

**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 34**

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## **CHRONOLOGICAL INDEX TO APPELLANT'S APPENDIX**

<b><u>NO.</u></b>	<b><u>DOCUMENT</u></b>	<b><u>DATE</u></b>	<b><u>VOL.</u></b>	<b><u>PAGE NO.</u></b>
1.	Motion to Vacate Arbitration Award (NRS 38.241) and for Entry of Judgment	6/17/22	1	1-24
	<u>Exhibit 117</u> : JAMS Final Award dated March 12, 2022		1	25-56
	<u>Exhibit 122</u> : Operating Agreement of Green Valley Commerce, LLC		1	57-85
2.	Appendix to Movant CLA Properties, LLC's Motion to Vacate Arbitration Award (NRS 38.241) and for Entry of Judgment (Volume 1 of 18)	6/22/22	1	86
	Note Regarding Incorrect Index		1	87
	Index [Incorrect]		1	88-98
	<u>Exhibit 101</u> : JAMS Arbitration Demand Form dated February 7, 2020		1	99-133
	<u>Exhibit 102</u> : Commencement of Arbitration dated March 2, 2020		1	134-149
	<u>Exhibit 103</u> : Respondent's Answer and Counter-Claim dated March 3, 2020		1	150-178
	<u>Exhibit 104</u> : Report of Preliminary Arbitration Conference and Scheduling Order dated April 30, 2020		1	179-184
	<u>Exhibit 105</u> : Claimant Shawn Bidsal's Answer to Respondent CLA Properties, LLC's Counterclaim dated May 19, 2020		1	185-190
	<u>Exhibit 106</u> : Notice of Hearing for February 17 through August 3, 2020		1	191-195

<b><u>NO.</u></b>	<b><u>DOCUMENT</u></b>	<b><u>DATE</u></b>	<b><u>VOL.</u></b>	<b><u>PAGE NO.</u></b>
(Cont. 2)	<u>Exhibit 107</u> : Notice of Hearing for February 17 through February 19, 2021 dated October 20, 2020		1	196-199
	<u>Exhibit 108</u> : Claimant Shawn Bidsal's First Amended Demand for Arbitration dated November 2, 2020		1	200-203
	<u>Exhibit 109</u> : Respondent's Fourth Amended Answer and Counter-Claim to Bidsal's First Amended Demand dated January 19, 2021		1	204-214
	<u>Exhibit 110</u> : Claimant Shawn Bidsal's Answer to Respondent CLA Properties, LLC's Fourth Amended Counterclaim dated March 5, 2021		1	215-220
	<u>Exhibit 111</u> : Notice of Additional Hearing for June 25, 2021 dated April 29, 2021		1	221-226
	<u>Exhibit 112</u> : Notice of Additional Hearing for September 29 through September 30, 2021 dated August 9, 2021		1	227-232
3.	Appendix to Movant CLA Properties, LLC's Motion to Vacate Arbitration Award (NRS 38.241) and for Entry of Judgment (Volume 2 of 18)	6/22/22	1	233
	Note Regarding Incorrect Index		1	234
	Index [Incorrect]		1	235-245
	<u>Exhibit 113</u> : Final Award - Stephen E. Haberfeld, Arbitrator dated April 5, 2019		2	246-267

<u>NO.</u>	<u>DOCUMENT</u>	<u>DATE</u>	<u>VOL.</u>	<u>PAGE NO.</u>
(Cont. 3)	<u>Exhibit 114</u> : Order Granting Petition for Confirmation of Arbitration Award and Entry of Judgment and Denying Respondent's Opposition and Counterpetition to Vacate the Arbitrator's Award dated December 5, 2019		2	268-278
	<u>Exhibit 115</u> : Notice of Entry of Order Granting Petition for Confirmation of Arbitration Award and Entry of Judgment and Denying Respondent's Opposition and Counterpetition to Vacate the Arbitration's Award dated December 16, 2019		2	279-293
	<u>Exhibit 116</u> : Interim Award dated October 20, 2021		2	294-321
	<u>Exhibit 117</u> : Final Award dated March 12, 2022		2	322-353
4.	Appendix to Movant CLA Properties, LLC's Motion to Vacate Arbitration Award (NRS 38.241) and for Entry of Judgment (Volume 3 of 18)	6/22/22	2	354
	Note Regarding Incorrect Index		2	355
	Index [Incorrect]		2	356-366
	<u>Exhibit 118</u> : Agreement for Sale and Purchase of Loan dated May 19, 2011		2	367-434
	<u>Exhibit 119</u> : Assignment and Assumption of Agreements dated May 31, 2011		2	435-438
	<u>Exhibit 120</u> : Final Settlement Statement – Note Purchase dated June 3, 2011		2	439-440
	<u>Exhibit 121</u> : GVC Articles of Organization dated May 26, 2011		2	441-442



<u>NO.</u>	<u>DOCUMENT</u>	<u>DATE</u>	<u>VOL.</u>	<u>PAGE NO.</u>
(Cont. 4)	<u>Exhibit 122</u> : GVC Operating Agreement		2	443-471
	<u>Exhibit 123</u> : Emails regarding Execution of GVC OPAG dated November 29, 2011 to December 12, 2011		2	472-476
	<u>Exhibit 124</u> : Declaration of CC&Rs for GVC dated March 16, 2011		3	477-557
	<u>Exhibit 125</u> : Deed in Lieu Agreement dated September 22, 2011		3	558-576
	<u>Exhibit 126</u> : Estimated Settlement Statement – Deed in Lieu Agreement dated September 22, 2011		3	577-578
	<u>Exhibit 127</u> : Grant, Bargain, Sale Deed dated September 22, 2011		3	579-583
5.	Appendix to Movant CLA Properties, LLC’s Motion to Vacate Arbitration Award (NRS 38.241) and for Entry of Judgment (Volume 4 of 18)	6/22/22	3	584
	Note Regarding Incorrect Index		3	585
	Index [Incorrect]		3	586-596
	<u>Exhibit 128</u> : 2011 Federal Tax Return dated December 31, 2011		3	597-614
	<u>Exhibit 129</u> : Escrow Closing Statement on Sale of Building C dated September 10, 2012		3	615-617
	<u>Exhibit 130</u> : Distribution Breakdown from Sale of Building C dated April 22, 2013		3	618-621
	<u>Exhibit 131</u> : 2012 Federal Tax Return dated September 10, 2013		3	622-638

<u>NO.</u>	<u>DOCUMENT</u>	<u>DATE</u>	<u>VOL.</u>	<u>PAGE NO.</u>
(Cont. 5)	<u>Exhibit 132</u> : Letter to CLA Properties with 2012 K-1 dated August 8, 2013		3	639-646
	<u>Exhibit 133</u> : Escrow Settlement Statement for Purchase of Greenway Property dated March 8, 2013		3	647-649
6.	Appendix to Movant CLA Properties, LLC's Motion to Vacate Arbitration Award (NRS 38.241) and for Entry of Judgment (Volume 5 of 18)	6/22/22	3	650
	Note Regarding Incorrect Index		3	651
	Index [Incorrect]		3	652-662
	<u>Exhibit 134</u> : Cost Segregation Study dated March 15, 2013		4	663-791
7.	Appendix to Movant CLA Properties, LLC's Motion to Vacate Arbitration Award (NRS 38.241) and for Entry of Judgment (Volume 6 of 18)	6/22/22	4	792
	Note Regarding Incorrect Index		4	793
	Index [Incorrect]		4	794-804
	<u>Exhibit 135</u> : 2013 Federal Tax Return dated September 9, 2014		4	805-826
	<u>Exhibit 136</u> : Tax Asset Detail 2013 dated September 8, 2014		4	827-829
	<u>Exhibit 137</u> : Letter to CLA Properties with 2014 K-1 dated September 9, 2014		4	830-836
	<u>Exhibit 138</u> : Escrow Closing Statement on Sale of Building E dated November 13, 2014		4	837-838
	<u>Exhibit 139</u> : Distribution Breakdown from Sale of Building E dated November 13, 2014		4	839-842

<u>NO.</u>	<u>DOCUMENT</u>	<u>DATE</u>	<u>VOL.</u>	<u>PAGE NO.</u>
(Cont. 7)	<u>Exhibit 140</u> : 2014 Federal Tax Return dated February 27, 2015		4	843-862
	<u>Exhibit 141</u> : Escrow Closing Statement on Sale of Building B dated August 25, 2015		4	863-864
	<u>Exhibit 142</u> : Distribution Breakdown from Sale of Building B dated August 25, 2015		4	865-870
	<u>Exhibit 143</u> : 2015 Federal Tax Return dated April 6, 2016		4	871-892
	<u>Exhibit 144</u> : 2016 Federal Tax Return dated March 14, 2017		5	893-914
	<u>Exhibit 145</u> : Letter to CLA Properties with 2016 K-1 dated March 14, 2017		5	915-926
	<u>Exhibit 146</u> : 2017 Federal Tax Return dated April 15, 2017		5	927-966
	<u>Exhibit 147</u> : Letter to CLA Properties with 2017 K-1 dated April 15, 2017		5	967-972
	<u>Exhibit 148</u> : 2018 Federal Tax Return dated August 2, 2019		5	973-992
	<u>Exhibit 149</u> : Letter to CLA Properties with 2018 K-1 dated April 10, 2018		5	993-1003
8.	Appendix to Movant CLA Properties, LLC's Motion to Vacate Arbitration Award (NRS 38.241) and for Entry of Judgment (Volume 7 of 18)	6/22/22	5	1004
	Note Regarding Incorrect Index		5	1005
	Index [Incorrect]		5	1006-1016
	<u>Exhibit 150</u> : 2019 Federal Tax Return (Draft) dated March 20, 2020		5	1017-1053

<u>NO.</u>	<u>DOCUMENT</u>	<u>DATE</u>	<u>VOL.</u>	<u>PAGE NO.</u>
(Cont. 8)	<u>Exhibit 151</u> : Letter to CLA Properties with 2019 K-1 dated March 20, 2020		5	1054-1063
	<u>Exhibit 152</u> : Emails Regarding CLA's Challenges to Distributions dated January 26 to April 22, 2016		5	1064-1082
	<u>Exhibit 153</u> : Buy-Out Correspondence – Bidsal Offer dated July 7, 2017		5	1083-1084
	<u>Exhibit 154</u> : Buy-Out Correspondence – CLA Counter dated August 3, 2017		5	1085-1086
	<u>Exhibit 155</u> : Buy-Out Correspondence – Bidsal Invocation dated August 5, 2017		5	1087-1088
	<u>Exhibit 156</u> : Buy-Out Correspondence – CLA Escrow dated August 28, 2017		5	1089-1093
	<u>Exhibit 157</u> : CLA Responses to First Set of Interrogatories dated June 22, 2020		5	1094-1102
	<u>Exhibit 158</u> : GVC Lease and Sales Advertising dated April 25, 2018		6	1103-1174
	<u>Exhibit 159</u> : Property Information dated August 10, 2020		6	1175-1177
9.	Appendix to Movant CLA Properties, LLC's Motion to Vacate Arbitration Award (NRS 38.241) and for Entry of Judgment (Volume 8 of 18)	6/22/22	6	1178
	Note Regarding Incorrect Index		6	1179
	Index [Incorrect]		6	1180-1190
	<u>Exhibit 160</u> : Deposition Transcript of David LeGrand dated March 20, 2018 (with Exhibits 1-39)		6 7 8 9	1191-1351 1352-1580 1581-1806 1807-1864

