42:06 21 A. Mr. Bidsal or me?
13:42:10 22 Q. I'm asking you.
13:42:11 23 A. No.
13:42:13 24 Q. Do you recognize this email from --
13:42:14 25 A. No. The letter from me to Mr. Bidsal?

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13:42:17 1 Q. No, sir. Look at the very top of the page of
13:42:20 2 Exhibit 36. Do you see an email from you, BenGol, to
13:42:24 3 Shawn Bidsal dated --
13:42:25 4 A. That's what I'm saying.
13:42:26 5 Q. -- April 22, 2017?
13:42:27 6 A. Bates stamp 1277, yeah?
13:42:30 7 THE ARBITRATOR: Yes.
13:42:30 8 THE WITNESS: Yes.
13:42:30 9 BY MR. GERRARD:
13:42:32 10 Q. Yes?
13:42:33 11 A. Okay. Yes, I'm looking at the letter.
13:42:35 12 Q. Okay. Now, it says -- in the middle of that
13:42:39 13 page, it says "The other matter is that your bookkeeper
13:42:45 14 is distributing more money to you than me. I understand
13:42:48 15 that it is not much, and once you told me that at the
13:42:54 16 end it will all even out. But it is not a correct
13:43:00 17 practice. Any money in excess of net profit from rent,
13:43:04 18 according to the books and K-1, must be divided 70-30."
13:43:08 19 Do you see where I'm reading?
13:43:09 20 A. Yes.
13:43:11 21 Q. Okay. So this statement acknowledges that you
13:43:14 22 had a conversation before this email with Mr. Bidsal
13:43:17 23 about how to make distributions of the excess money over
13:43:23 24 the amount of the basis on the sale of each of these
13:43:27 25 properties; correct?

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13:43:27 1 A. Correct.

13:43:28 2 Q. And in those conversations you'd had with

13:43:30 3 Mr. Bidsal, he'd explained to you that he was dividing

13:43:33 4 the basis portion 70-30 and he was paying out the gain

13:43:38 5 on a 50-50 basis; correct?

13:43:41 6 A. I don't remember.

13:43:43 7 Q. Okay. And that's why you said that he had told

13:43:46 8 you in the end it would even out, because if you did it

13:43:49 9 that way, by the time you sold all the properties, you

13:43:52 10 would have had a complete return of all of your original

13:43:55 11 capital contribution; correct?

13:43:56 12 A. It was not only --

13:43:58 13 Q. Sir, it's just yes or no. Is that right or?

13:44:00 14 A. No. Not correct.

13:44:01 15 Q. Okay. But your statement was, "I understand it

13:44:06 16 is not much, and once -- and once you told me that at

13:44:09 17 the end it will all even out."

13:44:11 18 Do you see that?

13:44:12 19 A. Yes.

13:44:12 20 Q. Okay. And Mr. Bidsal responded to this. If we

13:44:19 21 look at the next page of this exhibit, there's an email

13:44:25 22 of April 25th, 2016. Do you see that?

13:44:28 23 A. Yes.

13:44:28 24 Q. And Mr. Bidsal said, "Ben" -- and you received

13:44:32 25 this; correct?

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13:44:32 1 A. I think so, yes.

13:44:34 2 Q. And it said, "Ben, the only money that's being

13:44:38 3 distributed for the past several years are the rent

13:44:39 4 income, so that is why everything is 50-50. We have not

13:44:41 5 received anything that is of capital nature to be

13:44:44 6 applied at 70-30. I left you a voicemail on Friday and

13:44:48 7 a text now. Call me to clear this up. Another way to

13:44:50 8 clear this up and get a better understanding is to call

13:44:52 9 the CPA who prepares these tax returns. Please call

13:44:56 10 Daniella Pena."

13:44:58 11 And he gives you a phone number; correct?

13:45:00 12 A. Yes.

13:45:00 13 Q. Okay. And then he sends a message to people that

13:45:02 14 work for him saying, "Please provide Ben with every

13:45:05 15 document he needs related to Green Valley Commerce,

13:45:08 16 Greenway, and Country Club properties"; correct?

13:45:10 17 A. Correct.

13:45:11 18 Q. Okay. Now, isn't it true, sir, that this email

13:45:28 19 that we just looked at of April 22, 2016, is the first

13:45:33 20 time that you ever raised any objection to the way that

13:45:37 21 money was being distributed from Green Valley Commerce,

13:45:42 22 LLC?

13:45:43 23 A. I think --

13:45:45 24 Q. It's yes or no, sir.

13:45:47 25 A. Can you --

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13:45:49 1 Q. Do you want me to ask it again?

13:45:50 2 A. Yeah. Yeah.

13:45:51 3 Q. Sure.

13:45:52 4 Isn't it true, sir, that this email of April 22,

13:45:57 5 2016, is the first time you ever complained about how

13:46:00 6 money was being distributed from Green Valley Commerce,

13:46:04 7 LLC?

13:46:04 8 A. No. I had complained prior to that.

13:46:07 9 Q. Is this the first time you've complained in

13:46:09 10 writing?

13:46:09 11 A. I'm not sure.

13:46:10 12 Q. Okay.

13:46:11 13 A. I may have more.

13:46:13 14 Q. All right. Let's take a look, now, at

13:46:17 15 Exhibit 30. Now sir, so that we can save a little bit

13:46:36 16 of time, is it fair to say that for the years 2016,

13:46:42 17 2017, 2018, and 2019, that the only money that was

13:46:47 18 generated by the company was net rents?

13:46:50 19 A. No.

13:46:53 20 Q. Okay. Were there sales proceeds in any of those

13:46:56 21 years?

13:46:57 22 A. No.

13:46:57 23 Q. Okay. All right. I guess we'll have to do it

13:46:59 24 the long way. Let's go ahead and look at Exhibit 30.

13:47:03 25 A. I'm sorry. Did you say "generated"?

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13:47:07 1 Q. Yeah. The only money that there was that came
13:47:10 2 into the company was from the operations of the rentals?
13:47:14 3 A. I think so.
13:47:14 4 Q. Okay.
13:47:15 5 A. I misunderstood you. I thought --
13:47:17 6 Q. All right. Then would you agree with me, sir,
13:47:19 7 that for each of those years -- 2016, 2017, 2018,
13:47:25 8 2019 -- that all of the money that came in was allocated
13:47:30 9 to you on your K-1, 50 percent to you and 50 percent to
13:47:33 10 Mr. Bidsal?
13:47:35 11 A. Of those money that we received?
13:47:38 12 Q. The money that came into the company. All money
13:47:41 13 that was generated by the company in all those tax years
13:47:44 14 were allocated 50 percent to CLA Properties and
13:47:48 15 50 percent to Mr. Bidsal; correct?
13:47:49 16 A. Of the rent or --
13:47:50 17 Q. Yes.
13:47:50 18 A. Of the rent?
13:47:51 19 Q. Yeah. All money.
13:47:52 20 A. Yes.
13:47:53 21 Q. The rents, and if there was any interest income
13:47:54 22 on bank accounts.
13:47:55 23 A. No -- yes. It was 50-50. Everything all
13:47:59 24 together. You're right. I apologize.
13:48:01 25 Q. And any distributions that were made in all of

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13:48:04 1 those years were also done 50-50; correct?

13:48:05 2 A. Yes.

13:48:06 3 Q. Okay. And -- so let's make this quick. Do you

13:48:13 4 recognize Exhibit 30 as being the tax return for the

13:48:16 5 company for the year of 2017?

13:48:22 6 A. Yes.

13:49:03 7 You're waiting for me?

13:49:04 8 Q. Yeah. Do you recognize this as being the tax

13:49:07 9 return for the company for the year 2017?

13:49:08 10 A. Yes, sir.

13:49:09 11 Q. And you received a copy of this, along with all

13:49:11 12 the K-1s, when it was prepared; correct?

13:49:13 13 A. Yes.

