

**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 28**

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# **EXHIBIT 266**

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

ARBITRATION, DAY 3

March 19, 2021

Job Number: 735327

1 JAMS  
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

15 DAY 3

16 ARBITRATION

17 BEFORE DAVID WALL, ESQ., ARBITRATOR

18 LAS VEGAS, NEVADA

19 FRIDAY, MARCH 19, 2021

20

21 Reported By Kele R. Smith, NV CCR No. 672, CA CSR No.  
13405

22 Job No. 735327

23

24

25

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1 JAMS ARBITRATION,  
2 taken at 3800 Howard Hughes Parkway, Eleventh Floor, Las  
3 Vegas, Nevada, on Friday, March 19, 2021, at 8:41 a.m.,  
4 before Kele R. Smith, Certified Court Reporter, in and  
5 for the State of Nevada.

6

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23

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BENJAMIN GOLSHANI

25

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1 LAS VEGAS, NEVADA; FRIDAY, MARCH 19, 2021

2 8:41 A.M.

3 -oOo-

4 ARBITRATOR WALL: Okay. So Mr. Bidsal, I'm not  
5 going to re-swear you in. You've already begun your  
6 testimony. Do you realize you are still under oath?

7 THE WITNESS: Yes, Your Honor.

8 ARBITRATOR WALL: All right.

9 All right, Mr. Shapiro.

10 MR. SHAPIRO: Thank you.

11 CONTINUED EXAMINATION

12 BY MR. SHAPIRO:

13 Q. All right. Shawn, when we left off your  
14 testimony two days ago, we were talking about the Green  
15 Valley Center Owners Association. I'd like to have you  
16 take a quick look at Exhibit 7, and specifically I want  
17 you to go to Page 7 of that document, which is Bates  
18 stamped 1361.

19 A. Okay.

20 Q. What rights do these CC&Rs give each owner in the  
21 common areas of the property?

22 MR. LEWIN: Objection. The document speaks for  
23 itself.

24 ARBITRATOR WALL: You're asking for his  
25 understanding?



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08:43:06 1 MR. SHAPIRO: Well, yeah. I'm just asking -- he  
08:43:09 2 testified he's the one -- you know, he was in charge of  
08:43:13 3 preparing and recording these. So yeah. What's his  
08:43:16 4 understanding? What's in the document?

08:43:18 5 ARBITRATOR WALL: All right. I'll allow it.

08:43:21 6 A. So basically the parking lot is considered a  
08:43:24 7 service lot servicing the owners of the buildings.  
08:43:31 8 There are eight of them. And this is used for multiple  
08:43:39 9 purposes: for ingress, egress, underground easements,  
08:43:44 10 signage, and so forth. Basically the current GVC, the  
08:43:48 11 Green Valley Commerce, while the Green Valley is in  
08:43:53 12 charge as a declarant, it manages the parking lot and  
08:44:00 13 charges back the expenses of the parking lot to each  
08:44:03 14 owner.

08:44:04 15 BY MR. SHAPIRO:

08:44:04 16 Q. Okay. So in Section 3.1 they have a parking  
08:44:08 17 easement. Correct?

08:44:09 18 A. Yes.

08:44:09 19 Q. And then in 3.2 there's an access easement?

08:44:13 20 A. Yes.

08:44:13 21 Q. 3.3 is a utility easement?

08:44:17 22 A. Yes.

08:44:17 23 Q. Then there's some additional easements. We'll  
08:44:21 24 skip over. 3.6 there's actually a sign easement?

08:44:24 25 A. Yes.

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08:44:25

1 Q. And a drainage easement. Correct?

08:44:33

2 And do the owners of Buildings B, C, and E, do

08:44:37

3 they get the benefits of these rights, these easements?

08:44:41

4 A. Yes, they do. It's actually spelled out in their  
5 grant deed.

08:44:45

08:44:46

6 Q. Now, we previously looked at Section 2.10 of the

08:44:50

7 deed in lieu agreement. That's been discussed by a

08:44:55

8 number of witnesses. In that -- you can go there if you

08:44:57

9 need, but in that, American Nevada Realty was -- or GVC,

08:45:00

10 Green Valley Commerce, agreed to hire American Nevada

08:45:02

11 Realty to manage the property. Is that correct?

08:45:05

12 A. Yes.

08:45:06

13 Q. Who was in charge of the books and records while

08:45:11

14 American Nevada Realty was managing the property in

08:45:16

15 2011?

08:45:16

16 A. It was American Nevada.

08:45:19

17 Q. And there was some discussion about a 2011

08:45:27

18 general ledger, which is Exhibit 95 if you'd like to

08:45:30

19 turn to that. I don't know which binder book it's in,

08:45:33

20 but do you recall the 2011 general ledger that's been

08:45:37

21 discussed?

08:45:37

22 A. Yes.

08:45:38

23 Q. Okay. Did you prepare that document?

08:45:40

24 A. No.

08:45:41

25 Q. Who prepared that?

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08:45:43 1 A. American Nevada.

08:45:45 2 Q. And when did you take over the management of the

08:45:48 3 property from American Nevada?

08:45:51 4 A. Sometimes in 2012. I don't recall exactly. I

08:45:56 5 would say in mid-2012.

08:45:58 6 Q. Mid? Is that what you said?

08:46:00 7 A. Yes.

08:46:01 8 Q. Okay. I'd like for you to turn to Exhibit 52.

08:46:12 9 MR. SHAPIRO: I don't know if you have

08:46:15 10 Exhibit 52. Let me see here. It's probably going to be

08:46:22 11 Binder 2. There's 54, so it's probably this one.

08:46:27 12 ARBITRATOR WALL: 52?

08:46:28 13 MR. GERRARD: 52.

08:46:42 14 BY MR. SHAPIRO:

08:46:42 15 Q. Are you at Exhibit 52?

08:46:45 16 A. Yes.

08:46:45 17 Q. Exhibit 52 comprises two pages. Can you tell me

08:46:49 18 what those pages are?

08:46:50 19 A. It's the Clark County treasurer, first page, and

08:46:58 20 the second page is the map of the Green Valley Commerce

08:47:04 21 project site plan.

08:47:06 22 Q. Looking at the first page, someone has written in

08:47:10 23 A, E, F, G, H -- and I can't even tell what that last

08:47:15 24 one is.

08:47:15 25 ARBITRATOR WALL: CA, common area.

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08:47:17 1 MR. SHAPIRO: CA. There we go.

08:47:19 2 ARBITRATOR WALL: Perhaps.

08:47:20 3 A. Where are you looking at?

08:47:22 4 ARBITRATOR WALL: On the right side in the last

08:47:25 5 column of the first page.

08:47:31 6 BY MR. SHAPIRO:

08:47:31 7 **Q. Go to the right.**

08:47:33 8 ARBITRATOR WALL: Under location address.

08:47:35 9 BY MR. SHAPIRO:

08:47:36 10 **Q. Do you see those handwritten letters?**

08:47:39 11 A. Oh, yes. I got it.

08:47:41 12 **Q. Okay.**

08:47:41 13 ARBITRATOR WALL: Hold on.

08:47:43 14 Mr. Lewin, you there.

08:47:46 15 MR. LEWIN: Oh, I see. Yes. Thank you.

08:47:47 16 BY MR. SHAPIRO:

08:47:48 17 **Q. Do you know what those letters represent?**

08:47:49 18 A. Yeah. Those are like a building designation. A,

08:47:55 19 B, C, D, and then the CA is the parking lot.

08:47:56 20 **Q. Okay. And then if you turn the page, does this**

08:48:00 21 **designate which buildings are Buildings A, B, C, D, E,**

08:48:06 22 **F?**

08:48:07 23 A. Yes.

08:48:09 24 **Q. And is that designation correct? So as you've**

08:48:12 25 **heard witnesses talk about Building C, is that the**

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08:48:16 1 building designated on the second page as C?

08:48:25 2 ARBITRATOR WALL: It's pretty light, but yeah.

08:48:28 3 A. Yes.

08:48:28 4 BY MR. SHAPIRO:

08:48:28 5 Q. And Building B, you know, there's been some

08:48:32 6 testimony that Building B was sold. Is the Building B

08:48:35 7 designated on this page the correct building?

08:48:38 8 A. Yes.

08:48:40 9 Q. Okay.

08:48:41 10 MR. SHAPIRO: Your Honor, I'd move for the

08:48:44 11 admission of Exhibit 52.

08:48:46 12 MR. LEWIN: No objection.

08:48:48 13 ARBITRATOR WALL: All right. 52. 52 will be

08:49:14 14 admitted.

08:49:15 15 (Exhibit 52 admitted into evidence.)

08:49:15 16 BY MR. SHAPIRO:

08:49:15 17 Q. I'm going to go back to the first exhibit binder

08:49:19 18 and draw your attention to Exhibit 12. This is the 2011

08:49:32 19 tax return. Correct?

08:49:33 20 A. Yes.

08:49:34 21 Q. Did you send a copy of this tax return to Ben?

08:49:38 22 A. Yes.

08:49:38 23 Q. Did you send the K-1s to Ben?

08:49:41 24 A. Yes.

08:49:42 25 Q. Did Ben ever inform you that there were any

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08:49:45 1 inaccuracies in the way that the company income or  
08:49:48 2 revenue was allocated or distributed?  
08:49:52 3 A. No.  
08:49:53 4 Q. Can you please turn to Bates stamp 2341, which I  
08:50:04 5 believe is your K-1?  
08:50:08 6 A. (Complied.)  
08:50:09 7 Q. Did you include and pay taxes on all the income  
08:50:12 8 and distributions identified on your K-1 in your  
08:50:15 9 personal tax returns for 2011?  
08:50:17 10 A. Yes.  
08:50:18 11 Q. Can you please turn to Exhibit 18?  
08:50:22 12 A. (Complied.)  
08:50:30 13 Q. Now, this is the Cost Segregation Study.  
08:50:36 14 Correct?  
08:50:36 15 A. Yes.  
08:50:36 16 Q. And when did you commission the Cost Segregation  
08:50:41 17 Study?  
08:50:41 18 A. I don't recall exact date, but it should be  
08:50:46 19 sometime in 2013, early.  
08:50:52 20 Q. And what was the reason that you commissioned it?  
08:50:54 21 A. It's basically serves two purpose. One is to do  
08:51:00 22 cost allocation of each improvement and land for the  
08:51:07 23 subdivision, and it also provides a depreciation  
08:51:16 24 schedule that basically breaks the surplus of land and  
08:51:25 25 then breaks the buildings into building categories of

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08:51:28 1 depreciation as short-term, midrange and long-term  
08:51:30 2 depreciation, like 5-year, 15-year, and 30-year.

08:51:35 3 **Q. Does completing a Cost Segregation Study allow**  
08:51:39 4 **you to take advantage of some tax benefits?**

08:51:43 5 A. Yes. Basically, once you do that, you can  
08:51:46 6 accelerate the depreciation under short-term items on a  
08:51:51 7 property. So for example, carpet, air-conditioning and  
08:51:56 8 if it's a stove, refrigerator. Depending on the type of  
08:52:02 9 property, they will have a shorter lifespan so you can  
08:52:07 10 depreciate them faster.

08:52:07 11 **Q. So even if the original intent was to keep all of**  
08:52:10 12 **the buildings, was there still a reason to commission a**  
08:52:13 13 **Cost Segregation Study?**

08:52:15 14 A. Of course.

08:52:16 15 **Q. Was Ben aware that this was being commissioned?**

08:52:18 16 A. Yes.

08:52:19 17 **Q. Did he ever disagree or object to it?**

08:52:22 18 A. No.

08:52:22 19 **Q. Can you please turn to the last page -- actually,**  
08:52:33 20 **the second-to-last page of the study which is Exhibit 18**  
08:52:42 21 **and tell me what that document is?**

08:52:45 22 A. (Complied.)

08:52:46 23 **Q. You're not going to need that binder.**

08:53:03 24 A. This is the tax asset allocation 2011 from the  
08:53:11 25 tax return for Green Valley Commerce.

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08:53:14

1 Q. And then the last page?

08:53:20

2 A. That's the recast of the same document subject to

08:53:26

3 cost segregation. It's done with cost segregation.

08:53:28

4 Q. Okay. So is this where you -- where the

08:53:32

5 allocation to each individual lot is designated?

08:53:39

6 A. Yes.

08:53:40

7 Q. Now, at some point, clearly, a decision was made

08:53:51

8 to sell some of the buildings. Correct?

08:54:00

9 A. Yes.

08:54:00

10 Q. At what point in time was that decision made?

08:54:07

11 A. Sometime in -- before we listed in 2012.

08:54:13

12 Q. Okay. And I lied about not needing the other

08:54:18

13 one. Can you turn to Exhibit 50?

08:54:22

14 A. (Complied.)

08:54:27

15 Q. Tell me when you're there.

08:54:29

16 A. I'm there.

08:54:30

17 Q. Now, the top Email is not the one I'm focusing

08:54:38

18 on. I draw your attention to the Email header about

08:54:42

19 halfway down the page. Do you see where it says there

08:54:44

20 was an Email from Jeff Chain to <https://protect-us.mimecast.com/s/rcZ3CPNJLAc3qE4IzTu6r?domain=yahoo.com>

08:54:50

21 A. Yes.

08:54:51

22 Q. And the date of that Email is August 13th, 2012.

08:54:54

23 Correct?

08:54:54

24 A. Yes.

08:54:55

25 Q. Is that your Email address?



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08:54:56

1 A. Yes.

08:54:57

2 Q. And it appears while there's some documents

08:55:02

3 behind this first page, are these documents, were they

08:55:05

4 attached to that Email?

08:55:10

5 A. Probably. Yes.

08:55:22

6 Q. Is this the first -- well, tell me what this

08:55:27

7 Email -- why did Jeff Chain Email this information to

08:55:31

8 you?

08:55:31

9 A. Jeff Chain did an analysis on valuations, the

08:55:39

10 BOV -- Brokers Opinion of Value -- for Green Valley

08:55:45

11 Commerce. And, you know, I was talking to Ben and

08:55:51

12 discussing eventually selling them, so he made the

08:55:54

13 flyers with the income and expense of each building so

08:55:58

14 that we can go to market and sell.

08:56:02

15 Q. Now, the date of that Email is August 13th, 2012,

08:56:06

16 which is almost one year after you obtained title to the

08:56:09

17 property. Correct?

08:56:10

18 A. Yes.

08:56:10

19 Q. Had you made any efforts prior to August of 2012

08:56:16

20 to sell any of the properties?

08:56:19

21 A. No. I mean, there could be other E-mails in that

08:56:31

22 timeframe, but no.

08:56:32

23 Q. Was Ben still hesitant at this point to sell any

08:56:36

24 of the buildings or was he on board with the idea?

08:56:39

25 A. By this time he was on board.

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08:56:43 1 Q. Now, you ultimately sold Building C in  
08:56:49 2 September 2012. Correct?  
08:56:50 3 A. Yes.  
08:56:51 4 MR. SHAPIRO: Actually, Your Honor, I'd move for  
08:56:53 5 the admission of Exhibit 50.  
08:56:55 6 MR. LEWIN: No objection.  
08:56:57 7 ARBITRATOR WALL: All right. 50 will be  
08:56:59 8 admitted.  
08:57:05 9 (Exhibit 50 was admitted into evidence.)  
08:57:05 10 BY MR. SHAPIRO:  
08:57:06 11 Q. Can you turn back to Exhibit 13 with me?  
08:57:09 12 A. (Complied.)  
08:57:15 13 ARBITRATOR WALL: Back to what?  
08:57:16 14 MR. SHAPIRO: 13. 1-3.  
08:57:20 15 BY MR. SHAPIRO:  
08:57:20 16 Q. Now this is the closing statement on the sale of  
08:57:22 17 Building C. Correct?  
08:57:23 18 A. Yes.  
08:57:28 19 Q. Did Ben approve the sale of Building C?  
08:57:32 20 A. Yes.  
08:57:32 21 Q. And what was the sales price?  
08:57:36 22 A. 1,025,000.  
08:57:38 23 Q. What was the total amount that Green Valley  
08:57:42 24 Commerce received as a result of the sale?  
08:57:43 25 A. Total proceeds was 898,629.

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08:57:54 1 Q. What did you do with those proceeds?

08:57:56 2 A. The proceeds went into an IPX 1031 exchange

08:58:03 3 company.

08:58:03 4 Q. Did all the proceeds go there?

08:58:06 5 A. Eventually, yeah.

08:58:06 6 Q. Had you identified any replacement purchase

08:58:09 7 property at that time?

08:58:10 8 A. No.

08:58:10 9 Q. When did you ultimately identify a replacement

08:58:14 10 property?

08:58:17 11 A. I don't recall, but sometime after.

08:58:19 12 Q. Turn to Exhibit 17.

08:58:23 13 A. (Complied.)

08:58:26 14 Q. Now, this is the closing statement on the

08:58:29 15 purchase of the Arizona property. Correct?

08:58:33 16 A. Yes.

08:58:34 17 Q. And when did that property close?

08:58:40 18 A. Um, sometime -- I'm looking at the settlement

08:58:47 19 date and the print date. Sometime around 3/8/2013.

08:58:54 20 Q. After the purchase of the Arizona property, was

08:58:54 21 there money left over from the sale of Building C?

08:58:57 22 ARBITRATOR WALL: Did you say March of 2013 is

08:59:01 23 when the Greenway was closed?

08:59:04 24 THE WITNESS: Yes.

08:59:07 25 ARBITRATOR WALL: All right.

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08:59:15 1 THE WITNESS: I'm sorry. What was the question? Page 640  
08:59:17 2 BY MR. SHAPIRO:  
08:59:17 3 Q. The question is: Was there money left over from  
08:59:20 4 the sale of Building C after your purchased the Arizona  
08:59:24 5 property?  
08:59:24 6 A. Yes.  
08:59:30 7 Q. And did you have any conversations with Ben about  
08:59:33 8 what to do with the leftover funds?  
08:59:36 9 A. Yes.  
08:59:36 10 Q. What conversations did you have with him?  
08:59:39 11 A. How to break it up and distribute it.  
08:59:44 12 Q. Turn to Exhibit 14. Do you know who prepared  
08:59:54 13 Exhibit 14?  
08:59:56 14 A. This was prepared by my office.  
09:00:04 15 Q. Okay. And when you were talking to Ben about how  
09:00:06 16 to -- what to do with the excess proceeds, what was  
09:00:12 17 decided about how to split those proceeds up?  
09:00:16 18 A. Well, we talked about when we are selling these  
09:00:19 19 buildings one at a time, how we going to distribute the  
09:00:24 20 proceeds. So basically we had the tax cost allocation,  
09:00:30 21 and they would take the -- well, in this case it was  
09:00:35 22 exchange, but what --  
09:00:37 23 Q. Let's focus on this other one. We'll talk about  
09:00:39 24 the other ones later.  
09:00:41 25 A. Right. Whatever is left over of the cost base we

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09:00:47 1 will distribute 30/70 as a return of capital, and  
09:00:51 2 whatever was the actual profit on the property, it was  
09:00:54 3 rolled up into the new building.

09:01:00 4 **Q. Did you have any understanding with Ben**  
09:01:04 5 **regarding -- at the time you purchased the Arizona**  
09:01:07 6 **property, did you contemplate selling additional**  
09:01:10 7 **properties?**

09:01:12 8 A. By that time, yes, I had discussions with Ben  
09:01:16 9 about it and actually prior to the sale of the Building  
09:01:22 10 C.

09:01:22 11 **Q. Okay. And did you have any -- I mean, prior to**  
09:01:24 12 **that point, did you have any understanding with Ben**  
09:01:26 13 **about just generally how proceeds would be distributed?**

09:01:30 14 A. Yes. We talked about it.

09:01:32 15 **Q. Okay.**

09:01:32 16 A. So basically each building would be -- because by  
09:01:38 17 that time we had the so-called tax allocation, so we  
09:01:47 18 would distribute the tax cost allocation 30/70 between  
09:01:53 19 the partners, and the balance of it would be -- the  
09:01:55 20 profit would be split 50/50.

09:01:56 21 **Q. And that was something that you specifically**  
09:01:58 22 **discussed with Ben?**

09:01:59 23 A. Yes, I did.

09:02:00 24 **Q. Did Ben agree to it?**

09:02:01 25 A. Yes.

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09:02:02  
09:02:04  
09:02:04  
09:02:06  
09:02:07  
09:02:17  
09:02:21  
09:02:23  
09:02:24  
09:02:27  
09:02:31  
09:02:36  
09:02:40  
09:02:47  
09:02:51  
09:02:52  
09:02:57  
09:03:03  
09:03:07  
09:03:10  
09:03:13  
09:03:15  
09:03:20  
09:03:25  
09:03:29

1 Q. Did he have any concerns with it?

2 A. No.

3 Q. Did he raise any objections to it?

4 A. No.

5 Q. All right. Going back to Exhibit 14, you heard

6 Chris Wilcox provide his explanation of what happened or

7 what this page depicts. Correct?

8 A. Yes.

9 Q. Did he accurately describe what you and your

10 office did in calculating the distributions?

11 A. Yes, but there was one more explanation that I

12 need to make. So net gain, that's just a subtraction of

13 the selling of Building C minus buying the Greenway. So

14 that's how the additions went -- I mean the subtractions

15 went.

16 Q. Okay. But at the end of the day you split all of

17 the proceeds -- the remaining 95,000 and change 70/30

18 why?

19 A. That was based on my discussions with Ben, and

20 that was the right way to do it. That was the fair way

21 to do it. This was the leftover of the base, of the

22 cost base of Building C, because we rolled over all the

23 profit into the new -- from the relinquished property to

24 the replacement property. That's the terminology on

25 1031. That was the leftover of that money.

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09:03:31 1 Q. And when you were talking to Ben about how to  
09:03:35 2 split the proceeds on the 95,000, did you guys have any  
09:03:41 3 discussion about Exhibit B and the special allocation  
09:03:44 4 waterfall language there?

09:03:46 5 A. Yes, we talked about how to distribute this --  
09:03:54 6 well, it was before even the selling we had discussion  
09:03:57 7 of how to distribute the proceeds. And we agreed that  
09:04:02 8 this doesn't fall into the waterfall allocation --  
09:04:07 9 preferred allocation, so we would take these properties  
09:04:12 10 distinctly and we treat them like an individual sale,  
09:04:20 11 return the capital associated with the property on a  
09:04:24 12 30/70 basis, and then the balance of it would be  
09:04:26 13 distributed 50/50.

09:04:28 14 Q. Did you send him the breakdown of how you  
09:04:40 15 allocated each time that you distributed proceeds from  
09:04:46 16 the sale of the properties?

09:04:47 17 A. Yes. We generate -- this is generated in the  
09:04:51 18 office, and we usually -- I think at that time I think  
09:04:55 19 it was Alex. So he would send it to Ben, and if he  
09:05:02 20 okayed it, then we cut the checks.

09:05:05 21 Q. So you're saying he would send this breakdown to  
09:05:09 22 Ben prior to the time that the checks were cut?

09:05:11 23 A. Usually we did that. We get a consent.

09:05:14 24 Q. And then when you send the checks out, did you  
09:05:16 25 send a copy of it?

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09:05:17 1 A. Yes.

09:05:18 2 Q. And why did you send a copy of it?

09:05:20 3 A. So for whoever receives it has an understanding

09:05:23 4 of what the breakdowns are.

09:05:24 5 Q. All right. So if you turn to the next couple of

09:05:27 6 pages in Exhibit 14, there are some checks in there.

09:05:32 7 Correct? Some check stubs, I should say. Was it you or

09:05:37 8 your office that actually prepared these checks?

09:05:40 9 A. It's my office, but I sign them.

09:05:43 10 Q. You sign the checks. And so when you sent these

09:05:46 11 checks out, a copy of this breakdown was attached to the

09:05:50 12 checks?

09:05:50 13 A. Yes.

09:05:51 14 Q. Now, I want you to turn to Exhibit 57. You may

09:06:07 15 not have that. Tell me if you have Exhibit 57.

09:06:11 16 A. I do have it.

09:06:12 17 Q. You do have it? Okay.

09:06:18 18 MR. SHAPIRO: Not all the binders lined up the

09:06:21 19 same as far as which binder the exhibits were in. We'll

09:06:25 20 go ahead and wait until Rod gets there.

09:06:40 21 Are you there, Rod?

09:06:41 22 MR. LEWIN: I am.

09:06:43 23 BY MR. SHAPIRO:

09:06:44 24 Q. What is Exhibit 57?

09:06:45 25 A. That's the grant deed for the sale of Building C.



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09:06:48 1 Q. And did this deed convey any right to the new  
09:06:51 2 owner with respect to the parking lot, driveways, and  
09:06:54 3 common areas?

09:06:54 4 A. Yes, it did.

09:06:56 5 Q. Could you point out where that occurred?

09:06:58 6 A. On Page 1 of the grant deed there is Subject 2.  
09:07:02 7 No. 2 it says: Covenants, restrictions --  
09:07:02 8 (Court reporter clarification.)  
09:07:16 9 (Discussion off the record.)

09:07:16 10 ARBITRATOR WALL: It says: "Covenants,  
09:07:17 11 restrictions, conditions, reservations, rights,  
09:07:21 12 rights-of-way, and easements now of record, if any, or  
09:07:26 13 any that actually exist on the property."

09:07:29 14 A. In addition to the next sentence that says:  
09:07:31 15 "Together with all singular tenements," etc., etc.  
09:07:36 16 So...

09:07:37 17 And then on Page 3 of the grant deed, it says  
09:07:49 18 Parcel 3. That's the nonexclusive right to the parking  
09:07:54 19 lot.

09:07:54 20 BY MR. SHAPIRO:

09:07:54 21 Q. Just to clarify, you're on the document Bates  
09:07:58 22 stamped Bidsal 1457?

09:07:59 23 A. I'm looking at it, if you give me a minute.

09:08:02 24 Q. The Bates stamp at the bottom?

09:08:04 25 A. Yes.

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09:08:05 1 Q. Okay. And then you referenced Parcel 3.

09:08:11 2 Correct?

09:08:11 3 A. Yes.

09:08:11 4 Q. And Parcel 3 references a document that was

09:08:16 5 recorded on March 16, 2012 in Book 2012/03/16 as

09:08:22 6 Document 01304. Correct?

09:08:25 7 A. Yes.

09:08:26 8 Q. And if you look at the CC&Rs which are Exhibit 7,

09:08:34 9 is that the same recording information as the CC&Rs?

09:08:48 10 Exhibit 7. You're not in the front of the page. There

09:08:53 11 you go.

09:08:54 12 ARBITRATOR WALL: Wait. What did you just

09:08:56 13 compare this to?

09:08:58 14 MR. GERRARD: The CC&Rs. The recording stamp.

09:09:01 15 ARBITRATOR WALL: The recording stamp on

09:09:03 16 Exhibit 57?

09:09:04 17 MR. SHAPIRO: No, on Exhibit 57 I'm looking at

09:09:06 18 the recording information identified in Parcel 3 at the

09:09:10 19 bottom of Parcel 3.

09:09:12 20 MR. GERRARD: Legal description.

09:09:13 21 MR. SHAPIRO: It says -- the second-to-last

09:09:18 22 sentence says: Covenants and restrictions recorded

09:09:20 23 March 16th, 2012 in Book --

09:09:24 24 ARBITRATOR WALL: Okay. I got you.

09:09:26 25 MR. SHAPIRO: Okay.

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09:09:26 1 BY MR. SHAPIRO:

09:09:26 2 Q. If you compare that to the first page of

09:09:28 3 Exhibit 7, so Shawn, is that the same recording

09:09:32 4 information as the CC&Rs that are already in evidence as

09:09:35 5 Exhibit 7?

09:09:36 6 A. Yes.