<b><u>NO.</u></b>	<b><u>DOCUMENT</u></b>	<b><u>DATE</u></b>	<b><u>VOL.</u></b>	<b><u>PAGE NO.</u></b>
10.	Appendix to Movant CLA Properties, LLC's Motion to Vacate Arbitration Award (NRS 38.241) and for Entry of Judgment (Volume 9 of 18)	6/22/22	9	1865
	Note Regarding Incorrect Index		9	1866
	Index [Incorrect]		9	1867-1877
	<u>Exhibit 161</u> : Deed – Building C dated September 10, 2012		9	1878-1884
	<u>Exhibit 162</u> : Deed Building E dated November 13, 2014		9	1885-1893
	<u>Exhibit 163</u> : Email from Ben Golshani to Shawn Bidsal dated September 22, 2011		9	1894-1897
	<u>Exhibit 164</u> : Deed of Trust Notes (annotated) dated July 17, 2007		9	1898-1908
	<u>Exhibit 165</u> : Assignment of Lease and Rents dated July 17, 2007		9	1909-1939
	<u>Exhibit 166</u> : CLA Payment of \$404,250.00 dated May 29, 2011		9	1940-1941
	<u>Exhibit 167</u> : Operating Agreement For Country Club, LLC dated June 15, 2011		9	1942-1970
	<u>Exhibit 168</u> : Email from David LeGrand to Shawn to Bidsal and Bedn Gloshani dated September 16, 2011		9	1971-2001
	<u>Exhibit 169</u> : GVC General Ledger 2011 dated December 31, 2011		9	2002-2004
	<u>Exhibit 170</u> : Green Valley Trial Balance Worksheet, Transaction Listing dated June 7, 2012		9	2005-2010

<b><u>NO.</u></b>	<b><u>DOCUMENT</u></b>	<b><u>DATE</u></b>	<b><u>VOL.</u></b>	<b><u>PAGE NO.</u></b>
(Cont. 10)	<u>Exhibit 171</u> : Correspondence from Lita to Angelo re Country Blub 2012 Accounting dated January 21, 2016		9	2011-2013
	<u>Exhibit 172</u> : Email from Shawn Bidsal re Letter to WCICO dated January 21, 2016		9	2014-2017
	<u>Exhibit 173</u> : GVC Equity Balance Computation dated June 30, 2017		9	2018-2019
	<u>Exhibit 174</u> : Email from Ben Golshani to Jim Main dated July 21, 2017		9	2020-2021
	<u>Exhibit 175</u> : Email Communication between Ben Golshani and Jim Main dated July 25, 2017		9	2022-2025
	<u>Exhibit 176</u> : Email Communication from James Shapiro dated August 16, 2017		9	2026-2031
	<u>Exhibit 177</u> : Email Communication between Ben Golshani and Shawn Bidsal dated August 16, 2017		9	2032-2033
	<u>Exhibit 178</u> : Email Communication between Rodney T. Lewin and James Shapiro dated November 14, 2017		9	2034-2035
	<u>Exhibit 179</u> : Letter from Ben Golshani to Shawn Bidsal dated December 26, 2017		9	2036-2037
	<u>Exhibit 180</u> : Letter from Shawn Bidsal to Ben Golshani dated December 28, 2017		9	2038-2039
	<u>Exhibit 181</u> : Arbitration Final Award dated April 5, 2019		10	2040-2061
	<u>Exhibit 182</u> : Email from Ben Golshani to Shawn Bidsal dated June 30, 2019		10	2062-2063

<u>NO.</u>	<u>DOCUMENT</u>	<u>DATE</u>	<u>VOL.</u>	<u>PAGE NO.</u>
(Cont. 10)	<u>Exhibit 183</u> : Email from Ben Golshani to Shawn Bidsal dated August 20, 2019		10	2064-2065
	<u>Exhibit 184</u> : Email Communication between CLA and Shawn Bidsal dated June 14, 2020		10	2066-2067
	<u>Exhibit 185</u> : Claimant Shawn Bidsal's First Supplemental Responses to Respondent CLA Properties, LLC's First Set of Interrogatories to Shawn Bidsal dated October 2, 2020		10	2068-2076
	<u>Exhibit 186</u> : Claimant Shawn Bidsal's Responses to Respondent CLA Properties, LLC's Fifth Set of Requests for Production of Documents Upon Shawn Bidsal dated February 19, 2021		10	2077-2081
11.	Appendix to Movant CLA Properties, LLC's Motion to Vacate Arbitration Award (NRS 38.241) and for Entry of Judgment (Volume 10 of 18)	6/22/22	10	2082
	Note Regarding Incorrect Index		10	2083
	Index [Incorrect]		10	2084-2094
	<u>Exhibit 187</u> : Claimant Shawn Bidsal's Responses to Respondent CLA Properties, LLC's Sixth Set of Requests for Production of Documents Upon Shane Bidsal dated February 22, 2021		10	2095-2097
	<u>Exhibit 188</u> : 2019 Notes re Distributable Cash Building C dated July 11, 2005		10	2098-2099

<u>NO.</u>	<u>DOCUMENT</u>	<u>DATE</u>	<u>VOL.</u>	<u>PAGE NO.</u>
(Cont. 11)	<u>Exhibit 189</u> : Order Granting Petition for Confirmation of Arbitration Award and Entry of Judgment and Denying Respondent's Opposition and Counterpetition to Vacate the Arbitrator's Award dated December 6, 2019		10	2100-2110
	<u>Exhibit 190</u> : Plaintiff Shawn Bidsal's Motion to Vacate Arbitration Award dated April 9, 2019		10	2111-2152
	<u>Exhibit 191</u> : Notice of Appeal dated January 9, 2020		10	2153-2155
	<u>Exhibit 192</u> : Case Appeal Statement dated January 9, 2020		10	2156-2160
	<u>Exhibit 193</u> : Respondent's Motion for Stay Pending Appeal dated January 17, 2020		10 11	2161-2286 2287-2325
12.	Appendix to Movant CLA Properties, LLC's Motion to Vacate Arbitration Award (NRS 38.241) and for Entry of Judgment (Volume 11 of 18)	6/22/22	11	2326
	Note Regarding Incorrect Index		11	2327
	Index [Incorrect]		11	2328-2338
	<u>Exhibit 194</u> : Notice of Entry of Order Granting Respondent's Motion for Stay Pending Appeal dated March 10, 2020		11	2339-2344
	<u>Exhibit 195</u> : Notice of Posting Case in Lieu of Bond dated March 20, 2020		11	2345-2349
	<u>Exhibit 196</u> : (LIMITED) Arbitration #1 Exhibits 23-42 (Portions of 198 admitted: Exs. 26 and 40 within 198)		11	2350-2412



<u>NO.</u>	<u>DOCUMENT</u>	<u>DATE</u>	<u>VOL.</u>	<u>PAGE NO.</u>
(Cont. 12)	<u>Exhibit 197</u> : Rebuttal Report Exhibit 1 Annotated (Gerety Schedule) dated July 11, 2005		11	2413-2416
	<u>Exhibit 198</u> : Chris Wilcox Schedules dated August 13, 2020		11	2417-2429
	<u>Exhibit 199</u> : Rebuttal Report Exhibit 3 dated December 31, 2017		11	2430-2431
	<u>Exhibit 200</u> : Distribution Breakdown dated November 13, 2014 and August 28, 2015		11	2432-2434
	<u>Exhibit 201</u> : Respondent's Motion to Resolve Member Dispute Re Which Manager Should be Day to Day Manager and Memorandum of Points and Authorities and Declarations of Benjamin Golshani and Rodey T. Lewin in Support Thereof dated May 20, 2020		11 12	2435-2530 2531-2547
13.	Appendix to Movant CLA Properties, LLC's Motion to Vacate Arbitration Award (NRS 38.241) and for Entry of Judgment (Volume 12 of 18)	6/22/22	12	2548
	Note Regarding Incorrect Index		12	2549
	Index [Incorrect]		12	2550-2560
	<u>Exhibit 202</u> : Claimant Shawn Bidsal's Opposition Respondent CLA Properties, LLC's Motion to Resolve Member Dispute Re Which Manager Should be Day to Day Manager dated June 10, 2020 (with Exhibits 1-62)		12 13 14	2561-2775 2776-3016 3017-3155
	<u>Exhibit 203</u> : Request for Oral Arguments: Respondent CLA Properties, LLC's Motion to Resolve Member Dispute Re Which Manager Should be Day to Day Manager dated June 17, 2020		14	3156-3158

<u>NO.</u>	<u>DOCUMENT</u>	<u>DATE</u>	<u>VOL.</u>	<u>PAGE NO.</u>
(Cont. 13)	<u>Exhibit 204</u> : Respondent's Reply Memorandum of Point and Authorities and Declarations Benjamin Golshani and Rodney T. Lewin in Support of Motion to Resolve member Dispute Re Which Manager Should be Day to Day Manager dated June 24, 2020		14	3159-3179
	<u>Exhibit 205</u> : Claimant Shawn Bidsal's Supplement to Opposition to Respondent CLA Properties, LLC's Motion to Resolve Member Dispute Re Which Manager Should be Day to Day Manager dated July 7, 2020		14	3180-3193
	<u>Exhibit 206</u> : CLA's Supplement to Brief re Motion to Resolve Member Dispute Re Which Manager Should be Day to Day Manager – Tender Issue and Declaration of Benjamin Golshani in Support of Motion dated July 13, 2020		14	3194-3213
	<u>Exhibit 207</u> : Order on Pending Motions dated July 20, 2020		14	3214-3221
14.	Appendix to Movant CLA Properties, LLC's Motion to Vacate Arbitration Award (NRS 38.241) and for Entry of Judgment (Volume 13 of 18)	6/22/22	14	3222
	Note Regarding Incorrect Index		14	3223
	Index [Incorrect]		14	3224-3234
	<u>Exhibit 208</u> : CLA Properties, LLC's Motion to Compel Answers to First Set of Interrogatories to Shawn Bidsal dated July 16, 2020		14 15	3235-3262 3263-3292