13:49:14 14 Q. And let's look at Exhibit 31. Do you recognize

13:49:18 15 this as being a letter that was sent to you by Clifton

13:49:22 16 Larson Allen with a copy of your K-1 attached?

13:49:28 17 A. It may have, yes.

13:49:30 18 Q. Okay. Do you have any reason to believe you

13:49:34 19 didn't receive this letter?

13:49:34 20 A. You know, I don't remember if I received it or

13:49:39 21 not. I may have.

13:49:40 22 Q. Okay. You do remember receiving the tax return,

13:49:43 23 you're just not sure if you got the letter; correct?

13:49:46 24 A. Yes. I received the tax return.

13:49:47 25 Q. All right. So let's take a look at Exhibit 32.

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13:49:49 1 Do you recognize this as being the company tax return
13:49:52 2 for the year 2018?

13:49:53 3 A. Yes.

13:49:54 4 Q. And you received a copy of that when it was
13:49:57 5 prepared as well; correct? And all the associated
13:49:59 6 schedules?

13:49:59 7 A. Usually, I receive it at the end of the year,
13:50:05 8 like around October or so.

13:50:07 9 Q. Of the next year?

13:50:07 10 A. September, yes. August, September of the next
13:50:10 11 year.

13:50:10 12 Q. Okay. And take a look at Exhibit 33. This is
13:50:14 13 another letter to you from Clifton Larson Allen, LLP,
13:50:20 14 that has some K-1s attached to it. Do you recall
13:50:24 15 receiving that letter?

13:50:25 16 A. I don't recall, but it seems reasonable.

13:50:28 17 Q. Okay. Let's look at Exhibit 34. Do you
13:50:31 18 recognize this as being a copy of the 2019 proposed tax
13:50:35 19 return for the company?

13:50:36 20 A. Yes.

13:50:39 21 Q. And by then, you were in a dispute with
13:50:41 22 Mr. Bidsal and in litigation; correct?

13:50:44 23 A. 2019?

13:50:46 24 Q. Yes.

13:50:46 25 A. Yes.

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13:50:47 1 Q. Okay. And that's why only a draft of this was
13:50:51 2 prepared; correct?

13:50:52 3 A. I don't know why it was a draft prepared.

13:50:57 4 Q. Okay. But you did receive a copy of that, didn't
13:51:01 5 you?

13:51:01 6 A. I think so, yeah.

13:51:02 7 Q. And then Exhibit 35 is a letter to you from CL --
13:51:07 8 again, from the accountants with the 2019 tax return.
13:51:12 9 Did you receive that?

13:51:13 10 A. I think --

13:51:19 11 THE ARBITRATOR: The 2019 K-1.

13:51:21 12 MR. GERRARD: I'm sorry. For the 2019 K-1. He
13:51:23 13 already testified he got the tax return.

13:51:23 14 BY MR. GERRARD:

13:51:25 15 Q. Do you recall receiving that letter?

13:51:26 16 A. I think so, yes.

13:51:27 17 Q. Okay. All right. So let's now turn to
13:51:35 18 Exhibit 37. Do you have that open, sir?

13:51:45 19 A. Yes.

13:51:46 20 Q. Okay. Exhibit 37 is a letter dated July 7, 2017,
13:51:50 21 sent by Mr. Bidsal through his attorneys to CLA
13:51:56 22 Properties; correct?

13:51:56 23 A. Yes.

13:51:56 24 Q. And you recognize this as being Mr. Bidsal's
13:51:59 25 offer to purchase your membership interest, the CLA

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13:52:02 1 membership interest; correct?

13:52:03 2 A. Correct.

13:52:04 3 Q. So let's take a look at Exhibit 38. Is this your

13:52:14 4 response that you sent to that offer?

13:52:17 5 A. Looks like it, yeah.

13:52:19 6 Q. Is this what you referred to earlier as your

13:52:22 7 counter-offer?

13:52:23 8 A. Yes.

13:52:23 9 Q. Okay. So let's take a look at what this says.

13:52:27 10 It says "Dear Shawn, by this letter, CLA Properties,

13:52:29 11 LLC, the owner of 50 percent of the outstanding

13:52:31 12 membership interest in Green Valley Commerce, LLC, a

13:52:36 13 Nevada limited liability company, defined as 'the

13:52:40 14 company,' in response to your July 7, 2017 offer to

13:52:44 15 purchase membership interest hereby in accordance with

13:52:51 16 Section 4, Article 5 of the agreement elects and

13:53:04 17 exercises its option to purchase your 50 percent

13:53:07 18 membership interest in the company on the terms set

13:53:10 19 forth in the July 7, 2017 letter, based on your

13:53:15 20 \$5 million valuation of the company."

13:53:16 21 Do you see that?

13:53:17 22 A. Yes.

13:53:18 23 Q. Okay. It says "based upon the terms of the

13:53:21 24 July 7, 2017 letter." So let's look back at that,

13:53:25 25 Exhibit 37. In Exhibit 37, do you see any purchase

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13:53:29 1 price listed anywhere in that July 7, 2017 letter?

13:53:34 2 A. Exhibit what?

13:53:40 3 Q. Exhibit 37.

13:53:41 4 A. There's no price.

13:53:42 5 Q. Is there any price listed in that letter

13:53:44 6 anywhere?

13:53:45 7 A. I assume that the \$5 million --

13:53:49 8 Q. Well, it says that's an estimate of fair market

13:53:52 9 value; correct? In the second paragraph? It doesn't

13:53:54 10 say that that's the purchase price, does it?

13:53:56 11 A. Well, we call it different names. Within the

13:54:02 12 operating agreement, it's mentioned by a different name

13:54:06 13 too.

13:54:06 14 Q. Okay. Well, let's read in Exhibit 37. After the

13:54:10 15 \$5 million, it says --

13:54:11 16 A. 37, you said?

13:54:13 17 Q. Yeah. That's what you have open; right?

13:54:14 18 Mr. Bidsal's offer?

13:54:15 19 A. Uh-huh.

13:54:16 20 Q. Says "Unless contested, in accordance with the

13:54:19 21 provisions of Section 4.2 of Article 5 of the operating

13:54:23 22 agreement, the foregoing fair market value shall be used

13:54:27 23 to calculate the purchase price."

13:54:29 24 Do you see that? Do you see where I'm reading?

13:54:32 25 A. Yeah.

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13:54:33 1 Q. There is no purchase price listed anywhere in
13:54:35 2 this letter, is there?
13:54:36 3 A. Sure.
13:54:37 4 Q. In just says that the \$5 million will be used to
13:54:40 5 calculate a purchase price based upon that being the
13:54:44 6 fair market value number; correct?
13:54:45 7 A. Uh-huh.
13:54:46 8 Q. Okay.
13:54:46 9 THE ARBITRATOR: Yes?
13:54:46 10 BY MR. GERRARD:
13:54:46 11 Q. Is that a yes, sir?
13:54:49 12 THE ARBITRATOR: Mr. Golshani, it's hard for her
13:54:50 13 to take down "uh-huh" and "huh-uh." That's why I always
13:54:53 14 say -- or Mr. Gerrard always says, "Is that a yes?"
13:54:56 15 A. No, I meant I heard him. What is the -- what is
13:55:01 16 the question? I don't understand.
13:55:02 17 BY MR. GERRARD:
13:55:02 18 Q. The question is simple. Does this document --
13:55:04 19 A. Are you talking about the --
13:55:06 20 Q. Sir, listen to my question.
13:55:07 21 A. -- 38 or 39?
13:55:08 22 Q. I'm talking about 37.
13:55:11 23 A. 37. Okay. What about 37?
13:55:13 24 Q. Okay. Does 37 list anywhere in it an actual
13:55:16 25 purchase price?

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13:55:19 1 A. It says --

13:55:21 2 **Q. It's yes or no, sir.**

13:55:22 3 A. Fair -- yeah. Actually -- no, it says that --

13:55:27 4 yeah. It doesn't say, actually, purchase price.

13:55:27 5 **Q. Okay.**

13:55:30 6 A. I don't see it.