09:09:36 7 Q. So this deed specifically referenced these CC&Rs

09:09:41 8 and specifically granted to the owner the rights covered

09:09:44 9 by these CC&Rs. Correct?

09:09:46 10 A. And to the parking lot, yes.

09:09:50 11 Q. Yes. Well, that included the parking lot, the

09:09:52 12 signs, the utilities. Everything. Access. Right?

09:09:58 13 A. Yes.

09:09:58 14 Q. Okay.

09:09:59 15 MR. SHAPIRO: Your Honor, I'd move for the

09:10:01 16 admission of Exhibit 57.

09:10:06 17 MR. LEWIN: No objection.

09:10:07 18 ARBITRATOR WALL: All right. 57 will be

09:10:10 19 admitted.

09:10:12 20 (Exhibit 57 was admitted into evidence.)

09:10:12 21 BY MR. SHAPIRO:

09:10:12 22 Q. Okay. Turning your attention to Exhibit 15,

09:10:24 23 these are the 2012 tax returns. Correct?

09:10:27 24 A. Yes.

09:10:27 25 Q. Did you or your office send a copy of these tax

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09:10:30 1 returns to Ben?

09:10:31 2 A. Yes.

09:10:32 3 Q. Do you know when would you have sent those? I

09:10:36 4 don't know if you remember exactly, but maybe you do,

09:10:37 5 but when would you have sent those?

09:10:40 6 A. As soon as they get prepared by the CPA, they

09:10:43 7 send them. Also, the CPA sends them directly to the

09:10:47 8 partners, so partners receive the tax returns and K-1s

09:10:53 9 also from the CPA's office.

09:10:55 10 Q. Ans did Ben ever inform you that there are any

09:10:59 11 inaccuracies in the way that the company income or

09:11:03 12 revenue was allocated or distributed?

09:11:06 13 A. No.

09:11:06 14 Q. Can you please turn to document Bates stamped

09:11:10 15 2550, which should be your K-1? Tell me when you're

09:11:22 16 there.

09:11:22 17 A. Okay.

09:11:22 18 Q. Did you include and pay taxes on all income and

09:11:27 19 distributions identified on this K-1 in your personal

09:11:31 20 tax return for 2012?

09:11:34 21 A. Yes.

09:11:34 22 Q. If you could turn to Exhibit 16, do you know who

09:11:41 23 prepared this document?

09:11:42 24 A. This is prepared by Jim Main's office. It's a

09:11:51 25 K-1 addressed to CLA Properties and mailed to their Los

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09:12:00 1 Angeles office address, 2801 South Main Street.

09:12:03 2 Q. So Jim Main would have been the one that sent

09:12:07 3 that, not you?

09:12:08 4 A. Yes. This is Jim Main's accompanied by a letter

09:12:12 5 and then the K-1.

09:12:13 6 Q. Can you turn to Exhibit 19? This is the 2013 tax

09:12:24 7 returns. Correct?

09:12:24 8 A. Yes.

09:12:24 9 Q. Did you send these to Ben?

09:12:29 10 A. Yes.

09:12:29 11 Q. Did you ever have any conversations with Ben

09:12:32 12 regarding the 2013 tax returns? Just generally? Did

09:12:38 13 you ever talk to him about it? Do you know if he

09:12:40 14 received them?

09:12:41 15 A. We mailed it, so I'm assuming he received it.

09:12:45 16 Q. Did Ben ever inform you that there were any

09:12:49 17 inaccuracies in the way the company income or revenue

09:12:56 18 was allocated or distributed?

09:12:59 19 MR. LEWIN: Excuse me. The question is vague.

09:13:01 20 ARBITRATOR WALL: How?

09:13:01 21 MR. LEWIN: The issue is did he ever inform you?

09:13:04 22 I think he's talking about the tax return.

09:13:07 23 ARBITRATOR WALL: Right. I mean, ever, like, up

09:13:08 24 to today?

09:13:09 25 MR. SHAPIRO: Right.

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09:13:10 1 MR. LEWIN: Okay.

09:13:12 2 ARBITRATOR WALL: Not vague.

09:13:22 3 You can answer.

09:13:23 4 A. I don't think so. I mean, aside from this

09:13:25 5 arbitration.

09:13:26 6 BY MR. SHAPIRO:

09:13:31 7 Q. Generally speaking, did there ever come a point

09:13:34 8 in time when Ben started raising questions or concerns

09:13:38 9 about the tax returns?

09:13:39 10 A. I don't recall about tax returns but he start

09:13:46 11 sending E-mails in 2016.

09:13:48 12 Q. Okay. So at any time prior to 2016 did Ben ever

09:13:54 13 inform you that there were any inaccuracies in the way

09:13:58 14 that the company income or revenue was allocated or

09:14:02 15 distributed in the 2013 tax returns?

09:14:06 16 A. No.

09:14:06 17 Q. I'll draw your attention to Exhibit 22. What is

09:14:16 18 Exhibit 22?

09:14:16 19 A. That's the escrow closing for Building E.

09:14:34 20 Q. And when did that transaction close?

09:14:37 21 A. 11/13/2014. I'm reading off the closing

09:14:44 22 statement.

09:14:44 23 Q. Does that sound right to you?

09:14:46 24 A. Yeah.

09:14:46 25 Q. And what was the sales price?

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09:14:48 1 A. The gross sales price was 850. 850,000. Page 651

09:15:02 2 **Q. How much did Green Valley receive --**

09:15:09 3 ARBITRATOR WALL: Wait, wait, wait.

09:15:09 4 THE REPORTER: I did not hear the number.

09:11:55 5 THE WITNESS: The gross sales price was \$850,000.

09:15:14 6 BY MR. SHAPIRO:

09:15:14 7 **Q. How much did Green Valley receive from the sale**

09:15:14 8 **of Building E?**

09:15:14 9 A. 797,543.

09:15:14 10 **Q. And did you feel that this sale triggered the**

09:15:21 11 **special allocation waterfall provision in Exhibit B of**

09:15:25 12 **the operating agreement?**

09:15:26 13 A. No.

09:15:26 14 **Q. Did you have any conversations with Ben about**

09:15:29 15 **what to do with the proceeds from the sale of this**

09:15:31 16 **building?**

09:15:31 17 A. Yes.

09:15:32 18 **Q. And did you and Ben reach any type of an**

09:15:37 19 **agreement?**

09:15:37 20 A. Yes. We talked about it before and we both

09:15:41 21 agreed that we're going to distribute the cost base of

09:15:45 22 that building as a return of capital 30/70 and the

09:15:50 23 balance of it 50/50.

09:15:52 24 **Q. Did you have a new conversation about the sale of**

09:15:55 25 **Building E or were you relying on the prior conversation**

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09:15:58 1 that you had with him in connection with the sale of  
09:16:01 2 Building C?  
09:16:01 3 A. We had conversations on this transaction too.  
09:16:04 4 Q. And he confirmed that agreement with you?  
09:16:07 5 A. Yes.  
09:16:07 6 Q. Now, if you could turn to Exhibit 23, does this  
09:16:11 7 show how you calculated the distributions on the sale of  
09:16:15 8 Building E?  
09:16:15 9 A. Yes.  
09:16:19 10 Q. And you heard Chris Wilcox's testimony yesterday  
09:16:23 11 where he explained all the numbers in here. Correct?  
09:16:26 12 A. Yes.  
09:16:26 13 Q. Was his explanation accurate?  
09:16:29 14 A. Yes.  
09:16:29 15 Q. Was this breakdown prepared in accordance with  
09:16:35 16 your agreement with Ben?  
09:16:37 17 A. Yes.  
09:16:38 18 Q. And was Ben aware of how you were going to  
09:16:41 19 distribute these funds prior -- well, was he aware of  
09:16:46 20 how you were going to distribute these funds?  
09:16:49 21 A. Yes.  
09:16:50 22 Q. How do you know that?  
09:16:51 23 A. I talked to him in advance.  
09:16:52 24 Q. Did you send this first page of Exhibit 23 to Ben  
09:16:56 25 prior to cutting the checks?



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09:16:57 1 A. Yes. The office did.

09:16:59 2 Q. And did Ben approve it?

09:17:02 3 A. He okayed it and then we cut the checks.

09:17:07 4 Q. If you look at the next couple pages, there are

09:17:09 5 some checks there. Correct?

09:17:11 6 A. Yes.

09:17:11 7 Q. When you sent the checks to Ben, did you send a

09:17:14 8 copy of this summary with the checks?

09:17:16 9 A. Yes.

09:17:16 10 Q. Could he have received the checks without seeing

09:17:25 11 the summary?

09:17:26 12 A. I don't think so.

09:17:31 13 Q. Did Ben ever comment on or object to the fact

09:17:35 14 that some of the proceeds had been split 50/50 and other

09:17:40 15 part of the proceeds was split 70/30?

09:17:43 16 A. At that time that we send this?

09:17:45 17 Q. Yes.

09:17:46 18 A. No.

09:17:46 19 Q. When was the first time that he raised any

09:17:49 20 concerns regarding that issue?

09:17:52 21 A. As an issue or as to this building?

09:17:57 22 Q. Well, just generally speaking, when was the first

09:18:00 23 time you heard any concerns with Ben about your

09:18:02 24 agreement with him about how to split the proceeds from

09:18:06 25 the sale of the buildings?

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09:18:07 1 A. In some E-mails in 2016.

09:18:10 2 Q. If you could turn to Exhibit 58, can you tell me

09:18:30 3 what this document is?

09:18:31 4 A. That's the grant deed for the sale of Building D.

09:18:38 5 Q. And this was recorded when?

09:18:44 6 A. I think 11/13/2014.

09:18:53 7 Q. All right.

09:18:55 8 A. So November of 2014.

09:18:56 9 Q. And in this deed did you convey any rights to the

09:19:00 10 new owner with respect to the parking lot and common

09:19:03 11 areas?

09:19:04 12 A. Yes. The same language that was in the previous

09:19:08 13 grant deed, subject to No. 2 and also together with the

09:19:15 14 (inaudible).

09:19:15 15 Q. And did it have the same description in the legal

09:19:20 16 description?

09:19:21 17 A. Yes, it did.

09:19:35 18 Q. So looking at the document that's been Bates

09:19:40 19 stamped Bidsal 1473, it identifies a Parcel 3 which

09:19:44 20 specifically references the CC&Rs recorded March 16th,

09:19:49 21 2012. Correct?

09:19:49 22 A. Yes.

09:19:52 23 MR. SHAPIRO: I'd move for the admission of

09:19:55 24 Exhibit 58.

09:19:58 25 ARBITRATOR WALL: It's the grant bargain and sale

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09:20:01 1 deed.

09:20:02 2 MR. LEWIN: No objection.

09:20:03 3 ARBITRATOR WALL: All right. 58 will be

09:20:05 4 admitted.

09:20:10 5 (Exhibit 58 was admitted into evidence.)

09:20:10 6 BY MR. SHAPIRO:

09:20:11 7 Q. I ask you to keep that open because we're going

09:20:13 8 to be looking at Exhibit 56 in a minute. But for now

09:20:17 9 let's turn to Exhibit 24. This is the 2014 tax returns.

09:20:23 10 Correct?

09:20:24 11 A. Yes.

09:20:25 12 Q. Did you send a copy of these tax returns to Ben?

09:20:28 13 A. Yes.

09:20:29 14 Q. Did the copy that you sent include the K-1?

09:20:33 15 A. Yes.

09:20:33 16 Q. Did Ben ever inform you prior to the time that

09:20:37 17 you just previously testified in 2016 -- prior to that

09:20:41 18 point did Ben ever inform you that there were any

09:20:44 19 inaccuracies in the way that the company income or

09:20:47 20 revenue was allocated or distributed?

09:20:52 21 MR. LEWIN: I'm sorry. The question is vague as

09:20:54 22 to time. I don't understand if you're talking about

09:20:57 23 after the tax return or some other time.

09:21:00 24 MR. SHAPIRO: It's not vague. I said prior to

09:21:03 25 the 2016, did he ever complain.

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09:21:06 1 MR. LEWIN: Okay. I'm sorry. I missed that. Page 656  
09:21:08 2 A. No.  
09:21:09 3 BY MR. SHAPIRO:  
09:21:09 4 Q. I'm sorry, what was your answer?  
09:21:11 5 A. No.  
09:21:11 6 Q. And if you could turn to Bates stamp 1820, this  
09:21:25 7 is your K-1. Correct?  
09:21:27 8 A. Yes.  
09:21:28 9 Q. Did you include and pay taxes on all of the  
09:21:31 10 income and distributions identified on this K-1 in your  
09:21:35 11 personal tax return for 2014?  
09:21:36 12 A. Yes.  
09:21:37 13 Q. If you turn to Exhibit 25, please, this is the  
09:21:44 14 closing statement for Building B, I believe. Is that  
09:21:47 15 correct?  
09:21:48 16 A. Yes.  
09:21:55 17 Q. And approximately when did you sell Building B?  
09:22:06 18 A. Around August 31st, 2015.  
09:22:15 19 Q. What was the sales price?  
09:22:16 20 A. The gross sales price was 670,760.  
09:22:24 21 Q. And how much did Green Valley Commerce receive at  
09:22:28 22 the closing of that sale?  
09:22:30 23 A. \$584,019.  
09:22:35 24 Q. How did you -- well, did you have any  
09:22:39 25 conversations with Ben at this time regarding the

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09:22:41 1 distribution of those proceeds?

09:22:43 2 A. We sent him the distribution breakdown for

09:22:50 3 approval.

09:22:51 4 Q. So turning to Exhibit 26, is that what you sent

09:22:54 5 to him?

09:22:56 6 A. Yes.

09:22:58 7 Q. Now, you heard Mr. Wilcox go through all these

09:23:06 8 numbers as well, yesterday. Correct?

09:23:08 9 A. Yes.

09:23:09 10 Q. Did he accurately explain how you arrived at the

09:23:12 11 numbers on this -- that are depicted on this Exhibit 26?

09:23:16 12 A. Yes.

09:23:17 13 Q. Was this calculation prepared in accordance with

09:23:25 14 your agreement with Ben?

09:23:26 15 A. Yes.

09:23:27 16 Q. And you sent this to Ben prior to cutting the

09:23:30 17 checks?

09:23:30 18 A. Yes. The office did.

09:23:31 19 Q. And did Ben approve those numbers?

09:23:34 20 A. Yes. And then we cut the checks.

09:23:37 21 Q. And did you send a copy of this to Ben when you

09:23:40 22 sent him his checks?

09:23:42 23 A. Yes.

09:23:42 24 Q. And prior to the time in 2016 that you previously

09:23:47 25 testified to, did Ben ever comment on or object to

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09:23:55 1 anything -- any of the breakdown of the distributions?

09:23:58 2 A. No.

09:23:58 3 Q. Can you turn to Exhibit 56? What is this

09:24:17 4 document?

09:24:19 5 A. That's the grant bargain sale deed for Building

09:24:30 6 B.

09:24:30 7 Q. And does this document convey to the new owner

09:24:36 8 the same rights to use the parking lots, common areas,

09:24:41 9 and easements as the prior deeds?

09:24:43 10 A. Yes.

09:24:44 11 Q. If you could turn to the legal description on

09:24:55 12 Bates No. 1483, are the CC&Rs referenced there as well?

09:25:01 13 A. Yes.

09:25:03 14 MR. SHAPIRO: Your Honor, I'd move for the

09:25:05 15 admission of Exhibit 56.

09:25:07 16 MR. LEWIN: No objection.

09:25:08 17 ARBITRATOR WALL: All right. 56 will be

09:25:11 18 admitted.

09:25:11 19 (Exhibit 56 was admitted into evidence.)

09:25:11 20 MR. LEWIN: You know, 56 -- my books are a little

09:25:23 21 bit different. I have 56 as the LeGrand transcript.

09:25:29 22 MR. SHAPIRO: Oh, yeah.

09:25:31 23 ARBITRATOR WALL: I have that as 55.

09:25:34 24 MR. LEWIN: 55 I had some other document. CFR --

09:25:39 25 ARBITRATOR WALL: I'm using the list that was

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09:25:41 1 submitted with Mr. Bidsal's final Rule 20B hearing Page 659  
09:25:47 2 disclosures.  
09:25:48 3 MR. LEWIN: Then maybe I have it here. I'll  
09:25:52 4 figure it out.  
09:25:52 5 THE ARBITRATOR: Okay.  
09:25:55 6 MR. SHAPIRO: Rod, just to be clear, though, 56  
09:25:57 7 was the deed to Building B. 57 was the deed to Building  
09:26:02 8 C. 58 was the deed to Building E.  
09:26:06 9 ARBITRATOR WALL: Alphabetical order but --  
09:26:09 10 MR. SHAPIRO: Not chronological.  
09:26:11 11 ARBITRATOR WALL: -- not chronological?  
09:26:11 12 MR. SHAPIRO: Correct.  
09:26:17 13 BY MR. SHAPIRO:  
09:26:17 14 Q. Can you please turn to Exhibit 27? And I think I  
09:26:26 15 really mean it when I say we should be done with that  
09:26:32 16 binder, so you can close that. The other one, yeah. I  
09:26:35 17 think we're done with that. If you move that so you can  
09:26:37 18 see it better, that would be fine.  
09:26:44 19 Exhibit 27 are the 2015 tax returns. Correct?  
09:26:48 20 A. Yes.  
09:26:48 21 Q. Did you send these to Ben?  
09:26:50 22 A. Yes.  
09:26:51 23 Q. Did you send Ben a copy of the K-1s?  
09:26:54 24 A. Yes.  
09:27:14 25 Q. Again, prior to the conversations that you've

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09:27:18 1 spoken to previously that occurred in 2016, did Ben ever  
09:27:23 2 inform you that there were any inaccuracies in the way  
09:27:26 3 that the company income or revenues were allocated or  
09:27:30 4 distributed?

09:27:31 5 ARBITRATOR WALL: Well, let me stop you there  
09:27:33 6 because the testimony so far has been that returns  
09:27:36 7 weren't sent until the fall of the following year, which  
09:27:40 8 would be 2016.

09:27:41 9 MR. GERRARD: There was actually testimony with a  
09:27:43 10 letter showing that he got the return in March.

09:27:47 11 ARBITRATOR WALL: In March of 2016?

09:27:48 12 MR. GERRARD: He got this tax return in March of  
09:27:51 13 2016. We showed you the actual letter.

09:27:54 14 ARBITRATOR WALL: Okay. So I'm just -- I mean,  
09:27:55 15 the question was at some point in 2016.

09:27:59 16 MR. SHAPIRO: Which would have been -- fair  
09:28:02 17 point. Fair point. Because certainly the taxes would  
09:28:05 18 not have been prepared in 2015.

09:28:08 19 ARBITRATOR WALL: Correct.

09:28:08 20 MR. SHAPIRO: Had to have been sometime in 2016.

09:28:09 21 ARBITRATOR WALL: Maybe clarify that one.

09:28:11 22 BY MR. SHAPIRO:

09:28:14 23 Q. Do you know when the 2015 tax returns were  
09:28:17 24 prepared?

09:28:18 25 A. In 2016. Early 2016.



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09:28:20 1 Q. Okay. So -- if you can turn to Bates stamp 2323,

09:28:54 2 that's not what I thought it was going to be.

09:28:58 3 ARBITRATOR WALL: There's a date on the top of

09:29:00 4 2323.

09:29:03 5 MR. SHAPIRO: That's -- somewhere it's wrong.

09:29:06 6 BY MR. SHAPIRO:

09:29:06 7 Q. I'm trying to find your K-1, Shawn. It's not in

09:29:10 8 here.

09:29:11 9 ARBITRATOR WALL: It's 2313.

09:29:14 10 MR. SHAPIRO: That's what I want. 2313. Thank

09:29:17 11 you.

09:29:17 12 BY MR. SHAPIRO:

09:29:18 13 Q. If you can turn to Bates stamp 2313.

09:29:24 14 MR. LEWIN: You're referring to Exhibit...

09:29:25 15 MR. SHAPIRO: Exhibit 27.

09:29:41 16 BY MR. SHAPIRO:

09:29:41 17 Q. Are you at 2323?

09:29:49 18 A. I am. But it's a K-1 schedule, actually.

09:30:07 19 Q. And is that your K-1?

09:30:10 20 A. It's not the K-1. It's basically statements.

09:30:16 21 Q. I'm sorry. What page are you on?

09:30:19 22 ARBITRATOR WALL: You want 2313.

09:30:23 23 BY MR. SHAPIRO:

09:30:23 24 Q. Are you at 2323? Let me just ask you a quick

09:30:26 25 question.

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09:30:26 1 A. Yeah.

09:30:26 2 Q. 2323 there's a date at the top. Right?

09:30:29 3 A. Yes.

09:30:29 4 Q. What's that date?

09:30:30 5 A. That's the date that the return was filed and

09:30:33 6 sent to the partners.

09:30:35 7 Q. Okay. And what date is that?

09:30:38 8 A. 4/6/2016.

09:30:40 9 Q. So April 6, 2016 this -- at least this document

09:30:44 10 had been printed on that date. Correct?

09:30:46 11 A. This document is printed, yes.

09:30:53 12 Q. Okay. In fact, if you look at the first page of

09:31:09 13 Exhibit 27 at the bottom, it has a date next to the

09:31:13 14 preparer's signature?

09:31:14 15 A. Where are we?

09:31:15 16 Q. First page of the exhibit, see the preparer's

09:31:19 17 signature?

09:31:19 18 A. Yes.

09:31:20 19 Q. So is that the date that this was submitted to

09:31:22 20 the IRS?

09:31:25 21 MR. LEWIN: Objection. Calls for speculation.

09:31:29 22 Lacks foundation.

09:31:29 23 BY MR. SHAPIRO:

09:31:30 24 Q. According to your understanding, is that the

09:31:31 25 date?

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09:31:32 1 MR. LEWIN: His understanding is irrelevant.

09:31:34 2 ARBITRATOR WALL: Why?

09:31:35 3 MR. LEWIN: Well, because he can't testify when

09:31:38 4 it was submitted to the IRS.

09:31:39 5 ARBITRATOR WALL: He can testify to his

09:31:42 6 understanding of when it was submitted.

09:31:43 7 MR. LEWIN: Is that probative?

09:31:47 8 ARBITRATOR WALL: I think it's relevant.

09:31:48 9 Overruled.

09:31:49 10 A. What was the question?

09:31:50 11 BY MR. SHAPIRO:

09:31:50 12 Q. Is it your understanding that this return was

09:31:52 13 submitted April 6, 2016?

09:31:54 14 A. Yes. As soon as the Jim Main prepares and signs

09:32:00 15 it, we file it.

09:32:03 16 Q. If you turn to 2313 --

09:32:06 17 A. Okay.

09:32:06 18 Q. -- is that your K-1?

09:32:10 19 A. Yes.

09:32:10 20 Q. Did you include and pay taxes on all of the

09:32:13 21 income and distributions identified on this K-1 in your

09:32:18 22 personal tax return for 2015?

09:32:20 23 A. Yes.

09:32:20 24 Q. If you turn to Exhibit 28, this is the 2016 tax

09:32:32 25 returns. Correct?

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09:32:37 1 A. Yes.

09:32:38 2 Q. And what's the date next to the preparer's

09:32:42 3 signature?

09:32:42 4 A. March 14, 2017.

09:32:45 5 Q. Do you know if these tax returns were sent to

09:32:49 6 Ben?

09:32:50 7 A. Yes. Actually, from CPA's office.

09:32:58 8 MR. LEWIN: Objection, Your Honor. He has no

09:33:02 9 personal knowledge if they're sent from the CPA's

09:33:06 10 office.

09:33:07 11 ARBITRATOR WALL: What did you just say?

09:33:10 12 THE WITNESS: I said it was sent from the CPA's

09:33:13 13 office to CLA, as well as we sent it.

09:33:13 14 ARBITRATOR WALL: As well as you sent it?

09:33:13 15 THE WITNESS: Yes.

09:33:13 16 ARBITRATOR WALL: All right. That's what I

09:33:18 17 thought he said, but I wasn't sure.

09:33:18 18 BY MR. SHAPIRO:

09:33:18 19 Q. Can you turn to Bates stamp 1552?

09:33:21 20 MR. LEWIN: I'm sorry, what was that exhibit

09:33:26 21 again?

09:33:26 22 MR. SHAPIRO: 28.

09:33:27 23 ARBITRATOR WALL: What number?

09:33:29 24 MR. SHAPIRO: 1552.

09:33:33 25 A. Okay.

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09:33:33 1 BY MR. SHAPIRO:

09:33:33 2 Q. And this is your K-1. Correct?

09:33:35 3 A. Yes.

09:33:37 4 Q. Did you include and pay taxes on all of the

09:33:40 5 income and distributions identified on this K-1 in your

09:33:44 6 personal tax return for 2016?

09:33:47 7 A. Yes.

09:33:47 8 Q. Can you turn to Exhibit 30, please? I believe

09:34:03 9 Exhibit 30 is the 2017 tax return. Correct?

09:34:21 10 Is that correct or are you still looking?

09:34:54 11 A. Yes. It's for 2017.

09:34:56 12 Q. Can you turn to Bates stamp 535?

09:35:02 13 A. Okay.

09:35:14 14 Q. This is your K-1. Correct?

09:35:16 15 A. Yes.

09:35:16 16 Q. Did you include and pay taxes on all of the

09:35:20 17 income and distributions identified on this K-1 in your

09:35:24 18 personal tax return for 2017?

09:35:26 19 A. Yes.

09:35:26 20 Q. Please turn to Exhibit 32.

09:35:30 21 ARBITRATOR WALL: Before you do that, was that

09:35:32 22 return filed? I'm looking at Bates 514.

09:35:54 23 BY MR. SHAPIRO:

09:35:55 24 Q. Do you know if this tax return -- well, did Green

09:35:59 25 Valley Commerce file a tax return for 2017?

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09:36:02 1 A. Yes. It was actually E-filed, so when you do  
09:36:05 2 electronic E-file, the Jim Main doesn't sign. We file  
09:36:16 3 it.

09:36:16 4 Q. Can you turn to Exhibit 32. Is this the 2018 tax  
09:36:26 5 return for Green Valley Commerce?

09:36:54 6 A. Yes.

09:36:54 7 Q. And if you turn to the last page of Exhibit 32,  
09:36:58 8 is that your K-1?

09:37:03 9 A. Yes.

09:37:03 10 Q. Did you include and pay taxes on all of the  
09:37:07 11 income and distributions identified in this K-1 on your  
09:37:13 12 personal tax return for 2018?

09:37:15 13 A. Yes.

09:37:15 14 Q. If you turn to Exhibit 34, now, this appears to  
09:37:25 15 be a draft 2019 return. Correct? This isn't the one  
09:37:29 16 that was actually filed?

09:37:30 17 A. That is correct.

09:37:31 18 Q. Do you know if there are any material changes to  
09:37:33 19 the 2019 tax return that was actually filed with the  
09:37:37 20 IRS?

09:37:38 21 MR. LEWIN: Objection. There's no foundation.

09:37:41 22 ARBITRATOR WALL: Let's lay a little bit of  
09:37:44 23 foundation.

09:37:45 24 BY MR. SHAPIRO:

09:37:45 25 Q. Are you familiar with the 2019 tax return that

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09:37:48

1 was filed by Green Valley Commerce?

09:37:51

2 A. Somewhat, yes.

09:37:52

3 Q. Okay. Well, let's just get to the heart of the

09:37:57

4 matter. Can you turn to -- actually, turn to

09:38:10

5 Exhibit 35. This is a -- says draft. It was a draft

09:38:14

6 K-1 that was sent to CLA Properties, and I'm going to

09:38:18

7 direct your attention to Bates stamp 889, which is CLA

09:38:24

8 Properties' K-1.

09:38:25

9 A. Okay.

09:38:26

10 Q. Did you receive a K-1 from Green Valley Commerce

09:38:30

11 for the tax year 2019?