<b><u>NO.</u></b>	<b><u>DOCUMENT</u></b>	<b><u>DATE</u></b>	<b><u>VOL.</u></b>	<b><u>PAGE NO.</u></b>
(Cont. 14)	<u>Exhibit 209</u> : Exhibits to CLA Properties, LLC's Motion to Compel Answers to First Set of Interrogatories to Shawn Bidsal dated July 16, 2020		15	3293-3332
	<u>Exhibit 210</u> : Claimant's Opposition to Respondent's Motion to Compel Answers to First Set of Interrogatories to Shawn Bidsal and Countermotion to Stay Proceedings dated July 24, 2020		15	3333-3456
	<u>Exhibit 211</u> : Respondent CLA Properties, LLC Reply to Opposition by Claimant (Bidsal) to CLA's Motion to Compel Further Answers to Interrogatories dated July 27, 2020		15	3457-3464
	<u>Exhibit 212</u> : CLA Properties, LLC's Reply in Support of Motion to Compel Answers to First Set of Interrogatories and Opposition to Countermotion to Stay Proceedings dated July 28, 2020		15	3465-3489
	<u>Exhibit 213</u> : Order on Respondent's Motion to Compel and Amended Scheduling Order dated August 3, 2020		15	3490-3494
	<u>Exhibit 214</u> : Claimant's Emergency Motion to Quash Subpoenas and for Protective Order dated June 25, 2020		16	3495-3524
	<u>Exhibit 215</u> : CLA Properties, LLC's Opposition to Emergency Motion to Quash Subpoenas and for Protective Order dated June 29, 2020		16	3525-3536
	<u>Exhibit 216</u> : Claimant's Reply to Opposition to Motion to Quash Subpoenas and for Protective Order dated June 30, 2020		16	3537-3539

<u>NO.</u>	<u>DOCUMENT</u>	<u>DATE</u>	<u>VOL.</u>	<u>PAGE NO.</u>
(Cont. 14)	<u>Exhibit 217</u> : Order on Pending Motions dated July 20, 2020		16	3540-3547
15.	Appendix to Movant CLA Properties, LLC's Motion to Vacate Arbitration Award (NRS 38.241) and for Entry of Judgment (Volume 14 of 18)	6/22/22	16	3548
	Note Regarding Incorrect Index		16	3549
	Index [Incorrect]		16	3550-3560
	<u>Exhibit 218</u> : CLA Properties, LLC's Motion to Compel Further Responses to First Set of Interrogatories to Shawn Bidsal and for Production of Documents dated October 7, 2020		16	3561-3616
	<u>Exhibit 219</u> : Rodney Lewin and James Shapiro Email Chain dated October 19, 2020		16	3617-3619
	<u>Exhibit 220</u> : Claimant's Opposition to Respondent's Motion to Compel Further Responses to First Set of Interrogatories to Shawn Bidsal And for Production of Documents dated October 19, 2020		16	3620-3629
	<u>Exhibit 221</u> : CLA Properties, LLC's Reply to Opposition to Motion to Compel Further Responses to First Set of Interrogatories to Shawn Bidsal and for Production of Documents dated October 22, 2020		16	3630-3650
	<u>Exhibit 222</u> : Order on Respondent's Motion to Compel Further Responses to First Set of Interrogatories to Shawn Bidsal and for Production of Documents dated November 9, 2020		16	3651-3657

<u>NO.</u>	<u>DOCUMENT</u>	<u>DATE</u>	<u>VOL.</u>	<u>PAGE NO.</u>
(Cont. 15)	<u>Exhibit 223</u> : CLA Properties, LLC's Motion to Continue Proceedings dated November 5, 2020		16	3658-3663
	<u>Exhibit 224</u> : Order on Respondent's Motion to Continue Proceedings and Second Amended Scheduling Order dated November 17, 2020		16	3664-3669
	<u>Exhibit 225</u> : Letter to Honorable David Wall (Ret.) Requesting Leave to Amend dated January 19, 2021		16	3670-3676
	<u>Exhibit 226</u> : Respondent's Fourth Amended Answer and Counterclaim to Bidsal's First Amended Demand dated January 19, 2021		16	3677-3687
	<u>Exhibit 227</u> : Claimant's Opposition to Respondent / Counterclaimant's Motion for Leave to file Fourth Amended Answer and Counterclaim dated January 29, 2021		16	3688-3732
	<u>Exhibit 228</u> : Respondent / Counterclaimant's Reply in Support of Motion for Leave to File Fourth Amended Answer and Counterclaim dated February 2, 2021		16	3733-3736
	<u>Exhibit 229</u> : Order on Respondent's Pending Motions dated February 4, 2021		16	3737-3743
	<u>Exhibit 230</u> : CLA Properties, LLC's Emergency Motion for Order Compelling the Completion of the Deposition of Jim Main, CPA dated January 26, 2021		17	3744-3793

<u>NO.</u>	<u>DOCUMENT</u>	<u>DATE</u>	<u>VOL.</u>	<u>PAGE NO.</u>
(Cont. 15)	<u>Exhibit 231</u> : Claimant's Opposition to Respondent / Counterclaimant's Emergency Motion for Order Compelling the Completion of the Deposition of Jim Main, CPA dated January 29, 2021		17 18	3794-3993 3994-4029
	<u>Exhibit 232</u> : Jim Main's Opposition and Joinder to Claimant's Opposition to Respondent / Counterclaimant's Emergency Motion for Order Compelling the Completion of the Deposition of Jim Main, CPA dated February 1, 2021		18	4030-4032
	<u>Exhibit 233</u> : CLA Properties, LLC's Reply in Support of Emergency Motion for Order Compelling the Completion of the Deposition of Jim Main, CPA dated February 3, 2021		18	4033-4038
	<u>Exhibit 234</u> : Order on Respondent's Pending Motions dated February 4, 2021		18	4039-4045
16.	Appendix to Movant CLA Properties, LLC's Motion to Vacate Arbitration Award (NRS 38.241) and for Entry of Judgment (Volume 15 of 18)	6/22/22	18	4046
	Note Regarding Incorrect Index		18	4047
	Index [Incorrect]		18	4048-4058
	<u>Exhibit 235</u> : CLA Properties, LLC's Motion for Orders (1) Compelling Claimant to Restore/Add CLA to all Green Valley Bank Accounts; (2) Provide CLA with Keys to all of Green Valley Properties; and (3) Prohibiting Distributions to the Members until the Sales of the Membership Interest in Issue in this Arbitration is Consumated and the Membership Interest is Conveyed dated February 5, 2021		18	4059-4101

<u>NO.</u>	<u>DOCUMENT</u>	<u>DATE</u>	<u>VOL.</u>	<u>PAGE NO.</u>
(Cont. 16)	<u>Exhibit 236</u> : Claimant's Opposition to Respondent / Counterclaimant's Motion for Orders (1) Compelling Claimant To Restore / Add CLA to All Green Valley Bank Accounts; (2) Provide CLA with Keys to All Green Valley Properties; and (3) Prohibiting Distributions to The Members until the Sale of The Membership Interest in Issue in this Arbitration is Consummated and the Membership Interest is Conveyed dated February 19, 2021		18	4102-4208
	<u>Exhibit 237</u> : Order on Respondent's Motion for Various Orders dated February 22, 2021		18	4209-4215
	<u>Exhibit 238</u> : CLA Motion in Limine re Bidsal's Evidence re Taxes dated March 5, 2021		18	4216-4222
	<u>Exhibit 239</u> : Claimant's Opposition to CLA's Motion in Limine Regarding Bidsal's Evidence re Taxes dated March 11, 2021		18	4223-4229
	<u>Exhibit 240</u> : Ruling – Arbitration Day 1 p. 11 dated March 17, 2021		18	4230-4231
	<u>Exhibit 241</u> : CLA Properties, LLC's Motion in Limine Re Failure to Tender dated March 5, 2021		19	4232-4329
	<u>Exhibit 242</u> : Claimant Shawn Bidsal's Opposition to Respondent CLA Properties, LLC's Motion in Limine Re Failure to Tender dated March 11, 2021		19	4330-4354
	<u>Exhibit 243</u> : CLA Properties, LLC's Reply to Shawn Bidsal's Opposition Re Failure to Tender dated March 12, 2021		19	4355-4430

<u>NO.</u>	<u>DOCUMENT</u>	<u>DATE</u>	<u>VOL.</u>	<u>PAGE NO.</u>
(Cont. 16)	<u>Exhibit 244</u> : Ruling – Arbitration Day 1 pp 15-17 dated March 17, 2021		19	4431-4434
	<u>Exhibit 245</u> : CLA’s Motion to Withdraw Exhibit 188 dated March 26, 2021		19	4435-4437
	<u>Exhibit 246</u> : Claimant’s Opposition to CLA’s Motion to Withdraw Exhibit 188 dated March 31, 2021		19	4438-4439
	<u>Exhibit 247</u> : CLA’s Reply to Bidsal’s Opposition to the Motion to Withdraw Exhibit 188 dated March 31, 2021		19	4440-4442
	<u>Exhibit 248</u> : Order on Respondent’s Motion to Withdraw Exhibit 188 dated April 5, 2021		19	4443-4445
17.	Appendix to Movant CLA Properties, LLC’s Motion to Vacate Arbitration Award (NRS 38.241) and for Entry of Judgment (Volume 16 of 18)	6/22/22	19	4446
	Note Regarding Incorrect Index		19	4447
	Index [Incorrect]		19	4448-4458
	<u>Exhibit 249</u> : CLA Properties, LLC’s Brief Re: (1) Waiver of the Attorney-Client Privilege; and (2) Compelling the Testimony of David LeGrand, Esq. dated May 21, 2021		19	4459-4474
	<u>Exhibit 250</u> : Claimant Shawn Bidsal’s Brief Regarding the Testimony of David LeGrand dated June 11, 2021		20	4475-4569
	<u>Exhibit 251</u> : CLA’s Properties, LLC Supplemental Brief Re: (1) Waiver of the Attorney-Client Privilege; and (2) Compelling the Testimony of David LeGrand, Esq. dated July 9, 2021		20	4570-4577