13:55:31 7 **Q. Thank you. Now look at Exhibit 38. This is your**

13:55:34 8 **responding letter. Does Exhibit 38 contain any actual**

13:55:38 9 **purchase price?**

13:55:39 10 MR. LEWIN: Object that the document speaks for

13:55:39 11 itself.

13:55:39 12 BY MR. GERRARD:

13:55:42 13 **Q. Go ahead, sir.**

13:55:42 14 THE ARBITRATOR: Overruled.

13:55:43 15 THE WITNESS: You need to give me a chance to

13:55:45 16 read it.

13:55:45 17 BY MR. GERRARD:

13:55:45 18 **Q. Okay.**

13:56:02 19 A. From what I see, it says "company on the terms

13:56:04 20 set forth in July 17 letter, based on your \$5 million

13:56:10 21 valuation of company."

13:56:10 22 **Q. Okay. Thanks for reading that to me. And we**

13:56:13 23 **just looked at that July 7, 2017 letter, and you just**

13:56:16 24 **said that that letter didn't have a purchase price in**

13:56:19 25 **it. Does this letter have a purchase price in it?**

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13:56:21 1 MR. LEWIN: Objection. Argumentative.

13:56:23 2 THE ARBITRATOR: Overruled.

13:56:26 3 A. He offered us a --

13:56:29 4 THE ARBITRATOR: It's a yes-or-no question,

13:56:30 5 Mr. Golshani.

13:56:31 6 THE WITNESS: What's the question? Does the --

13:56:31 7 BY MR. GERRARD:

13:56:32 8 Q. Sure.

13:56:33 9 Does this letter, Exhibit 38, have a purchase

13:56:36 10 price listed anywhere in the letter?

13:56:38 11 A. Our letter?

13:56:40 12 Q. Yes or no?

13:56:40 13 A. Our letter?

13:56:41 14 Q. Yes, your letter.

13:56:43 15 A. Let me look. Our letter says the purchase --

13:57:05 16 Q. Sir, it's yes or no. Does it have a purchase

13:57:08 17 price or not?

13:57:09 18 A. No, I don't see it.

13:57:10 19 Q. Okay. Thank you. Then it -- right after you see

13:57:13 20 the number 5 million, in the middle of that paragraph,

13:57:17 21 there's a sentence that says "The purchase will be all

13:57:21 22 cash with escrow to close within 30 days from the date

13:57:26 23 hereof."

13:57:26 24 Do you see that?

13:57:27 25 A. Yes.

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13:57:27 1 Q. Did you close escrow within 30 days from the date
13:57:30 2 of this letter? Yes or no, sir?
13:57:34 3 A. There was no escrow open. No.
13:57:37 4 Q. No. Did you pay any money to Mr. Bidsal at any
13:57:44 5 time to purchase his membership interest?
13:57:46 6 A. Yeah.
13:57:47 7 Q. From the date of this letter to the present?
13:57:48 8 A. We attempted very hard.
13:57:51 9 Q. Again, yes or no? Did you pay any actual money
13:57:54 10 to Mr. Bidsal at any time from August 3, 2017, to the
13:57:57 11 present day?
13:57:58 12 A. To pay, it takes two persons --
13:58:00 13 Q. Again, yes or no?
13:58:01 14 THE ARBITRATOR: Okay, we're going to take a
13:58:02 15 break.
13:58:02 16 A. No.
13:58:05 17 THE ARBITRATOR: We're going to take a break.
13:58:05 18 We're going to take about a five- or ten-minute break.
13:58:07 19 Mr. Lewin, I'm going to ask you, because
13:58:10 20 obviously what I say isn't getting through, to carefully
13:58:15 21 explain to Mr. Golshani the rules of cross-examination.
13:58:20 22 Okay? Because it's starting to try my patience. And I
13:58:26 23 think it's a bit -- I think it's intentional. And
13:58:29 24 you'll have the opportunity to fully explore --
13:58:32 25 MR. LEWIN: I understand. I'll talk to him.

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13:58:35 1 THE ARBITRATOR: All right. We're going to take
13:58:36 2 a break, Mr. Golshani. Okay? Listen to what Mr. Lewin
13:58:38 3 has to say to you during the break. All right?
13:58:40 4 THE WITNESS: No problem.
13:58:40 5 ***
13:58:40 6 (RECESS TAKEN FROM 1:58 P.M. TO 2:19 P.M.)
14:19:51 7 ***
14:19:51 8 THE ARBITRATOR: You may continue.
14:20:01 9 MR. GERRARD: Okay.
14:20:02 10 BY MR. GERRARD:
14:20:02 11 Q. Sir, let's look back at Exhibit No. 43.
14:20:28 12 A. 43.
14:20:33 13 Q. These were your responses to interrogatories in
14:20:36 14 this case, and if we look at Interrogatory No. 1 on the
14:20:39 15 first page, it asks in the middle of the page what the
14:20:45 16 closing date should have been -- let's see. Let's just
14:20:51 17 go to the top of the second page.
14:20:53 18 It basically says "Please identify the exact date
14:20:56 19 of the closing date as that term is used in paragraph 6
14:21:00 20 of your counter-claim."
14:21:02 21 And you stated that the -- in your response "CLA
14:21:08 22 exercised its option to buy on August 3, 2017. The
14:21:11 23 transaction should have closed by September 2, 2017."
14:21:15 24 Do you see where I'm reading?
14:21:16 25 A. No, I don't. Which page is it?

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14:21:18 1 Q. Page 2 of Exhibit 43. Response to Interrogatory
14:21:22 2 No. 1.
14:21:22 3 A. All right.
14:21:25 4 Q. So after the objections, it says, quote --
14:21:29 5 starting at line 6 towards middle -- "CLA responds as
14:21:35 6 follows: CLA exercised its option to buy on August 3,
14:21:38 7 2017. The transaction should have closed by
14:21:41 8 September 2, 2017."
14:21:42 9 Do you see where I'm reading?
14:21:43 10 A. Yes, sir.
14:21:44 11 Q. Okay. Prior to September 2, 2017, did you ever
14:21:46 12 pay any money to Mr. Bidsal?
14:21:48 13 A. No.
14:21:50 14 Q. Did you ever open an escrow and deposit any money
14:21:53 15 into it prior to that date?
14:21:55 16 A. No.
14:21:55 17 Q. Now, would you also, please, go back to look at
14:22:01 18 Exhibit 5 again, way back at the beginning of that
14:22:05 19 binder. That's the operating agreement. And what I'd
14:22:16 20 like you to do is to look -- we're going to look at
14:22:20 21 Article 2, Section 3, which actually starts on the
14:22:28 22 bottom of page 2, but most of it is on the next page.
14:22:31 23 You can see at the bottom of page 2 is the heading of
14:22:34 24 Section 3, which says "Records."
14:22:36 25 Do you see where I'm looking?

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14:22:38

1 A. Yes.

14:22:38

2 Q. So then let's look at the next page, and it says

14:22:44

3 that the -- gives a list of all of the records that the

14:22:48

4 company is required to keep at its registered office.

14:22:53

5 Okay? Now, you understand that Mr. Bidsal

14:22:57

6 identified his business office as the registered office

14:23:01

7 for the company; correct?

14:23:02

8 A. Yes.

14:23:02

9 Q. Okay. So there's a list of all the records that

14:23:06

10 are supposed to be there, and then if you look at

14:23:09

11 Section 4, at the bottom it says "Records kept pursuant

14:23:11

12 to this article are subject to inspection and copying at

14:23:16

13 the request and at the expense of any member in person

14:23:21

14 or by an attorney or other agent."

14:23:24

15 Do you see where I'm reading?

14:23:25

16 A. Yes.

14:23:25

17 Q. Okay. Did you ever go to the registered office

14:23:29

18 and inspect any of the records that you wanted to look

14:23:31

19 at?

14:23:32

20 A. I have never gone there, no.

14:23:34

21 Q. Okay. And did you ever send an agent, an

14:23:37

22 attorney or an accountant to the registered office to

14:23:41

23 inspect any of the records?