09:38:32

12 A. Yes, I did.

09:38:33

13 Q. And for whatever reason we don't have a copy of

09:38:38

14 that here, but would your numbers have been similar to

09:38:41

15 the numbers on CLA's K-1?

09:38:45

16 MR. LEWIN: Objection. Best evidence and also

09:38:47

17 the date was similar.

09:38:50

18 A. I need to look at --

09:38:52

19 ARBITRATOR WALL: Hold on. Hold on. There's an

09:38:53

20 objection pending so I got to weigh in on it.

09:38:57

21 Where's the '19?

09:39:00

22 MR. SHAPIRO: It's not included. We can go get

09:39:02

23 that if we need to. I think I can get to it a different

09:39:06

24 way, though, Your Honor.

09:39:07

25 ARBITRATOR WALL: Okay. All right. Let's do

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09:39:08 1 that.

09:39:08 2 BY MR. SHAPIRO:

09:39:08 3 Q. In 2019, do you know if there were any special

09:39:17 4 allocations of interest or income or any other special

09:39:22 5 allocations in the tax year 2019 for Green Valley

09:39:26 6 Commerce?

09:39:26 7 A. No.

09:39:28 8 Q. So were all of the allocations of income,

09:39:35 9 interest, anything to do with taxes, were those split

09:39:40 10 50/50 in 2019?

09:39:42 11 A. Yes.

09:39:42 12 Q. And did you include and pay taxes on all of the

09:39:47 13 income and distributions that were allocated to you in

09:39:50 14 your personal tax returns for the tax year 2019?

09:39:55 15 A. Yes.

09:39:56 16 Q. Is it safe to say that since Green Valley

09:40:03 17 Commerce was formed, through the current year, you have

09:40:05 18 included and paid taxes on all income and distributions

09:40:10 19 associated with your membership interest in Green Valley

09:40:10 20 Commerce on your personal tax returns?

09:40:16 21 A. Yes.

09:40:17 22 Q. If CLA had paid you for your membership interest

09:40:22 23 in Green Valley Commerce back in September of 2017 such

09:40:24 24 that you no longer owned any interest in Green Valley

09:40:28 25 Commerce as of September 2017, would you still have paid



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09:40:31 1 the same amount of taxes in 2017, '18, and '19?

09:40:37 2 A. I wouldn't, no.

09:40:38 3 Q. And how would it be different?

09:40:41 4 A. Whatever income shows for those years would not

09:40:44 5 be included in my personal taxes.

09:40:46 6 Q. And so your personal tax returns would have been

09:40:50 7 less in those years. Correct?

09:40:51 8 A. Yes.

09:40:52 9 Q. Direct your attention to Exhibit 36.

09:41:10 10 A. Okay.

09:41:13 11 Q. These are some E-mails -- actually, I want to go

09:41:27 12 to --

09:41:27 13 ARBITRATOR WALL: While you're doing that, while

09:41:29 14 you're looking for it, it's hard enough for her when you

09:41:34 15 guys are talking amongst yourselves. And I get it, you

09:41:38 16 want to communicate. You just got to be -- it's got to

09:41:41 17 be a whisper because when you guys are talking, it's

09:41:45 18 hard for me to hear him. It's difficult enough I think

09:41:48 19 just with masks and soft voices and accents a little bit

09:41:53 20 for her to get it, for me to get it. If you want us to

09:41:57 21 get it, it's got to be kind of a lower volume.

09:42:00 22 MR. LEWIN: I'm sorry. I was trying to whisper.

09:42:03 23 ARBITRATOR WALL: I know. I know, but...

09:42:05 24 All right. Mr. Shapiro.

09:42:16 25 MR. GERRARD: What exhibit are you on, Jim?

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09:42:19 1 MR. SHAPIRO: Well, I was going to go to 36, but Page 670  
09:42:21 2 I don't know that I want to.  
09:42:24 3 MR. GERRARD: Okay.  
09:42:26 4 BY MR. SHAPIRO:  
09:42:26 5 Q. You heard Ben's testimony given two days ago that  
09:42:35 6 he first started complaining to you about the  
09:42:39 7 distribution and the manner in which the distributions  
09:42:42 8 were made sometime in late 2015. Do you recall that  
09:42:45 9 testimony?  
09:42:46 10 A. Yes.  
09:42:48 11 Q. To your recollection -- to your knowledge, is  
09:42:50 12 that when he started complaining?  
09:42:52 13 A. No.  
09:42:52 14 Q. When did he first raise the issue of how the  
09:42:57 15 money was being distributed between the members?  
09:42:59 16 A. 2016.  
09:43:02 17 Q. And in what manner? What was the first time you  
09:43:06 18 learned that he had any concerns at all regarding that  
09:43:08 19 issue?  
09:43:09 20 A. He sent an Email in I think it was sometime in  
09:43:14 21 2016.  
09:43:17 22 Q. Going back to your original conversation with  
09:43:26 23 Ben, around the time that Building C was sold back in  
09:43:31 24 2012 -- is that when that was sold?  
09:43:33 25 A. Yes.

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09:43:33 1 Q. Okay. Did you specifically talk about Exhibit B  
09:43:38 2 to the operating agreement and the waterfall provisions  
09:43:43 3 at that time?

09:43:43 4 A. We did talk about how to distribute Building C's  
09:43:50 5 money, and yes, we did speak about it.

09:43:53 6 Q. And did either of you ever feel that that  
09:43:59 7 waterfall provision had been triggered?

09:44:01 8 MR. LEWIN: Objection. Calls for speculation.

09:44:02 9 ARBITRATOR WALL: Well, based on your  
09:44:04 10 conversations.

09:44:05 11 A. It was not, no.

09:44:07 12 BY MR. SHAPIRO:

09:44:10 13 Q. Did you ever make distributions from the sale of  
09:44:13 14 any of the buildings without first talking to Ben about  
09:44:16 15 how those distributions would be split?

09:44:19 16 A. No.

09:44:20 17 Q. Did there come a point in time when your  
09:44:22 18 relationship with Ben became strained or started to  
09:44:26 19 deteriorate?

09:44:27 20 A. Yes.

09:44:27 21 Q. When did that happen?

09:44:28 22 A. I had issues with not getting reimbursements for  
09:44:40 23 the expenses that I spent for Green Valley Commerce, and  
09:44:49 24 we had conversations in 2016 and early 2017 where Ben  
09:44:56 25 came to my office and I was raising my complaints about

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09:45:02 1 not getting reimbursements for advertising and for the  
09:45:08 2 labor services, and that's where I guess the  
09:45:14 3 relationship started deteriorating.

09:45:16 4 Q. Okay. And at some point did you make a decision  
09:45:19 5 to make an offer to buy Ben's interest?

09:45:22 6 A. Yes.

09:45:23 7 Q. Direct your attention to Exhibit 37. Is this the  
09:45:33 8 offer that you made to Ben?

09:45:36 9 A. Yes.

09:45:40 10 Q. What terms did you include -- well, first of all,  
09:45:47 11 was this an offer for you to sell your interest to Ben  
09:45:51 12 or for you to buy Ben's interest?

09:45:53 13 A. It was to buy Ben's interest.

09:45:55 14 Q. And what terms did you include in your initial  
09:45:58 15 offer?

09:45:58 16 MR. LEWIN: Objection that the document speaks  
09:46:00 17 for itself.

09:46:02 18 ARBITRATOR WALL: Well, he can testify about what  
09:46:08 19 he did and why, so I'm going to overrule that objection.

09:46:13 20 A. I offered to buy CLA's membership interest of  
09:46:22 21 50 percent based on estimated fair market value of the  
09:46:28 22 company at 5 million.

09:46:30 23 BY MR. SHAPIRO:

09:46:30 24 Q. Using only the terms identified in your initial  
09:46:32 25 offer, could you determine a purchase price that you

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09:46:36 1 would ultimately pay for CLA's membership interest?

09:46:41 2 A. No.

09:46:42 3 Q. Why not?

09:46:43 4 A. Because it's not specified. It needs to go

09:46:49 5 through a calculation.

09:46:52 6 Q. When you made this offer, did you anticipate that

09:47:02 7 you would be buying Ben's interest in the company,

09:47:05 8 including any cash in the bank at the time?

09:47:09 9 MR. LEWIN: Objection. Unexpressed anticipation

09:47:14 10 is not relevant.

09:47:15 11 MR. SHAPIRO: It absolutely is relevant, Your

09:47:18 12 Honor. They're making arguments about whether or not

09:47:21 13 cash in the bank is included in the offer. And Shawn's

09:47:25 14 the one that made the first offer, and his offer was to

09:47:28 15 purchase Ben's interest. It goes to the heart of their

09:47:31 16 argument.

09:47:32 17 MR. LEWIN: Well, the issue is whether it's

09:47:34 18 evidentially admissible. I don't think the unexpressed

09:47:39 19 intention of a party to a contract is admissible.

09:47:43 20 ARBITRATOR WALL: Well, I don't know if it's

09:47:44 21 expressed or not in the letter or whether buying

09:47:48 22 interest in GVC necessarily includes everything.

09:47:55 23 MR. LEWIN: He's selling his membership interest.

09:47:58 24 He's valuing it as a date certain, and, therefore,

09:48:01 25 whatever those assets were that constituted the company.

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09:48:07 1 Because he just said he was estimating the company's  
09:48:10 2 value. That would intrinsically include all of the  
09:48:15 3 assets.

09:48:15 4 MR. SHAPIRO: That's their argument and that's  
09:48:17 5 exactly why it's relevant.

09:48:17 6 MR. LEWIN: But --

09:48:21 7 MR. SHAPIRO: Well, hold on, Rod. Let me finish.

09:48:21 8 ARBITRATOR WALL: Let him finish.

09:48:24 9 MR. SHAPIRO: So not only is it directly relevant  
09:48:25 10 to their argument, but it's very relevant to create the  
09:48:29 11 proper foundation and background of what exactly  
09:48:32 12 happened. Their whole argument is premised upon the  
09:48:35 13 fact that Shawn is selling his membership interest to  
09:48:39 14 CLA Properties. But the reality is, the first offer was  
09:48:43 15 the opposite. The first offer was for Ben to purchase  
09:48:44 16 CLA Properties' membership interest in the company. And  
09:48:47 17 so --

09:48:48 18 ARBITRATOR WALL: Wait. The first offer was for  
09:48:50 19 Ben to purchase --

09:48:54 20 MR. SHAPIRO: Shawn to purchase. Thank you.  
09:48:55 21 Sorry. I misspoke.

09:48:56 22 It was for Shawn to purchase CLA's membership  
09:49:00 23 interest in the company. And what -- how he came to  
09:49:03 24 that amount, we're not arguing the amount. The amount's  
09:49:07 25 been set. We get that. But how he came to that amount

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09:49:10 1 and what his intent and understanding about what would  
09:49:12 2 happen is directly relevant to what they're trying to  
09:49:15 3 flip around and force down his throat.

09:49:18 4 ARBITRATOR WALL: Well --

09:49:19 5 MR. LEWIN: Isn't that the issue, Your Honor? If  
09:49:21 6 he doesn't tell -- if he doesn't express that intent,  
09:49:24 7 how would anyone know what he thinks he's including?

09:49:29 8 ARBITRATOR WALL: I think that's a fair argument,  
09:49:31 9 but I don't think it renders it inadmissible for that  
09:49:35 10 purpose. So I'll allow it.

09:49:37 11 MR. SHAPIRO: Okay. Thank you.

09:49:38 12 BY MR. SHAPIRO:

09:49:38 13 **Q. The question is: When you made this offer, did**  
09:49:40 14 **you anticipate that prior to buying Ben's interest you**  
09:49:45 15 **would make a cash distribution of all of the cash in the**  
09:49:48 16 **bank so that Ben would receive the benefit of all of the**  
09:49:51 17 **income up to the date he purchased his interest or were**  
09:49:53 18 **you offering to buy it without any further**  
09:49:55 19 **distributions?**

09:49:57 20 A. We were making periodic distributions of profits,  
09:50:01 21 but the way I -- my intent was the way I came to the  
09:50:07 22 fair market value was just the properties that was owned  
09:50:11 23 at that time in 2017, July 2017. So basically the real  
09:50:16 24 estate.

09:50:16 25 **Q. Okay. So you weren't considering that as part of**

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09:50:20 1 the offer you were making, that Ben would relinquish any  
09:50:24 2 rights to distributions?  
09:50:26 3 A. No.  
09:50:28 4 ARBITRATOR WALL: Up to a certain date?  
09:50:31 5 MR. SHAPIRO: Yeah, up to the time of the  
09:50:32 6 transfer of membership interest.  
09:50:36 7 ARBITRATOR WALL: Okay.  
09:50:43 8 Is that right?  
09:50:44 9 BY MR. SHAPIRO:  
09:50:44 10 Q. Is that right that --  
09:50:46 11 ARBITRATOR WALL: It doesn't matter if you and  
09:50:48 12 I --  
09:50:48 13 BY MR. SHAPIRO:  
09:50:48 14 Q. At what point in time --  
09:50:51 15 THE WITNESS: You're asking at least two  
09:50:52 16 different questions, Your Honor.  
09:50:53 17 ARBITRATOR WALL: The question that you were  
09:50:54 18 asked was whether it was contemplated that Mr. Golshani  
09:51:01 19 would receive -- CLA would receive -- would continue to  
09:51:05 20 receive distributions, and my question was: You mean up  
09:51:09 21 to a certain point? Mr. Shapiro responded up to the  
09:51:14 22 point of sale.  
09:51:16 23 MR. SHAPIRO: I'm not the witness.  
09:51:18 24 ARBITRATOR WALL: He's not sworn in. You are.  
09:51:21 25 THE WITNESS: I got your point.



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09:51:22 1 A. Up to the point that the transaction has been  
09:51:25 2 consummated. It's finished.  
09:51:28 3 ARBITRATOR WALL: Okay. That's it. All right.  
09:51:29 4 MR. LEWIN: Thank you.  
09:51:29 5 BY MR. SHAPIRO:  
09:51:30 6 Q. Now, how did CLA Properties respond to your  
09:51:35 7 offer?  
09:51:35 8 A. CLA made a counteroffer.  
09:51:40 9 Q. And if you can turn to Exhibit A, what were the  
09:51:44 10 terms of CLA's counteroffer?  
09:51:49 11 ARBITRATOR WALL: You said A38?  
09:51:49 12 MR. SHAPIRO: Sorry. 38.  
09:51:57 13 A. Basically, Ben turned down my offer and said that  
09:52:02 14 the same number I came up with he's going to buy me out  
09:52:07 15 as a counteroffer for the membership interest.  
09:52:15 16 BY MR. SHAPIRO:  
09:52:16 17 Q. And did you ever object to Ben buying your  
09:52:23 18 membership interest out?  
09:52:27 19 A. No. Why would I mind? If he wants to buy it, he  
09:52:31 20 could buy it.  
09:52:32 21 Q. Okay. What was your objection?  
09:52:33 22 A. That we need to get an appraisal.  
09:52:35 23 Q. And if you turn to Exhibit 39, is this your  
09:52:39 24 response?  
09:52:39 25 A. Yes.

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09:52:41

1 Q. And in here you identify, actually, four

09:52:45

2 different appraisers. Correct?

09:52:47

3 A. Yes.

09:52:48

4 Q. Why did you identify four appraisers?

09:52:53

5 A. Because I responded to CLA that they need to have

09:52:57

6 an appraisal to determine his new offer price, and based

09:53:03

7 on the Section 4 of the operating agreement, parties

09:53:07

8 need to identify appraisers.

09:53:10

9 Q. Is there anything in this response where you tell

09:53:14

10 Ben that you're not going to selling your membership

09:53:17

11 interest to him?

09:53:18

12 A. No.

09:53:18

13 Q. Did you ever tell Ben that you're not going to

09:53:21

14 sell your membership interest to him?

09:53:23

15 A. No.

09:53:24

16 Q. Going back to Exhibit 38, does Ben identify a

09:53:35

17 purchase price anywhere in his counteroffer to you?

09:53:39

18 A. For the membership interest?

09:53:43

19 Q. Correct.

09:53:44

20 A. No.

09:53:46

21 Q. Now, in here Ben indicates -- I'm looking right

09:53:51

22 about the middle of the paragraph where he identifies

09:53:54

23 your 5 million valuation of the company. Do you see

09:53:56

24 that?

09:53:57

25 A. Yes.

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09:53:57 1 Q. And then it says: "The purchase will be all cash  
09:54:01 2 with escrow to close within 30 days of the date hereof.  
09:54:04 3 We will contact you regarding setting up escrow. I  
09:54:07 4 trust that there have not been any distributions of cash  
09:54:12 5 on hand that I have not approved of either before or  
09:54:17 6 after July 7, 2017."

09:54:21 7 Do you see that?

09:54:22 8 A. Yes.

09:54:22 9 Q. What was your understanding of that sentence?

09:54:25 10 A. We were making distributions before and after,  
09:54:35 11 so --

09:54:35 12 Q. Did he agree with those?

09:54:40 13 MR. LEWIN: Objection. Compound.

09:54:42 14 ARBITRATOR WALL: In the letter?

09:54:44 15 MR. SHAPIRO: No, not in the letter. Just he  
09:54:45 16 said we were making them, so I asked about the ones  
09:54:50 17 being made.

09:54:51 18 A. Yeah. We were making distributions before and  
09:54:54 19 even after, so --

09:54:54 20 BY MR. SHAPIRO:

09:54:55 21 Q. Was an escrow ever opened?

09:54:57 22 A. -- whatever distributions were made before he  
09:55:02 23 cashed it and even after 2017, he also cashed the  
09:55:08 24 checks.

09:55:08 25 But I'm sorry. What was the question?

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09:55:10  
09:55:13  
09:55:14  
09:55:21  
09:55:24  
09:55:29  
09:55:31  
09:55:32  
09:55:35  
09:55:38  
09:55:41  
09:55:47  
09:55:51  
09:55:54  
09:55:56  
09:56:00  
09:56:04  
09:56:08  
09:56:17  
09:56:18  
09:56:20  
09:56:24  
09:56:26  
09:56:29  
09:56:32

1 Q. The question was: Was an escrow ever opened?

2 A. No.

3 Q. Did Ben ever identify a purchase price -- well,  
4 let me -- let me narrow it to time. At any point in  
5 2017, calendar year of 2017, did Ben ever identify an  
6 amount that he was willing to pay you for your  
7 membership interest?

8 MR. LEWIN: Your Honor, this line of questioning  
9 in terms of this is not relevant for the reasons that we  
10 talked about before. It's assumed in the arbitration  
11 and the judgment. If it goes to a -- if the purpose of  
12 this is to go to a tender issue, it's just not relevant.  
13 They've identified some new tender issue.

14 ARBITRATOR WALL: And that was the subject of the  
15 motion in limine, and I sort of stated my feelings on it  
16 but said it was more of a dispositive motion than a  
17 motion in limine, so I denied it. I understand what's  
18 happening, but I also stated my -- what's a good word?  
19 My --

20 MR. SHAPIRO: Initial thoughts?

21 MR. LEWIN: That's two words, but that's fine.

22 ARBITRATOR WALL: -- current state of mind as it  
23 relates to that issue. So I see it as a continuing  
24 objection to this line of questioning. So all right.

25 MR. LEWIN: That's fine.

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09:56:33 1 MR. SHAPIRO: Thank you.

09:56:35 2 BY MR. SHAPIRO:

09:56:36 3 Q. At any point in 2017, calendar year 2017, did Ben

09:56:41 4 ever offer or identify the amount that he was willing to

09:56:44 5 pay you for your membership interest?

09:56:47 6 A. No, he didn't.

09:56:49 7 Q. At any point in 2017 did Ben ever offer to pay

09:56:53 8 you any specific sum of money?

09:57:00 9 A. No.

09:57:01 10 Q. And let me be clear: Did he offer to pay you any

09:57:05 11 specific sum of money for your membership interest in

09:57:10 12 Green Valley Commerce?

09:57:10 13 A. No, he did not.

09:57:11 14 Q. And again, to be clear: At any point on or after

09:57:21 15 July of 2017, did you tell Ben you were not going to

09:57:25 16 sell your membership interest in Green Valley Commerce?

09:57:28 17 A. No. I just demanded an appraisal.

09:57:37 18 Q. If Ben had delivered cash, a check, a wire

09:57:45 19 transfer in any form -- if Ben had delivered money to

09:57:50 20 you for the purpose of purchasing your membership

09:57:53 21 interest in Green Valley Commerce, what would you have

09:57:56 22 done?

09:58:00 23 MR. LEWIN: Objection. Calls for speculation.

09:58:02 24 I'll withdraw.

09:58:03 25 ARBITRATOR WALL: Thanks.

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09:58:05 1 A. Probably would put it in a accommodative escrow  
09:58:10 2 account and consider the -- well, if the amount was  
09:58:15 3 right -- I would calculate, and if it was correct, then  
09:58:18 4 I would accept it. If not, it would be a partial  
09:58:21 5 payment.

09:58:23 6 BY MR. SHAPIRO:

09:58:28 7 **Q. You never told Ben that you would not sell your**  
09:58:31 8 **membership interest. Correct?**

09:58:33 9 MR. LEWIN: Again, how many times are we going to  
09:58:35 10 ask the same question?

09:58:37 11 ARBITRATOR WALL: That's asked and answered.  
09:58:38 12 Sustained.

09:58:39 13 BY MR. SHAPIRO:

09:58:39 14 **Q. Can you turn to Exhibit 40? What is this**  
09:58:51 15 **document?**

09:58:51 16 A. It's a letter from Rod to you showing -- stating  
09:59:08 17 that the CLA has the funds.

09:59:09 18 **Q. Is there any amount identified anywhere in**  
09:59:12 19 **Exhibit 40 that -- is there anything in Exhibit 40 that**  
09:59:15 20 **identifies the amount Ben is willing to pay you for your**  
09:59:18 21 **membership interest?**

09:59:19 22 A. No.

09:59:31 23 **Q. Is there anything in Exhibit 40 that identifies**  
09:59:34 24 **an escrow account that was opened or to be opened?**

09:59:38 25 A. No.

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09:59:41 1 Q. Is there anything in Exhibit 40 that identifies  
09:59:44 2 that these funds have been placed into an escrow account  
09:59:49 3 for the purpose of purchasing your membership interest?  
09:59:52 4 A. No.  
09:59:53 5 Q. Have you always been willing to sell your  
10:00:20 6 interest at a fair price?  
10:00:22 7 A. Yes.  
10:00:23 8 Q. According to your understanding of what was in  
10:00:28 9 dispute in the first arbitration, was the issue of how  
10:00:32 10 much the purchase price should be part of the initial  
10:00:36 11 arbitration process?  
10:00:41 12 A. No.  
10:00:49 13 MR. SHAPIRO: I'll pass the witness.  
10:00:51 14 ARBITRATOR WALL: Do you want to take a break  
10:00:53 15 now?  
10:00:54 16 MR. LEWIN: I would, yeah.  
10:00:56 17 ARBITRATOR WALL: We'll take ten minutes. I have  
10:00:59 18 10 o'clock on the button so we'll return in 10 minutes.  
10:01:04 19 \*\*\*  
10:01:04 20 (RECESS TAKEN FROM 10:00 TO 10:18)  
10:18:52 21 \*\*\*  
10:18:52 22 ARBITRATOR WALL: Okay. Mr. Bidsal, you realize  
10:18:59 23 you're still under oath?  
10:19:01 24 THE WITNESS: I do, Your Honor.  
10:19:03 25 ARBITRATOR WALL: All right. Mr. Lewin?

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10:19:07 1 MR. LEWIN: Thank you, Your Honor. We have -- I Page 684  
10:19:10 2 think we have an extra copy of Mr. Bidsal's deposition  
10:19:14 3 for you.  
10:19:17 4 MR. SHAPIRO: Going straight into his depo?  
10:19:20 5 MR. LEWIN: Well, I just want it so we don't have  
10:19:24 6 to stop in the middle.  
10:19:27 7 ARBITRATOR WALL: Thank you. No objection to  
10:19:30 8 this being published. Is that right?  
10:19:32 9 MR. GERRARD: No objection.  
10:19:34 10 ARBITRATOR WALL: All right.  
10:19:34 11 (Unknown exhibit number was admitted into  
10:19:34 12 evidence.)  
10:19:51 13 CROSS-EXAMINATION  
10:19:51 14 BY MR. LEWIN:  
10:19:56 15 Q. Good morning, Mr. Bidsal.  
10:19:57 16 A. Morning.  
10:19:58 17 Q. Do you recall that I took your deposition in this  
10:20:07 18 case?  
10:20:07 19 A. Yes.  
10:20:08 20 Q. And you were sworn to tell the truth. Do you  
10:20:10 21 remember that?  
10:20:11 22 A. Yes.  
10:20:11 23 Q. Did you tell the truth?  
10:20:13 24 A. Yes.  
10:20:13 25 Q. And you also testified in the arbitration that



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10:20:16 1 took place before Judge Haberfeld?

10:20:19 2 A. Yes.

10:20:19 3 Q. And you swore to tell the truth --

10:20:23 4 ARBITRATOR WALL: Wait a minute. Wait a minute.

10:20:24 5 Wait a minute.

10:20:26 6 MR. SHAPIRO: This is Wilcox. Maybe I don't have

10:20:50 7 Shawn.

10:20:50 8 (Discussion off the record.)

10:22:15 9 BY MR. LEWIN:

10:22:15 10 Q. Mr. Bidsal, you testified that Ben approached you

10:22:22 11 to work on deals to buy properties together. Is that

10:22:27 12 correct?

10:22:29 13 ARBITRATOR WALL: Mr. Lewin, if you're facing

10:22:32 14 that way, you're going to need to keep your voice up.

10:22:35 15 BY MR. LEWIN:

10:22:35 16 Q. You testified that Ben approached you to buy

10:22:38 17 properties together. Is that correct?

10:22:40 18 A. Yes.

10:22:40 19 Q. Now, at the time -- I think you also said that

10:22:43 20 you had identified the Green Valley properties?

10:22:46 21 A. Yes.

10:22:46 22 Q. And that you were -- had already qualified to

10:22:54 23 bid. Is that correct?

10:22:55 24 A. Yes.

10:22:56 25 Q. When you say you qualified to bid, what do you

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10:22:59

**1 mean?**

10:22:59

**2 A. I provided proof of funds to be able to qualify**

10:23:03

**3 to bid. Of course, in addition to the business bid**

10:23:10

**4 under LSC, I also had to provide the operating agreement**

10:23:14

**5 and the article to show the auction.com that I have the**

10:23:17

**6 right -- I'm the right party to authorize under the LSC**

10:23:23

**7 to bid.**

10:23:23

**8 Q. Isn't it true that you asked Ben to be able to**

10:23:26

**9 use his credit card to put up the initial money to be**

10:23:30

**10 able to bid for the Green Valley properties? That's a**

10:23:36

**11 yes or no.**

10:23:37

**12 A. No.**

10:23:38

**13 Q. Did you use your own credit card?**

10:23:45

**14 A. On the purchase of the note I had my credit card**

10:23:48

**15 on file with auction.com.**

10:23:50

**16 Q. And who put up the deposit for the winning bid,**

10:23:55

**17 for the 10 percent deposit?**

10:23:57

**18 A. After the purchase and sale agreement was signed,**

10:24:04

**19 that (inaudible) was the winner, I assigned it to the**

10:24:08

**20 Green Valley Commerce and then Ben put the deposit.**

10:24:10

**21 Q. And how much was that deposit?**

10:24:15

**22 A. 400,000.**

10:24:21

**23 Q. Now, you actually -- so had Ben participated at**

10:24:23

**24 all in buying the Green Valley note?**

10:24:27

**25 A. He -- I don't think he looked at any of the loan**

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10:24:31 1 documents, but he -- we drove together to Las Vegas to  
10:24:36 2 view the property.