<u>NO.</u>	<u>DOCUMENT</u>	<u>DATE</u>	<u>VOL.</u>	<u>PAGE NO.</u>
(Cont. 17)	<u>Exhibit 252</u> : Claimant Shawn Bidsal's Supplemental Brief Regarding the Testimony of David LeGrand dated July 23, 2021		20	4578-4595
	<u>Exhibit 253</u> : Order Regarding Testimony of David LeGrand dated September 10, 2021		20	4596-4604
	<u>Exhibit 254</u> : Claimant Shawn Bidsal's Application for Award of Attorney's Fees and Costs dated November 12, 2021		20	4605-4687
	<u>Exhibit 255</u> : Respondent / Counterclaimant CLA Properties, LLC's Opposition to Claimant Bidsal's Application for Attorney's Fees and Costs dated December 3, 2021		21	4688-4757
	<u>Exhibit 256</u> : Claimant's Reply in Support of Claimant Shawn Bidsal's Application for Attorney's Fees and Costs dated December 17, 2021		21	4758-4806
	<u>Exhibit 257</u> : Respondent / Counterclaimant CLA Properties, LCC's Supplemental Opposition to Claimant's Application for Attorney's Fees and Costs dated December 23, 2021		21	4807-4838
	<u>Exhibit 258</u> : Response to CLA Properties' Rogue Supplemental Opposition dated December 29, 2021		21	4839-4946
	<u>Exhibit 259</u> : Claimant Shawn Bidsal's Supplemental Application for Award of Attorney's Fees and Costs dated January 12, 2022		21 22	4847-4930 4931-4964

<u>NO.</u>	<u>DOCUMENT</u>	<u>DATE</u>	<u>VOL.</u>	<u>PAGE NO.</u>
(Cont. 17)	<u>Exhibit 260</u> : Respondent's Second Supplemental Opposition to Application for Attorney's Fees and Costs dated January 26, 2022		22	4965-4998
	<u>Exhibit 261</u> : Claimant's Second Supplemental Reply in Support of Claimant Shawn Bidsal's Application for Award of Attorney Fees and Costs dated February 15, 2022		22	4999-5052
18.	Appendix to Movant CLA Properties, LLC's Motion to Vacate Arbitration Award (NRS 38.241) and for Entry of Judgment (Volume 17 of 18)	6/22/22	22	5053
	Note Regarding Incorrect Index		22	5054
	Index [Incorrect]		22	5055-5065
	<u>Exhibit 262</u> : Transcript of Proceedings – Honorable Stephen E. Haberfeld Volume 1 dated May 8, 2018		23	5066-5287
	<u>Exhibit 263</u> : Transcript of Proceedings – Honorable Stephen E. Haberfeld Volume 2 dated May 9, 2018		23 24	5288-5313 5314-5549
	<u>Exhibit 264</u> : Arbitration Hearing Transcript Day 1 dated March 17, 2021		25 26	5550-5797 5798-5953
	<u>Exhibit 265</u> : Arbitration Hearing Transcript Day 2 dated March 18, 2021		26 27 28	5954-6046 6047-6260 6261-6341
	<u>Exhibit 266</u> : Arbitration Hearing Transcript Day 3 dated March 19, 2021		28 29 30	6342-6505 6506-6705 6706-6798
	<u>Exhibit 267</u> : Arbitration Hearing Transcript Day 4 dated April 26, 2021		30 31	6799-6954 6955-7117

<u>NO.</u>	<u>DOCUMENT</u>	<u>DATE</u>	<u>VOL.</u>	<u>PAGE NO.</u>
19.	Appendix to Movant CLA Properties, LLC's Motion to Vacate Arbitration Award (NRS 38.241) and for Entry of Judgment (Volume 18 of 18)	6/22/22	31	7118
	Note Regarding Incorrect Index		31	7119
	Index [Incorrect]		31	7120-7130
	<u>Exhibit 268</u> : Arbitration Hearing Transcript Day 5 dated April 27, 2021		31 32	7131-7202 7203-7358
	<u>Exhibit 269</u> : Reporter's Transcript dated June 25, 2021		32	7359-7410
	<u>Exhibit 270</u> : Remote Transcript of Proceedings dated August 5, 2021		33	7411-7531
	<u>Exhibit 271</u> : Transcript of Proceedings Arbitration dated September 29, 2021		33 34	7532-7657 7658-7783
	<u>Exhibit 272</u> : Transcript of Hearing Proceedings dated January 5, 2022		34	7784-7814
	<u>Exhibit 273</u> : Transcript of Telephonic Hearing Proceedings dated February 28, 2022		34	7815-7859
	<u>Exhibit 274</u> : Appellant Shawn Bidsal's Opening Brief ( <i>Supreme Court of Nevada, Appear from Case No. A-19-795188-P, District Court, Clark County, NV</i> ) dated November 24, 2020		35	7860-7934
	<u>Exhibit 275</u> : Respondent's Opposition to CLA's Petition for Confirmation of Arbitration Award and Entry of Judgment and Counterpetition to Vacate Arbitration Award ( <i>Case No. A-19-795188-P, District Court, Clark County, NV</i> ) dated July 15, 2019		35	7935-7975

<u>NO.</u>	<u>DOCUMENT</u>	<u>DATE</u>	<u>VOL.</u>	<u>PAGE NO.</u>
(Cont. 19)	<u>Exhibit 276</u> : Order of Affirmance (In Re: Petition of CLA Properties, LLC C/W 80831 Nos. 80427; 80831, <i>Order of Affirmance</i> , unpublished Deposition) dated March 17, 2022		35	7976-7981
	<u>Exhibit 277</u> : 2011-2019 Green Valley Commerce Distribution		35	7982-7984
20.	Bidsal's Opposition to CLA Properties, LLC's Motion to Vacate Arbitration Award (NRS 38.241) and for Entry of Judgment and Bidsal's Countermotion to Confirm Arbitration Award	9/1/22	35	7985-8016
	<u>Exhibit 1</u> : Declaration of Shawn Bidsal in Support of Claimant Shawn Bidsal's Opposition to Respondent CLA Properties, LLC Motion to Resolve Member Dispute Re Which Manage Should be Day to Day Manager dated June 10, 2020		35	8017-8027
	<u>Exhibit 2</u> : Affidavit of Benjamin Golshani in Opposition to Respondent's Motion for Stay Pending Appeal dated January 31, 2020		35	8028-8041
	<u>Exhibit 3</u> : Articles of Organization for Green Valley Commerce, LLC dated May 26, 2011		35	8042-8043
	<u>Exhibit 4</u> : Final Settlement Statement for Green Valley Commerce, LLC dated September 3, 2011		35	8044-8045
	<u>Exhibit 5</u> : Grant, Bargain and Sale Deed dated September 22, 2011		35	8046-8050
	<u>Exhibit 6</u> : Estimated Settlement Statement dated September 22, 2011		35	8051-8052

<b><u>NO.</u></b>	<b><u>DOCUMENT</u></b>	<b><u>DATE</u></b>	<b><u>VOL.</u></b>	<b><u>PAGE NO.</u></b>
(Cont. 20)	<u>Exhibit 7</u> : Declaration of Covenants, Conditions and Restrictions and Reservation of Comments for Green Valley Commerce Center dated March 16, 2012		35 36	8053-8097 8098-8133
	<u>Exhibit 8</u> : Seller's Closing Statement – Final dated September 10, 2012		36	8134-8136
	<u>Exhibit 9</u> : Operating Agreement for Green Valley Commerce, LLC		36	8137-8165
	<u>Exhibit 10</u> : Schedule with Check of Distributions sent from Shawn Bidsal to Benjamin Golshani		36	8166-8169
	<u>Exhibit 11</u> : Seller's Closing Statement – Final dated November 14, 2014		36	8170-8171
	<u>Exhibit 12</u> : Schedule of Distributions		36	8172-8175
	<u>Exhibit 13</u> : Seller's Settlement Statement dated August 31, 2015		36	8176-8177
	<u>Exhibit 14</u> : CLA Properties, LLC's Election to Purchase Membership Interest dated August 3, 2017		36	8178-8179
	<u>Exhibit 15</u> : Correspondence from Rodney T. Lewin to James E. Shapiro Re Proof of Funds to Purchase Membership Interest		36	8180-8184
	<u>Exhibit 16</u> : Demand for Arbitration Form dated September 26, 2017		36	8185-8190
	<u>Exhibit 17</u> : JAMS Arbitration Final Award dated April 4, 2019		36	8191-8212

<b><u>NO.</u></b>	<b><u>DOCUMENT</u></b>	<b><u>DATE</u></b>	<b><u>VOL.</u></b>	<b><u>PAGE NO.</u></b>
(Cont. 20)	<u>Exhibit 18</u> : Demand for Arbitration Form dated February 7, 2020		36	8213-8247
	<u>Exhibit 19</u> : Respondent's Answer and Counter-Claim dated March 4, 2020		36	8248-8276
	<u>Exhibit 20</u> : JAMS Final Award dated March 12, 2022		36	8277-8308
	<u>Exhibit 21</u> : Order of Affirmance dated March 17, 2022		36	8309-8314
	<u>Exhibit 22</u> : Remittitur from Supreme Court of the State of Nevada dated June 10, 2022		36	8315-8319
	<u>Exhibit 23</u> : Correspondence from James E. Shapiro to Benjamin Golshani Re Offer to Purchase Membership Interest dated July 7, 2017		36	8320-8321
	<u>Exhibit 24</u> : Cashier's Check		36	8322-8323
21.	CLA's Reply in Support of Motion to Vacate (Partially) Arbitration Award	10/7/22	37	8324-8356
22.	CLA's Opposition to Shawn Bidsal's Countermotion to Confirm Arbitration Award	10/7/22	37	8357-8359
	<u>Exhibit 1</u> : Motion to Vacate Arbitration Award (NRS 38.241) and for Entry of Judgment dated June 17, 2022		37	8360-8445
	<u>Exhibit 2</u> : CLA's Reply in Support of Motion to Vacate [Partially] Arbitration Award dated October 7, 2022		37	8446-8479
23.	Bidsal's Reply in Support of Bidsal's Countermotion to Confirm Arbitration Award	10/31/22	37	8480-8505

<b><u>NO.</u></b>	<b><u>DOCUMENT</u></b>	<b><u>DATE</u></b>	<b><u>VOL.</u></b>	<b><u>PAGE NO.</u></b>
(Cont. 23)	<u>Exhibit 25</u> : Arbitration Hearing Partial Transcript Day 3 dated March 19, 2021		37	8506-8511
24.	Order Granting Bidsal's Countermotion to Confirm Arbitration Award and Denying CLA Properties, LLC's Motion to Vacate Arbitration Award	3/20/23	37	8512-8521
25.	Notice of Entry of Order {Order Granting Bidsal's Countermotion to Confirm Arbitration Award and Denying CLA Properties, LLC's Motion to Vacate Arbitration Award dated March 20, 2023}	3/21/23	37	8522-8533
26.	Transcript of Hearing Re: Motion to Vacate Arbitration Award (NRS 38.241) and for Entry of Judgment dated February 7, 2023	4/11/23	38	8534-8660
27.	CLA Properties, LLC's Notice of Appeal	4/17/23	38	8661-8672
28.	CLA Properties, LLC's Motion to Approve Payment of Fees Award in Full and for Order Preserving Appeal Rights as to the Fees and Right to Return if Appeal is Successful and Request for Order Shortening Time	5/4/23	38	8673-8680
	<u>Exhibit A</u> : Declaration of Todd Kennedy, Esq. dated April 27, 2023		38	8681-8684
29.	Bidsal's Opposition to CLA Properties, LLC's Motion to Approve Payment of Fees Award in Full and for Order Preserving Appeal Right as to the Fees and Right to Return if Appeal is Successful on Order Shortening Time	5/8/23	38	8685-8692