14:23:42

24 A. No, I haven't.

14:23:46

25 Q. Okay. Now, you don't see any provision in this

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14:23:49 1 Section 4 that allows you to demand that records be
14:23:52 2 provided to you -- be copied and sent to you, do you?
14:23:57 3 A. I haven't looked at it that accurate. I'm not
14:24:01 4 sure.
14:24:01 5 Q. Okay. But it clearly gives you the right to go
14:24:04 6 to the registered office at any time to inspect whatever
14:24:07 7 records you want to inspect; correct?
14:24:09 8 A. All right.
14:24:09 9 Q. And you never took the opportunity to do that;
14:24:11 10 correct?
14:24:11 11 A. No.
14:24:14 12 Q. You never took that opportunity?
14:24:17 13 A. I never had the opportunity, yes.
14:24:21 14 Q. Okay, sir. Listen carefully to my question: Did
14:24:25 15 you ever elect to exercise your option to go to the
14:24:29 16 company's registered office to review or inspect
14:24:32 17 whatever records you wanted to inspect? Yes or no?
14:24:35 18 A. Yes.
14:24:36 19 Q. You did? You went to company's office?
14:24:38 20 A. No. I -- I thought you meant if I wanted to go.
14:24:43 21 I -- I meant to go. Is that --
14:24:45 22 Q. Okay. But you never went; right?
14:24:46 23 A. No, I never went.
14:24:48 24 Q. Okay. Thank you.
14:25:05 25 Many of these questions are already going to --

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14:25:08 1 have been answered, so let me just quickly go through
14:25:12 2 here.

14:25:14 3 And, sir, you had also a personal accountant;
14:25:17 4 correct?

14:25:17 5 A. Yes.

14:25:18 6 Q. And if at any time you had a question about
14:25:21 7 anything on any of your tax returns that you received,
14:25:23 8 you could have asked your personal accountant to explain
14:25:26 9 those things to you; correct?

14:25:28 10 A. Yes.

14:25:39 11 Q. And, sir, you -- at all times, for you to
14:26:08 12 determine whether you were receiving allocations and
14:26:13 13 distributions you were supposed to receive, you went by
14:26:16 14 what was on the tax returns that you received; correct?

14:26:18 15 A. Correct.

14:26:19 16 Q. And, sir, you understand that when the property
14:26:37 17 was transferred from the former owner to Green Valley
14:26:41 18 Commerce through the deed in lieu of foreclosure
14:26:44 19 agreement, that all accrued interest and principal on
14:26:47 20 the note was forgiven; correct?

14:26:50 21 MR. LEWIN: Objection. The document speaks for
14:26:56 22 itself.

14:26:56 23 A. I'm not sure, sir. I'm not sure.

14:26:59 24 THE ARBITRATOR: I'm going to overrule the
14:27:00 25 objection. Allow the answer.

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14:27:05 1 A. I'm not sure. I -- yeah.

14:27:09 2 MR. GERRARD: Do we need to go through the

14:27:10 3 process of publishing his deposition to use it the past?

14:27:13 4 I don't know how you do that under your arbitration

14:27:16 5 rules. Or do we just pull it out?

14:27:18 6 THE ARBITRATOR: Is it to refresh his

14:27:19 7 recollection or for something else?

14:27:21 8 MR. GERRARD: To refresh his recollection or just

14:27:22 9 impeach his answer.

14:27:23 10 MR. LEWIN: I'm okay with just from reading from

14:27:23 11 the transcript.

14:27:29 12 THE ARBITRATOR: Okay. Lay the foundation about

14:27:30 13 being deposed and all that.

14:27:32 14 MR. GERRARD: Sure. Sure.

14:27:32 15 THE ARBITRATOR: This is deposition, not prior --

14:27:35 16 MR. GERRARD: Deposition in this case, yes.

14:27:36 17 Do you have his deposition there?

14:27:38 18 MR. SHAPIRO: Yep. Let me find it. There's two

14:27:51 19 copies, one for the judge and one for the witness.

14:27:51 20 THE ARBITRATOR: Thank you.

14:27:56 21 BY MR. GERRARD:

14:27:56 22 Q. Sir, do you recall having your deposition taken

14:27:58 23 in this case on January 4, 2021?

14:28:00 24 A. Correct.

14:28:00 25 Q. Would you look at page 156 of this transcript?

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14:28:13 1 A. Okay.

14:28:15 2 MR. LEWIN: And just give me a moment. I'll

14:28:17 3 be -- I'll be with you in second.

14:28:17 4 THE ARBITRATOR: 156?

14:28:26 5 MR. GERRARD: Yeah. Actually, let's start at

14:28:27 6 155. Page 155.

14:28:27 7 BY MR. GERRARD:

14:28:27 8 Q. Let me know if you've got that open. At this

14:28:29 9 point in the deposition, we were reading from the deed

14:28:31 10 in lieu of foreclosure agreement. Let's start at line

14:28:35 11 9. I'm going to read the question I asked you in the

14:28:38 12 deposition, if you'll please read the answer you gave.

14:28:39 13 MR. LEWIN: Hold on a second. If we're going to

14:28:42 14 be reading the deposition, I have objections that are

14:28:45 15 interposed, so the objections should be ruled on.

14:28:47 16 MR. GERRARD: Well, I haven't asked a question

14:28:49 17 yet. What objection could you have?

14:28:50 18 THE ARBITRATOR: He's saying the objections in

14:28:51 19 the transcript.

14:28:53 20 MR. GERRARD: Sure. So the normal way, isn't it,

14:28:54 21 Judge, that we would read the question, and then he

14:28:56 22 would say, "Here's the objection I raised to it."

14:29:00 23 THE ARBITRATOR: All right. So -- all right. So

14:29:03 24 read the question.

14:29:04 25 MR. GERRARD: All right. Thank you.

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14:30:02

1 BY MR. GERRARD:

2 Q. So the question said: "Do you -- sir, do you

3 understand from this paragraph that your company was

4 going to be given a complete release of the obligations

5 under the promissory note" -- that should have said "was

6 going to be giving," not "given" -- "under the loan to

7 the former owner of the property in exchange for them

8 transferring the property to your company?"

9 MR. LEWIN: Do you want me to state the

10 objection? Is that --

11 MR. GERRARD: Yeah. Yeah. The objection you

12 stated.

13 MR. LEWIN: For efficiency, I would propose that

14 you just read the page and line numbers that you want

15 to. If there's an objection, then the judge can rule on

16 it without us reading it. But if you want me to read

17 it, I'll read it. Whatever you want to do.

18 THE ARBITRATOR: I mean, I can read it myself.

19 But if you want to read it into the record, that's fine.

20 MR. LEWIN: I don't want to read it. I just want

21 to state there's an objection.

22 THE ARBITRATOR: The objection was the document

23 speaks for itself, that it calls for an inadmissible

24 opinion and conclusion. I'm going to overrule the

25 objection, so the answer that's in here can stand.

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14:30:06 1 MR. GERRARD: So your answer on line 22 is what? Page 224

14:30:11 2 THE WITNESS: You might -- you want me to read?

14:30:13 3 BY MR. GERRARD:

14:30:13 4 Q. Yeah. Read that, please.

14:30:14 5 A. You asked me if I see that that's what they said.

14:30:20 6 I said, "Yeah, that's what we said here."

14:30:24 7 Q. So then I ask you a question at the top of page

14:30:27 8 156: "So you understand this to mean that when the

14:30:31 9 property was transferred to your entity, that there

14:30:34 10 was -- that all accrued interest and principal on the

14:30:38 11 promissory note was forgiven?"

14:30:39 12 And what did you say?

14:30:41 13 MR. LEWIN: Well, I had an objection that was

14:30:41 14 stated. The answer was given before my objection.

14:30:41 15 THE ARBITRATOR: Okay. And it was to move to

14:30:46 16 strike the previous answer?

14:30:47 17 MR. LEWIN: Move to strike the answer that was

14:30:49 18 given before I had a chance to interpose my objection.