10:24:37 3 Q. As a matter of fact, you and Ben drove together  
10:24:41 4 from Los Angeles and spent at least a whole day driving  
10:24:46 5 around Las Vegas looking at properties. Right?

10:24:48 6 A. Yes.

10:24:48 7 Q. And one of those properties was the Green Valley  
10:24:51 8 properties. Right?

10:24:53 9 A. Green Valley Commerce.

10:24:55 10 Q. Green Valley Center?

10:24:55 11 A. Yes.

10:24:55 12 Q. And was Jeff Chain with you at the time?

10:25:01 13 A. No.

10:25:02 14 Q. And didn't you tell Jeff Chain that Ben was  
10:25:05 15 putting up the credit -- using -- strike that.

10:25:11 16 Didn't you tell Jeff Chain that Ben put his  
10:25:14 17 credit card up to be able to bid on the Green Valley  
10:25:17 18 note?

10:25:18 19 A. I don't remember that.

10:25:22 20 ARBITRATOR WALL: Hold on.

10:25:26 21 MR. GERRARD: Thank you.

10:25:26 22 ARBITRATOR WALL: Thank you.

10:25:27 23 BY MR. LEWIN:

10:25:27 24 Q. So you and Mr. Golshani went and visited the  
10:25:32 25 Green Valley Center before you put a bid on it. Right?

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10:25:36 1 A. Yes.

10:25:36 2 Q. And it was a promissory note that you were

10:25:44 3 bidding on?

10:25:45 4 A. Yes.

10:25:46 5 Q. And he testified that those were risky purchases.

10:25:55 6 Right?

10:25:55 7 A. Well, it's not a risky purchase. It has risk

10:25:59 8 elements in them.

10:26:00 9 Q. What are those risk elements?

10:26:02 10 A. Um, the borrower can file bankruptcy and delay

10:26:09 11 the proceedings or it can basically -- I think that's

10:26:19 12 one element of it, but it could pay off if -- the loan

10:26:26 13 or sell the property, the underlying collateral.

10:26:30 14 Q. There are multiple defenses they might raise.

10:26:33 15 Right?

10:26:38 16 A. They could raise defenses, but this loan was a

10:26:42 17 little bit different. It was a CMBS loan. It was

10:26:47 18 securitized. So it's very different than a balance

10:26:48 19 sheet loan that a regular bank use. So there's much

10:26:52 20 stronger language. Bigger language is built into it.

10:26:56 21 Q. But in converting the note to fee simple, it

10:27:00 22 could either be adversarial or friendly. Right?

10:27:04 23 A. I suppose so, yes.

10:27:05 24 Q. And the plan was to buy the note and then try to

10:27:12 25 convert it into fee simple. Right?

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10:27:15 1 A. Yes.

10:27:15 2 Q. And the note was in default at the time you were

10:27:19 3 bidding on it?

10:27:20 4 A. Yes.

10:27:20 5 Q. And how much was it in default for?

10:27:23 6 A. In what sense?

10:27:24 7 Q. How much was overdue?

10:27:26 8 A. Time-wise, I think -- I have to just guess, but I

10:27:35 9 think it was from 2010.

10:27:36 10 Q. And the payments on that note were roughly

10:27:40 11 \$49,000 a month?

10:27:42 12 A. Something like that.

10:27:44 13 Q. So if you -- if you win, there are two

10:27:48 14 procedures. You've got a short time period to sign the

10:27:53 15 purchase and sale contract?

10:27:55 16 A. The sale -- purchase and sale was pretty much

10:28:00 17 right away, which I did. And same day that the bid is

10:28:05 18 won, you need to sign the PSA.

10:28:09 19 Q. And in the event that you decided to pull out of

10:28:18 20 the deal or the buyer caused too many problems --

10:28:22 21 ARBITRATOR WALL: Well, he's the buyer.

10:28:25 22 MR. LEWIN: I'm sorry.

10:28:25 23 BY MR. LEWIN:

10:28:26 24 Q. In the event the borrower causes too many

10:28:29 25 problems and you decide not to go forward, is the down

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10:28:33 1 payment, the 10 percent down payment nonrefundable?

10:28:36 2 A. Are you referring to the auction.com transaction

10:28:39 3 or the --

10:28:39 4 Q. Yeah. The auction.com transaction. You then put

10:28:43 5 up \$404,000. Right?

10:28:46 6 A. Yes.

10:28:46 7 Q. Does it refresh your recollection that you wrote

10:28:49 8 Ben an Email sometime in 2011 -- did I get that

10:28:49 9 straight? Excuse me.

10:28:54 10 Ben wrote you an Email asking if you could reduce

10:28:57 11 the balance on his credit card because he wanted to use

10:29:00 12 it. He was going to travel. Do you remember that?

10:29:03 13 A. That was in 2011. That was 2010, '12 or '13.

10:29:09 14 Q. So you were using Ben's credit card to bid on

10:29:13 15 auction.com properties. Right?

10:29:14 16 A. At what point in time?

10:29:16 17 Q. From June 2011 to whenever Ben wrote you the

10:29:18 18 Email?

10:29:23 19 A. So you're referring after the purchase of Green

10:29:26 20 Valley Commerce?

10:29:27 21 Q. After the purchase of Green Valley Commerce,

10:29:27 22 isn't it true that Ben asked you to release his credit

10:29:31 23 card because he wanted to take a trip?

10:29:32 24 MR. SHAPIRO: Objection. Relevance.

10:29:35 25 MR. LEWIN: This has to do with what credit card

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10:29:38 1 was used to put up the initial 5 percent.

10:29:43 2 ARBITRATOR WALL: Except the question goes to

10:29:43 3 after it was --

10:29:43 4 MR. LEWIN: Right.

10:29:44 5 ARBITRATOR WALL: He's already said which credit

10:29:48 6 card was used.

10:29:49 7 MR. LEWIN: I know what he said. I'm trying to

10:29:51 8 refresh his recollection that what he said might be

10:29:55 9 incorrect.

10:29:56 10 ARBITRATOR WALL: You just said the relevance is

10:29:58 11 which credit card was used for the purchase. He's

10:30:01 12 confirmed that. Are you impeaching him on that?

10:30:05 13 MR. LEWIN: That's right. There's a two-step

10:30:08 14 process, I think he testified. You have to put a credit

10:30:10 15 card. Let me ask him the question. I'll withdraw the

10:30:14 16 question and see if I can lay a better foundation.

10:30:16 17 BY MR. LEWIN:

10:30:17 18 **Q. Okay. In order to bid on the Green Valley note,**

10:30:21 19 **you had to put up an initial deposit. Right?**

10:30:24 20 A. No. You had to -- you have to show that -- the

10:30:30 21 proof of fund that you have 4 million dollars, which I

10:30:34 22 did of my own money, and you also -- procedurally you

10:30:39 23 have to have a credit card on file like \$10,000.

10:30:45 24 **Q. Isn't that a deposit that you have to put up some**

10:30:50 25 **money in order to bid. Right?**

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10:30:52 1 A. No. You provide corporate document --

10:30:57 2 **Q. Just answer my question.**

10:30:59 3 ARBITRATOR WALL: It's a yes-or-no question.

10:31:01 4 BY MR. LEWIN:

10:31:01 5 **Q. You have to put up a deposit of some kind like a**

10:31:03 6 **credit card --**

10:31:03 7 A. Yes.

10:31:04 8 **Q. -- in order just to bid?**

10:31:07 9 A. Yes.

10:31:07 10 **Q. And that's up to \$50,000. Right?**

10:31:11 11 A. No. Depends on case by case.

10:31:14 12 **Q. How much was the initial deposit on this to bid**

10:31:20 13 **on the promissory note?**

10:31:24 14 A. You're referring to the credit card. I don't

10:31:31 15 recall, but I had my credit card on file.

10:31:33 16 **Q. So there's no reason for you to ask Ben to use**

10:31:35 17 **his credit card if, in fact, you did. Right?**

10:31:38 18 A. You're referring to the --

10:31:39 19 **Q. There's no reason for you to use Ben's credit**

10:31:42 20 **card to bid, if, in fact, you made that request, because**

10:31:46 21 **you had your own credit card. Right?**

10:31:50 22 MR. SHAPIRO: Objection. Lacks foundation.

10:31:51 23 A. Yes.

10:31:51 24 ARBITRATOR WALL: Overruled.

10:31:51 25 You got to wait when there's an objection until



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10:31:51 1 I've weighed in. Okay?

10:31:51 2 But I'm overruling the objection, so the answer

10:31:55 3 will stand.

10:31:55 4 BY MR. LEWIN:

10:31:55 5 Q. So after you win the bid, you had to put up a

10:32:01 6 10 percent deposit. So it was \$404,250. Right?

10:32:06 7 A. Yes.

10:32:06 8 Q. And Ben wired that money and that money was put

10:32:09 9 up. Right?

10:32:10 10 A. After I won the purchase agreement and

10:32:14 11 transferred the assignment, then yeah.

10:32:17 12 Q. Well, let's talk about it. Who was present when

10:32:20 13 you were bidding on the note?

10:32:21 14 A. Ben was present and myself.

10:32:23 15 Q. You were both jointly deciding how much to bid.

10:32:26 16 Right?

10:32:27 17 A. Pretty much I knew the process and I knew how

10:32:32 18 much the valuations were, so I was driving -- I was

10:32:35 19 driving the bidding process.

10:32:36 20 Q. Can you answer my question? You and Ben were

10:32:40 21 both making joint decisions on what to bid. Isn't that

10:32:43 22 true?

10:32:43 23 A. I was making the decisions.

10:32:45 24 Q. You were making the decisions.

10:32:47 25 And Jeff Chain was present during the bidding.

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10:32:50 1 Right?

10:32:50 2 A. I think he was.

10:32:51 3 Q. And who else was present?

10:32:52 4 A. I don't remember.

10:32:58 5 Q. Didn't you ask Ben to put up the \$404,250 because

10:33:05 6 you told him you were short on cash?

10:33:07 7 A. No.

10:33:07 8 Q. The deposit is at risk if you don't close.

10:33:10 9 Right?

10:33:10 10 A. The deposit would be at risk, yes.

10:33:11 11 Q. That means if you don't close for any reason,

10:33:13 12 such as the borrower is going to be too much of a hassle

10:33:17 13 or the borrower may file bankruptcy, whatever reason,

10:33:21 14 that cash is gone. Right?

10:33:22 15 A. That is not correct, no. That's not true.

10:33:26 16 Q. In what respect isn't it true?

10:33:30 17 A. Because the person who buys the note should have

10:33:34 18 done his due diligence prior to bidding, and the

10:33:38 19 purchase and sale agreement are nonnegotiable and final.

10:33:42 20 So once you bid, you are already okay with it. So if

10:33:45 21 the borrower file bankruptcy in the middle or something,

10:33:46 22 there's no recourse. You decided. You're buying it.

10:33:51 23 Q. If you decided not to put up the remainder of the

10:33:55 24 money, in this case almost 4 million dollars, then you

10:33:59 25 lose the deposit?

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10:34:00 1 A. You would lose the deposit.

10:34:03 2 Q. And the only person who put up the deposit was

10:34:06 3 Ben. Right?

10:34:07 4 A. The initial deposit, yes.

10:34:10 5 Q. The \$404,250?

10:34:13 6 A. After the assignment of the GVC, yes.

10:34:16 7 Q. Excuse me. He put up the \$404,000 as required

10:34:21 8 for the assignment, didn't he?

10:34:23 9 A. One more question -- one more time.

10:34:24 10 Q. He put up the assignment -- put up the \$404,000

10:34:28 11 before the assignment. Isn't that correct?

10:34:30 12 A. I don't know the timeline within those few days,

10:34:35 13 but I need to look at it.

10:34:37 14 Q. And Ben gave you his credit card to put up the

10:34:41 15 deposit for auctions. Didn't he?

10:34:43 16 A. At a later date, yeah.

10:34:46 17 Q. So you're saying it wasn't with respect to this

10:34:50 18 auction?

10:34:50 19 A. Yeah, because the credit card --

10:34:52 20 Q. Just answer my question, please. You're saying

10:34:56 21 that it wasn't with respect to this auction?

10:34:58 22 A. I had my credit card on file.

10:35:00 23 Q. And before Ben put up the \$404,250 and before you

10:35:07 24 were bidding, did you talk about how you were going to

10:35:10 25 form an LLC to purchase the note?

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10:35:12 1 A. I was buying it on my own, and Ben came --

10:35:15 2 **Q. Excuse me. If you would please answer my**

10:35:17 3 **question.**

10:35:17 4 ARBITRATOR WALL: If it's a yes/no question, then

10:35:20 5 you can't add an explanation. You could say, "I can't

10:35:24 6 answer it yes or no," but if it's a yes-or-no question,

10:35:29 7 he has that right.

10:35:29 8 THE WITNESS: I can't answer yes or no.

10:35:31 9 MR. GERRARD: Judge, I think part of the problem

10:35:31 10 is you can't sometimes tell from Mr. Lewen's question if

10:35:35 11 he's asking it for a yes-or-no answer because he doesn't

10:35:39 12 say, "Could you please answer yes or no." He asks the

10:35:41 13 question, and then after the answer starts, then he

10:35:44 14 says, "Oh, that's answer yes or no."

10:35:45 15 ARBITRATOR WALL: I think we can tell.

10:35:47 16 MR. GERRARD: Okay.

10:36:15 17 (Discussion off the record.)

10:36:54 18 BY MR. LEWIN:

10:37:01 19 **Q. Please take a look at Exhibit 87. It's in Book**

10:37:14 20 **1. Do you see the date on this document, May 20th?**

10:37:41 21 A. Yes.

10:37:41 22 **Q. You received this?**

10:37:58 23 A. I don't know if I received it or escrow received

10:38:02 24 it, but this is in our file.

10:38:05 25 MR. LEWIN: I move to admit Exhibit 87, Your

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10:38:10 1 Honor. Page 697

10:38:10 2 MR. SHAPIRO: There's still been no foundation.

10:38:12 3 MR. LEWIN: He received it.

10:38:13 4 MR. SHAPIRO: What is it?

10:38:14 5 MR. LEWIN: I'm going to ask him in a second.

10:38:16 6 BY MR. LEWIN:

10:38:16 7 **Q. Do you know what this document represents?**

10:38:19 8 A. It's a wire transfer.

10:38:29 9 **Q. In the sum of \$404,250?**

10:38:35 10 A. Yes, to the escrow.

10:38:36 11 **Q. To the escrow to purchase the note. Right?**

10:38:36 12 A. Yes.

10:38:36 13 **Q. The date on this is May 20th. Right?**

10:38:42 14 A. Right.

10:38:42 15 MR. LEWIN: Now I offer this into evidence.

10:38:46 16 MR. SHAPIRO: No objection.

10:38:46 17 ARBITRATOR WALL: All right. 87 will be

10:38:48 18 admitted.

10:38:48 19 (Exhibit 87 was admitted into evidence.)

10:38:48 20 BY MR. LEWIN:

10:38:49 21 **Q. If you'll look at Exhibit No. 1, you testified**

10:39:21 22 **that this was a purchase and sale contract to purchase**

10:39:25 23 **the note?**

10:39:29 24 A. Yes.

10:39:29 25 **Q. What date did you sign this document? It's dated**

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10:39:49

1 May 19th.

10:39:50

2 A. Yeah, it was signed May 19th electronically by

10:39:54

3 DocuSign.

10:39:54

4 Q. By the time you signed the document for the

10:39:58

5 purchase of the note, Exhibit No. 1, you had already

10:40:01

6 made your arrangement with Ben for him to put up the

10:40:04

7 deposit. Right?

10:40:06

8 A. No, he was coming --

10:40:08

9 Q. It's a yes or no.

10:40:09

10 A. No.

10:40:10

11 Q. So you're saying between May 19 and May 20 you

10:40:13

12 made your arrangements with Ben to put up a deposit.

10:40:17

13 Yes or no?

10:40:19

14 A. He was interested in the --

10:40:21

15 MR. GERRARD: You have to answer yes or no.

10:40:22

16 BY MR. LEWIN:

10:40:23

17 Q. Is it true that -- are you saying that between

10:40:24

18 the time you signed this document on May 19 and Ben sent

10:40:28

19 the \$404,250 on May 20, that you had -- that's when you

10:40:34

20 made your arrangements for Ben to put up the money?

10:40:39

21 A. Yes.

10:40:39

22 Q. So you had no discussions before that?

10:40:41

23 A. We had discussions.

10:40:42

24 Q. As a matter of fact, you had discussed before you

10:40:45

25 bid on the note that you wanted Ben to put up the money.

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10:40:49 1 Right? Yes or no?

10:40:51 2 A. If he wanted to be a partner, yes.

10:40:54 3 Q. So when Ben was in the room -- do you remember

10:40:58 4 the room you were in? Were you in a hotel or where were

10:41:01 5 you?

10:41:02 6 A. I think it was in Thomas & Mack in one of the

10:41:06 7 ballrooms.

10:41:08 8 ARBITRATOR WALL: In one of the what?

10:41:10 9 THE WITNESS: They have a stadium ballroom.

10:41:16 10 ARBITRATOR WALL: At.

10:41:18 11 MR. SHAPIRO: B-A-R room?

10:41:20 12 ARBITRATOR WALL: At the Thomas and Mack?

10:41:24 13 THE WITNESS: I think it was one of the

10:41:25 14 convention center or sports center of some sort that

10:41:28 15 they had a large room that they were conducting the

10:41:31 16 auction, but the auction was online.

10:41:36 17 BY MR. LEWIN:

10:41:36 18 Q. So before you were actually bidding on the

10:41:41 19 project, you and Ben had talked about becoming partners

10:41:46 20 through an LLC and buying the note. Right?

10:41:50 21 A. If he wanted to, I would have accepted.

10:41:52 22 Q. Had you made an agreement with him before then

10:41:55 23 and told him that he would have to put up the money?

10:41:59 24 A. He could have changed his mind.

10:42:02 25 Q. Had you made an agreement with him and told him

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10:42:06 1 he had to put up the money before you went to the  
10:42:10 2 bidding? Yes or no?  
10:42:10 3 A. We had conversations but no agreement.  
10:42:12 4 Q. No agreement?  
10:42:13 5 A. No.  
10:42:14 6 Q. And how long after the bidding did you sign the  
10:42:17 7 purchase and sale contract?  
10:42:20 8 A. I'm sorry? One more time.  
10:42:21 9 Q. How long after you won the bid did you sign the  
10:42:24 10 purchase and sale contract?  
10:42:25 11 A. Same hour, same day.  
10:42:27 12 Q. So in between May 19 and May 20, that's when you  
10:42:37 13 formalized that Ben was going to put up the money. Yes  
10:42:42 14 or no?  
10:42:44 15 A. If he wanted to be a partner, yes.  
10:42:47 16 Q. And -- but had you talked about -- you talked  
10:42:52 17 about forming an LLC. Right?  
10:42:55 18 A. If we would get into a joint project --  
10:42:59 19 Q. You --  
10:42:59 20 ARBITRATOR WALL: Give him some time reference.  
10:43:01 21 BY MR. LEWIN:  
10:43:02 22 Q. Before you bid on the note with Ben present in  
10:43:07 23 the ballroom, wherever you were, did you talk with Ben  
10:43:13 24 about how the -- what entity you would buy the note in  
10:43:15 25 if you won the bid?



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10:43:15 1 A. We would form an LLC.

10:43:17 2 Q. Did you talk about who would be the manager?

10:43:20 3 A. I would be the manager.

10:43:21 4 Q. You and Ben talked about just you being the

10:43:25 5 manager? Is that what you're saying?

10:43:26 6 A. I would be the managing member to run it, yes.

10:43:30 7 Q. Did Ben agree that you would be the managing

10:43:34 8 member?

10:43:34 9 A. At that time he was okay with it.

10:43:36 10 Q. Did he say that it was okay for you to be the

10:43:40 11 sole managing member?

10:43:42 12 A. I don't think that conversation ever took place.

10:43:46 13 Q. Isn't it true that Ben told you -- strike that.

10:43:48 14 Had you talked about how much of the -- how much

10:43:52 15 of the purchase price that you and he would pay?

10:43:58 16 MR. SHAPIRO: At what point in time?

10:43:59 17 BY MR. LEWIN:

10:43:59 18 Q. Before you bid?

10:44:05 19 A. How much of the -- no. I understand the

10:44:10 20 question. No.

10:44:11 21 Q. So you're talking about being partners. Was the

10:44:17 22 conversation that you would each put up an equal amount

10:44:20 23 of money? And I'm talking about before you bid.

10:44:29 24 A. I don't recall that detail.

10:44:31 25 Q. You don't recall how much money you said that you

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10:44:37 1 would put up and how much money you would expect him to  
10:44:40 2 put up? Page 702  
10:44:40 3 A. I was buying it under my own --  
10:44:43 4 Q. Can you just answer my question, sir? Is it your  
10:44:46 5 testimony that you do not recall how much money -- the  
10:44:49 6 discussion between you and Ben about how much money you  
10:44:53 7 would each put up if you won the bid?  
10:44:55 8 A. Prior to bidding?  
10:44:56 9 Q. Prior to bidding.  
10:44:58 10 A. I don't recall having that detailed of a  
10:45:00 11 discussion.  
10:45:01 12 Q. Okay. Now let's talk about after you won the bid  
10:45:03 13 and between the time you signed the purchase contract  
10:45:06 14 and Ben put up \$404,250. Did you then have a  
10:45:11 15 conversation how much each of you were going to put up?  
10:45:14 16 A. It's not having a conversation that if I'm -- if  
10:45:16 17 he wants me to assign it and he become a partner, then  
10:45:21 18 he needs to put more money and --  
10:45:25 19 Q. Isn't it true that you told Ben that you didn't  
10:45:29 20 have enough money to pay for 50 percent of the --  
10:45:35 21 available cash to pay 50 percent of the note and you  
10:45:38 22 wanted him to put up more?  
10:45:40 23 A. No.  
10:45:41 24 Q. Did you originally tell him that you wanted him  
10:45:45 25 to put up 60 percent of the money and you would put up

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10:45:47

1 40 percent because you felt that you were going to be

10:45:50

2 doing more work than him?

10:45:52

3 A. No.

10:45:52

4 Q. Did you ever have any discussions about him

10:45:54

5 putting up 60 percent and you putting up 40 percent?

10:45:58

6 A. After we were in escrow or after we bought the

10:46:02

7 property -- I mean, the note?

10:46:05

8 Q. Okay. Let's break down the time period.

10:46:05

9 Before Ben put up the \$404,250, did you have that

10:46:11

10 discussion?

10:46:12

11 MR. SHAPIRO: Objection. Which discussion?

10:46:14

12 BY MR. LEWIN:

10:46:14

13 Q. The discussion about you putting up 40 percent

10:46:16

14 and him putting up 60 percent?

10:46:19

15 A. No.

10:46:19

16 Q. Did you ever have that discussion?

10:46:21

17 A. We had negotiations after we bought the note. I

10:46:26

18 mean, we were putting the money in escrow to buy it.

10:46:29

19 Q. Isn't it true that before Ben put up the deposit,

10:46:34

20 the 404,000 -- I'm going to round it out to 404,000.

10:46:39

21 Isn't it true that before he put up that money, you had

10:46:43

22 told him that you would put up 40 percent of the

10:46:45

23 purchase price?

10:46:47

24 A. At what point in time?

10:46:48

25 Q. Before he put up the 404,000.

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10:46:51 1 A. No.

10:46:55 2 Q. Before escrow closed did you tell him that you

10:46:59 3 would put up 40 percent of the money?

10:47:05 4 A. We were negotiating at that time how much -- if

10:47:09 5 he wants to be a partner, what amounts of money we each

10:47:14 6 will put.

10:47:14 7 Q. But you didn't have those negotiations finalized

10:47:18 8 before you put up the 404,000. Is that your testimony?

10:47:21 9 A. I don't recall having that discussion.

10:47:24 10 Q. All right. But you did talk about forming an

10:47:30 11 LLC, and didn't Ben tell you before he put up the

10:47:34 12 404,000 he'd want to be a co-manager?

10:47:36 13 A. I don't remember that discussion, no.

10:47:42 14 Q. Do you deny it took place or you just don't

10:47:47 15 remember one way or another?

10:47:49 16 A. I don't think there was a discussion about --

10:47:52 17 Q. It's a yes or no, sir.

10:47:54 18 A. No.

10:47:55 19 Q. Do you deny it or you just don't remember?

10:47:58 20 MR. SHAPIRO: Wait a second. He said, Do you

10:47:59 21 deny or you just don't know and then he says it's a yes

10:48:01 22 or no.

10:48:02 23 MR. LEWIN: My apologies. You're right.

10:48:04 24 ARBITRATOR WALL: He can answer that question.

10:48:05 25 ///

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10:48:05

1 BY MR. LEWIN:

10:48:05

2 Q. Do you deny the conversation took place before

10:48:08

3 you put up the money or you just don't remember one way

10:48:12

4 or another?

10:48:12

5 A. I don't think we had such a conversation, no.

10:48:14

6 Q. All right. But when was the first time that Ben

10:48:21

7 told you that he wanted to be a manager?

10:48:24

8 A. It was sometime after we purchased the note.

10:48:28

9 Q. Was it -- but it was after -- you say it was

10:48:31

10 after he put up the \$404,250?

10:48:33

11 A. Yes.

10:48:34

12 Q. So the only person who had any money at risk

10:48:46

13 while you were negotiating the deal was Ben. Right?

10:48:49

14 A. I wouldn't characterize it --

10:48:55

15 Q. It's a yes or no, sir.

10:48:57

16 A. Yes.

10:48:59

17 Q. Okay. And the escrow closed about a month later.

10:49:04

18 Is that correct?

10:49:05

19 A. No. It closed about -- 10-day escrow.

10:49:08

20 Q. Okay. So you said that you were negotiating how

10:49:17

21 much money each of you were putting up. Is it true that

10:49:21

22 Ben wanted you to put up 50 percent of the money?

10:49:24

23 A. You're referring to from the time we were --

10:49:29

24 Q. Before you closed escrow.

10:49:31

25 A. Before we had negotiations, yeah.

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10:49:33 1 Q. And you said you didn't think that was right  
10:49:36 2 because you were going to be managing the property. Is  
10:49:38 3 that correct?

10:49:40 4 A. That, plus I already bought it under my own name.

10:49:44 5 Q. You bought it under your own name with his money?

10:49:46 6 A. No. I could have closed escrow on my own.

10:49:49 7 Q. Have you ever produced any documents that show  
10:49:53 8 that you could be able to put up your own money?

10:49:55 9 A. The PSA is in my name, and auction.com wouldn't  
10:50:01 10 even allow me to bid if I wouldn't have shown the  
10:50:05 11 complete proof of funds prior to even bidding.

10:50:06 12 Q. Didn't Ben provide the proof of funds?

10:50:09 13 A. No.

10:50:09 14 Q. Did you ever ask Ben to provide proof of funds?

10:50:12 15 A. I was already shown the proof of fund to  
10:50:17 16 auction.com and I was qualified to bid.

10:50:21 17 Q. Did you ever ask Ben to provide the proof of  
10:50:23 18 funds?

10:50:23 19 A. No. I just answered. I said I wasn't --

10:50:24 20 Q. It's a yes or no. The question is: Did you ask?

10:50:24 21 A. No.

10:50:25 22 Q. Isn't it true that you asked him in front of Jeff  
10:50:29 23 Chain to put up the proof of funds?

10:50:34 24 ARBITRATOR WALL: You're talking about the proof  
10:50:36 25 of funds for auction.com before he bid on the note?

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10:50:40 1 Before Real Equities bid on the note?

10:50:45 2 MR. LEWIN: That's right.

10:50:45 3 ARBITRATOR WALL: All right.

10:50:45 4 A. I don't recall.