<b><u>NO.</u></b>	<b><u>DOCUMENT</u></b>	<b><u>DATE</u></b>	<b><u>VOL.</u></b>	<b><u>PAGE NO.</u></b>
(Cont. 29)	<u>Exhibit 1:</u> Transcript of Proceedings Re Motion to Vacate Arbitration Award (NRS 38.241) and for Entry of Judgment dated April 11, 2023		38 39	8693-8782 8783-8802
	<u>Exhibit 2:</u> JAMS Final Award dated March 12, 2022		39	8803-8834
30.	Recorder's Transcript of Pending Motions dated May 9, 2023	5/12/23	39	8835-8878
31.	Recorder's Transcript of Pending Motion dated May 11, 2023	5/15/23	39	8879-8888
32.	Order Regarding Bidsal's Motion to Reduce Award to Judgment and for an Award for Attorney Fees and Costs and Judgment	5/24/23	39	8889-8893
33.	Order Denying CLA Properties, LLC's Motion to Approve Payment of Fees Award in Full and for Order Preserving Appeal Rights as to the Fees and Right to Return if Appeal is Successful	5/24/23	39	8894-8898
34.	Notice of Entry of Order Denying CLA Properties, LLC's Motion to Approve Payment of Fees Award in Full and for Order Preserving Appeal Rights as to the Fees and Right to Return if Appeal is Successful	5/24/23	39	8899-8905
35.	Notice of Entry of Order Regarding Bidsal's Motion to Reduce Award to Judgment and for an Award for Attorney Fees and Costs and Judgment	5/25/23	39	8906-8915
36.	CLA Properties, LLC's Supplemental Notice of Appeal	6/20/23	39	8916-8917
37.	CLA Properties, LLC's Errata to Supplemental Notice of Appeal	6/23/23	39	8918-8931



1 after deducting the cost of Building C is the actual  
2 cost of Greenway as shown on Exhibit 17, which I  
3 believe -- I don't have the exhibit right in front of  
4 me. I believe it's \$846,560.18.

5 Now, in determining COP, we have the issue of  
6 the common area for the parking lot. Mr. Gerrard  
7 originally told Your Honor that the cost of -- the costs  
8 of using the parcels that were sold stating that as to  
9 each of these parcels were sold off, as Mr. Bidsal did,  
10 he took the basis associated with each of these  
11 properties as an allocable share of the original  
12 purchase of the note, and on that basis he divided the  
13 money divided from the proceeds of the sale. That  
14 statement was untrue. The cost Mr. Bidsal divided 70/30  
15 included no part of the common area as Parcel 57, which  
16 I'm going to call the parking lot for convenience. You  
17 can look at Exhibits 14, 23, and 26 for that.

18 In his analysis, Mr. Wilcox concluded that a  
19 portion of the value of the parking lot should be  
20 deducted from COP on account of the nonexclusive  
21 easements that were granted in conjunction with the sale  
22 of the Buildings B -- C, B, and E. That's in his  
23 Schedule 5 on Exhibit 201. Mr. Wilcox only included a  
24 portion of that cost, in other words, \$253,676 instead  
25 of the actual allocated value of the parking lot of

1 \$369,957. The fact that all -- in fact, as I said, all  
2 that was transferred was a grant of a nonexclusive  
3 easement for the use of which the grantee has some  
4 payment obligations.

5 Now, in looking at COP, I just want to point  
6 out that Mr. Wilcox gets all of his calculations for COP  
7 in Schedule 3, which, in turn, relies on his Schedule 2.  
8 He there show -- he, there, shows two sections of cost.  
9 The first section shows what he's relying on, in part,  
10 is the 2011 tax asset detail and then the 2013 cost  
11 segregation study, which was, again, allowed to --  
12 for -- so that appreciated depreciate -- so that  
13 accelerated depreciation would be able to be taken.

14 No one, and I repeat no one, has ever contended  
15 that depreciation has the slightest relevance in  
16 determining COP. What is important about this is that  
17 he's using the original cost of the note as modified  
18 with the cost segregation study as the foundation for  
19 his conclusion.

20 Nowhere in those schedules, by the way, does he  
21 mention that he's deducted what he -- the amount that he  
22 claims toward the nonexistent sale of the common area.  
23 Now, Mr. Wilcox -- and I know you'll -- maybe you'll  
24 remember -- it's been a long time -- but he repeatedly  
25 claimed reliance on how a matter was treated in the tax

1 returns for the company.

2 And as a matter of fact, at page 612 at line  
3 23, he testified he did not need to speak with people  
4 because he could rely on the tax returns; however, when  
5 it came to the parking lot, all of a sudden Mr. Wilcox  
6 claims that a portion of the parking lot had been sold  
7 and contradicting the tax returns will show that no part  
8 of the common area has ever been sold and no part of the  
9 cost allocated has ever been included in the cost of  
10 sales by showing the cost of sales. That's at page 913.

11 And he contradicts Mr. Bidsal's accounting  
12 records as well as he likewise never reduced the cost of  
13 the common area by reason of the sales. Indeed, if we  
14 look for the accounting given CLA for the 2014 -- 2014  
15 and 2015 sales, there is not one dime of cost allocated  
16 to the common area included as a return -- as the return  
17 of capital.

18 Now, Mr. Gerety confirmed that in the tax  
19 returns there's no reduction of the tax basis for the  
20 common area. That's at page 913, lines 12 through 21,  
21 where he said there's no -- where he said at line 18,  
22 quote:

23 "There was no allocation of the common area to  
24 the basis of Property C, B, and E upon the sale  
25 of those assets on the tax return."

1           Moreover, at page 7- -- 574, Mr. Wilcox conceded  
2   that Mr. Bidsal did not include parts -- costs of the  
3   parking lot as part of the distribution of the costs  
4   allocated 70/30 on any of the sales.

5           Would you please put up Document 16.

6           THE ARBITRATOR: Mr. Lewin, how much more do  
7   you have, do you think?

8           MR. LEWIN: I have -- I have quite a bit,  
9   actually. I have minimally another hour or more.

10          THE ARBITRATOR: Really? I mean, I want to  
11   give everybody the opportunity, but I never -- I just  
12   never envisioned five hours of closing argument. I have  
13   just -- I mean, I did -- I was there, and I did review,  
14   you know, and hear everything. I just -- I never  
15   envisioned that.

16          MR. LEWIN: I guess, Your Honor, I -- the  
17   issue -- I know, but it's been quite a while since you  
18   were -- since you were there.

19          THE ARBITRATOR: I know. But, I mean, I have  
20   all my notes and exhibits. I mean, I'll let you go. I  
21   mean, I -- really another hour? Can we just kind of hit  
22   the high points of what we need to -- what we're really  
23   here to determine?

24          MR. LEWIN: Sure, Your Honor. Well, I think  
25   this is a part of it because we're talking about the

1 allocation of the parking lot information. Let me --

2 Spencer, take this document down, will you  
3 please? I'll just paraphrase it and make it go faster.

4 THE ARBITRATOR: Appreciate that. Appreciate  
5 it.

6 MR. LEWIN: I've lost my document, however.

7 Oh. Picking up where I was and the -- where I  
8 was, at page 574, Mr. Wilcox conceded that the costs of  
9 the parking lot were not included in any of the costs  
10 that Mr. Bidsal allocated as part of the cost of the  
11 sales.

12 So even -- but even if Mr. Wilcox was right  
13 about the parking lot, his calculations would be wrong.  
14 At least you would think that he would try to be  
15 consistent with Mr. Bidsal's distribution of the cost of  
16 the parcels sold. If Mr. Wilcox believed that the  
17 effect of the easements was a sale, then the -- and that  
18 Mr. Bidsal was returning the costs for those -- of the  
19 parking lot, that amount should have been included in --  
20 in Mr. Bidsal's own approach and distributed 70/30  
21 instead of 50/50. In other words, Mr. Bidsal took the  
22 cost of the parking lots and distributed 50/50.

23 So if -- if the cost of the parking lots is not  
24 included as part of the cost -- as part of COP, then  
25 Mr. Bidsal has to be charged with the return of capital

1 for the portion of the parking lot that he distributed  
2 to himself instead of allocating it to the cost of  
3 the -- of the properties.

4 I'm having a little bit of a technical problem  
5 here. If I can -- one second.

6 Okay. So in terms of -- in calculating COP,  
7 taking all the matters into account, this is how we  
8 think COP should be calculated. It should be the  
9 original cost of the note, subtract the cost of the sold  
10 properties, add back the cost of Greenway, and include  
11 in that the actual cost of the parking lot. It's not a  
12 reduction. It should not be deducted from COP.

13 The differences between the Gerety calculation  
14 of COP and Wilcox were discussed by Mr. Wilcox and  
15 explained that -- and that he -- he took -- that there's  
16 a difference in what they considered the COP for  
17 Greenway. Mr. Wilcox used 399,193.81; Mr. Gerety used  
18 the actual cost of Greenway. The COP --

19 THE ARBITRATOR: Mr. Lewin, are you using a  
20 formula with a calculation that's different than  
21 Mr. Gerety's?

22 MR. LEWIN: No, Your Honor. No. It -- well,  
23 actually, what I'm -- I was describing how Mr. Wilcox  
24 described his differences.

25 THE ARBITRATOR: No, I know. But I don't think

## Closing Arguments

## Shawn Bidsal v. CLA Properties, LLC, et al.

Page 1512

1 Mr. Gerety used the price of the note to formulate COP.

2 MR. LEWIN: Yes. That's right. As I mentioned  
3 both he and Mr. Wilcox missed the 81,000.

4 THE ARBITRATOR: So you're adding 81,000 onto  
5 the Gerety number under either Alternative A or B.

6 MR. LEWIN: That's correct.

7 THE ARBITRATOR: Okay.

8 MR. LEWIN: That's because --

9 THE ARBITRATOR: Here's the thing. I'm -- I  
10 don't want to -- I don't want to restrict anybody's  
11 argument, but I don't -- I've read everything in the  
12 arbitration brief. I know all the calculations that  
13 Mr. Gerety made. I know all the calculations that  
14 Mr. Wilcox made in their -- in their numbers. I've got  
15 all that. So I just -- I don't want to restrict  
16 anybody's argument, but I don't want to really have  
17 people repeat what's in the arbitration briefs and  
18 what's in those two calculations, at least on those  
19 issues. If it's something different, if it's something  
20 new, hey, I want to hear about it, but I really just  
21 don't want to hear the -- the -- either side regurgitate  
22 kind of what's in the arbitration brief because I get  
23 it. I got it. All right.