14:30:52 19 THE ARBITRATOR: Yes. Okay.

14:30:53 20 MR. LEWIN: And it calls for -- it, again, calls

14:30:56 21 for inadmissible opinion and conclusion. The document

14:30:59 22 speaks for itself.

14:31:00 23 THE ARBITRATOR: Right. And I'll overrule that

14:31:01 24 objection so the answer of "yes" will stand.

14:31:04 25 A. Yes. The answer was "yes."

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14:31:06 1 MR. GERRARD: Okay. Thank you.

14:31:37 2 I pass the witness, Your Honor.

14:31:39 3 THE ARBITRATOR: All right. Mr. Lewin.

14:31:43 4 MR. LEWIN: Thank you very much. Let me just
14:31:44 5 make my note here, so.

14:31:44 6 EXAMINATION

14:31:44 7 BY MR. LEWIN:

14:31:48 8 Q. While we're looking at it, would you just take a
14:31:49 9 look at Exhibit No. 9? No, pardon me. 8. Pull it out.

14:31:49 10 A. Is it this one?

14:32:04 11 THE ARBITRATOR: Yes, sir.

14:32:04 12 BY MR. LEWIN:

14:32:08 13 Q. When was the first time you saw -- this is the
14:32:11 14 deed in lieu agreement.

14:32:13 15 A. I saw this --

14:32:14 16 Q. Hold on. Let me get my -- when is the first time
14:32:19 17 you saw this agreement document?

14:32:20 18 A. I saw this on the previous arbitration, around
14:32:26 19 that time.

14:32:27 20 Q. Did you -- when you -- in answering the
14:32:38 21 deposition questions that you just answered, were you
14:32:42 22 taking into consideration that there was \$295,000 that
14:32:47 23 was being transferred?

14:32:48 24 A. No. Because he asked me about the interest and
14:32:53 25 principal.

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1 Q. Earlier you testified about -- when asked a
2 question did -- when you purchased the note, did you
3 have -- did you get title to the property. Do you
4 remember that testimony?
5 A. Yes.
6 Q. Looking at this deed in lieu agreement, in
7 connection with this deed in lieu agreement, it lists
8 the documents that secured the promissory. It was
9 secured by a deed of trust; right? Take a look. It's
10 listed here.
11 A. Which line would like me to look?
12 Q. The promissory note was a secured promissory
13 note; is that correct?
14 A. Yes.
15 Q. And it was secured by -- it was secured by a deed
16 of trust -- there was a deed of trust note. Do you see
17 that?
18 A. May I ask where you're reading?
19 Q. It's on page -- deed in lieu agreement in the
20 recitals.
21 A. I know, but a number? A, B, 1 --
22 Q. Under B.
23 A. Under B.
24 Q. It says, "Under the terms of a loan made by the
25 lender's predecessor to the borrower on or about

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14:33:59 1 July 17, 2007 (the loan), the property is subject to
14:34:05 2 certain liens, assignments, and security interests
14:34:08 3 (collectively, the initial cap Liens) which are
14:34:13 4 evidenced by certain documents, including the documents
14:34:16 5 listed below, collectively the loan documents."

14:34:16 6 A. Yes.

14:34:19 7 Q. And it lists some documents here. Did you know
14:34:24 8 what a deed of trust was in June 2007 -- June 2011?

14:34:29 9 A. I -- I am not very well versed. I didn't know
14:34:35 10 that much.

14:34:36 11 Q. Well, I'm talking about -- how about right now?
14:34:39 12 Do you know what a deed of trust is? Do you know what a
14:34:40 13 deed of trust is now?

14:34:41 14 A. Yes.

14:34:42 15 Q. Do you know what assignment of rents -- leases
14:34:46 16 and rents is now?

14:34:48 17 A. Yes.

14:34:48 18 Q. Okay. So when you said that the -- that on
14:34:55 19 June 3, 2011, when you purchased the note, the secured
14:34:58 20 note, that you got title, what you were referring to?

14:35:01 21 A. Well, we got title over the note and whatever
14:35:10 22 came with it, you know, like the rent that they had
14:35:12 23 collected and they were supposed to give it to us and a
14:35:18 24 few other things.

14:35:19 25 Q. Did Mr. Bidsal consult you at all with respect to

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14:35:22 1 the terms and conditions of this deed in lieu agreement?

14:35:25 2 A. No.

14:35:26 3 Q. Looking at -- okay, I don't need to go there.

14:35:41 4 Mr. Gerety asked you --

14:35:44 5 THE ARBITRATOR: Gerrard?

14:35:45 6 MR. LEWIN: Pardon me.

14:35:45 7 BY MR. LEWIN:

14:35:45 8 Q. Mr. Gerrard asked you about your -- the August 2

14:35:50 9 letter that's Exhibit 7, I think. Exhibit -- what were

14:35:50 10 we just looking at?

14:36:05 11 MR. GERRARD: Exhibit 7 are CC&Rs.

14:36:08 12 MR. LEWIN: I'm talking about -- I'm talking

14:36:10 13 about the offer. Hold on a second.

14:36:23 14 THE ARBITRATOR: The offer letter?

14:36:25 15 BY MR. LEWIN:

14:36:25 16 Q. Exhibit 38.

14:36:30 17 A. I have it.

14:36:43 18 Q. Mr. Gerrard was asking you if there is a purchase

14:36:49 19 price stated in that letter. You seemed to struggle

14:36:51 20 with it and finally you said no. What -- what

14:36:57 21 significance does the \$5 million have in terms of

14:37:00 22 establishing a purchase price?

14:37:01 23 A. The \$5 million is the FMV, fair market value,

14:37:09 24 that later on will be plugged into the formula to find

14:37:16 25 out the selling person -- how much the selling person

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14:37:21 1 gets.

14:37:22 2 Q. All right. Then there's a series of questions
14:37:26 3 that Mr. Gerrard asked about when you objected to the
14:37:32 4 distributions that Mr. Bidsal was making on the sales of
14:37:35 5 the property. You didn't object to Mr. Bidsal's
14:37:40 6 distributions in -- did you object to Mr. Bidsal's
14:37:43 7 distributions in connection with the sale of Building C?

14:37:46 8 A. No.

14:37:47 9 Q. And why not?

14:37:48 10 A. It was done right. It was done according to the
14:37:54 11 operating agreement.

14:37:54 12 Q. You mentioned that in 2013 that you had some
14:37:58 13 problems with the -- that there's some problems that you
14:38:00 14 objected to -- that you had some objections to the 2013
14:38:04 15 tax return that you spoke to Mr. Bidsal about. Tell us
14:38:07 16 about that -- those objections.

14:38:09 17 A. Well, that problem is a different problem. What
14:38:13 18 is happening is that I noticed that my capital
14:38:21 19 contribution ratio was supposed to be 70 percent, and
14:38:24 20 then I noticed that it is becoming more and his capital
14:38:31 21 contribution -- capital account, I should say, is going
14:38:36 22 down. And I checked about it and they told me that he's
14:38:42 23 over-distributing money to himself.

14:38:46 24 MR. GERRARD: I'm sorry. Move to strike as it
14:38:47 25 relates to what somebody else says being hearsay. I

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14:38:50 1 don't know -- he didn't lay a foundation for that and
14:38:52 2 he's going --
14:38:52 3 THE ARBITRATOR: Yeah. So there's an objection
14:38:54 4 of hearsay.
14:38:54 5 MR. LEWIN: It only has to go to the state of
14:38:56 6 mind, not for the truth of the matter asserted.
14:38:59 7 THE ARBITRATOR: So specifically not to the truth
14:39:01 8 of whether there were over-distributions, I'll allow it.
14:39:05 9 MR. LEWIN: In terms of -- that's right. In
14:39:05 10 terms of his -- the basis for him raising the
14:39:08 11 objections.
14:39:09 12 THE ARBITRATOR: Okay.
14:39:10 13 A. And so I found out that he's distributing the
14:39:21 14 money above and beyond the net income. And if you
14:39:28 15 notice in some years, he has even distributed the
14:39:36 16 security deposit -- some of it. And so for that reason,
14:39:41 17 I realized that my capital ratio is going higher, and I
14:39:47 18 started talking to him. And if you noticed in one of
14:39:52 19 his letters, he said, "I only distribute rent. I don't
14:39:56 20 distribute anything else."
14:39:57 21 BY MR. LEWIN:
14:39:57 22 Q. Would you take a look at Exhibit 36?
14:40:09 23 A. 36.
14:40:10 24 Q. This is a -- this is an email that you sent on
14:40:15 25 April 22, 2016.