10:50:46 5 BY MR. LEWIN:

10:50:46 6 Q. All right. In any case, would you take a look at

10:50:53 7 Exhibit No. 2? This is the assignment that you talked

10:51:06 8 about. I'm sorry. Let's go to Exhibit No. 4. These

10:51:13 9 are the articles of organization for Green Valley

10:51:16 10 Commerce, LLC which you signed on May 25 -- pardon me.

10:51:25 11 You filed on it May 26, 2011. Right?

10:51:26 12 A. Yes.

10:51:26 13 Q. And you signed this on May 25, 2011?

10:51:35 14 A. Doesn't have a date of signature but it was filed

10:51:38 15 on May 26th.

10:51:40 16 Q. Okay. And I see you named yourself as the sole

10:51:47 17 manager. Right?

10:51:48 18 A. Sole member.

10:51:54 19 Q. Sole manager.

10:52:03 20 A. I see a sole member. Can you point me to where

10:52:07 21 you see that?

10:52:08 22 ARBITRATOR WALL: No. 5 lists name and address of

10:52:12 23 each manager or managing member.

10:52:14 24 THE WITNESS: Yes. No. 4 shows as a managing

10:52:18 25 member.

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10:52:18  
10:52:19  
10:52:22  
10:52:27  
10:52:30  
10:52:37  
10:52:39  
10:52:39  
10:52:45  
10:52:48  
10:52:51  
10:52:54  
10:52:58  
10:53:04  
10:53:08  
10:53:09  
10:53:10  
10:53:11  
10:53:12  
10:53:19  
10:53:28  
10:53:28  
10:53:36  
10:53:41  
10:53:44

1 BY MR. LEWIN:

2 Q. Did you tell Ben when you filed these articles of

3 organization that you were naming yourself as the sole

4 manager?

5 MR. GERRARD: I'm sorry.

6 A. I'm sorry. What was the question?

7 BY MR. LEWIN:

8 Q. Did you tell Ben -- so let me step back.

9 Ben had already put up the \$404,000 on May 20th.

10 This document -- this organization of Green Valley took

11 place on May 26th. Between -- did you tell Ben that you

12 had filed to set up Green Valley; that you named

13 yourself as the sole manager or managing member?

14 A. Yes. He knew about filing the GVC --

15 Q. The question is: Did you tell him?

16 A. Yes.

17 Q. How did you tell him? Did you tell him verbally

18 or in writing?

19 A. I don't recall the method.

20 Q. And then going back now to Exhibit No. 3, because

21 you said you went over -- I'm sorry -- Exhibit No. 2.

22 That is the -- when you -- that is when you assigned --

23 you actually assigned the purchase contract to Green

24 Valley on May 31st, 2011?

25 A. Yes.



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10:53:45 1 Q. Did you provide a copy of the articles of  
10:53:50 2 organization or the assignment to Ben at or about the  
10:53:55 3 time these were executed?

10:53:57 4 A. Probably, yes.

10:54:01 5 Q. When you say "probably, yes," do you remember  
10:54:04 6 whether you did it?

10:54:05 7 A. I don't. It's too many years ago. I don't  
10:54:07 8 remember.

10:54:07 9 Q. Okay. That's fair. In any case, as of May 31st,  
10:54:19 10 2011 was there any document whatsoever that identified  
10:54:23 11 Ben as an owner of Green Valley LLC?

10:54:31 12 A. In the LLC or in the -- within the escrow  
10:54:35 13 document to purchase the note?

10:54:37 14 Q. Was there any document that -- was there any  
10:54:40 15 document before the LLC operating agreement was signed  
10:54:46 16 that showed that Ben was an owner?

10:54:50 17 A. How can it be? Because you say before the  
10:54:59 18 operating agreement or the article?

10:55:01 19 Q. The operating agreement. I'll withdraw that.  
10:55:09 20 The escrow closed on June 3rd for purchase of the  
10:55:12 21 note?

10:55:12 22 A. Yes.

10:55:13 23 Q. Ben put up 2.8 and some change. You put up a  
10:55:18 24 million-2 and some change. Right?

10:55:21 25 A. Yes.

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10:55:21 1 Q. Was there any document that existed as of the  
10:55:24 2 date that Ben contributed the 2.8 million dollars that  
10:55:28 3 showed that he was an owner of Green Valley?

10:55:31 4 ARBITRATOR WALL: When you say "he," you're  
10:55:33 5 including CLA?

10:55:36 6 MR. LEWIN: Correct. That CLA was an owner.

10:55:38 7 MR. SHAPIRO: Again, the point of time is when?

10:55:41 8 ARBITRATOR WALL: As of June 3rd, 2011.

10:55:44 9 MR. LEWIN: Right.

10:55:45 10 A. I don't know. I don't know if there was a  
10:55:53 11 document.

10:55:57 12 BY MR. LEWIN:

10:55:58 13 Q. Now, what were the terms of -- what did  
10:56:05 14 you under- -- strike that.

10:56:06 15 What did you and Mr. Golshani agree what you  
10:56:12 16 would be doing for Green Valley before he put up his  
10:56:16 17 money? I'll rephrase that.

10:56:18 18 Before you both put up your money to close the  
10:56:22 19 escrow, did you have an agreement with Ben about what  
10:56:25 20 you would be doing?

10:56:26 21 A. For Green Valley Commerce?

10:56:28 22 Q. Yeah.

10:56:28 23 A. First, management. Managing the operation.

10:56:37 24 Q. As a matter of fact, you know, you've read  
10:56:40 25 Mr. Wilcox's report. Right?

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10:56:42 1 A. Yeah.

10:56:43 2 Q. And he quoted an affidavit that you had filed in

10:56:46 3 this case. Right?

10:56:47 4 A. Okay.

10:56:49 5 MR. SHAPIRO: Objection. Double hearsay.

10:56:52 6 ARBITRATOR WALL: Well, it's a yes-or-no

10:56:55 7 question.

10:56:56 8 A. Yes.

10:56:57 9 BY MR. LEWIN:

10:57:01 10 Q. Do you remember how you described what you would

10:57:04 11 be doing in that affidavit?

10:57:05 12 MR. SHAPIRO: Objection. Lacks foundation.

10:57:08 13 ARBITRATOR WALL: All right. So the foundation

10:57:15 14 you're looking for is when and how the affidavit was

10:57:19 15 generated?

10:57:20 16 MR. SHAPIRO: No. The foundation is he's asking

10:57:22 17 a question about Chris Wilcox's report where Chris

10:57:28 18 Wilcox references a declaration that Shawn allegedly

10:57:34 19 signed, and he's asking Shawn about questions about a

10:57:37 20 declaration that Chris Wilcox references in Chris

10:57:43 21 Wilcox's report.

10:57:45 22 ARBITRATOR WALL: Okay. So foundation is your

10:57:45 23 objection.

10:57:45 24 MR. SHAPIRO: There we go. Foundation.

10:57:45 25 ARBITRATOR WALL: Well, that's what your

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10:57:45 1 objection was.

10:57:46 2 MR. SHAPIRO: What's that? Well, it lacks

10:57:48 3 foundation because he hasn't identified the declaration.

10:57:51 4 It's best evidence. If he's going to talk about the

10:57:56 5 declaration, why are we talking about Chris Wilcox's

10:57:57 6 report?

10:57:57 7 MR. LEWIN: All right. I'll rephrase it.

10:57:59 8 ARBITRATOR WALL: All right.

10:58:00 9 BY MR. LEWIN:

10:58:01 10 Q. Did you ever say in any -- either orally or in

10:58:03 11 writing that your deal with Ben was that you were going

10:58:06 12 to be using your knowledge and expertise in finding

10:58:10 13 deals, plural, on property, purchasing property and

10:58:12 14 converting those into fee simple properties if needed,

10:58:16 15 subdividing the properties and managing the properties,

10:58:19 16 and that is why you got a disparate interest?

10:58:23 17 A. At different points in time, yes.

10:58:25 18 Q. Was that your agreement with Mr. -- that you had

10:58:30 19 with Mr. Golshani before he put up the 2.8 million?

10:58:36 20 A. At that time, no. I just said at different times

10:58:39 21 there were different levels of expertise. But at that

10:58:42 22 time was to buy the note, try to convert it to a fee

10:58:45 23 simple and manage it.

10:58:47 24 Q. Well, if you recall, you told Mr. Wilcox -- or at

10:58:52 25 least your affidavit -- that the reason why you put up a

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10:58:56 1 million-2 as opposed to 50 percent of the purchase price  
10:59:02 2 but got a 50 percent membership interest was because you  
10:59:07 3 were going to do those things I just recited.  
10:59:10 4 MR. SHAPIRO: Objection.  
10:59:12 5 ARBITRATOR WALL: Okay. All right. We're about  
10:59:28 6 45 minutes in and I'm just not seeing how any of this so  
10:59:32 7 far has been relevant to the decisions I have to make.  
10:59:34 8 MR. LEWIN: I was going to tie that in. I'm  
10:59:35 9 really moving off of this right now. The issue has to  
10:59:38 10 do with how the -- the basis for how Mr. Golshani was  
10:59:43 11 expecting to get his money back.  
10:59:46 12 ARBITRATOR WALL: I mean, there's -- okay. Well,  
10:59:47 13 that, we haven't even gotten to that.  
10:59:49 14 MR. LEWIN: This is sort of how that came about.  
10:59:53 15 ARBITRATOR WALL: I'm going to overrule the  
10:59:56 16 objection. We have Mr. Gerety coming at 1, and I want  
10:59:59 17 to make sure we get through exactly what you need and  
11:00:02 18 what -- more importantly what I need.  
11:00:03 19 MR. LEWIN: Okay.  
11:00:15 20 BY MR. LEWIN:  
11:00:15 21 Q. Would you please take a look at Exhibit 3?  
11:00:29 22 A. Okay.  
11:00:32 23 Q. Is this the closing statement for the purchase of  
11:00:35 24 the note?  
11:00:38 25 A. Yes.

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11:00:38 1 Q. Okay. And the note shows that the -- how much  
11:00:44 2 was the total cost of Green Valley to purchase the note?  
11:00:47 3 A. The note was 3,850,000 plus some closing costs.  
11:00:55 4 Q. Well, the total cost of Green Valley was  
11:00:59 5 \$4,048,959. Right?  
11:01:02 6 A. Yes.  
11:01:03 7 Q. And this note was subsequently converted into the  
11:01:06 8 purchase of getting fee simple title. Right?  
11:01:11 9 A. It was negotiated into a DIL form, deed in lieu,  
11:01:17 10 which later on --  
11:01:17 11 Q. That's a yes or no, sir.  
11:01:19 12 A. I'm sorry. What was the question?  
11:01:19 13 Q. The note was subsequently converted by exchanging  
11:01:23 14 it for a fee simple title for property. Right?  
11:01:26 15 A. Through a process, yes.  
11:01:27 16 Q. And the cost of the -- so the cost of the  
11:01:29 17 purchase of the three -- of the three Sunset Winds  
11:01:35 18 properties, that's the Henderson properties, was  
11:01:40 19 \$4,048,959. Right?  
11:01:46 20 A. The investment cost.  
11:01:48 21 Q. Excuse me. It's a yes or no.  
11:01:49 22 A. Yes.  
11:01:50 23 Q. Now, almost immediately after you purchased the  
11:02:12 24 note, you began to negotiate with the borrowers to try  
11:02:17 25 to get a fee simple note?

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11:02:19 1 A. Yes.

11:02:20 2 Q. You hired Mr. LeGrand to arrange for it. Right?

11:02:22 3 A. Actually, I started that process.

11:02:23 4 Q. But you then hired David LeGrand. Right?

11:02:27 5 A. Yes.

11:02:27 6 Q. And you hired David LeGrand before you even met

11:02:31 7 Mr. Golshani. Right?

11:02:34 8 MR. SHAPIRO: I'm sorry. What was the question?

11:02:35 9 BY MR. LEWIN:

11:02:36 10 Q. You hired Mr. LeGrand --

11:02:38 11 MR. LEWIN: -- before he met Mr. Golshani.

11:02:43 12 ARBITRATOR WALL: Before who met?

11:02:46 13 BY MR. LEWIN:

11:02:46 14 Q. Before LeGrand met Golshani.

11:02:49 15 A. Yes.

11:02:49 16 Q. So but you were in charge of negotiating the

11:02:53 17 terms and conditions of the deed in lieu?

11:02:58 18 A. You might say that.

11:02:59 19 Q. And Ben was not involved with that. Is that

11:03:05 20 correct?

11:03:05 21 A. Ben was informed of what we were doing and he was

11:03:08 22 cc'd on the E-mails and the process, yes.

11:03:11 23 Q. He was cc'd on the E-mails?

11:03:13 24 A. Yes.

11:03:14 25 Q. But in terms of negotiating the actual deed in

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11:03:20 1 lieu agreement, you heard Ben say he never received it  
11:03:25 2 until a couple of years ago. Do you remember that?  
11:03:27 3 A. Yes. That's not correct.  
11:03:29 4 Q. Do you have any document that shows that you  
11:03:31 5 provided Ben with a copy of the deed in lieu agreement  
11:03:34 6 before you signed it?  
11:03:38 7 A. He was cc'd on the back-and-forth, yes. And also  
11:03:42 8 with a letter, opening letter to open a negotiation with  
11:03:43 9 the borrower.  
11:03:44 10 Q. My question was: Do you have any document in  
11:03:45 11 your possession that you produced in this lawsuit or you  
11:03:47 12 can produce later -- do you have any document that shows  
11:03:50 13 that Ben was given the -- was provided with a copy of  
11:03:54 14 the deed in lieu agreement before you signed it?  
11:03:57 15 A. I think there is, yes.  
11:03:58 16 Q. You haven't produced it in this lawsuit. Right?  
11:04:01 17 A. I don't know.  
11:04:02 18 Q. Did you actually begin foreclosure proceedings on  
11:04:23 19 the security documents for the Green Valley property --  
11:04:25 20 Henderson property? I'm going to call it the Henderson  
11:04:27 21 property, the Nevada property -- the Henderson property  
11:04:28 22 before you got the deed in lieu?  
11:04:30 23 A. No.  
11:04:31 24 Q. All the money that was used to purchase the note  
11:04:43 25 was generated from you and Ben. Right?



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11:04:43 1 A. Was what?

11:04:43 2 Q. All the money that was used to purchase the note

11:04:46 3 was from you and Ben? There was no mortgage?

11:04:47 4 A. Correct.

11:04:47 5 Q. And is it true at the time Green Valley acquired

11:04:57 6 title of the property, the cost of purchase of that

11:04:59 7 property would have included the cost of the note, the

11:05:01 8 payment to auction.com, and all other expenses you

11:05:04 9 incurred in connection with acquiring title to the

11:05:07 10 property?

11:05:08 11 A. At what point in time?

11:05:14 12 Q. At the time Green Valley acquired title to the

11:05:19 13 property, the cost of purchase of that property included

11:05:23 14 the cost of the note, the payment to auction.com, and

11:05:26 15 all other expenses incurred in connection with acquiring

11:05:30 16 title to the property?

11:05:32 17 A. Yes.

11:05:33 18 Q. So that would have been the COP for the Green

11:05:40 19 Valley property.

11:05:41 20 MR. SHAPIRO: Objection. Calls for a legal

11:05:43 21 conclusion.

11:05:43 22 A. No.

11:05:47 23 MR. SHAPIRO: You got to let him rule.

11:05:50 24 THE WITNESS: I'm sorry.

11:05:50 25 ARBITRATOR WALL: Overruled. And the answer was

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11:05:53 1 no.

11:05:56 2 BY MR. LEWIN:

11:05:56 3 Q. Well, but you just answered a minute ago, you

11:06:01 4 said the cost of purchasing the property was all those

11:06:04 5 costs that I just identified. Isn't that the cost of

11:06:07 6 the COP?

11:06:09 7 ARBITRATOR WALL: Is that just a yes or no?

11:06:12 8 MR. LEWIN: Yes.

11:06:13 9 A. No.

11:06:13 10 BY MR. LEWIN:

11:06:13 11 Q. Okay. And why not?

11:06:19 12 A. Because we went through a process of allocating

11:06:28 13 and assigning valuations to different parcels at a later

11:06:33 14 date.

11:06:34 15 Q. Let me just read it. So I'm talking about the

11:06:39 16 time -- the issue was at the time of acquiring the title

11:06:43 17 of the property, and when I asked you at the time Green

11:06:51 18 Valley acquired title to the property and the cost of

11:06:54 19 recording the note and all the other costs what were

11:07:00 20 the -- was the cost to purchase the property. Let me

11:07:04 21 back up.

11:07:05 22 I asked you a minute ago is it true that at the

11:07:09 23 time Green Valley acquired the property, the cost of

11:07:12 24 purchase of that property would have included the cost

11:07:14 25 of the note, the payment at auction.com, and all other

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11:07:18 1 expenses incurred in connection with acquiring title and  
11:07:24 2 you said yes. So my question is --  
11:07:27 3 A. I don't -- I can't answer it the way you're  
11:07:30 4 asking.  
11:07:31 5 Q. Okay. Well, let me just read it. I'd like to  
11:07:32 6 read the deposition testimony then since there's a  
11:07:32 7 question about this.  
11:07:34 8 At Page 155, Line 24 through 156 --  
11:07:42 9 MR. SHAPIRO: So how are you using this?  
11:07:50 10 BY MR. LEWIN:  
11:07:50 11 Q. Quote, "QUESTION: Okay. So is it" --  
11:07:55 12 MR. SHAPIRO: Mr. Bidsal doesn't have anything in  
11:07:58 13 front of him.  
11:08:03 14 ARBITRATOR WALL: Where's the published one?  
11:08:06 15 MR. GERRARD: He didn't bring any copies.  
11:08:09 16 ARBITRATOR WALL: We don't have the original?  
11:08:13 17 MR. LEWIN: No. We don't have the original.  
11:08:20 18 ARBITRATOR WALL: You don't have a copy for him?  
11:08:23 19 MR. LEWIN: I don't. I thought that Jim had an  
11:08:26 20 extra copy for him. I thought Mr. Bidsal said he had a  
11:08:32 21 copy. So shall we print another copy?  
11:08:37 22 ARBITRATOR WALL: All right.  
11:08:41 23 (Discussion off the record.)  
11:12:13 24 MR. LEWIN: I apologize, Your Honor. I thought I  
11:12:19 25 had my certified copy.

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11:12:23 1 ARBITRATOR WALL: 155 and 6?

11:12:27 2 MR. LEWIN: We are talking about Page 155,

11:12:27 3 Line 24 through Line 6.

11:12:29 4 BY MR. LEWIN:

11:12:30 5 Q. Quote, "QUESTION" --

11:12:31 6 A. I'm sorry. Which? 155?

11:12:34 7 Q. Line 24 through 156, Line 6 -- Line 5.

11:12:38 8 A. Let me, if you don't mind.

11:12:40 9 MR. SHAPIRO: So he's going to read the question

11:12:43 10 and then...

11:12:43 11 THE WITNESS: Okay.

11:12:44 12 BY MR. LEWIN:

11:12:44 13 Q. Quote, "QUESTION: Okay. Is it -- so is it -- is

11:12:47 14 it true that at the time Green Valley acquired title to

11:12:50 15 the property, the cost of purchase of that property

11:12:53 16 would have included the cost of the note, the payment to

11:12:55 17 auction.com, and all other expenses you incurred in

11:13:05 18 connection with acquiring title to the property" --

11:13:06 19 MR. SHAPIRO: I'm going to object, Your Honor.

11:13:06 20 He's attempting to impeach Mr. Bidsal with a different

11:13:10 21 question. The question that he asked immediately before

11:13:10 22 he introduced the deposition transcript dealt

11:13:11 23 specifically with COP as defined in the operating

11:13:13 24 agreement. This does not deal with that and you can't

11:13:16 25 use a deposition transcript to impeach a different

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11:13:20 1 question.

11:13:22 2 ARBITRATOR WALL: But the one he asked did that,

11:13:23 3 and then we went to the transcript, and he asked this

11:13:26 4 essential question. And then Mr. Bidsal --

11:13:30 5 MR. SHAPIRO: Which is different than COP. I

11:13:33 6 didn't understand that.

11:13:33 7 ARBITRATOR WALL: So he's off the COP in the

11:13:35 8 formula question and he's on this.

11:13:37 9 MR. GERRARD: You're saying, Judge, there was an

11:13:40 10 intervening question? I think he repeated his question

11:13:41 11 twice, but each time he's using it for cost of purchase.

11:13:43 12 ARBITRATOR WALL: He went to this question.

11:13:45 13 MR. SHAPIRO: That's fine. As long as the

11:13:46 14 understanding is that it's not COP as defined by the

11:13:50 15 operating agreement, then I'm okay.

11:13:53 16 ARBITRATOR WALL: Okay.

11:13:53 17 BY MR. LEWIN:

11:13:54 18 **Q. When you purchased the note, you obtained a**

11:13:58 19 **package of security instruments. Right?**

11:14:00 20 A. Yes.

11:14:00 21 **Q. Would you please turn to Document 84?**

11:14:06 22 ARBITRATOR WALL: 84?

11:14:08 23 MR. LEWIN: 84.

11:14:15 24 BY MR. LEWIN:

11:14:16 25 **Q. We're going to be looking at 174, 84, and 85.**

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11:14:23 1 A. 170?

11:14:25 2 MR. GERRARD: Did you say 174?

11:14:29 3 MR. LEWIN: We'll get to 174. Let's just start

11:14:30 4 with 84 first.

11:14:32 5 MR. GERRARD: 84. Okay.

11:14:33 6 MR. LEWIN: Sort of out of sequence but that's

11:14:37 7 fine.

11:14:37 8 BY MR. LEWIN:

11:14:55 9 Q. 84 is a -- what is Document 84, sir?

11:15:04 10 A. It's a deed of trust note.

11:15:07 11 Q. And that is the promissory note that you bought?

11:15:10 12 A. Looks that way.

11:15:12 13 Q. And what is 85?

11:15:13 14 A. It's the assignment of leases and rents.

11:15:21 15 Q. If you look at 85 first -- first, there's two

11:15:24 16 parts to 85. The first part is from pages --

11:15:30 17 A. To 85?

11:15:32 18 Q. I meant Exhibit 85. The first part is from

11:15:35 19 Bidsal 4461 to Bidsal 4556. No. Pardon me. 4550.

11:15:52 20 MR. SHAPIRO: There's no 4550 in my Exhibit 85.

11:15:57 21 A. 4550 is a signature page.

11:16:05 22 Q. Signature page.

11:16:05 23 MR. SHAPIRO: Which Bate number?

11:16:05 24 MR. LEWIN: This is 85, 4550.

11:16:07 25 ARBITRATOR WALL: The exhibit starts with 4461.

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11:16:12 1 MR. LEWIN: That's right.

11:16:14 2 ARBITRATOR WALL: And you said 4550, which would

11:16:14 3 be before this.

11:16:14 4 MR. GERRARD: 4550?

11:16:18 5 MR. LEWIN: 4550.

11:16:18 6 MR. SHAPIRO: I don't have that. It's not

11:16:19 7 identified on your list and it's not part of our

11:16:22 8 exhibit.

11:16:23 9 ARBITRATOR WALL: 4550.

11:16:27 10 MR. LEWIN: It's the assignment of the deed of

11:16:30 11 trust. It's identified.

11:16:33 12 ARBITRATOR WALL: Yeah.

11:16:34 13 MR. GERRARD: We printed out all the documents

11:16:39 14 that you gave, which he prepared.

11:16:39 15 MR. SHAPIRO: So he E-mailed us some .pdfs. We

11:16:43 16 printed the .pdfs and put them in. And what we're

11:16:44 17 saying is that the .pdf that you provided to us does not

11:16:48 18 have what you're referencing as part of the exhibit, so

11:16:53 19 it is not in our exhibit binders.

11:16:53 20 MR. LEWIN: I think we gave -- I think we sent

11:16:59 21 you the exhibits a couple separate from the last time

11:17:00 22 that included this document.

11:17:00 23 MR. SHAPIRO: It didn't. In fact, my paralegal

11:17:02 24 came and said, "What do I do? The documents are wrong."

11:17:05 25 And I said, "Print out whatever he sent us and

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11:17:07 1 we'll deal with it."

11:17:08 2 MR. LEWIN: Well, all I can tell you is I had my

11:17:09 3 books created from the same .pdf that you did.

11:17:13 4 BY MR. LEWIN:

11:17:13 5 **Q. In any case, do you have these documents, sir?**

11:17:17 6 MR. GERRARD: So Jim, go over and look.

11:17:21 7 MR. SHAPIRO: Can I look over his shoulder?

11:17:23 8 ARBITRATOR WALL: Absolutely.

11:17:24 9 BY MR. LEWIN:

11:17:25 10 **Q. This first part of the document is the assignment**

11:17:27 11 **of leases and rents. Did you read this before you**

11:17:30 12 **closed escrow as part of the due diligence?**

11:17:38 13 A. Probably did long time ago.

11:17:41 14 **Q. You are familiar with the concept of assignment**

11:17:44 15 **of leases and rents. Right?**

11:17:46 16 A. Yes.

11:17:46 17 **Q. And what is your general understanding of what an**

11:17:49 18 **assignment of leases and rents constitutes?**

11:17:52 19 A. Basically the borrower in default is collecting

11:17:57 20 the rents on behalf of the lender. It became a new

11:18:04 21 lender, and then they assigned the assignment of the

11:18:08 22 leases and rents to us.

11:18:09 23 **Q. My point is: When the note goes into default,**

11:18:12 24 **the borrower is then obligated under the assignment to**

11:18:17 25 **collect the rents and hold them and turn them over in**



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11:18:17 1 payment of the principal and interest under the note.

11:18:28 2 Right?

11:18:28 3 MR. SHAPIRO: Objection. Calls for a legal

11:18:31 4 conclusion.

11:18:31 5 ARBITRATOR WALL: Overruled. He said he's

11:18:33 6 familiar with that kind of document.

11:18:34 7 MR. GERRARD: I guess the problem, Judge, is are

11:18:36 8 we talking about what happened in this case or are we

11:18:38 9 just talking in general what can happen? Those are two

11:18:39 10 different things.

11:18:39 11 ARBITRATOR WALL: The question was generally, as

11:18:41 12 I understood it.

11:18:41 13 BY MR. LEWIN:

11:18:43 14 Q. Generally that's your understanding. Right?

11:18:46 15 A. Can you repeat the question?

11:18:48 16 Q. When you read this assignment of leases and

11:18:55 17 rents, did you understand that this required the

11:18:56 18 borrower in default to collect the rents and then turn

11:19:01 19 them over to the lender, which would be you in payment

11:19:04 20 of the obligations under the note?

11:19:06 21 MR. SHAPIRO: Objection. Foundation. He's

11:19:08 22 asking if Shawn understood what the -- how the lender

11:19:12 23 would apply the rents that were turned over. I think

11:19:18 24 that's inappropriate. Calls for speculation.

11:19:20 25 ARBITRATOR WALL: I don't think it calls for

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11:19:22 1 speculation. I'll allow it.

11:19:23 2 You may answer.

11:19:23 3 THE WITNESS: Your Honor, I can only tell you  
11:19:27 4 about my own understanding.

11:19:28 5 ARBITRATOR WALL: I'm sorry?

11:19:29 6 THE WITNESS: I can only explain about my own  
11:19:32 7 understanding.

11:19:33 8 A. So yeah, the borrower is unable to pay the  
11:19:37 9 interest or principal, so ceases to pay that. There's  
11:19:41 10 still a charge because there's a management agreement  
11:19:44 11 between the borrower and the previous lender. Under  
11:19:47 12 that management agreement is collecting the rent and is  
11:19:49 13 obligated to turn it over to the lender. So if you had  
11:19:53 14 a new lender, then turn it over to us.