24 MR. LEWIN: Okay. So -- well, I was going -- I  
25 was actually going to -- I was actually going to go to

1 the return -- to the returned capital part of my  
2 presentation because that's the -- Mr. Gerrard spent  
3 quite a bit of time on this issue that -- that there --  
4 that only -- that all proceeds except -- except the  
5 proceeds from Building C under the operating  
6 agreement -- the -- should -- were properly distributed  
7 50/50. I think that in order for -- in order for you to  
8 decide that, you need to decide what the -- what the  
9 returned capital was.

10 So would you want -- would you want to -- are  
11 you planning on taking a break for lunch, Your Honor?  
12 Because if you are, I think we can take a short break,  
13 and I can sort of look on my notes and see what I -- how  
14 I --

15 THE ARBITRATOR: I mean, I wasn't. I wasn't  
16 planning on doing that.

17 MR. LEWIN: Okay. Well, all right. Then I'll  
18 continue. I'll just continue. I've got my document up  
19 now on here.

20 So in terms of -- in terms of what the intent  
21 of the parties was for the -- even before the -- this  
22 arbitration was that -- I think it's important to look  
23 at Mr. Bidsal's testimony about how he believed the  
24 formula was to work. Now, we've all agreed -- it's been  
25 agreed -- and I'm not going to belabor the point



1 again that the -- the -- the idea that using the initial  
2 capital contributed by the parties as it was has been  
3 abandoned by Mr. Bidsal and abandoned by Mr. Wilcox in  
4 their schedules.

5 Mr. Gerety provided two alternatives, but I  
6 suggest that the proper way to look at this is to -- is  
7 to take what the returned capital is and the -- and I  
8 recall Mr. Bidsal's testimony at page 802 through 803,  
9 quote --

10 Spencer, put up Document 28A.

11 I'll just quote it. I'm going to quote this  
12 because I think it's important. It says, quote:

13 "Question: Your understanding of how the  
14 formula worked was that you returned the  
15 capital, the remaining capital, and the  
16 balances left over you divided up 50/50; right?

17 "Answer: You return the remaining capital,  
18 that's okay, and whatever the fair market value  
19 is, you deduct the cost basis, divide by two,  
20 and then you add the remaining capital.

21 "Question: So the remaining capital, you mean  
22 that's the unreturned capital?

23 "Question:" --

24 There's some -- there's some colloquy, and it  
25 goes down to a question at the beginning -- at page 803,

1 line 6:

2 "If the remaining capital is the unreturned  
3 capital --

4 "Answer: The remaining cash --

5 "Cash contribution, yes. The amount of your  
6 initial cash contribution minus whatever  
7 capital had been returned; right?

8 "Answer: Yeah."

9 And that was agreed to by Mr. -- that was agreed  
10 to by Mr. Wilcox, who felt that that was the reasonable  
11 approach.

12 So the approach taken by everyone here is to  
13 take -- is to take the original -- his original capital  
14 contribution and deduct some of the distributions  
15 arising from the properties.

16 Mr. Bidsal, in his schedule, deducted -- he  
17 deducted the -- in 2013 the -- he -- he took -- he  
18 deducted \$28,581.79, which was the -- 30 percent of the  
19 \$95,000 that was distributed as the profit, and he only  
20 deducted on a 70/30 basis for the remaining two sales  
21 the cost. That's what Mr. -- that's how Mr. Wilcox used  
22 it all.

23 So -- so Mr. Wilcox only deducts \$257,774 to  
24 arrive at the end returned capital, but we know that  
25 from the 2016 tax return that's Exhibit 28 and

1 Mr. Gerety's Exhibit 200, that at the -- that at the end  
2 of 2016, Mr. Bidsal's stated capital account was around  
3 \$730,000. In other words, based on the tax return  
4 alone, there was around another 220,000 of capital  
5 returned to Mr. Bidsal that Mr. Wilcox never accounts  
6 for.

7 And to be complete, let me remind you, Your  
8 Honor, that that cannot be from operations since --  
9 because there is zero net impact on capital accounts  
10 from the credit for ordinary income and the charge for  
11 the distribution thereof. That's -- each would be on a  
12 50/50 basis.

13 So what Mr. Wilcox has done is he incorrectly  
14 ignored returns of capital and leaving the unreturned  
15 capital much more. And he also assumed that Mr. Bidsal  
16 made all distributions correctly and did not  
17 overdistribute to himself. And both the omission and  
18 the assumption find its way not only to Mr. Wilcox's  
19 Schedule 5 where he computes the purchase price but also  
20 into Mr. Bidsal's supplemental answer to Interrogatory  
21 Number 2.

22 So now we have to look at what the  
23 overdistributions -- what the overdistributions are.  
24 First, Mr. -- he -- Mr. Bidsal overdistributed to  
25 himself in three ways. And in -- and with one exception

1 these are shown in Mr. Gerety's spreadsheet, Exhibit  
2 200.

3 First, as I mentioned, he -- while he  
4 distributed profits on the sale of Building C on a 70/30  
5 basis, he didn't do it on -- he did not distribute the  
6 profits on B and E at the same basis. He only did it on  
7 a 50/50 basis.

8 Second, he distributed cash in excess of that  
9 which -- of which was generated from operations  
10 resulting in ordinary income on a 50/50 basis. That  
11 included cash that was distributed that was made  
12 available as a result of the depreciation deduction.

13 And lastly, he made distributions after his  
14 offer of July 7, which cash was part of the company  
15 value that was included by Mr. Bidsal by necessity in  
16 Mr. Bidsal's offer despite being advised by CLA not to  
17 do that.

18 So in order to avoid these distributions,  
19 Mr. Bidsal has asserted an interpretation of Exhibit B  
20 that I think is, at best, frivolous. His claim is that  
21 the waterfall is not for you to accept unless sale of  
22 all or substantially all of Green Valley's assets on a  
23 capital refinancing, cash-out financing. I assert that  
24 this is convoluted and, to quote Judge Haberfeld, an  
25 outcome-determinative interpretation of Exhibit B.

1           In determining the intent, the testimony of one  
2 of the most important witnesses, Mr. LeGrand, from  
3 block -- has been blocked who claimed -- by Mr. Bidsal  
4 who claimed attorney-client privilege.

5           I would disagree with that ruling and wonder  
6 why Mr. Bidsal would not want to have Mr. LeGrand  
7 testify. Your Honor is left with the test- -- only the  
8 testimony of Mr. Golshani about what the understanding  
9 was they had reached before June 3rd, 2011, and what he  
10 and Mr. Bidsal told Mr. LeGrand what they agreed was to  
11 be in the agreement.

12           And this is very important because if he's --  
13 this is the only testimony about instructions that were  
14 given to LeGrand, and since LeGrand's not testifying,  
15 this is it.

16           Mr. Golshani said in pages 10 -- pages 1009  
17 through 1001 -- 11, what -- and at pages 1014 through  
18 1016 and at page 1015 and at page 1016. I'm going to  
19 summarize this. I have the testimony, but I'm going to  
20 summarize it. That -- that LeGrand was -- I'm sorry,  
21 that's the wrong one. That's wrong. That's -- that's  
22 the wrong citation.

23           Mr. Golshani testified about his -- the  
24 discussions and instructions to LeGrand at page 1049,  
25 line 18, through 1051, line 21. And what he told him --

1 what they -- what they both told Mr. LeGrand was they  
2 basically repeated the understandings that they had  
3 reached before that Mr. Golshani had already testified  
4 about. They talked about the percentage and that,  
5 according to Mr. Golshani, they told LeGrand -- he told  
6 LeGrand that "I" -- quote:

7 "I needed to get that money back, you know,  
8 through money other than net rent, and the  
9 proceeds from the net rent would divide 50/50."

10 And then -- and also they told LeGrand -- I'm  
11 going to quote Mr. Golshani again. I'm going to quote  
12 the question and answer at page 1051, line 17, quote:

13 "Go ahead. What was said to LeGrand about  
14 that?

15 "Answer: We said that we first -- we first  
16 distribute the rent money, the net rent money.  
17 Whatever is left, we distribute according to  
18 the prorated share of the capital apartments"  
19 [sic], end quote.

20 So that's what LeGrand was told about, and if  
21 there's anything -- LeGrand is the person who drafted  
22 the agreement. So we -- there's nothing that indicates  
23 that LeGrand was not following his instructions. So an  
24 interpretation of Exhibit B, I think that's very  
25 important testimony.

1           And so we know what Bidsal's understanding was.  
2   Just take a look at the first transaction, Building C,  
3   and how he dealt with distributing the money. He  
4   distributed it 70/30. Not only the profit -- not only  
5   the cost, but the profit.

6           THE ARBITRATOR: Well, there wasn't any profit  
7   because Building C was the one that turned into a 1031  
8   exchange, and there was only about 95,000 or so, I  
9   think -- 75- or 95,000 at the end of the day, and he  
10   distributed that 70/30; right?

11           MR. LEWIN: That's right. That was profit,  
12   Your Honor. That was profit. The boot -- that was  
13   boot. That was the -- as far as escrow.

14           THE ARBITRATOR: Okay.

15           MR. LEWIN: There was a purchase of -- they  
16   used the costs of the property to buy -- the cost to buy  
17   Greenway. The 95,000 that was distributed was profit.

18           THE ARBITRATOR: All right. Again, I  
19   understand.

20           All right. Is this a good time to take about a  
21   five-minute break?

22           MR. LEWIN: Sure.

23           THE ARBITRATOR: All right. We'll take about a  
24   five-minute break, and then we'll hopefully get close to  
25   wrapping things up. All right. Five minutes.

1 (A recess was taken from 12:33 a.m. to  
2 12:40)

3 THE ARBITRATOR: All right. Back on the  
4 record. Mr. Lewin, you may continue.

5 MR. LEWIN: Thank you, Your Honor.

6 And in context of the prior discussion, Your  
7 Honor, I'm going to try to go through some of my points.  
8 I have a number of points I need to make.

9 THE ARBITRATOR: Okay.

10 MR. LEWIN: I'll try to do it in as -- as  
11 efficiently as possible.

12 THE ARBITRATOR: Okay.

13 MR. LEWIN: The -- so we were talking about the  
14 sales of Buildings B and E and -- and the fact that  
15 the -- the way that was handled by Mr. Bidsal was  
16 different than Building C. And you can look through  
17 Exhibit B and, for that matter, the rest of the  
18 operating agreement. You can find no justification to  
19 distinguish the costs of the portion of the proceeds of  
20 sale, which is profit.

21 You can look through the entirety of Exhibit B  
22 and the entirety of the operating agreement, and you are  
23 not going to find any reason to distinguish -- to -- to  
24 the cost -- to distribute cost in a different way than  
25 you distribute profit. Exhibit B makes no such



1 distinction. It refers to cash distributions from a  
2 capital transaction.