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14:40:17 1 A. Correct.

14:40:17 2 Q. It talks about a conversation or conversations

14:40:30 3 where Mr. Bidsal told you or made a statement -- what

14:40:33 4 did he tell you? Would you read it, please?

14:40:36 5 A. Which one? You want me to read the whole letter,

14:40:39 6 or --

14:40:39 7 Q. No. Let me -- I'll point you to the exact thing

14:40:43 8 I'm talking about. You say, "The other matter is that

14:40:51 9 your bookkeeper is distributing more money to you than

14:40:54 10 me. I understand that it is not much, and once you told

14:40:57 11 me at the end it all will even out, but it's not the

14:41:02 12 correct practice."

14:41:03 13 Then you go on to explain how you think it should

14:41:05 14 be distributed. When did that conversation take place?

14:41:08 15 A. When?

14:41:09 16 Q. If you recall. The email is dated April 22,

14:41:13 17 2016.

14:41:13 18 A. That -- that conversation took place, I believe,

14:41:18 19 sometime in 2015.

14:41:20 20 Q. Okay.

14:41:21 21 A. And 2000 -- actually, about that

14:41:30 22 over-distribution over the rent, we have been talking

14:41:32 23 about it --

14:41:34 24 MR. GERRARD: Objection. Move to strike. It

14:41:36 25 goes beyond the scope of the -- beyond the question that

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14:41:37 1 was asked.

14:41:39 2 THE ARBITRATOR: The question was when was the
14:41:40 3 conversation. I think you've answered that.

14:41:42 4 Next question.

14:41:42 5 BY MR. LEWIN:

14:41:42 6 **Q. Tell me what was said in the conversation.**

14:41:48 7 THE ARBITRATOR: This is the conversation with
14:41:49 8 Mr. Bidsal?

14:41:50 9 BY MR. LEWIN:

14:41:50 10 **Q. When Mr. Bidsal -- when he tells -- what he told**
14:41:52 11 **you as you documented here that "in the end it will all**
14:41:57 12 **even out."**

14:42:00 13 A. I told him that our capital -- the ratio of
14:42:06 14 capital is changing. And at that time, I didn't know
14:42:12 15 much about it and I told him it shouldn't; it should be
14:42:18 16 always 70-30. And he said he would look into it and he
14:42:23 17 would see what is what. And then a few weeks passed.

14:42:28 18 You know, in those times we had a very good
14:42:32 19 relationship. And I, you know -- I just casually told
14:42:35 20 that to him, and I thought he would take care of it.
14:42:39 21 But, you know, he said that he was busy and he would
14:42:42 22 take care of it and all that. I mentioned to him later
14:42:45 23 on that, "Have you taken care of it?"

14:42:50 24 He said I shouldn't worry. When we sell, it is
14:42:58 25 going to be evening out. And at that time it wasn't

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14:43:04 1 that much. But then --

14:43:07 2 Q. You've answered the question. But did you come

14:43:17 3 to an understanding yourself as to what the problem --

14:43:20 4 what the basis was?

14:43:21 5 MR. GERRARD: Objection. Leading.

14:43:23 6 THE ARBITRATOR: Did you come to an

14:43:25 7 understanding? No. Overruled.

14:43:26 8 BY MR. LEWIN:

14:43:26 9 Q. Did you ever --

14:43:29 10 THE ARBITRATOR: I overruled the objection, so.

14:43:29 11 MR. LEWIN: I wasn't finished, though.

14:43:29 12 THE ARBITRATOR: I know.

14:43:29 13 MR. LEWIN: I understand.

14:43:29 14 BY MR. LEWIN:

14:43:34 15 Q. Did you come to an understanding as to what the

14:43:37 16 reason why these capital accounts were becoming not

14:43:44 17 proper percentages?

14:43:45 18 A. Because it was -- because of over-distribution.

14:43:50 19 If he distributed the rent that was allocated 50-50, it

14:43:58 20 would have been always the same. But he would

14:44:02 21 distribute over that. And that's what -- the reason

14:44:06 22 that he told me.

14:44:07 23 Q. Did you ever have a discussion with Mr. Bidsal

14:44:09 24 about -- in terms of not distributing amounts that were

14:44:14 25 covered by depreciation?

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14:44:16 1 A. I have discussed it with him, but he told me that
14:44:21 2 that's no problem and he can do it.

14:44:25 3 Q. Okay. Now, Mr. Gerrard asked you if you had ever
14:44:31 4 complained before April. Take a look at Exhibit 107,
14:44:34 5 would you, please?

14:44:35 6 THE ARBITRATOR: It's going to be a different
14:44:36 7 book. Do you have that for him?

14:44:41 8 MR. LEWIN: This one is -- you have 107. It's in
14:44:43 9 version -- it should be in -- it's in my book.
14:44:48 10 Volume I.

14:44:49 11 THE ARBITRATOR: I'm saying does the witness have
14:44:51 12 it?

14:44:53 13 MR. LEWIN: Oh, yeah. Here we go.

14:45:18 14 BY MR. LEWIN:

14:45:18 15 Q. Exhibit 107 is a letter dated January 21, 2016,
14:45:36 16 to Angelo from Lea. Who is Angelo?

14:45:37 17 A. Angelo --

14:45:39 18 MR. GERRARD: I'm sorry to interrupt, but we have
14:45:40 19 an objection to this exhibit being used at all. And the
14:45:43 20 basis is relevance. It doesn't have anything to do with
14:45:47 21 Green Valley Commerce, LLC. It says right in it that it
14:45:49 22 has to do with Country Club, which is a different
14:45:51 23 entity, different -- has nothing to do with this case.

14:45:53 24 THE ARBITRATOR: They also have ownership
14:45:56 25 interest in --

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14:45:56 1 MR. GERRARD: Yeah, but it has nothing to do with Page 235
14:45:57 2 this case.
14:45:58 3 MR. LEWIN: They have ownership interest and the
14:45:59 4 exact same operating agreement.
14:46:01 5 THE ARBITRATOR: Yeah, but why -- if they were --
14:46:05 6 let's just hypothetically say there were
14:46:09 7 over-distributions or incorrect distributions for the
14:46:12 8 other property. How is that relevant to ours?
14:46:17 9 MR. LEWIN: Well, the issue here is the manner in
14:46:18 10 which the distributions should be made. That's why this
14:46:21 11 is offered. In other words, you have the same formula,
14:46:24 12 you have the same distribution schedule, same Exhibit B.
14:46:25 13 So the -- and you have the same ownership schedule --
14:46:30 14 same ownership, essentially, the way it turns out.
14:46:33 15 70-30 in terms of capital.
14:46:35 16 So the evidence is is that -- evidence concerning
14:46:38 17 the manner in which distributions are made in Country
14:46:42 18 Club are the same -- is relevant in terms of showing how
14:46:48 19 distributions should be made in Green Valley. And his
14:46:50 20 objection -- at issue is he's making an objection to the
14:46:52 21 format, the way that he's making distribution, which is
14:46:56 22 the same way he's objecting to Green Valley.
14:47:00 23 MR. GERRARD: Well, again, Your Honor, it doesn't
14:47:01 24 have anything to do with Green Valley. If he sent a
14:47:03 25 letter that objected to distributions in Green Valley,

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14:47:05 1 that would be relevant. If he sends a letter that's
14:47:08 2 objecting to distributions of another company, it has a
14:47:11 3 complete set -- completely different set of books,
14:47:14 4 different distributions that were being made, different
14:47:16 5 properties that it owns. One has absolutely nothing to
14:47:19 6 do with the other. So it obviously is irrelevant
14:47:23 7 because it doesn't relate to this company. It can't
14:47:25 8 be -- it can't be raised as an objection, which is what
14:47:27 9 he's asked the witness, just a minute ago, if he
14:47:30 10 objected before such and such a date, and then he's
14:47:33 11 showing this exhibit.