11:19:56 15 BY MR. LEWIN:

11:19:57 16 **Q. But then turning over the amount of rents is in**  
11:19:59 17 **payment of what, according to your understanding?**

11:20:03 18 A. Just basically because if you haven't paid the  
11:20:07 19 principal and interest and there's still a manager of  
11:20:12 20 the property, they cannot take the money away and pay  
11:20:18 21 themselves. So they have to turn over that money.

11:20:20 22 **Q. In payment of the debt, the principal and**  
11:20:23 23 **interest. Right?**

11:20:23 24 A. I don't know that. I'm not legally that  
11:20:30 25 sophisticated.

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11:20:30 1 Q. As of June 3rd, 2011, how many properties had you  
11:20:34 2 owned?  
11:20:34 3 A. As of June...  
11:20:37 4 Q. 3rd, 2011?  
11:20:39 5 A. Probably about 10, 15.  
11:20:43 6 Q. Is it more like 25 or 30?  
11:20:46 7 A. As of today. Not as of 10 years ago.  
11:20:49 8 Q. Turn to the second part of this exhibit, which is  
11:20:52 9 Bidsal 4551 through 4556. Do you recognize this as the  
11:21:02 10 assignment of the deed of trust to you -- or to Green  
11:21:10 11 Valley?  
11:21:10 12 A. Yes.  
11:21:11 13 Q. All right. As part of the security package, you  
11:21:23 14 got an assignment with -- you got -- you received an  
11:21:23 15 assignment of the -- you received an assignment of  
11:21:26 16 the -- assignment of leases and rents. Right?  
11:21:28 17 A. Yes.  
11:21:30 18 MR. LEWIN: I move Exhibits 84 and 85 into  
11:21:35 19 evidence, Your Honor.  
11:21:37 20 MR. SHAPIRO: So just so I'm clear, 84 is the  
11:21:44 21 note. Right? I don't have any objection to that.  
11:21:50 22 85 appears to be multiple documents. More than  
11:21:54 23 two, from what I can tell, and you're proposing that all  
11:21:57 24 of those documents be admitted as one exhibit?  
11:22:01 25 MR. LEWIN: That's correct.

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11:22:03 1 MR. SHAPIRO: I think that's confusing, but  
11:22:05 2 beyond that I don't have an objection.

11:22:07 3 ARBITRATOR WALL: I can sort through that  
11:22:08 4 confusion. So 84 and 85 will be admitted. For what  
11:22:13 5 it's worth, 84 is identical to 174 so I don't see a need  
11:22:20 6 to do that.

11:22:21 7 MR. LEWIN: I'm not going to go to 174.

11:22:25 8 ARBITRATOR WALL: All right.

11:22:26 9 (Exhibits 84 and 85 were admitted into evidence.)

11:22:26 10 BY MR. LEWIN:

11:22:26 11 Q. So at the time that you signed the deed in lieu  
11:22:33 12 agreement, what was -- did you have an understanding of  
11:22:38 13 how much was owed by the borrower to Green Valley, who  
11:22:43 14 is now the lender?

11:22:44 15 A. There was rent and there was also security  
11:22:49 16 deposit.

11:22:50 17 Q. Well, the borrower only -- before the deed in  
11:22:54 18 lieu agreement, the only obligation the borrower had was  
11:22:59 19 to pay principal and interest -- right -- under the  
11:23:01 20 note?

11:23:01 21 A. Yes.

11:23:02 22 Q. How much was owed then under the note as of the  
11:23:06 23 day before the deed in lieu agreement was signed,  
11:23:10 24 approximately?

11:23:10 25 A. About almost 4 million in principal and about, I

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11:23:16 1 think, 311,000 for interest. In addition to collected  
11:23:25 2 rents and security deposit by the borrower.

11:23:31 3 Q. Well, the rents belonged to the borrower until  
11:23:35 4 Green Valley became the owner of the property. Right?

11:23:39 5 A. No.

11:23:40 6 Q. The rents were assigned to Green Valley as  
11:23:46 7 security for paying the principal and interest on the  
11:23:50 8 note. Right?

11:23:51 9 A. No. It didn't belong to the borrower.

11:23:56 10 Q. It was your understanding that the rent that the  
11:23:59 11 borrower was collecting under the promissory note and  
11:24:03 12 the security documents, that rent actually belonged to  
11:24:09 13 the lender. Right?

11:24:12 14 A. I can only tell you my understanding.

11:24:16 15 Q. Yes or no?

11:24:17 16 A. The answer is yes.

11:24:19 17 Q. Okay. And so the only reason that -- strike  
11:24:22 18 that.

11:24:23 19 And the borrower was willing to turn over  
11:24:28 20 whatever it had -- whatever rent it had accumulated and  
11:24:33 21 not paid to the lender as part of the deed in lieu  
11:24:37 22 process. Right?

11:24:38 23 A. Yes.

11:24:39 24 Q. And the borrower -- did the borrower insist that  
11:24:47 25 it pay that money to you as rent or did it -- strike

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11:24:47 1 that.

11:24:50 2 Were there any communications between you and the

11:24:52 3 borrower where the borrower said "I've got to transfer

11:24:55 4 these as rent as opposed to principal and interest"?

11:24:59 5 A. Yes. There were conversations.

11:25:03 6 Q. Was David LeGrand part of those conversations?

11:25:07 7 A. Communications with lender.

11:25:08 8 Q. Communications between the borrower and you?

11:25:12 9 A. Yes, there were communications.

11:25:14 10 Q. You chose to have the borrower -- it was your

11:25:17 11 decision to have that money that the borrower was

11:25:19 12 holding characterized as rent in the deed in lieu

11:25:23 13 agreement. Right?

11:25:23 14 A. No.

11:25:24 15 Q. Whose decision was that?

11:25:26 16 A. It's not a matter of decision. They're providing

11:25:29 17 financials on a monthly or every few months about how

11:25:33 18 much rent they're collecting and how much were the

11:25:35 19 expenses. And there was a net income per month attached

11:25:39 20 to that financials, and it was adding up to be, like,

11:25:45 21 295,000 plus security deposit. And that document became

11:25:48 22 an attachment to the deed in lieu as one of the exhibits

11:25:53 23 of the deed in lieu.

11:25:54 24 Q. My question is: You chose to characterize in the

11:26:00 25 deed of lieu agreement those monies as rent?

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11:26:03 1 A. No. No.

11:26:04 2 Q. Did it make a difference to you whether the money

11:26:06 3 was paid as rent or paid as principal and interest?

11:26:10 4 A. It was rent, how much they're collecting rent

11:26:14 5 every month. And once we did the deed in lieu

11:26:17 6 agreement, they had to turn it over. It was just rent.

11:26:19 7 Q. You had to turn it over in payment of what?

11:26:20 8 A. Based on the agreement, based on the assignment

11:26:23 9 of leases and rents.

11:26:26 10 Q. In payment of the borrower's obligation to the

11:26:31 11 lender. Right?

11:26:32 12 A. In a form of --

11:26:36 13 Q. Yes or no?

11:26:37 14 A. -- our obligation.

11:26:39 15 ARBITRATOR WALL: I didn't hear that as a

11:26:41 16 yes-or-no question, so...

11:26:41 17 BY MR. LEWIN:

11:26:43 18 Q. I said in payment of the borrower's obligations

11:26:46 19 to the lender. Right?

11:26:48 20 MR. SHAPIRO: Your Honor, this misstates what the

11:26:48 21 assignment of rent says.

11:26:48 22 ARBITRATOR WALL: Well, it can, but that doesn't

11:26:54 23 mean he can't ask the question. So he's not asking the

11:26:55 24 question about what the assignment of rent said. He's

11:26:57 25 asking about what happened. So --

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11:26:59 1 MR. SHAPIRO: Well, if he's asking what happened,  
11:27:01 2 how is Shawn going to know how the prior lender applied  
11:27:05 3 payments?

11:27:06 4 MR. LEWIN: The assignment of -- the deed of  
11:27:07 5 trust -- the note and the assignment is in evidence.  
11:27:12 6 I'm asking him if he under- -- the question is --

11:27:14 7 ARBITRATOR WALL: Let's re-ask the question.

11:27:21 8 BY MR. LEWIN:

11:27:28 9 Q. Isn't it true that the rents that were being  
11:27:33 10 accumulated by the borrower were being held by the  
11:27:37 11 borrower for payment of the borrower's obligations under  
11:27:44 12 the note and deed of trust and the assignment of lease?

11:27:47 13 MR. SHAPIRO: Objection.

11:27:47 14 BY MR. LEWIN:

11:27:47 15 Q. Yes or no?

11:27:48 16 MR. SHAPIRO: Objection. That calls for -- I  
11:27:52 17 mean, that question is covered by the document, and the  
11:27:55 18 way that he asked the question misstates what the  
11:27:59 19 document says.

11:27:59 20 ARBITRATOR WALL: I'm going to sustain the  
11:28:01 21 objection.

11:28:02 22 BY MR. LEWIN:

11:28:03 23 Q. Is it true that it was your understanding -- was  
11:28:04 24 it your understanding that prior to that, the rent --  
11:28:04 25 let me rephrase that.



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11:28:10 1 Was it your understanding that the borrower was  
11:28:12 2 collecting the rents and that before foreclosure or the  
11:28:16 3 deed in lieu that the lender owned the rents?  
11:28:21 4 A. The rents belonged to the lender that the  
11:28:27 5 borrower had to transfer.  
11:28:29 6 Q. The borrower had to transfer those because it was  
11:28:32 7 in payment of the note. Right?  
11:28:32 8 MR. SHAPIRO: Objection.  
11:28:32 9 BY MR. LEWIN:  
11:28:34 10 Q. Is that your understanding?  
11:28:35 11 MR. SHAPIRO: That is governed by the assignment  
11:28:39 12 of --  
11:28:39 13 ARBITRATOR WALL: He's talking about before that.  
11:28:40 14 MR. SHAPIRO: No, at every point in time that's  
11:28:43 15 governed by the assignment of leases and rents.  
11:28:46 16 ARBITRATOR WALL: He's talking about what  
11:28:47 17 occurred prior to the execution of the assignment of  
11:28:51 18 rents.  
11:28:51 19 MR. SHAPIRO: No, because the assignment  
11:28:51 20 transferred in 2007.  
11:28:51 21 MR. LEWIN: No, no, no. He's correct. There's  
11:28:55 22 an assignment of rents from 2007.  
11:28:59 23 ARBITRATOR WALL: Oh, oh, oh. All right. So...  
11:29:04 24 MR. LEWIN: I'll re-ask it a different way.  
11:29:04 25 ARBITRATOR WALL: All right.

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11:29:04 1 BY MR. LEWIN:

11:29:05 2 Q. The only claim that the lender Green Valley had

11:29:08 3 to any amounts of money that were being collected as

11:29:14 4 rents was pursuant to notes and assignment of leases and

11:29:19 5 rents. Right?

11:29:20 6 MR. GERRARD: At what point in time?

11:29:22 7 MR. LEWIN: Before the deed in lieu.

11:29:26 8 MR. GERRARD: Okay.

11:29:26 9 A. The new lender had the right to those rents.

11:29:29 10 That's the question, if I got it right.

11:29:34 11 BY MR. LEWIN:

11:29:34 12 Q. Now, in any case the decision to -- how the

11:29:43 13 monies that were being accumulated and transferred to

11:29:47 14 Green Valley was controlled by you. Isn't that correct?

11:29:51 15 A. No.

11:29:51 16 Q. Okay. You were, in 2011, from the time you

11:30:01 17 purchased the note, you were in charge as the managing

11:30:04 18 member of Green Valley of all the business activities.

11:30:08 19 Right?

11:30:09 20 A. I was the managing member, yes.

11:30:11 21 Q. And did you consider -- did you tell Ben before

11:30:14 22 the operating agreement was signed that he was not a

11:30:18 23 managing member?

11:30:18 24 A. No.

11:30:19 25 Q. Okay. And as a managing member, you were in

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11:30:25 1 charge of overseeing all of the accounting for Green  
11:30:28 2 Valley. Right?

11:30:28 3 A. As a managing manager of company, yes.

11:30:33 4 Q. And you talked about American --

11:30:38 5 MR. LEWIN: American Native, is it, the name of  
11:30:39 6 the property manager?

11:30:39 7 ARBITRATOR WALL: American Nevada.

11:30:41 8 BY MR. LEWIN:

11:30:42 9 Q. American Nevada, they were the property managers  
11:30:43 10 for awhile. Right?

11:30:44 11 A. They were the property manager before and after,  
11:30:47 12 yes.

11:30:47 13 Q. And it's your job as the manager to supervise  
11:30:53 14 their activities. Right? I mean, not on a day-to-day  
11:30:57 15 basis, but to ensure that they're doing the right job  
11:31:04 16 for Green Valley?

11:31:04 17 MR. GERRARD: Rod, when you ask these questions,  
11:31:06 18 can we just have a continuing objection, Judge, that  
11:31:09 19 when he says "manager," it's managing member? Because  
11:31:10 20 that's what the document says.

11:31:10 21 MR. LEWIN: Is there a technical difference?

11:31:14 22 MR. GERRARD: There is a difference, yes.

11:31:15 23 MR. LEWIN: When I say "manager" I mean managing  
11:31:17 24 member. Okay? How's that?

11:31:18 25 ///

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11:31:18 1 BY MR. LEWIN:

11:31:18 2 Q. As the managing member you did have the

11:31:22 3 obligation to oversee, in a general sense, the

11:31:26 4 activities of American Nevada. Right?

11:31:28 5 A. They're the manager of the property, property

11:31:36 6 management.

11:31:36 7 Q. It's a yes or no.

11:31:37 8 A. To some extent, yes.

11:31:38 9 Q. To what extent weren't you obligated to sort of

11:31:42 10 super -- make sure they were doing the right job for

11:31:44 11 Green Valley?

11:31:45 12 A. We just acquired the fee simple to the property,

11:31:50 13 and they were in charge of managing it for almost four

11:31:56 14 years prior to that, so -- from 2007 to 2011, so we

11:32:02 15 needed some time to even get our heads around what we

11:32:07 16 bought.

11:32:07 17 Q. But as manager, you would agree that it's your

11:32:09 18 job to ensure that Green Valley's accounting records are

11:32:15 19 accurate. Right?

11:32:18 20 ARBITRATOR WALL: Are you talking about before?

11:32:20 21 MR. LEWIN: After. No, no -- I'm sorry.

11:32:22 22 ARBITRATOR WALL: Before he took over from

11:32:25 23 American Nevada in the middle of 2012 or after?

11:32:30 24 MR. LEWIN: Before. At all times. At all times.

11:32:31 25 My question goes to all times.

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11:32:31 1 ARBITRATOR WALL: Well, there was a separate  
11:32:33 2 property manager up to the time that West Coast  
11:32:38 3 Investments replaced American Nevada, so I think there  
11:32:41 4 may be a distinction.

11:32:43 5 MR. LEWIN: But I'm talking about in his role as  
11:32:45 6 the managing member of Green Valley.

11:32:48 7 ARBITRATOR WALL: Okay.

11:32:48 8 BY MR. LEWIN:

11:32:49 9 Q. As the managing member at Green Valley, it's your  
11:32:51 10 job to review the information that's provided by  
11:32:54 11 American Nevada to make sure it's accurate. Right?

11:32:57 12 A. To the extent it's provided, yes.

11:32:59 13 Q. And it was your obligation as the managing member  
11:33:02 14 to provide accurate accounting records to the company's  
11:33:06 15 accountants. Right?

11:33:07 16 A. Actually --

11:33:12 17 Q. Yes or no.

11:33:13 18 A. Um, I wouldn't know.

11:33:23 19 Q. As a manager was it your job -- isn't it true  
11:33:25 20 that it was your job to ensure that Green Valley's  
11:33:28 21 accounting records are accurate during all times?

11:33:31 22 A. If I had the information, I would look at our  
11:33:35 23 record.

11:33:35 24 Q. When tax returns were prepared for Green Valley,  
11:33:41 25 it was your policy to review those tax returns before

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11:33:45 1 they were filed with the government. Right?

11:33:48 2 A. I would look at --

11:33:49 3 Q. It's yes or no, sir.

11:33:50 4 A. I would look at them, yes.

11:33:52 5 Q. And you'd look at them for the purpose of

11:33:55 6 ensuring that they're accurate. Right?

11:33:57 7 A. I would look at several things.

11:33:59 8 Q. It's a yes or no, please.

11:34:01 9 A. I would look at them.

11:34:02 10 Q. To ensure that they were accurate. Isn't that

11:34:05 11 correct?

11:34:05 12 A. To the extent I would understand, yes.

11:34:09 13 Q. Would you take a look at Exhibit 96. Actually,

11:34:41 14 let's take a look at 95 for a second. I apologize.

11:34:48 15 These are documents that were produced by Jim

11:34:54 16 Main's company. Mr. Main testified -- you heard

11:35:00 17 Mr. Main testify that --

11:35:02 18 ARBITRATOR WALL: Mr. Main hasn't testified.

11:35:02 19 MR. LEWIN: In his deposition?

11:35:02 20 ARBITRATOR WALL: Right.

11:35:07 21 MR. LEWIN: Okay. I'll ask that.

11:35:07 22 BY MR. LEWIN:

11:35:07 23 Q. You heard Mr. Main testify in his deposition

11:35:09 24 where you were present that he received all of the

11:35:12 25 accounting basic data such as the general ledger from

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11:35:16 1 you. Do you remember that?

11:35:20 2 MR. GERRARD: Your Honor, he can't introduce

11:35:23 3 testimony that's not in evidence in the court. He can't

11:35:26 4 do it that way.

11:35:26 5 ARBITRATOR WALL: Sustained.

11:35:28 6 BY MR. LEWIN:

11:35:28 7 Q. Did you provide Exhibit 95 to Mr. Main?

11:35:31 8 A. I don't recall. It could have been sent directly

11:35:35 9 from American Nevada.

11:35:36 10 Q. Was it your process as the managing member of

11:35:40 11 Green Valley to have the property manager send documents

11:35:45 12 directly to Mr. Main?

11:35:47 13 A. It can be, yes, in cases.

11:35:49 14 Q. Was that your policy?

11:35:50 15 A. I don't recall. This was the first year of

11:35:53 16 taking over the note.

11:35:56 17 Q. Was it your policy? It's yes or no.

11:35:59 18 A. What was the question again?

11:36:00 19 Q. Was it your policy to have the American Nevada

11:36:05 20 send documents directly to Mr. Main in 2011?

11:36:10 21 A. I don't think it constitute a policy in the sense

11:36:15 22 of a repeat, but I think they did that.

11:36:18 23 Q. We talked about this. How much cash did Green

11:36:23 24 Valley receive from the borrower in connection with the

11:36:28 25 deed in lieu agreement?

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11:36:30 1 A. At what point -- oh, deed in lieu? 295,000, I  
11:36:36 2 think, plus the security deposit. Page 740  
11:36:38 3 Q. Did they also receive some additional money?  
11:36:40 4 Total money was -- didn't they receive an additional  
11:36:44 5 57,000?  
11:36:44 6 A. Correct.  
11:36:45 7 Q. All of that -- was any part of that money  
11:36:50 8 characterized as a reduction in capital?  
11:36:54 9 A. It should not have, no.  
11:36:56 10 Q. I know that your claim is that the \$295,000 --  
11:37:05 11 strike that.  
11:37:06 12 Of all the money that Green Valley received, it  
11:37:10 13 received 295,000 and another 57,000 that totalled  
11:37:15 14 345,000 -- roughly 345,000?  
11:37:18 15 A. Something like that, yeah.  
11:37:19 16 Q. And the 57,000 was paid for what purpose?  
11:37:23 17 A. It was rent.  
11:37:25 18 Q. Part of that rent was accumulated for periods  
11:37:31 19 before Green Valley obtained the note. Right?  
11:37:37 20 ARBITRATOR WALL: Wait. For my clarification,  
11:37:40 21 the 295 was rent and the 57 was also rent?  
11:37:44 22 MR. LEWIN: He says it's rent. He says they're  
11:37:46 23 both rent.  
11:37:47 24 ARBITRATOR WALL: Okay.  
11:37:49 25 THE WITNESS: They are both rent, Your Honor. I



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11:37:52 1 just don't remember -- actually, there is a different  
11:37:56 2 exhibit from our binder that differences that 57,000 and  
11:38:12 3 can clarify for what period of time.  
11:38:12 4 ARBITRATOR WALL: Okay.  
11:38:12 5 THE WITNESS: But we did receive 57 and we did  
11:38:13 6 receive 295. I just don't know -- I know the 295 was a  
11:38:15 7 difference to the deed in lieu, but the 57 I don't  
11:38:18 8 remember was it before or after or for what months of  
11:38:22 9 rent collection.  
11:38:23 10 ARBITRATOR WALL: But you believe that was  
11:38:24 11 additional rent collection?  
11:38:25 12 THE WITNESS: I think there was another rent  
11:38:25 13 somewhere.  
11:38:25 14 ARBITRATOR WALL: Okay.  
11:38:25 15 BY MR. LEWIN:  
11:38:29 16 **Q. But the 57,000 was for periods prior to the deed**  
11:38:33 17 **in lieu agreement. Right?**  
11:38:35 18 A. I don't know that.  
11:38:36 19 **Q. This exhibit --**  
11:38:40 20 ARBITRATOR WALL: Wait a minute. This is all  
11:38:46 21 surrounding money that was transferred at the time of  
11:38:49 22 the deed in lieu agreement?  
11:38:50 23 MR. LEWIN: That's right.  
11:38:52 24 ARBITRATOR WALL: So how would it be for a period  
11:38:54 25 after the deed in lieu agreement? It couldn't.

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11:38:59 1 THE WITNESS: Actually --

11:39:01 2 ARBITRATOR WALL: Unless they're paid in advance,

11:39:05 3 I suppose.

11:39:05 4 BY MR. LEWIN:

11:39:05 5 Q. A portion of the money that was transferred, the

11:39:08 6 \$345,000, was for periods prior to June 3rd, 2011.

11:39:14 7 Isn't that true?

11:39:15 8 ARBITRATOR WALL: Yeah, but you said prior --

11:39:15 9 your other questions were prior to the deed in lieu

11:39:18 10 agreement.

11:39:19 11 MR. LEWIN: Now I'm going -- now I'm clarifying

11:39:21 12 that.

11:39:22 13 ARBITRATOR WALL: All right.

11:39:22 14 BY MR. LEWIN:

11:39:23 15 Q. We're going to call it the 345,000. You know

11:39:23 16 what I'm talking about. Right?

11:39:23 17 A. Okay.

11:39:28 18 Q. A portion of the \$345,000 was for periods prior

11:39:32 19 to Green Valley acquiring the note on June 3rd. Right?

11:39:37 20 A. I don't know. I need to look at the document.

11:39:40 21 Q. Okay. Well, it's in the -- by the way,

11:39:50 22 Exhibit 96, this is a record of Green Valley Commerce

11:39:50 23 LLC. Is that correct? I'm talking about 95. It says

11:39:54 24 on top of it.

11:39:54 25 A. Yeah, it's done by the American Nevada.

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11:39:57 1 Q. But it is a record of your company. Right?

11:39:59 2 A. It's a -- becomes a record of the company, yes.

11:40:02 3 MR. LEWIN: I move to admit Exhibit 95 into

11:40:05 4 evidence.

11:40:05 5 MR. SHAPIRO: I thought it was in. Nope, it

11:40:08 6 wasn't. No objection.

11:40:11 7 ARBITRATOR WALL: 95 is in.

11:40:16 8 (Exhibit 95 was admitted into evidence.)

11:40:16 9 BY MR. LEWIN:

11:40:16 10 Q. As the manager of Green Valley, was it your

11:40:19 11 custom and practice in 2011 --

11:40:21 12 A. One more time.

11:40:22 13 Q. As the manager of Green Valley, was it your

11:40:25 14 custom and practice to review the financial documents

11:40:28 15 that were provided to Mr. Main before they were sent to

11:40:31 16 him?

11:40:31 17 A. If it was generated from my office, I look at the

11:40:36 18 PMM.

11:40:40 19 Q. So if you had records from American Nevada, you

11:40:46 20 wouldn't look at them before transmitting them to

11:40:49 21 Mr. Main?

11:40:49 22 A. As I said, I'm not sure whether -- this is a

11:40:51 23 transition time, the note purchase on the property. I'm

11:40:58 24 not clear how Mr. Main received them and how he

11:41:02 25 processed them.

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11:41:28 1 Q. Looking at Exhibit 9 --

11:41:31 2 A. Are we done with this exhibit?

11:41:34 3 Q. Yes. We're done with that.

11:41:42 4 A. Okay.

11:41:48 5 Q. Well, I'm sorry. Let's turn to Exhibit 18 first.

11:41:53 6 Go to the last page of Exhibit 18, cost allocation

11:42:12 7 study.

11:42:12 8 A. Okay.

11:42:13 9 Q. The original cost of the note, which we

11:42:20 10 established is 4,048,000-something dollars, was modified

11:42:29 11 and reduced by this cost allocation study. Right?

11:42:33 12 A. Yes.

11:42:35 13 Q. Cost Segregation Study?

11:42:37 14 A. Yes.

11:42:38 15 Q. And it says here the new land allocations were

11:42:41 16 per you. Did you provide this?

11:42:43 17 A. Yeah. So what happened --

11:42:45 18 Q. It's just yes --

11:42:46 19 A. I provided the backup documents, the comparisons

11:42:52 20 for the land prices to the -- for the cost segregation

11:42:54 21 company.

11:42:54 22 Q. And so the -- you reduced it. Why did you reduce

11:42:59 23 the cost of the note in this -- strike that.

11:43:01 24 Why did you reduce the cost of the Green Valley

11:43:05 25 properties in this Cost Segregation Study?

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11:43:09 1 A. We did not reduce it. If you compare, it was not  
11:43:11 2 reduced. You are referring to the land recasting, not  
11:43:14 3 the note.

11:43:14 4 Q. I'm talking about the original cost of -- the  
11:43:17 5 original cost, which was 4,048,000 is now -- according  
11:43:24 6 to this, the total cost is less than that. Right?

11:43:32 7 A. The total showing here is 3,000,967.

11:43:36 8 Q. So there was a reduction?

11:43:38 9 A. Okay.

11:43:39 10 Q. Why did you reduce the cost?

11:43:42 11 A. I did not reduce it. So what I did is I sent the  
11:43:50 12 information to the -- Danielle Pina, which is the  
11:43:50 13 assistant to Jim Main's office, the CPA, and they did  
11:43:54 14 the calculation to come up with the 2011 tax year.

11:43:58 15 Q. Isn't the reason that they -- the cost was  
11:44:03 16 reduced because the note balance had been reduced by  
11:44:07 17 cash that was paid to Green Valley when you got fee  
11:44:11 18 simple title to the land?

11:44:12 19 A. One more time, please.

11:44:14 20 Q. Isn't the reason why the Cost Segregation Study  
11:44:18 21 is less is because you made a capital distribution and  
11:44:22 22 reduced the cost of the note when you got cash from the  
11:44:25 23 borrower?

11:44:27 24 A. No.

11:44:30 25 ARBITRATOR WALL: And that's Danielle Pina is

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11:44:34 1 D-A-N-I-E-L-L-E, last name P-I-N-A. Page 746

11:44:40 2 MR. LEWIN: Right.

11:44:47 3 ARBITRATOR WALL: I'm here for you. I got your

11:44:59 4 back.

11:45:01 5 BY MR. LEWIN:

11:45:01 6 **Q. Turn to Exhibit 5, please.**

11:45:16 7 ARBITRATOR WALL: Oh. The operating agreement?

11:45:18 8 MR. LEWIN: The operating agreement.

11:45:23 9 BY MR. LEWIN:

11:45:23 10 **Q. We've established that you signed this agreement.**

11:45:26 11 **Did you sign it on December 11 or 12, 2011?**

11:45:30 12 A. Let me get there. Yeah. In that timeframe.