3           So rather than try to address that, what  
4 Mr. Bidsal has done is to -- is to place their entire  
5 stack of cards on their attempt to change the words,  
6 quote, "sale of company asset" to a sale of all company  
7 assets and implicitly claim that Mr. Bidsal is to be  
8 canonized as a nice guy for -- for distributing Building  
9 C as 70 -- Building C as 70/30 when he didn't have to do  
10 that.

11           So -- so in essence, their claim is that the  
12 waterfall is not distributed and that the only exception  
13 is the 50/50 distribution of cash. The only exception  
14 to that is if the company sold all the assets or  
15 refinanced. But the first paragraph of Exhibit B begins  
16 cash distributions from capital transactions, in the  
17 plural, shall be distributed. It means more than one  
18 transaction, obviously. And by definition, there cannot  
19 be plural sales of all or substantially all the assets  
20 or plural cash-out refinancing. Each only happens once.  
21 But as I just read, the first sentence of Exhibit B  
22 applies the waterfall to capital transactions in the  
23 plural. Therefore, the waterfall logically cannot be by  
24 varied terms restricted to what Mr. Bidsal claims.

25           Also -- also, in Article 4, Section 2H requires

1 that the manager obtain a 90 percent approval to sell or  
2 transfer any assets. This -- this, again, is in the  
3 plural, and it shows that more than one asset was  
4 contemplated.

5 More than that, as I mentioned earlier, before  
6 the operating agreement was signed, the Henderson  
7 property had been subdivided. And shortly after that in  
8 August 2012, I think, that Mr. -- and by Exhibit 50,  
9 three of the -- some of the properties were listed.

10 Now, Mr. Gerrard said, well, that's a year  
11 later. The fact of the matter is he also said and  
12 pointed out that the CC&Rs were not recorded until March  
13 of 2012. So realistically there's not much time  
14 difference between March of 2012 and August -- the  
15 August listing dates, if that, in fact, was the date of  
16 listing.

17 Again, the -- the -- Mr. Bidsal claims that the  
18 words, quote, "sale of company asset" asserts -- to  
19 assert that the meaning that -- that the term "capital  
20 transactions" has no meaning and that the waterfall is  
21 only triggered by a sale of all the assets ignoring and  
22 making, I think, an absurd argument about the lack of  
23 grammatical sense.

24 Mr. Gerrard also argued since the effective  
25 date is in June before title was obtained in the

1 property, the words "sale of capital assets" controls  
2 the exhibit -- the interpretation of Exhibit B. He  
3 construes what the words "effective date" means. That  
4 date may impact rights and obligations, but it had no --  
5 (The court reporter interrupts for  
6 clarification of the record.)

7 MR. LEWIN: He construes what that -- he  
8 construes -- he misconstrues the word -- what the words  
9 "effective date" means. That date might affect in --  
10 it might impact rights and obligations, but it has no  
11 impact on what the parties actually knew when the  
12 contract is signed or their intentions.

13 So Mr. Gerrard and Mr. Bidsal would have you  
14 believe that when the language of Exhibit B was  
15 finalized, there was no contemplation of subdividing and  
16 certainly no contemplation of selling. That agreement  
17 was not finalized until December and that -- there were  
18 changes made to it. But the plan was always to  
19 subdivide the property and the only -- the only evidence  
20 that there was -- that the parties had -- were going to  
21 agree only to sell all in one package was only provided  
22 by Mr. Bidsal. He has not provided one shred of paper  
23 that indicates that.

24 Now, according to Mr. Golshani, the plan was to  
25 sell some of the properties and try to get some of the

1 money back. That is -- that certainly is not an  
2 unreasonable -- unreasonable assumption from the account  
3 of the parties.

4 Now, if there -- the reference to -- there  
5 can't really be any dispute that the sale of the three  
6 properties were a capital transaction. Even Wilcox, you  
7 know, Mr. Wilcox would agree that the sale of the  
8 property was a capital transaction, and certainly  
9 Mr. Main agreed with that.

10 Now, there's more reasons about why  
11 Mr. Bidsal's argument -- that you only get -- there's --  
12 the only distributions that are capital transactions  
13 would only occur on the sale of all the assets are  
14 capital refinance. And we can go to the specific  
15 language in the specific intent paragraph which states  
16 that the capital distributions of profits from  
17 operations shall be allocated and distributed 50/50.

18 So that paragraph tells us what capital  
19 distributions of profits are and what the -- and it also  
20 tells us both what they are and then the residual of  
21 what they're not. They are distributions resulting in  
22 ordinary income and then they -- and then the paragraph  
23 concludes with two categories of what cash distributions  
24 and profits are not.

25 First, they are not distributions arising from

1 capital transactions. Second, they're not distributions  
2 arising from nonrecurring events. And then the -- and  
3 the second -- and then the second of these residual  
4 classifications about what are not cash distributions of  
5 profits give some examples and begin "such as," which  
6 can only be read to mean examples are not the entire  
7 universe. And even if capital -- even if nonrecurring  
8 events was limited to the sale of substantial portion of  
9 the company's assets or cash-out financing, those  
10 limitations do not apply to the first residual  
11 classification that is a capital transaction.

12           What Mr. Bidsal wants you to do is ignore what  
13 the document says in black and white and asks you to  
14 find that -- there has to -- there has to be a sale of  
15 everything or cash refinancing before anybody --  
16 Mr. Golshani starts to get his money out. That's -- and  
17 as you correctly asked questions about, under that  
18 defin- -- and what Mr. Wilcox admitted, that definition  
19 doesn't really work. At the end -- at the end it means  
20 that -- that Mr. Golshani may never get his -- may never  
21 get his capital account returned and Mr. -- and -- and  
22 that could not have been the intent of the parties.

23           The whole reason for the waterfall is that --  
24 is to -- is to -- when you have a disproportionate  
25 amount of capital is to try to even that capital out.

1 And the only way that occurs is if on capital  
2 transactions the money is distributed 70/30. Mr. Bidsal  
3 gets to keep his 50/50 share of the operations, but on  
4 the capital transaction, the money should have been  
5 distributed on a 70/30 basis.

6 And two things I want to point out: There's  
7 no -- there is no dispute as to what constitutes  
8 ordinary income in this case. Mr. Wilcox, Mr. Gerety,  
9 and Mr. Main all agree that the determination of  
10 ordinary income includes a deduction for things like  
11 amortization or depreciation. The deduction is in --  
12 is -- is -- it's a tax -- you know what depreciation is.  
13 It's a tax benefit that allows people to -- to  
14 essentially -- it's an expense that allows people to  
15 put -- to account for the cost for reduction and the --  
16 the depreciation of the real property assets.

17 Mr. Wilcox agreed to this in his testimony at  
18 496 through 498. I'm not going to quote it at length.  
19 And he also agreed that the provision for 50/50  
20 distributions does not say gain from sale are  
21 distributed 50/50, just the ordinary income from  
22 operations.

23 If -- why would you -- what is the purpose of  
24 having the specific definition of what -- of where  
25 Mr. Bidsal gets a 50/50 distribution if there -- if

1 anything outside of that -- anything outside of ordinary  
2 incomes and operations is not distributed 70/30?

3 THE ARBITRATOR: How do you square that with  
4 5.1.1 on all income, gains, losses, deductions to be  
5 allocated or distributed -- I can't remember which it  
6 says -- on the basis of the members' percentage  
7 interest, which is 50/50?

8 MR. LEWIN: First of all, 5.1.1.1. And it says  
9 all items as you just described it, income, gain, loss,  
10 deduction of credit allocated to the proportion of  
11 percentage interest subject to a preferred allocation  
12 schedule contained in Exhibit B. So -- so number one.

13 Number two, as a -- as a -- as Mr. Main  
14 testified, that -- and as I mentioned earlier, that  
15 there's a difference in allocation for tax purposes and  
16 a difference in allocations of cash. Mr. Main said --  
17 and I have -- I was coming to that. I was actually  
18 coming to that. He testified -- and Mr. Wilcox and  
19 Mr. Gerety, I think, all agree with this -- is that cash  
20 flow is different than allocation for tax purposes.

21 The only way -- the only -- so what happens is  
22 that if you have \$100,000 of income and it's allocated  
23 50/50 but you have a preferred -- a preferred -- a  
24 preferred distribution schedule, the money is allocated  
25 on the tax returns. That's -- and that's the way it's

1 supposed to do. And that's what -- and as a matter of  
2 fact, what Mr. Main said, contrary to what Mr. Gerrard  
3 said, he said they allocated the money correctly under  
4 the tax returns.

5           We're not claiming that they didn't allocate  
6 the money correctly on the tax returns. But what he --  
7 but what he also said is that -- he also said is that we  
8 don't control the cash. We don't write the checks. The  
9 allocations for tax purposes are different for  
10 distributions.

11           So what happens in the end is that -- the way  
12 that -- the way that these capital accounts get reduced  
13 to zero is -- the only way that they -- that that  
14 happens is that if the -- if the income is allocated  
15 50/50 but the -- but the distributions are 70/30, sooner  
16 or later those -- the capital accounts get reduced to  
17 zero and therefore -- and that is the way the operating  
18 agreement -- that is the way Exhibit B is set up.

19           All right. I want to -- I want to get -- since  
20 we are talking about this issue, I want to quote  
21 Mr. Main specifically.

22           Spencer, put up -- put up Exhibit -- I'll just  
23 read it. We don't have to put it up.

24           In his testimony at 1319 to 1320, Mr. Gerrard  
25 asks him a question:



1 "Okay. What I'm asking -- let me ask the  
2 question a little bit differently, Mr. Main.  
3 In looking at the documents that were provided,  
4 the financial records provided to you by  
5 Mr. Bidsal or his staff in connection with  
6 Green Valley, in order for you to make  
7 adjusting entries for -- to the tax returns you  
8 issued proper K-1s. Did you consider the  
9 allocations and distribution schedule contained  
10 in Exhibit B of the operating agreement?"  
11 His answer is at 1320, line 11:  
12 "Answer: What we did is when there was a --  
13 from -- not from -- a distribution standpoint,  
14 because we had nothing to do with the  
15 distribution. Okay? But the allocation of  
16 the -- the accounting effects of the sale of  
17 the capital transaction, we allocated the gain  
18 from the sale of the transaction on the basis  
19 of 50/50. The distributions had nothing to do  
20 with -- so the distributions were done by -- by  
21 Mr. Bidsal. When we were accounting for the  
22 transaction, the capital transaction, we  
23 allocated the gain from the capital  
24 transactions 50/50, okay, from the accounting  
25 standpoint. Cash is something different."