14:47:34 12 THE ARBITRATOR: You're not offering this to show
14:47:35 13 that he objected to the way it was being done on Country
14:47:39 14 Club in January of 2016; therefore, since they're set up
14:47:45 15 the same way with apparently similar operating
14:47:47 16 agreements, that that registers as an objection to how
14:47:52 17 it should be done for Green Valley?

14:47:55 18 MR. LEWIN: No. It's notice. It's the notice of
14:47:57 19 how --

14:47:59 20 THE ARBITRATOR: I'm going to sustain the
14:48:00 21 objection on that. I think they're -- I think they're
14:48:02 22 separate. I don't have the Country Club operating
14:48:05 23 agreement. I don't have --

14:48:08 24 MR. LEWIN: You will, because I have it. It's
14:48:08 25 one of my --

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14:48:10 1 MR. GERRARD: And I'm going to object to that, Page 237
14:48:12 2 too, because --
14:48:12 3 THE ARBITRATOR: To me, they are separate. I
14:48:15 4 don't think notice on one constitutes notice on the
14:48:16 5 other, even if the -- even if the operating agreement
14:48:19 6 provides for a similar distribution pattern.
14:48:23 7 I don't think it's course of conduct. I don't
14:48:27 8 think it's habit or routine evidence. I don't think
14:48:29 9 it's -- I think it's sufficiently attenuated at this
14:48:36 10 point that I wouldn't admit it. So I'm going to sustain
14:48:39 11 the objection as to 107.
14:48:55 12 MR. LEWIN: Well, Your Honor, I'd like to
14:48:59 13 introduce Exhibit 108, and I think that'll make up the
14:49:03 14 107 as well. Exhibit 108, it talks about his response
14:49:12 15 to the letter. And sure enough, Mr. Bidsal saw that it
14:49:17 16 related to both because he responds talking about Green
14:49:21 17 Valley's distribution. He goes to --
14:49:23 18 THE ARBITRATOR: Well, I don't have an objection
14:49:26 19 to 108 at this point. So I don't know if you're asking
14:49:29 20 questions about it, but I don't want you to just
14:49:30 21 testify, so.
14:49:32 22 MR. LEWIN: Okay. Well, what I'm saying, though,
14:49:33 23 108 -- in order to understand 108, you have to let --
14:49:37 24 you have to have 107, because it's in response to -- it
14:49:39 25 says letter -- West Coast Investment's company -- of

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14:49:44 1 January 21, 2016. That's Mr. Bidsal attachments. Page 238
14:49:51 2 THE ARBITRATOR: Okay. Well, the first page of
14:49:55 3 108 that I have appears to be the same as the attachment
14:49:59 4 to 107 and it's in reference to Green Valley, so I don't
14:50:03 5 have a problem with that.
14:50:07 6 MR. LEWIN: The second page. The second page.
14:50:07 7 THE ARBITRATOR: 108 is an email from Mr. Bidsal
14:50:10 8 to --
14:50:14 9 MR. GERRARD: We do not have an objection to 108
14:50:16 10 because it does talk about Green Valley.
14:50:18 11 THE ARBITRATOR: All right.
14:50:18 12 MR. LEWIN: But he's responding to the --
14:50:21 13 THE ARBITRATOR: Doesn't independently make 107
14:50:24 14 admissible.
14:50:25 15 MR. LEWIN: Okay.
14:50:25 16 THE ARBITRATOR: All right.
14:50:33 17 BY MR. LEWIN:
14:50:33 18 Q. Take a look at 108.
14:50:34 19 A. Okay.
14:50:35 20 Q. Mr. Bidsal talked about -- he says -- he talks
14:50:43 21 about Alex not being with West Coast Investments.
14:50:43 22 Angelo and Henry have taken over the position.
14:50:50 23 Then he goes on. It says "In regard to your
14:50:53 24 question on the sale of the property, our distribution
14:50:55 25 is in accordance with the operating agreement and the

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14:50:57 1 sale," and it goes on. This is dated January 25, 2016.

14:51:00 2 So had you raised a question as to how -- with

14:51:07 3 Mr. Bidsal -- as to how, in terms of the propriety of

14:51:12 4 his distributions, as of January 25, 2016?

14:51:16 5 THE ARBITRATOR: On which property?

14:51:18 6 MR. LEWIN: On Green Valley.

14:51:20 7 THE WITNESS: For the sale?

14:51:20 8 BY MR. LEWIN:

14:51:20 9 Q. Yes.

14:51:21 10 A. Yes.

14:51:21 11 Q. Were any of -- so before this -- January 25,

14:51:26 12 2016, were they oral or in writing?

14:51:28 13 A. I don't know when I started writing letter, but

14:51:35 14 about 2016 I thought that it's better -- I better write

14:51:41 15 a letter about these over-distributions.

14:51:45 16 Q. Can you give His Honor an estimate, if

14:51:48 17 possible -- we don't want you to guess -- as to how many

14:51:49 18 times you broached the subject of the distributions with

14:51:53 19 Mr. Bidsal prior to this January 25, 2016, letter

14:51:57 20 orally?

14:51:58 21 A. Four, five times.

14:52:00 22 Q. Okay. Now, we looked at the -- Mr. Gerrard took

14:52:21 23 you through the 2013 tax return where the allocations

14:52:29 24 from the sale of Building C were 70-30, but you had some

14:52:34 25 other issues with that -- having to do with the thought

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14:52:38 1 that he was over-distributing on other matters?

14:52:40 2 A. Yes.

14:52:41 3 Q. The 2014 tax return you received in 2015?

14:52:44 4 A. Yes.

14:52:47 5 MR. GERRARD: Objection. Leading.

14:52:47 6 THE ARBITRATOR: Overruled. I mean, you already

14:52:51 7 covered that with him.

14:52:53 8 MR. GERRARD: I did, but every question has --

14:52:55 9 THE ARBITRATOR: I know. The foundational stuff,

14:52:58 10 I'm just trying to --

14:53:00 11 MR. GERRARD: I understand. That's why I haven't

14:53:00 12 objected.

14:53:02 13 BY MR. LEWIN:

14:53:02 14 Q. And when did you receive the -- so the 2014 tax

14:53:07 15 return, what sale would that have reflected?

14:53:11 16 A. 2014 was sale of Building D.

14:53:14 17 Q. Okay. And Mr. Gerrard took you through that and

14:53:18 18 showed you how the distributions were made?

14:53:20 19 A. Yes, sir.

14:53:21 20 Q. And the 2000 -- in 2015, when did you get that

14:53:34 21 tax return? When did you get that tax return?

14:53:36 22 MR. GERRARD: I'm sorry. Objection. Vague. I

14:53:38 23 don't know which tax return he's talking about.

14:53:40 24 MR. LEWIN: The 2015 tax return.

14:53:42 25 MR. GERRARD: Oh, okay.