11:45:39 13 **Q. And before you signed the operating agreement,**

11:45:43 14 **you looked at -- you and Ben discussed the provisions of**

11:45:46 15 **Exhibit A very briefly. Right?**

11:45:48 16 A. Exhibit A? Yeah, we discussed.

11:46:02 17 **Q. Did you have any part in drafting Exhibit A?**

11:46:17 18 A. No.

11:46:19 19 **Q. Just take a look at Exhibit B.**

11:46:23 20 A. (Complied.)

11:46:26 21 **Q. Did you draft any part of Exhibit B?**

11:46:35 22 A. No.

11:46:35 23 **Q. Did you discuss Exhibit B with David LeGrand?**

11:46:39 24 A. At what point in time?

11:46:41 25 **Q. Before you signed it.**

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11:46:43 1 A. At the very beginning, yes.

11:46:48 2 Q. And at the very beginning didn't you discuss with

11:46:52 3 David LeGrand that in the event that there was a sale of

11:46:55 4 any of their properties, that there should be a

11:46:59 5 waterfall preferred allocation and distribution

11:47:05 6 schedule?

11:47:09 7 A. Not any property.

11:47:09 8 Q. Yes or no, sir?

11:47:11 9 A. The answer is no.

11:47:11 10 Q. Did you discuss what would be a capital

11:47:16 11 transaction with David LeGrand?

11:47:18 12 A. We discussed it in general terms, yes.

11:47:18 13 Q. Do you know whether Ben drafted any portions of

11:47:22 14 Exhibit B?

11:47:22 15 A. Yeah. The drafts were showing it's our

11:47:32 16 membership interest at 30 percent, and the final version

11:47:36 17 that's signed shows 50 percent. And I think there were

11:47:40 18 discussions on the last expressed intent paragraph that

11:47:45 19 Ben commented to David LeGrand and David LeGrand

11:47:52 20 drafted.

11:47:53 21 Q. Take a look at Exhibit 6. You received this on

11:48:05 22 November 29, 2011?

11:48:05 23 A. Yes.

11:48:06 24 Q. Okay. And thereafter didn't you tell Mitchell

11:48:16 25 LeGrand that you wanted to review it and make revisions

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11:48:21 1 to it?

11:48:26 2 A. I don't recall, sir, no.

11:48:31 3 Q. Do you remember Mr. LeGrand contacting you by

11:48:34 4 Email and asking you if you were finished with your

11:48:38 5 revisions?

11:48:39 6 A. He contacted me --

11:48:40 7 Q. It's a yes or no.

11:48:42 8 A. I don't recall.

11:48:45 9 Q. You don't know.

11:48:47 10 A. I might have. I don't recall.

11:48:49 11 Q. And when you signed this agreement, your

11:48:56 12 understanding of the words "cash distributions of

11:49:04 13 profits" refers to distributions generated from

11:49:09 14 operations resulting in ordinary income. Your

11:49:11 15 understanding of the words meant that it was ordinary

11:49:14 16 income, referring to income from the properties from

11:49:16 17 operations. Isn't that correct?

11:49:18 18 MR. SHAPIRO: Objection. We're talking about

11:49:20 19 Exhibit 6. There's no testimony that he signed anything

11:49:26 20 in Exhibit 6.

11:49:26 21 ARBITRATOR WALL: He's asking about Exhibit B to

11:49:31 22 the operating agreement.

11:49:32 23 MR. SHAPIRO: Okay. But we're talking about

11:49:34 24 Exhibit 6, and then he said, "when you signed this

11:49:34 25 document," and I don't see anything in Exhibit 6.



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		Page 749
11:49:34	1	ARBITRATOR WALL: We're back to the operating
11:49:37	2	agreement.
11:49:38	3	A. What was the question?
11:49:40	4	BY MR. LEWIN:
11:49:40	5	Q. Let's take a look at Exhibit 5. The last -- the
11:49:49	6	words -- specifically the words on Exhibit B, the
11:49:51	7	second-to-last paragraph where it says, "Cash
11:50:00	8	distributions of profits from operations shall be
11:50:02	9	allocated and distributed 50 percent to Shawn Bidsal and
11:50:06	10	50 percent to CLA Properties LLC."
11:50:09	11	And your understanding of those words were that
11:50:13	12	ordinary income refers to income from the properties
11:50:17	13	from operations. Right?
11:50:19	14	A. All kinds of income.
11:50:21	15	Q. And your understanding of those words meant --
11:50:26	16	your understanding of the word "operation" meant running
11:50:30	17	the properties like rent income, interest income.
11:50:36	18	Right?
11:50:36	19	MR. SHAPIRO: Objection. Vague.
11:50:38	20	A. As a part of --
11:50:39	21	ARBITRATOR WALL: You got to wait. When he
11:50:41	22	objects, he's objecting to protect you. Okay? So let
11:50:44	23	him protect you and wait for me.
11:50:48	24	But it's overruled.
11:50:51	25	So you can answer.

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11:50:51 1 BY MR. LEWIN:

11:50:52 2 Q. Yes or no?

11:50:52 3 A. One more time, your question.

11:50:53 4 Q. Your understanding of operations meant rent

11:50:57 5 income, interest income? Things like that?

11:50:59 6 A. As a part of it, but it's much broader and more

11:51:03 7 general term.

11:51:04 8 Q. I'd like to read from the witness's deposition at

11:51:17 9 Page 102 beginning at Line 10 through 103, Line 13.

11:51:43 10 MR. LEWIN: There was an objection, but I

11:51:45 11 clarified the question, that's why I'll leave out the

11:51:47 12 objections.

11:51:47 13 BY MR. LEWIN:

11:51:47 14 Q. Quote, "QUESTION: Do you have an understanding

11:51:49 15 of what the words mean in Exhibit B where it says

11:51:55 16 cash -- 'cash distribution of profits refers to

11:51:58 17 distributions generated from operations resulting in

11:52:01 18 ordinary income'? Do you have an understanding of those

11:52:04 19 words?"

11:52:05 20 Mr. Shapiro objected, and I continue.

11:52:10 21 MR. GERRARD: Is there a ruling on the objection?

11:52:13 22 ARBITRATOR WALL: I thought he said it was to

11:52:16 23 rephrase and then you rephrased.

11:52:18 24 MR. LEWIN: I rephrased.

11:52:18 25 MR. SHAPIRO: He didn't rephrase it though.

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11:52:22 1 ARBITRATOR WALL: What page? I'm sorry. I was Page 751  
 11:52:26 2 just listening.  
 11:52:27 3 MR. LEWIN: Page 102, Line 22.  
 11:52:27 4 ARBITRATOR WALL: Okay, 102.  
 11:52:30 5 MR. LEWIN: It starts at 10. So I did ask it. I  
 11:52:35 6 changed the question and it went on.  
 11:52:39 7 MR. SHAPIRO: No, you didn't change the question.  
 11:52:42 8 ARBITRATOR WALL: I don't -- wait. Are you on  
 11:52:44 9 10 --  
 11:52:44 10 MR. LEWIN: I'm on 102, Line 22.  
 11:52:47 11 ARBITRATOR WALL: Okay. Hold on. There's not  
 11:53:00 12 specifically an objection, but -- and then there's a new  
 11:53:04 13 question at Line 22. All right. So there was an  
 11:53:12 14 objection to the question on Line 22 and 23, which  
 11:53:18 15 refers back to the language read in the question from  
 11:53:21 16 Lines 10 through 14, so I don't think there's an  
 11:53:30 17 objection to the one that begins on Line 22.  
 11:53:33 18 So you can answer.  
 11:53:35 19 BY MR. LEWIN:  
 11:53:35 20 **Q. Continuing on Line 22, quote: "Mr. Bidsal, do**  
 11:53:38 21 **you have an understanding of those words?**  
 11:53:40 22 "ANSWER: Ordinary income refers to income from  
 11:53:43 23 the properties from operations.  
 11:53:47 24 "QUESTION: Did you and Ben discuss what was  
 11:53:51 25 meant by the word 'operations' before you signed the

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11:53:54 1 operating agreement?

11:53:56 2 ANSWER: "Operations, we had discussions. The

11:53:58 3 operations means running -- running the -- the

11:54:00 4 properties.

11:54:01 5 "QUESTION: So rent income, interest income?

11:54:04 6 Things like that?

11:54:05 7 "ANSWER: Yes.

11:54:06 8 "QUESTION: Is there any other kind of ordinary

11:54:09 9 income that Green Valley earned since -- since the

11:54:13 10 properties were acquired other than rent and possibly

11:54:15 11 interest?

11:54:16 12 "ANSWER: I would have to go back and look at it,

11:54:18 13 but, mostly rent and -- mostly rent actually."

11:54:27 14 Now, that conversation took place before you

11:54:28 15 signed the operating agreement. Right?

11:54:30 16 A. Right.

11:54:31 17 Q. And you've had no discussions with Mr. Golshani

11:54:36 18 since December of 2011. Isn't that correct?

11:54:40 19 Let me rephrase it. You've had no conversations

11:54:44 20 with Mr. Golshani regarding Exhibit B after December of

11:54:48 21 2011. Isn't that correct?

11:54:50 22 A. No.

11:54:50 23 Q. No, it's not correct?

11:54:52 24 A. It's not correct.

11:54:53 25 Q. Okay.

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11:54:53 1 MR. LEWIN: I'd like to read from the witness's Page 753  
11:54:55 2 deposition at Page 103, Line 14 through 23.  
11:55:11 3 MR. SHAPIRO: And again, Your Honor, it doesn't  
11:55:16 4 impeach him.  
11:55:18 5 ARBITRATOR WALL: Right. Because it goes up to  
11:55:20 6 104 and says, "We might have discussed it. I don't  
11:55:23 7 recall."  
11:55:24 8 So is that what you're impeaching him with?  
11:55:24 9 MR. LEWIN: He told me that he didn't recall any  
11:55:27 10 discussions.  
11:55:28 11 MR. SHAPIRO: Well, he says we had situations  
11:55:29 12 where he sold properties and returned capital,  
11:55:33 13 contributions of profits. And that's what he testified  
11:55:36 14 to earlier today, so it's completely consistent.  
11:55:40 15 ARBITRATOR WALL: I mean, if you want to read it  
11:55:41 16 in, great. I'm telling you, if you want to have it read  
11:55:44 17 in, that's fine.  
11:55:44 18 MR. LEWIN: If it's not probative in your mind,  
11:55:47 19 there's no purpose.  
11:55:48 20 ARBITRATOR WALL: I don't see it as impeachment  
11:55:52 21 of what he has testified to this morning, but I'm giving  
11:55:56 22 you the option to have it read in if you wish.  
11:55:59 23 MR. LEWIN: That's okay.  
11:56:01 24 ARBITRATOR WALL: All right.  
11:56:11 25 ///

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11:56:11 1 BY MR. LEWIN:

11:56:12 2 Q. Did you tell Jim Main that the sales proceeds --

11:56:15 3 let me strike that.

11:56:17 4 Was Mr. Golshani in touch with James Main, as far

11:56:22 5 as you knew?

11:56:23 6 A. Yes.

11:56:24 7 Q. You do agree that if there's a capital

11:56:31 8 transaction, the waterfall stepdown allocation applies.

11:56:36 9 Right?

11:56:36 10 A. No. Not under that characterization.

11:56:41 11 Q. So under Exhibit B there's a phrase that talks

11:57:02 12 about a sale of substantially all of the company's

11:57:07 13 assets. Do you see that phrase?

11:57:08 14 A. Yes. At what paragraph do you mean?

11:57:10 15 Q. In B, the last paragraph.

11:57:12 16 A. Okay.

11:57:13 17 Q. Did you have a conversation with Ben about what

11:57:21 18 that meant?

11:57:22 19 A. At what point in time?

11:57:24 20 Q. At any time before you signed the operating

11:57:27 21 agreement?

11:57:27 22 A. Yes.

11:57:27 23 Q. And have you had a conversation with him about

11:57:30 24 what that meant at any time after you signed that

11:57:34 25 agreement?

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11:57:35 1 A. Yes.

11:57:35 2 Q. Okay. And what was said between you and Ben as

11:57:40 3 to what was meant by substantially all the assets of the

11:57:44 4 company?

11:57:44 5 ARBITRATOR WALL: At what point?

11:57:46 6 BY MR. LEWIN:

11:57:46 7 Q. Before the operating agreement was signed?

11:57:48 8 A. You're referring to the waterfall provision?

11:57:51 9 Q. I'm referring to the last paragraph where it says

11:57:54 10 "substantially all of the assets." What was the

11:57:58 11 discussion between you and Ben?

11:58:00 12 MR. SHAPIRO: That was his answer.

11:58:02 13 MR. GERRARD: Let him answer.

11:58:05 14 THE WITNESS: I can explain, Your Honor, the

11:58:07 15 intent, the concept that was discussed prior to signing

11:58:11 16 the document.

11:58:11 17 ARBITRATOR WALL: The question is about

11:58:14 18 discussions you had with Mr. Golshani regarding that

11:58:19 19 particular paragraph before the operating agreement was

11:58:23 20 signed.

11:58:23 21 A. Okay. Like, if you sell -- there's a couple of

11:58:27 22 possibilities. If we are winding down closing the

11:58:31 23 company, we sell all the assets and we go to the

11:58:37 24 waterfall provision and pay everybody off with that. Or

11:58:41 25 if you're paying the cash contributions of the members,

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11:58:46 1 you go and refinance on a cashout basis and pay the Page 756  
11:58:52 2 members off.  
11:58:55 3 ARBITRATOR WALL: Then that would trigger the  
11:58:59 4 waterfall?  
11:59:00 5 THE WITNESS: That would trigger waterfall, yes.  
11:59:02 6 BY MR. LEWIN:  
11:59:02 7 **Q. Was there a discussion about what would be**  
11:59:06 8 **substantial?**  
11:59:07 9 A. Substantial assets to be able to pay back the  
11:59:12 10 cash contributions of the members.  
11:59:14 11 **Q. It says here, "such as a sale of all or a**  
11:59:18 12 **substantial portion of the company's assets." Did you**  
11:59:22 13 **and Ben discuss what was substantial?**  
11:59:27 14 MR. SHAPIRO: Asked and answered.  
11:59:29 15 ARBITRATOR WALL: He just answered if it was  
11:59:33 16 sufficient to pay back the entire capital contribution.  
11:59:36 17 Is that right?  
11:59:36 18 MR. LEWIN: Well, let me read from his deposition  
11:59:40 19 at Page 107, Line 15 -- pardon me. Page 108, Line 15.  
11:59:46 20 Hold on a second. Line 10 through line 25.  
11:59:47 21 MR. SHAPIRO: What's your final answer, Rod?  
11:59:47 22 You've been jumping around here.  
11:59:53 23 MR. LEWIN: Sorry. Line 10 through Line 25.  
11:59:53 24 MR. SHAPIRO: Of what page?  
11:59:59 25 ARBITRATOR WALL: 108.



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12:00:02 1 MR. SHAPIRO: And again, the purpose is to Page 757  
12:00:05 2 impeach, not to be consistent with.  
12:00:07 3 ARBITRATOR WALL: That's all right. Let's let it  
12:00:09 4 go.  
12:00:11 5 Sure you don't want to start with Line 5?  
12:00:17 6 MR. LEWIN: Okay. I'll start with Line 5.  
12:00:19 7 ARBITRATOR WALL: All right.  
12:00:19 8 BY MR. LEWIN:  
12:00:19 9 Q. "QUESTION: When you say -- when you say 'selling  
12:00:21 10 all of the company's assets or close to that,' what did  
12:00:25 11 you mean by the words 'or close to that?'  
12:00:26 12 "ANSWER: It means substantially -- substantially  
12:00:29 13 all of them.  
12:00:30 14 "QUESTION: That's what I'm trying to understand.  
12:00:32 15 Did you and Ben have a discussion as to what was meant  
12:00:35 16 by 'substantially all' before you signed the operating  
12:00:35 17 agreement?  
12:00:38 18 "ANSWER: Yes.  
12:00:40 19 "Okay. What was said between you and Ben as to  
12:00:43 20 what was meant by 'substantially all' of the company's  
12:00:43 21 assets?  
12:00:45 22 "ANSWER: That's what it means. Substantially  
12:00:47 23 means almost all the assets.  
12:00:50 24 "QUESTION: Does that mean 50 percent of the  
12:00:52 25 assets, 80 percent of the assets, 95 percent of the

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12:00:54 1 assets? What does it mean?

12:00:55 2 "ANSWER: Again, we didn't go into detail about

12:00:58 3 that, but our intent was substantially means almost

12:01:01 4 all."

12:01:02 5 ARBITRATOR WALL: But he said, "Again, we didn't

12:01:04 6 go into that detail about percentages, but our intent

12:01:08 7 was substantially means, like, almost all of it."

12:01:12 8 MR. LEWIN: Okay. I'd like to read Page 109 to

12:01:21 9 Line 10 to Page 10 -- to Line 17.

12:01:25 10 ARBITRATOR WALL: Okay.

12:01:25 11 BY MR. LEWIN:

12:01:28 12 Q. "QUESTION: I'll re-ask the question. Let me ask

12:01:30 13 a different question. When you had nine parcels, what

12:01:33 14 did you believe that selling a substantial portion of

12:01:36 15 the nine parcels would include?

12:01:39 16 "ANSWER: Actually, we didn't sell the parking

12:01:41 17 lot, so it's eight parcels. Substantially means like

12:01:44 18 selling all of it or maybe even if not selling one,

12:01:48 19 selling, like, 7 out of the 8 but not one of them." End

12:01:51 20 quote.

12:01:52 21 MR. SHAPIRO: Again, Your Honor --

12:01:54 22 ARBITRATOR WALL: So it's in. Okay? You're not

12:01:58 23 objecting to that information coming in. Right?

12:02:00 24 MR. GERRARD: No.

12:02:01 25 MR. SHAPIRO: No. I'm just saying it's an

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12:02:03	1	inappropriate use of deposition testimony, but...	Page 759
12:02:11	2	ARBITRATOR WALL: I don't see that it's	
12:02:13	3	prejudicial.	
12:02:14	4	MR. SHAPIRO: No, it's not. It's consistent	
12:02:51	5	still.	
12:02:55	6	BY MR. LEWIN:	
12:02:55	7	Q. When you sold Building C, you received boot. Is	
12:03:14	8	that correct?	
12:03:14	9	A. I received --	
12:03:14	10	Q. Yes or no, sir.	
12:03:16	11	MR. GERRARD: Rod, unless you want to define what	
12:03:20	12	"boot" is and you assume he knows what it is.	
12:03:20	13	BY MR. LEWIN:	
12:03:20	14	Q. Do you know what boot is?	
12:03:22	15	A. Not in that content of terminology, but...	
12:03:24	16	Q. Okay. You heard what Mr. Wilcox described as	
12:03:27	17	boot. That would be the amount of money that was not used	
12:03:29	18	as part of the exchange process?	
12:03:33	19	A. Okay. I got it now. Correct. I did receive	
12:03:37	20	boot.	
12:03:37	21	Q. And you received approximately \$95,000 of boot.	
12:03:42	22	Right?	
12:03:42	23	A. In addition to some other interest, yes.	
12:03:50	24	Q. In addition to a \$75,000 promissory note?	
12:03:54	25	A. No. In addition to some other interest of the	

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12:03:56 1 money. Page 760

12:03:59 2 ARBITRATOR WALL: 40-some thousand?

12:04:02 3 THE WITNESS: No, that's the principal of the

12:04:04 4 money. We also received some interest, smaller interest

12:04:08 5 amounts in addition to.

12:04:10 6 ARBITRATOR WALL: Okay.

12:04:10 7 BY MR. LEWIN:

12:04:11 8 Q. But whatever it was, you distributed the boot

12:04:15 9 70/30. Right?

12:04:17 10 A. Correct. And then we distributed the --

12:04:20 11 Q. Excuse me. There's no question pending.

12:04:22 12 Did you distribute the promissory note?

12:04:26 13 A. No, we distributed the --

12:04:27 14 Q. Did you distribute the promissory note?

12:04:31 15 ARBITRATOR WALL: It's a yes-or-no question.

12:04:31 16 A. I don't -- different question?

12:04:33 17 MR. SHAPIRO: No, no. The question is: Did you

12:04:35 18 distribute the promissory note? Yes or no or you can't

12:04:35 19 answer.

12:04:35 20 ARBITRATOR WALL: But you can't distribute a

12:04:38 21 note.

12:04:38 22 A. You're referring to the promissory note on

12:04:41 23 Building C?

12:04:41 24 MR. SHAPIRO: That is correct.

12:04:43 25 THE WITNESS: Oh. The --

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12:04:43 1 ARBITRATOR WALL: Yes, no, I don't know. Page 761  
12:04:45 2 answer it yes or no. I don't understand the question. I can't  
12:04:49 3 A. We distributed the -- the answer is yes.  
12:04:53 4 ARBITRATOR WALL: All right.  
12:04:53 5 BY MR. LEWIN:  
12:04:53 6 Q. Okay. And I think you testified that -- looking  
12:04:59 7 at Exhibit 14.  
12:05:01 8 A. 14?  
12:05:04 9 Q. Your office prepared this. Is that correct?  
12:05:07 10 A. Yes.  
12:05:08 11 Q. And then you sent this to Ben?  
12:05:10 12 A. Yes.  
12:05:10 13 Q. Did you personally send it to Ben?  
12:05:13 14 A. The office usually sends it.  
12:05:15 15 Q. So whenever you said "I sent a tax return" or "I  
12:05:18 16 sent a schedule," you mean that someone else sent them.  
12:05:22 17 Right?  
12:05:22 18 A. Not quite. Sometimes I do send it myself.  
12:05:27 19 Q. All right. And as a matter of -- these  
12:05:39 20 calculations, they're not in your handwriting. Is that  
12:05:42 21 correct?  
12:05:42 22 A. It's not my handwriting.  
12:05:45 23 Q. Do you know whose handwriting it is?  
12:05:47 24 A. Probably Alex.  
12:05:49 25 Q. You produced this document in this litigation.

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12:05:57 1 Right? See it says Bidsal 1452?

12:06:03 2 A. Yes. Yes.

12:06:04 3 Q. This was in your file. Right?

12:06:07 4 A. Yes.

12:06:08 5 ARBITRATOR WALL: For the record, who is Alex?

12:06:10 6 THE WITNESS: Alex Valerio was an accountant from

12:06:14 7 2011 --

12:06:17 8 ARBITRATOR WALL: Was a what?

12:06:19 9 THE WITNESS: Accountant.

12:06:19 10 ARBITRATOR WALL: Accountant.

12:06:20 11 THE WITNESS: From 2011 until '15, '16.

12:06:26 12 ARBITRATOR WALL: And what was the last name?

12:06:28 13 THE WITNESS: Valerio, V-A-L-E-R-I-O.

12:06:31 14 ARBITRATOR WALL: Thanks.

12:06:33 15 BY MR. LEWIN:

12:06:33 16 Q. As a matter of fact, you don't know where this

12:06:35 17 document came from. Isn't that true?

12:06:37 18 A. That's not true.

12:06:38 19 Q. You don't know whether it came from you or the

12:06:41 20 accountant or somewhere else. Isn't that right? Is

12:06:44 21 that right? Yes or no?

12:06:45 22 A. I was --

12:06:46 23 Q. Yes or no?

12:06:47 24 A. What is the question?

12:06:48 25 Q. You don't know where this document came from,

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12:06:52 1 whether it came from a CPA or from your office or  
12:06:56 2 wherever. Isn't that correct?  
12:06:57 3 A. That's not correct.  
12:06:59 4 Q. You don't know whether it was produced by Henry  
12:07:02 5 or Alex. Isn't that correct?  
12:07:04 6 ARBITRATOR WALL: In the litigation?  
12:07:06 7 MR. LEWIN: No. Sorry. Let me rephrase.  
12:07:07 8 BY MR. LEWIN:  
12:07:08 9 Q. You don't know if this handwriting is from Alex  
12:07:11 10 or from Henry. Isn't that right?  
12:07:12 11 A. It's not from Henry because this predates Henry.  
12:07:15 12 Q. You don't know that it's from Alex either, do  
12:07:18 13 you?  
12:07:18 14 A. Most probably it's from Alex. It was during that  
12:07:22 15 time that --  
12:07:22 16 Q. It's a yes or no, sir.  
12:07:24 17 A. I think it's from Alex.  
12:07:27 18 MR. LEWIN: I'd like to read from the witness's  
12:07:30 19 deposition.  
12:07:31 20 ARBITRATOR WALL: Page?  
12:07:32 21 MR. LEWIN: Page 139, within the deposition.  
12:07:36 22 This document was marked as Exhibit 11.  
12:07:36 23 ARBITRATOR WALL: Okay.  
12:07:42 24 MR. LEWIN: Can I refer to it as -- no, I'll just  
12:07:45 25 read the deposition. I'm going to read from 139

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12:07:51 1 through 140, Line 6.

12:07:54 2 BY MR. LEWIN:

12:07:56 3 Q. By Mr. Lewin:

12:07:59 4 "QUESTION: Mr. Bidsal, let me see if I can move

12:08:01 5 this over a little bit. Take a look at Exhibit 11 and

12:08:05 6 tell me if you recognize it."

12:08:07 7 I've already got -- I'm just going to skip that.

12:08:07 8 Then it goes down to -- I'll start at line 10.

12:08:12 9 "This -- is this document -- is this -- are your

12:08:16 10 calculations -- are these calculations in your

12:08:17 11 handwriting?

12:08:18 12 "ANSWER: No.

12:08:20 13 "Do you know whose handwriting it is?

12:08:21 14 "ANSWER: No.

12:08:22 15 "Do you recognize this handwriting as being

12:08:24 16 either -- being from either Henry or Alex?

12:08:26 17 "ANSWER: I don't -- I wouldn't know.

12:08:28 18 "QUESTION: Well, you produced this document.

12:08:31 19 Where did you get it?

12:08:32 20 "ANSWER: It was in our file. It was something

12:08:35 21 that either the CPA produced or it was in our file that

12:08:39 22 we produced.

12:08:41 23 "QUESTION: When you say 'produced it,' either

12:08:42 24 who?

12:08:43 25 "ANSWER: Either the CPA or from my office.



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12:08:45 1 "QUESTION: You can see it was in your file,  
12:08:48 2 however. Right?  
12:08:48 3 "ANSWER: Yes.  
12:08:49 4 "QUESTION: Do you have any reason to doubt that  
12:08:51 5 it came from your accountant Henry?  
12:08:54 6 "ANSWER: I can't be certain on that. As I said,  
12:08:57 7 it could be from the CPA's office or from my office."  
12:09:06 8 Now, in connection with this document, you  
12:09:14 9 believe this is an accurate description of how the boot  
12:09:18 10 was calculated. Right? Talking about Exhibit 14.  
12:09:26 11 A. To the best of my knowledge, yes.  
12:09:28 12 Q. And this was distributed on a 70/30 basis?  
12:09:33 13 A. Yes.  
12:09:34 14 Q. By the way, you've testified that you've had  
12:09:37 15 conversations with Ben where he agreed to how to  
12:09:42 16 distribute money or how to distribute funds. Do you  
12:09:45 17 have any document in writing where Ben agreed to a  
12:09:53 18 distribution of funds other than sales of the property?  
12:09:56 19 Talking about B and E. Do you have anything in writing  
12:10:00 20 where it shows that he approved that distribution?  
12:10:04 21 A. In writing? He cashed the checks. He agreed to  
12:10:08 22 it.  
12:10:08 23 Q. You have nothing in writing from him saying "I  
12:10:12 24 agree with this. This is the way the money should be  
12:10:14 25 distributed." Is that correct?

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12:10:16 1 A. Not that I know of.

12:10:18 2 Q. Thank you.

12:10:20 3 Well, you've searched all your records for this  
12:10:24 4 arbitration. Right?

12:10:26 5 A. The great extent is literally, I don't know,  
12:10:31 6 20,000 E-mails.

12:10:37 7 Q. And you said that the first time that you  
12:10:47 8 understood that there was a disagreement was when Ben  
12:10:54 9 sent you an Email in 2016. Is that correct?

12:10:58 10 A. Yes.

12:10:59 11 Q. Now, again, looking at Exhibit 23, do you know  
12:11:11 12 who prepared this?

12:11:15 13 A. 23, it's from our office.

12:11:28 14 Q. Well, actually, you don't know whether -- it's  
12:11:28 15 like the same with respect to the other one. You don't  
12:11:31 16 know whether it came from the CPA's office or your  
12:11:33 17 office. Right?

12:11:35 18 A. No. But when I meant the CPA office, I meant who  
12:11:39 19 produced the production of documents. But in terms of  
12:11:42 20 the actual drafting of it, this came from our office.

12:11:45 21 Q. So you're saying this was created by -- so again,  
12:12:00 22 was this provided to Ben?

12:12:01 23 A. Yes.

12:12:02 24 Q. When?

12:12:03 25 A. When we did the distribution sheet, we provided

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12:12:08 1 it to Ben.

12:12:09 2 Q. And how do you know that?

12:12:10 3 A. Because I reviewed this and I'm the one who signs

12:12:15 4 the checks.

12:12:15 5 Q. Did you mail this document to Ben? Yes or no?

12:12:21 6 A. Personally, I don't remember.

12:12:22 7 Q. You actually don't know who created the document

12:12:25 8 and you don't know who mailed it to him, if anybody.

12:12:28 9 Isn't that right?

12:12:28 10 A. That is not true.

12:12:31 11 Q. Will you take a look at Exhibit 58? I'm sorry.

12:13:08 12 That's wrong. Take a look at Exhibit 108.

12:13:12 13 ARBITRATOR WALL: 108?

12:13:13 14 MR. LEWIN: 108.

12:13:19 15 BY MR. LEWIN:

12:13:33 16 Q. You wrote this. This is an Email dated

12:13:38 17 January 25, 2016. You wrote this?

12:13:44 18 MR. SHAPIRO: Which page are you referencing?

12:13:47 19 MR. LEWIN: The first page.

12:13:48 20 ARBITRATOR WALL: No, second page. 2087?

12:13:52 21 MR. LEWIN: You're right. Second page.

12:13:57 22 A. Yes.

12:14:00 23 BY MR. LEWIN:

12:14:00 24 Q. And it says -- you say -- and you composed this

12:14:07 25 Email?

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12:14:08 1 A. Yes.

12:14:08 2 Q. And what were you -- what were you responding to

12:14:15 3 when you composed this Email? Take a look at

12:14:59 4 Exhibit 107 and see if that refreshes your recollection.

12:15:06 5 It says letter to WCI 1 -- 01 -- January 21st, 2016.

12:15:27 6 A. Are you looking at Exhibit 107?

12:15:29 7 Q. Were you responding to Exhibit 107 when you wrote

12:15:32 8 this Email on Exhibit 108?

12:15:34 9 A. (No verbal response.)

12:15:55 10 Q. Notice that Exhibit 107 is a letter dated

12:15:59 11 January 21st, 2016. And on your response, the

12:16:02 12 attachment refers to January 21st, 2016?

12:16:18 13 A. The 107 is regarding the country club. It's a

12:16:23 14 different property.

12:16:24 15 Q. I understand that. But you were responding to

12:16:26 16 this letter when you wrote -- isn't it true you were

12:16:27 17 responding to Exhibit 107 when you wrote Exhibit 108?

12:16:31 18 A. I don't know if it's a response to that or

12:16:33 19 response to another Email.

12:16:35 20 Q. Okay.

12:16:38 21 MR. LEWIN: Your Honor, we talked about

12:16:40 22 Exhibit 107. And I realized last night we turned to

12:16:46 23 Exhibit 36. All these E-mails related to Country Club

12:16:51 24 are in evidence already. Exhibit 36 is a series of

12:17:01 25 E-mails from -- that were offered into evidence by

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12:17:09 1 Mr. Gerrard. I'd like to revisit 107.

12:17:19 2 ARBITRATOR WALL: 36 is in. Right? Why don't

12:17:20 3 you use 36?

12:17:22 4 MR. LEWIN: Well --

12:17:22 5 MR. GERRARD: He doesn't want to use it because

12:17:25 6 107 is not a part of that.

12:17:27 7 ARBITRATOR WALL: 107 is part of it.

12:17:27 8 MR. GERRARD: Is it?

12:17:28 9 ARBITRATOR WALL: It's Bates 1554.

12:17:37 10 BY MR. LEWIN:

12:17:37 11 **Q. So now looking at Exhibit 107, does that refresh**

12:17:40 12 **your --**

12:17:40 13 MR. LEWIN: I just thought it would be better to

12:17:42 14 have them next to each other.

12:17:44 15 MR. GERRARD: Hold on for a second.

12:17:47 16 ARBITRATOR WALL: 108 is 1552.

12:17:47 17 MR. GERRARD: Oh, I do see it at the end. Yep, I

12:17:47 18 do see it.

12:17:54 19 ARBITRATOR WALL: All right. So let's just use

12:17:55 20 Exhibit 36 since they're in evidence.

12:17:58 21 MR. LEWIN: Very well.

12:17:59 22 BY MR. LEWIN:

12:17:59 23 **Q. When you wrote your response --**

12:18:03 24 A. Can I go to 36 now or...

12:18:07 25 ARBITRATOR WALL: Yeah.

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12:18:15 1 BY MR. LEWIN:

12:18:31 2 Q. When you wrote your response to --

12:18:44 3 ARBITRATOR WALL: So you're going to look at --

12:18:47 4 his response is Exhibit 36 Page 1552.

12:18:55 5 THE WITNESS: 1 --

12:18:56 6 ARBITRATOR WALL: -- 552.

12:18:58 7 THE WITNESS: Okay.

12:18:59 8 MR. SHAPIRO: And then turn to 108.

12:19:04 9 ARBITRATOR WALL: We don't need 107 and 108.

12:19:06 10 They're all in 36.

12:19:09 11 BY MR. LEWIN:

12:19:09 12 Q. So when you wrote this response --

12:19:11 13 MR. SHAPIRO: In 108.

12:19:12 14 ARBITRATOR WALL: Wait. Wait. We're just using

12:19:13 15 Exhibit 36.

12:19:14 16 BY MR. LEWIN:

12:19:14 17 Q. When you wrote the response to Lida on

12:19:18 18 January 25, your response to the January 21st letter

12:19:23 19 where there was a complaint regarding the way you were

12:19:27 20 distributing money, you were responding to that letter.

12:19:30 21 Right? You were responding to the January 21st letter?

12:19:34 22 MR. SHAPIRO: Objection. Asked and answered. He

12:19:36 23 said he wasn't sure.

12:19:38 24 ARBITRATOR WALL: All right.

12:19:39 25 ///

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12:19:39 1 BY MR. LEWIN:

12:19:39 2 Q. Is your answer still you don't know?

12:19:48 3 A. It looks like the response is to Country Club,

12:19:52 4 which is different property.

12:19:53 5 Q. The country club, however, has the same operating

12:20:01 6 agreement as Green Valley. Isn't that right?

12:20:01 7 A. Similar, yes.

12:20:01 8 Q. It's not similar. It's the same. Right? Except

12:20:03 9 it's a different name?

12:20:06 10 A. I haven't looked at it for quite a while.

12:20:10 11 Q. Take a look at Exhibit 88.

12:20:13 12 MR. SHAPIRO: What's the relevance of the

12:20:14 13 similarities between the operating agreements?

12:20:14 14 MR. LEWIN: Because the relevance is the issue in

12:20:17 15 the way that Mr. Bidsal was managing both properties

12:20:21 16 with identical operating agreements, and Ben was

12:20:23 17 beginning to object to the way he was distributing money

12:20:27 18 under both of them.

12:20:29 19 ARBITRATOR WALL: Okay. So it's not a

12:20:30 20 circumstance where in the Country Club scenario that

12:20:36 21 sales of property were distributed differently than they

12:20:40 22 were in the Green Valley?

12:20:44 23 MR. LEWIN: He was distributing in Country

12:20:48 24 Club --

12:20:49 25 ARBITRATOR WALL: The same way?

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12:20:50 1 MR. LEWIN: The same way and Ben was objecting.

12:20:56 2 ARBITRATOR WALL: All right. Were there sales

12:21:03 3 in -- I don't want to ask --

12:21:04 4 MR. SHAPIRO: That's the problem.

12:21:06 5 ARBITRATOR WALL: All right. All right.

12:21:06 6 MR. LEWIN: I understand.

12:21:07 7 ARBITRATOR WALL: I mean, I'll allow -- 36 is

12:21:08 8 already in evidence, so he can explain what he was

12:21:11 9 talking about. He said it's Country Club.

12:21:14 10 MR. SHAPIRO: This is a letter to him so he

12:21:17 11 really can't explain what he was talking about because

12:21:19 12 it's a letter from CLA Properties. I mean, Ben's the

12:21:22 13 one that should --

12:21:22 14 ARBITRATOR WALL: Not 1552.

12:21:27 15 BY MR. LEWIN:

12:21:28 16 **Q. In 1552 you're actually responding to both Ben's**

12:21:33 17 **complaints about Country Club and Green Valley. Right?**

12:21:37 18 A. I can't be -- I can't be certain of that.

12:21:45 19 **Q. But in any case, by -- by the time you received**

12:21:50 20 **the letter in January from Lida, you understood that Ben**

12:21:56 21 **was objecting to the way that you were distributing**

12:21:59 22 **money in Green Valley. Correct?**

12:22:02 23 A. Okay.

12:22:03 24 **Q. And he was also objecting on the same basis for**

12:22:07 25 **Country Club. Right?**



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12:22:09 1 MR. SHAPIRO: Objection. Relevance.

12:22:11 2 ARBITRATOR WALL: Overruled.

12:22:16 3 BY MR. LEWIN:

12:22:16 4 Q. Take a look again at Exhibit 88, please.

12:22:19 5 A. Exhibit?

12:22:20 6 Q. 88.

12:22:22 7 A. 88.

12:22:25 8 MR. SHAPIRO: Again, Your Honor, this is the

12:22:27 9 operating agreement of Country Club. I'm not sure how

12:22:31 10 this is relevant to the present dispute.

12:22:32 11 MR. LEWIN: It's just to show that they had the

12:22:34 12 same --

12:22:34 13 BY MR. LEWIN:

12:22:35 14 Q. Let's look over Exhibit B.

12:22:47 15 A. Okay.

12:22:48 16 Q. You had the same disproportionate capital

12:22:56 17 contributions to the country club. Right?

12:22:59 18 MR. SHAPIRO: I mean, again, objection.

12:23:01 19 Relevance.

12:23:02 20 ARBITRATOR WALL: Sustained.

12:23:03 21 BY MR. LEWIN:

12:23:03 22 Q. You had the same Exhibit B. Exhibit B was the

12:23:06 23 same in Country Club, except for the amount of capital,

12:23:10 24 as Green Valley's Exhibit B. Right?

12:23:14 25 MR. SHAPIRO: Objection. Relevance.

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12:23:17 1 ARBITRATOR WALL: I'm not going to admit 88.

12:23:19 2 MR. LEWIN: Well, I just want to get to prove

12:23:21 3 that the purpose of -- only to prove that Ben's

12:23:21 4 complaint about Country Club is raising the same issue.

12:23:25 5 So it's not like he's not sitting on his hands and not

12:23:30 6 doing anything, not complaining about it.

12:23:31 7 ARBITRATOR WALL: But as of January of 2016 he

12:23:33 8 made a complaint with respect to how distributions were

12:23:37 9 being made.

12:23:37 10 MR. LEWIN: That's right.

12:23:38 11 ARBITRATOR WALL: That came through

12:23:39 12 Mr. Golshani's testimony. So all right. I don't need

12:23:45 13 the Country Club operating agreement to establish that.

12:23:49 14 MR. LEWIN: Okay.

12:23:50 15 BY MR. LEWIN:

12:23:50 16 **Q. By the way, so there's a series of E-mails**

12:23:52 17 **between you and Ben from the beginning of 2016 that's**

12:23:56 18 **going on where he's complaining about the way you're**

12:23:59 19 **distributing money. Right?**

12:24:01 20 A. (Moved head.)

12:24:01 21 **Q. And some of them are in Exhibit 36. Is that**

12:24:04 22 **correct?**

12:24:04 23 A. Yes.

12:24:05 24 **Q. And if you remember, you testified earlier today**

12:24:10 25 **that you and Ben had a conversation where you said that**

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12:24:15 1 he had agreed that the waterfall was not triggered by  
12:24:20 2 the sales of property and that he agreed with the way  
12:24:24 3 that you were distributing the funds. Do you remember  
12:24:26 4 that testimony?

12:24:27 5 A. Yes.

12:24:28 6 Q. In responding to Ben's complaints, all of the  
12:24:32 7 complaints that he made, did you ever once say in  
12:24:34 8 writing, "Ben, remember we talked about this and you  
12:24:39 9 agreed?" Do you remember saying that?

12:24:42 10 A. Yes. There's an Email like that.

12:24:45 11 Q. Where does it say in this -- where does it say in  
12:24:48 12 the exhibit -- in your response or --

12:24:50 13 A. I don't know where it is --

12:24:51 14 Q. Wait. Wait. Where does it say in this response  
12:24:54 15 on January 25? Where do you refer to that conversation?

12:24:57 16 MR. SHAPIRO: Objection. Argumentative. He  
12:24:59 17 asked a general question if there was an Email, and  
12:25:02 18 now he's trying to --

12:25:03 19 ARBITRATOR WALL: He can itemize, so overruled.

12:25:06 20 BY MR. LEWIN:

12:25:08 21 Q. Is there anywhere where you reference that "By  
12:25:11 22 the way, don't you remember we had a discussion and an  
12:25:15 23 agreement" in this document, in this response?

12:25:17 24 A. Yes. CLA Bate No. 1279. So if you read my Email  
12:25:49 25 to him --

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12:25:50 1 ARBITRATOR WALL: At the bottom? At the bottom Page 776  
12:25:53 2 of the page?  
12:25:54 3 THE WITNESS: Yeah. It says under tax returns it  
12:25:57 4 shows, "Please check your notes from prior discussions."  
12:26:01 5 BY MR. LEWIN:  
12:26:02 6 Q. That's it.  
12:26:03 7 A. And then -- yeah, and then give more information.  
12:26:05 8 Q. This is an Email you sent on April 23. Were you  
12:26:15 9 referring to your other E-mails that you sent him?  
12:26:18 10 A. Prior discussions. He took notes. He has  
12:26:22 11 information on that.  
12:26:23 12 Q. Is that the only place that you claimed that  
12:26:26 13 you're referring to a conversation with Ben about his  
12:26:30 14 agreement to distribute funds not attached to the  
12:26:34 15 waterfall? That's a yes or no, sir.  
12:26:37 16 MR. GERRARD: You're asking if that's the only  
12:26:39 17 place in writing?  
12:26:40 18 MR. LEWIN: Yes.  
12:26:40 19 A. I wouldn't know. There might be more.  
12:27:14 20 ARBITRATOR WALL: This is a good spot where it  
12:27:17 21 makes sense to break for lunch.  
12:27:19 22 MR. LEWIN: Okay.  
12:27:32 23 \*\*\*  
12:27:32 24 (RECESS TAKEN FROM 12:27 TO 1:12)  
13:11:49 25 \*\*\*

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13:11:49 1 ARBITRATOR WALL: Mr. Bidsal, do you realize

13:11:52 2 you're still under oath?

13:11:59 3 THE WITNESS: Yes.

13:11:59 4 BY MR. LEWIN:

13:12:00 5 Q. Mr. Bidsal, when you and -- did you and Ben ever

13:12:03 6 meet with David LeGrand in person?

13:12:06 7 MR. SHAPIRO: Objection. What point in time?

13:12:09 8 MR. LEWIN: Ever.

13:12:10 9 A. Yes, I did.

13:12:10 10 BY MR. LEWIN:

13:12:10 11 Q. Did you have a meeting where you talked about

13:12:14 12 what you wanted to have in the operating agreement with

13:12:16 13 Mr. LeGrand and Ben?

13:12:18 14 A. What we wanted in the operating agreement? We

13:12:22 15 met in I think it was June/July of 2011.

13:12:24 16 Q. And during that meeting, was there a discussion

13:12:27 17 about how the -- what would constitute a capital

13:12:38 18 transaction?

13:12:39 19 A. I don't recall.

13:13:02 20 Q. Was there any discussion about the stepdown

13:13:13 21 allocations in the meeting with Mr. LeGrand where you

13:13:17 22 and Ben were both present?

13:13:19 23 A. You mean in 2011?

13:13:21 24 Q. Before the operating agreement was signed.

13:13:22 25 A. We had discussions.

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13:13:24  
13:13:27  
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13:14:09  
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13:14:18  
13:14:20  
13:14:22  
13:14:23  
13:14:24  
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13:14:35  
13:14:35  
13:14:39

1 Q. Did you privately have discussions with  
2 Mr. LeGrand about what should be in the stepdown  
3 allocation or the waterfall, as we've described it?  
4 A. No.  
5 Q. Okay. Did you ever discuss Exhibit B to the  
6 operating agreement with Jim Main?  
7 A. I don't recall.  
8 Q. Did you describe to Mr. Main how you felt --  
9 strike that.  
10 Did you describe to Mr. Main what would trigger  
11 the waterfall?  
12 A. I don't recall having that discussion.  
13 Q. Did you ever discuss what would trigger the  
14 waterfall with Mr. Main?  
15 MR. GERRARD: Objection.  
16 ARBITRATOR WALL: Was that the same question?  
17 MR. LEWIN: I thought I -- it was a little bit  
18 different. Okay, it's the same.  
19 BY MR. LEWIN:  
20 Q. When's the last time you spoke to Jim Main about  
21 the -- well, when's the last time before your deposition  
22 that you had spoken to Mr. Main about the operating  
23 agreement?  
24 A. It was probably few -- few months.  
25 Q. Okay. And at that time you were discussing

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13:14:42

1 profit distributions with him?

13:14:50

2 A. I don't recall the details.

13:14:52

3 Q. But we're talking about a few months prior to

13:14:54

4 your deposition. Right?

13:14:56

5 A. Yes.

13:14:56

6 Q. Okay. You initiated the process to buy the CLA's

13:15:08

7 membership interest because you did not -- no longer

13:15:12

8 wanted to manage the property. Right?

13:15:14

9 A. I didn't want to manage the property for the

13:15:17

10 partnership.

13:15:20

11 Q. Isn't it true in March of 2017 you had asked

13:15:29

12 Mr. Golshani if he was interested in purchasing other

13:15:40

13 properties with you?

13:15:40

14 A. I don't recall that.

13:15:50

15 ARBITRATOR WALL: Sorry. That was me. Hold on,

13:16:00

16 Mr. Lewin.

13:16:03

17 (Interruption in proceedings.)

13:16:03

18 MR. SHAPIRO: You did it without anything? I'm

13:16:08

19 impressed.

13:16:16

20 BY MR. LEWIN:

13:16:21

21 Q. In March of 2017 did Mr. Golshani tell you that

13:16:26

22 he was a little tight with money and wasn't liquid

13:16:30

23 enough to buy a property with you?

13:16:33

24 MR. SHAPIRO: Objection. Compound.

13:16:37

25 ARBITRATOR WALL: Overruled.

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13:16:38 1 A. I never thought that he didn't have money. He Page 780  
13:16:42 2 always had money. We both had it.  
13:16:45 3 BY MR. LEWIN:  
13:16:45 4 Q. My question is: Did he tell you that?  
13:16:46 5 A. I don't recall that conversation.  
13:16:48 6 Q. You don't recall that conversation, but you do  
13:16:51 7 recall a conversation in approximately March about  
13:16:56 8 buying other properties with Mr. Golshani. Is that  
13:16:59 9 correct?  
13:16:59 10 MR. SHAPIRO: Objection. Asked and answered.  
13:17:01 11 ARBITRATOR WALL: Overruled.  
13:17:02 12 A. I don't recall having that conversation for that  
13:17:06 13 subject matter.  
13:17:07 14 BY MR. LEWIN:  
13:17:07 15 Q. Okay. Well, when you first -- strike that.  
13:17:20 16 In approximately March of 2017 had you received a  
13:17:27 17 study from brokers analyzing the value of Green Valley's  
13:17:32 18 real properties?  
13:17:33 19 A. We received DOVs at different times. I mean, I  
13:17:36 20 can't be that specific. It could be 2017 or 2018.  
13:17:37 21 Q. Didn't you list some of Green Valley's properties  
13:17:42 22 in early 2017?  
13:17:43 23 A. Yes, we did.  
13:17:49 24 Q. You did. Right?  
13:17:51 25 A. That's what I meant, yeah.



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13:17:52 1 Q. And what properties did you list for sale?

13:17:55 2 A. We listed some buildings in Green Valley

13:17:58 3 Commerce.

13:17:58 4 Q. And that was in -- that was approximately in

13:18:00 5 March 2017?

13:18:01 6 A. I don't specifically remember which month, but

13:18:06 7 the property had been listed for awhile.

13:18:09 8 Q. And would you have also listed the Green Valley

13:18:17 9 property?

13:18:17 10 A. Green Valley property for lease or for sale?

13:18:20 11 Q. For sale.

13:18:21 12 A. I probably did, yeah.

13:18:23 13 Q. Do you remember what month you listed the

13:18:30 14 properties for sale, the Green -- the Nevada properties

13:18:32 15 for sale?

13:18:34 16 A. What month? No, I can't remember.

13:18:36 17 Q. Would it have been in the first quarter of 2017?

13:18:39 18 A. The properties of Green Valley Commerce were for

13:18:45 19 sale off and on.

13:18:48 20 Q. But you received a study in 2017 that valued the

13:18:52 21 properties -- all the properties at over 6 million

13:18:56 22 dollars. Right?

13:18:58 23 A. You mean Nevada Henderson properties or --

13:19:01 24 Q. Nevada Henderson properties.

13:19:05 25 A. I don't recall, but I know it was listed.

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13:19:07 1 Q. When you made your offer on July 7th, you knew  
13:19:12 2 that the brokers had valued the Green Valley properties  
13:19:15 3 at over 6 million dollars. Right?  
13:19:21 4 A. Yes. And we didn't sell.  
13:19:27 5 Q. And you had received an offer for the Greenway  
13:19:34 6 property. Isn't that correct?  
13:19:40 7 A. We did receive --  
13:19:40 8 Q. In 2017?  
13:19:41 9 A. We did receive an offer. It might have been  
13:19:43 10 2017.  
13:19:44 11 Q. And the offer was for approximately \$1.6 million.  
13:19:51 12 Right?  
13:19:51 13 A. I don't remember the exact number.  
13:19:53 14 Q. Do you mean the approximate number?  
13:20:00 15 A. Not offhand. But it was somewhere between 1.5  
13:20:05 16 and 1.7, 1.8.  
13:20:10 17 Q. And what was the basis -- what was the -- the COP  
13:20:22 18 in -- for Greenway based on formula was how much?  
13:20:32 19 MR. SHAPIRO: Objection. Vague. There's no  
13:20:34 20 formula for COP.  
13:20:37 21 MR. LEWIN: The cost of purchase based on the  
13:20:40 22 settlement statement when Greenway was purchased.  
13:20:45 23 That's what I'm talking about.  
13:20:45 24 BY MR. LEWIN:  
13:20:45 25 Q. How much was Greenway purchased for?

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13:20:47 1 MR. SHAPIRO: Okay.

13:20:49 2 ARBITRATOR WALL: He's just asked how much -- the

13:20:52 3 statement that you made is not universally agreed upon,

13:20:58 4 so the question is simply how much was Greenway

13:21:01 5 purchased on. This answer is not in response to you're

13:21:05 6 saying that fits into the COP formula.

13:21:05 7 MR. LEWIN: I understand.

13:21:05 8 ARBITRATOR WALL: All right.

13:21:12 9 A. Can you please rephrase?

13:21:12 10 BY MR. LEWIN:

13:21:12 11 **Q. What was the purchase price for Greenway,**

13:21:14 12 **including all costs associated with it?**

13:21:16 13 A. I don't remember off the top of my head. Was

13:21:19 14 it -- it's in the documents. Was it -- I don't

13:21:28 15 remember. I have to look at the closing statement.

13:21:32 16 **Q. Okay.**

13:21:33 17 ARBITRATOR WALL: I mean, we've seen -- was that

13:21:35 18 the 790?

13:21:35 19 BY MR. LEWIN:

13:21:40 20 **Q. 790 plus some costs?**

13:21:43 21 A. Yeah.

13:21:43 22 **Q. When you made your offer, you believe -- strike**

13:21:47 23 **that.**

13:21:47 24 **When you made your July 7 offer, you knew you had**

13:21:51 25 **already received an offer for Greenway of over 1 and a**

## ARBITRATION, DAY 3 - 03/19/2021

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13:21:55 1 half million dollars. Right?

13:21:57 2 A. Sometime at that time, yeah.

13:22:01 3 Q. Okay. And when you were -- when you were making

13:22:04 4 your offer, you were evaluating the value of the real

13:22:09 5 properties. Right?

13:22:10 6 A. Yes.

13:22:11 7 Q. That included Greenway. Right?

13:22:14 8 A. Yes.

13:22:15 9 Q. What other real properties did it include?

13:22:17 10 A. What other property? It included the remaining

13:22:23 11 buildings in Green Valley Commerce.

13:22:25 12 Q. And the -- so when you were considering how much

13:22:35 13 to offer Ben, you knew that the brokers had valued the

13:22:39 14 properties at over 6 million. Right?

13:22:42 15 A. They didn't -- they make -- brokers offered to

13:22:48 16 get the listing so they can sell it. That's just a --

13:22:51 17 there's a reason behind it. But it didn't sell for a

13:22:56 18 long time.

13:22:56 19 Q. That wasn't my question. Please answer my

13:22:59 20 question.

13:22:59 21 A. I did answer it. Yes. They did provide some

13:23:04 22 sort of DOV.

13:23:12 23 Q. And also, when you were making your offer, you

13:23:16 24 also looked at the financials of the company. Right?

13:23:19 25 A. The way I did it was --

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13:23:22 1 Q. Please answer my question.

13:23:24 2 A. Yes, I did.

13:23:25 3 Q. And you looked at the financials because you

13:23:27 4 wanted to look at what the income stream was. Right?

13:23:31 5 A. Yes.

13:23:32 6 Q. As of July 7, 2017, you had owned either

13:23:42 7 multiresidential or commercial properties either between

13:23:45 8 25 and 30. Right?

13:23:49 9 A. I don't count them, but in that range. 20 to 30.

13:23:53 10 Q. Some of them were large. You owned a 72-unit

13:23:58 11 apartment building in Los Angeles. Right?

13:24:00 12 A. No.

13:24:02 13 Q. You didn't?

13:24:06 14 A. July 7, 2017, no, I didn't.

13:24:09 15 Q. Okay. So at the time that you made your offer,

13:24:19 16 having received the brokers evaluation of over 6 million

13:24:24 17 dollars and having received an offer to purchase

13:24:27 18 Greenway for around 1.5 plus, you believed that

13:24:37 19 5 million dollars was less than the fair market value of

13:24:39 20 the company. Isn't that true?

13:24:41 21 A. No.

13:24:41 22 Q. When you consider the fair market value of the

13:24:45 23 company, you were talking about the value of the

13:24:48 24 company's assets. Right?

13:24:51 25 A. The real estate.