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14:53:42 1 A. Usually we get the tax return later in the year,
14:53:48 2 probably August.
14:53:49 3 BY MR. LEWIN:
14:53:49 4 Q. Were they sent to you electronically or mailed to
14:53:52 5 you?
14:53:52 6 A. We asked them to send electronically. We wrote
14:53:56 7 letter, but they said that they don't have it -- that
14:53:59 8 available and most of the time send by print. And they
14:54:07 9 send by print. The last tax return, Jim Main send it to
14:54:15 10 us by electronically and -- whereas they had told me
14:54:20 11 that they don't have it electronically, we found out
14:54:24 12 they do.
14:54:24 13 Q. So when you got the tax returns, who did they
14:54:26 14 come from?
14:54:27 15 A. Usually it comes from Mr. Bidsal. I think this
14:54:32 16 year, came from Jim Main directly.
14:54:34 17 Q. Even the tax returns that had the letter that
14:54:37 18 said, "Here's your K-1," did those tax returns -- so did
14:54:40 19 you receive the K-1 separately from Main?
14:54:43 20 A. Usually we didn't get K-1. Recently, they have
14:54:46 21 started sending K-1 and it comes -- I believe it comes
14:54:50 22 from Jim Main. I'm not the one who gets them.
14:54:53 23 Q. Okay. So by the time -- when you got
14:54:57 24 Mr. Bidsal's response in Exhibit 108, you had not yet
14:55:01 25 received the 2015 tax return; is that correct?

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14:55:03 1 A. 2015?

14:55:04 2 Q. Yes.

14:55:05 3 A. Oh, according to that letter?

14:55:08 4 Q. The letter that you received from Mr. Bidsal when

14:55:13 5 talking about how -- apparently responding to questions

14:55:16 6 you had about how he was distributing the sales

14:55:20 7 proceeds --

14:55:20 8 A. Are you talking about the --

14:55:20 9 Q. This is January 25, 2016. Okay?

14:55:20 10 A. Uh-huh.

14:55:23 11 Q. Had you received the 2015 tax return as of the

14:55:26 12 date of that letter?

14:55:27 13 A. No.

14:55:28 14 Q. Okay. And the email that Mr. Gerrard showed you

14:55:36 15 of April 2016, the one we just talked about where you

14:55:41 16 said -- about past conversations, had you received the

14:55:43 17 tax return as of the date you wrote that email?

14:55:47 18 A. Is your question I got the tax return on that

14:55:53 19 date?

14:55:53 20 Q. No. Did you -- had you -- by the time you --

14:55:54 21 when you wrote the April 22, 2016, email to Mr. Bidsal,

14:56:04 22 had you received the 2015 tax return?

14:56:07 23 A. I don't think so. They are not that fast.

14:56:10 24 Q. So -- and when you did receive the 2015 tax

14:56:14 25 return, did you object to the distribution?

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14:56:21 1 A. Yeah. Like I said, this was an ongoing thing.

14:56:25 2 Q. So --

14:56:27 3 A. And I apologize to interrupt you, but the gap is

14:56:32 4 becoming more and more.

14:56:34 5 Q. I'm just going to move off of this. I just want

14:56:38 6 to make sure. So you made no objection to the -- you

14:56:41 7 didn't have an objection for 2015, you didn't register

14:56:44 8 an objection for 2014 -- pardon me.

14:56:47 9 You had no objection to the 2013 tax return

14:56:50 10 regarding Building C. You didn't do anything with

14:56:52 11 respect to the sale of Building E except possibly talk

14:56:56 12 to Mr. Bidsal?

14:56:57 13 MR. GERRARD: Objection. Leading.

14:56:58 14 THE ARBITRATOR: Sort of, but --

14:57:01 15 MR. LEWIN: And I'm not finished yet.

14:57:03 16 THE ARBITRATOR: Yeah, it's still kind of

14:57:04 17 leading. But go ahead.

14:57:06 18 BY MR. LEWIN:

14:57:06 19 Q. And you -- you did object to the 2015 tax return

14:57:10 20 regarding Building B. Is that the -- is that how that

14:57:13 21 all played out?

14:57:13 22 THE ARBITRATOR: I'm going to overrule the

14:57:15 23 objection.

14:57:16 24 A. That's right.

14:57:16 25 ///

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14:57:17 1 BY MR. LEWIN:

14:57:17 2 Q. Oh -- I'll come back to that. Look at

14:57:40 3 Exhibit 12. I just have a few more questions.

14:58:02 4 A. Okay.

14:58:02 5 Q. Mr. Gerrard asked you a number of questions about

14:58:06 6 the fact that this reflected interest income. Did you

14:58:22 7 know where that -- did Mr. Bidsal explain to you the

14:58:25 8 source of that interest income in 2011?

14:58:28 9 A. No.

14:58:29 10 Q. How about 2012?

14:58:31 11 A. What source of income in 2012?

14:58:35 12 Q. Well, there was interest income that Mr. Gerrard

14:58:39 13 was asking you questions about.

14:58:40 14 THE ARBITRATOR: I don't see interest there.

14:58:40 15 MR. LEWIN: Maybe I have the wrong --

14:58:42 16 THE ARBITRATOR: Oh, wait. There it is.

14:58:43 17 Interest income on Schedule K of Exhibit 12. All right.

14:58:47 18 A. 2011 has interest income.

14:58:54 19 BY MR. LEWIN:

14:58:54 20 Q. Have you now -- have you since learned where that

14:58:59 21 interest -- where some of that interest income was

14:59:02 22 generated from?

14:59:03 23 A. Pardon me?

14:59:05 24 Q. Since you received this tax return in 2012, I

14:59:11 25 take it; right?

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14:59:12 1 A. About, yeah.

14:59:13 2 Q. Okay. Have you learned what generated that
14:59:19 3 interest income?

14:59:27 4 A. I learned -- well, I knew that some money was
14:59:30 5 coming from the previous owner. Okay? And I had
14:59:36 6 accepted it as though -- because it says here "interest"
14:59:41 7 as interest. Years later, when I got the general
14:59:48 8 ledger -- we used to ask for general ledger and they
14:59:51 9 said, "We never send general ledger." We have letters
14:59:54 10 to that effect.

14:59:55 11 But when Jim Main gave it to me, and then we
14:59:59 12 wanted to find out -- reconcile the escrow with the
15:00:05 13 accounting, we realized that the money that the previous
15:00:09 14 owner gave to us in the second escrow, it -- they
15:00:17 15 divided it into two segments. One segment, they call it
15:00:20 16 interest and the other segment, which was \$34,000, they
15:00:25 17 considered it to be a return of capital, plus \$57,000 or
15:00:31 18 change on that that they received from the previous
15:00:38 19 owner. And they deduce -- they considered it to be a
15:00:43 20 return of capital. All right?

15:00:45 21 Now, I understand from what Mr. Bidsal said that
15:00:51 22 that interest that they -- was reported there was wrong.
15:00:55 23 And they did not get that interest. But the 295-, there
15:01:02 24 is no doubt that we received that. The books shows and
15:01:09 25 the escrow shows that we received one lump sum of

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15:01:13 1 \$345,000, which was the deposit, rent deposit, plus that
15:01:28 2 295,000, minus the cost of the escrow.
15:01:32 3 **Q. But my question is: When did you learn this?**
15:01:36 4 A. Recently. I mean, before the last year when I
15:01:39 5 started getting the papers from Jim Main.
15:01:43 6 **Q. We talked about -- you're talking about the**
15:01:45 7 **production that Mr. Main made?**
15:01:47 8 A. Yes, sir.
15:01:48 9 **Q. And he talked about the general ledger?**
15:01:53 10 A. General ledger, yes. There was a general ledger
15:01:56 11 that was the deed in lieu, and there were other
15:02:01 12 documents that we put together, spend a lot of time to
15:02:08 13 go sort them out.
15:02:09 14 **Q. Just to wrap this up, please take a look at**
15:02:24 15 **Exhibit 95. This is the general ledger as of**
15:02:38 16 **December 31, 2001. It was produced by Mr. Main, his**
15:02:40 17 **company. Document No. 3641 and 3642.**
15:02:48 18 A. Yes.
15:02:49 19 **Q. Looking at the second page -- by the way, in**
15:02:58 20 **2011-2012, who was doing the accounting work for Green**
15:03:03 21 **Valley? I mean, not the accountant, but who between you**
15:03:06 22 **and Mr. Bidsal?**
15:03:07 23 A. It was done in-house from -- in the -- not --
15:03:11 24 Mr. Bidsal office, and then Jim Main as a CPA would do
15:03:16 25 the taxes.