1           You can take that down, Spence.

2           So that's -- and that is -- that is the  
3 dichotomy of the Bidsal position and ours. They have  
4 tried to repeatedly focus you on Exhibit A saying  
5 Exhibit A says this, Exhibit A says that, but that's not  
6 the way this agreement works. The party -- under the --  
7 under Exhibit A, it sets forth how things are to be  
8 booked on that, from an accounting standpoint on the tax  
9 returns, but they don't -- that has nothing to do with  
10 cash flow.

11           Now, there was a -- a -- there was a -- a --

12           Spence, I'd like you to put up Exhibit --

13           There was a discussion between you and  
14 Mr. Wilcox regarding allocations, and you asked more or  
15 less the same question that --

16           THE ARBITRATOR: Right. No, I recall. I have  
17 notes on that.

18           MR. LEWIN: And Mr. Wilcox, during that  
19 discussion, agreed that allocations for tax purposes are  
20 different than distributions. I'm just going to read a  
21 portion of it. This is at 583, line 1. This is you  
22 asking the question. Pardon me. It's actually 582,  
23 line 21.

24           "So my -- that -- Question: So my question  
25 makes sense, I guess, where are those two with

1 me in terms of whether Exhibit B says to you  
2 the only thing that's separated 50/50 is cash  
3 distributions of profits as defined in  
4 paragraph -- in the paragraph below or if it's  
5 broader than that based on Exhibit A?

6 "Answer: Okay. So 5.1.1.1, that's -- just to  
7 be clear, that's talking about allocations of  
8 income amongst the partners, not distribution  
9 of cash. But it's talking about allocations of  
10 income amongst the partners.

11 "Question: Okay.

12 "Answer: And it's basically saying there, as  
13 you just read, all those things, income, gain,  
14 loss, deductions, all of those things are going  
15 to be allocated to the members. Again, not  
16 distributions, but that's what's going to be  
17 showing up on your K-1 as income.

18 "Question: All right.

19 "Answer: And then it says as set forth in B  
20 obviously 'subject to the preferred allocations  
21 contained in Exhibit B.'"

22 Take that down, Spencer.

23 Oh. Okay. So we had a -- I think this is  
24 important because -- because it's -- it has to do with  
25 your interpretation. Bidsal's -- Bidsal's claim as to

1 what the specific intent paragraph violates -- violates  
2 an accepted rule of interpretation limiting  
3 qualifications such as examples to the closest  
4 antecedent. It can perhaps be made most clear by  
5 substituting the phrase "office building" -- I'm going  
6 to give an example now -- "office buildings or  
7 residential structures such as single-family homes."

8 Mr. Bidsal would urge that the phrase  
9 "single-family homes" not only exemplifies residential  
10 structures but also office buildings as he has done in  
11 that last paragraph. Only if you would conclude that  
12 single-family homes and office -- are our office  
13 buildings can you accept that contention. Otherwise,  
14 the proper interpretation of the sale of all or a  
15 substantial portion of the company's assets is just an  
16 example of a nonrecurring event. It has nothing to do  
17 with what is a capital transaction.

18 Finally, the last paragraph of -- of the -- on  
19 Exhibit B I think provides match point. It's -- it's  
20 clear not only from -- from this -- this section but  
21 also the specific intention paragraph of Exhibit 4.2 --  
22 that Mr. Gerrard didn't mention when he was discussing,  
23 you know, how to respond to an offer -- that what  
24 Mr. LeGrand was doing, even though he wrote what he  
25 probably figured was complete, but to avoid disputes, he

1    tried to provide what is specifically 4.2 as the  
2    specific intent and here of what Exhibit B intended.

3           In other words, no matter what else was stated,  
4    the deal is, and the deal cannot be clearer, cash  
5    distributions arising from operations is 50/50.  Cash  
6    distributions from capital transactions is 70/30.  
7    Capital transactions has a much broader meaning than --  
8    than just a -- you know, a sale of all the assets.

9           Well, does that mean -- does that result in  
10   making what appears before unnecessary?  Absolutely.  
11   But a court shouldn't interpret a contract as to make  
12   its provisions meaningless.  I refer to Phillips vs.  
13   Mercer at 94 Nev. 279 and Musser vs. Bank of America:

14           "A basic" -- quote:

15           "A basic rule of contract interpretation is  
16           that every word must be given effect, if at all  
17           possible."

18           But that is exactly why in the final paragraph  
19   the statements of specific intent were included.  By the  
20   way, Musser is 114 Nev. 945.

21           Now, last point.  The sales -- the sales were  
22   reported to the IRS as capital transactions.  And Mr. --  
23   and that -- but Mr. Bidsal would say that they're not  
24   capital transactions here, but they were on the tax  
25   returns.

1           And then there's this issue of what they call a  
2 nonrecurring event. Mr. Gerrard has offered the  
3 prospect that the business was either -- the business of  
4 the -- of Green Valley was to sell. Either they were  
5 going to hold everything and sell it all at once, or  
6 they were going to sell all the assets like a car  
7 dealership.

8           Well, that -- I questioned Mr. Wilcox on that  
9 at page 478, and I asked him would the -- would the sale  
10 of the three properties be recurring events for purposes  
11 of reporting them on the tax forms. And Mr. Wilcox  
12 said, "No, I would say they're nonrecurring." And the  
13 question was:

14           "As a matter of fact, you sell a property, it's  
15 gone forever; right?

16           "Answer: It's gone forever."

17           You can take that down, Spence.

18           I hope you remember there was somewhat of a  
19 forceful exchange between Mr. Gerrard and Mr. Wilcox  
20 trying to get him to say that it was reoccurrent- --  
21 they weren't -- they weren't nonrecurring events, but --

22           THE ARBITRATOR: Well, I recall some confusion  
23 on his part about what was a recurring event or a  
24 nonrecurring event, but...

25           MR. LEWIN: Well, it's my -- it's my

1 recollection that Mr. Gerrard almost had to throttle him  
2 to get him to withdraw the concession that he had made  
3 that the three sales were nonrecurring events. That was  
4 my -- that's my recollection of it.

5           So he asked him repeatedly -- repeatedly, and  
6 then he got the same answer that he gave me. Got him --  
7 repeated it again, same answer he gave me. He finally  
8 asked after -- I think there it was a third time, he  
9 said nonrecurring. But after, again, for the fourth  
10 time, he finally said the sales were recurring.

11           So there was another discussion that you had  
12 with Mr. Wilcox where -- where Mr. Wilcox admitted that  
13 Mr. Bidsal's interpretation about what triggers the  
14 waterfall doesn't work. And that's at 378, line 4,  
15 through 381, line 21. And there's -- it goes on for  
16 many pages there, but the -- but at the end -- and I'm  
17 not going to read them because it's going to take too  
18 much time, and I'm concerned about that. But during --  
19 in this discussion, Mr. Wilcox admits that -- in essence  
20 that what Mr. -- that Mr. Bidsal's interpretation of  
21 Exhibit B doesn't work.

22           As a matter of fact -- as a matter of fact,  
23 that testimony -- the -- let me -- let me just read it,  
24 a portion of it. Do you want me to read it? Because I  
25 can read a portion of it here beginning at page 379,

1 line 6 where you point out the fact that -- the question  
2 was:

3 "You can't sell all eight and distribute all  
4 the sales proceeds 50/50 because the assets are  
5 gone, and the member who has the  
6 disproportionately higher capital contribution  
7 is never -- never is able to recoup that. So  
8 at what point in that hypothetical would the  
9 special allocation have been triggered so that  
10 the member with the higher capital contribution  
11 would be able to recoup it? Does that question  
12 make sense?

13 "Answer: Yeah, I understand the question. And  
14 that really gets to the heart of why there  
15 is -- the operating agreement simply isn't  
16 clear. There's ambiguity in it. Because the  
17 operating agreement says -- on its face says  
18 distribute the assets. If you sell one a year,  
19 you never get to -- you never get to  
20 substantially all the assets. I mean, when do  
21 you get to that? So that's really your  
22 question --

23 "Question: Right.

24 "Answer: -- is when does it get triggered.

25 "Question: You're the accountant for this, and



1           there's a sale of one a year.

2           "Answer: So under that scenario, at some point  
3           in time you've got to step back and say, well,  
4           this doesn't work. It doesn't work."

5           I'm going to leave it at that, but --

6           THE ARBITRATOR: What's the rest of the answer?  
7           I didn't see the rest of the answer.

8           MR. LEWIN: Put up the -- put up the rest --  
9           put it up again. It would be 380, line -- line 5.

10          THE ARBITRATOR: I mean, you don't have to read  
11         it to me. But, yeah, just leave it up for a second, and  
12         I can read it.

13          No, go back.

14          MR. LEWIN: To page 380. That's right.

15          THE ARBITRATOR: All right. All right.

16          MR. LEWIN: I actually think we ought to read  
17         the rest of the testimony on this. We should read it  
18         all into --

19          THE ARBITRATOR: Well, I mean --

20          MR. LEWIN: You can read it.

21          THE ARBITRATOR: We can just refer to pages 380  
22         and 381 of the record. I don't know that we have to  
23         read it into the record, frankly, but I would like to  
24         just take 30 seconds and read it.

25          MR. LEWIN: Would you like to read your entire

1 dialogue with him? We can put it back.

2 THE ARBITRATOR: No, I saw the rest.

3 MR. LEWIN: Okay.

4 THE ARBITRATOR: You had it up there.

5 Okay. You can go to 381.

6 Okay. All right. You can go on.

7 MR. LEWIN: I want to make sure that you --  
8 that when we had up page -- the page 379, that you were  
9 able to see the predicate of this question.

10 THE ARBITRATOR: No, you had it up there. You  
11 had them all up there while you were talking.

12 MR. LEWIN: Very well.

13 THE ARBITRATOR: 378, 379, 380, 381. All  
14 right. But thank you.

15 MR. LEWIN: So if all the buildings were sold  
16 for the allocated cost and only the cost was allocated  
17 70/30, CLA would lose 70 percent of the portion  
18 allocated to the common --

19 (The court reporter interrupts for  
20 clarification of the record.)

21 MR. LEWIN: I'm sorry. I'm going to start  
22 over. And, Dawn, just let me know if I'm talking too  
23 fast.

24 If all of the buildings were sold for their  
25 allocated cost on the cost segregation schedule, and

1 only that cost, CLA -- and allocated 70/30, CLA would  
2 lose 70 percent of the portion allocated to the common  
3 area, which would -- which could not be sold for much of  
4 anything. And as you -- and as you pointed out in  
5 the -- in your questions, not treating each sale as a  
6 capital event calling for application of the waterfall  
7 would result in CLA never recovering its larger  
8 investment.

9 Now -- and I want to point -- I want to focus  
10 in on that. Here's what happens. Let's say this -- and  
11 Mr. Gerety talked about this. This property -- let's --  
12 as I mentioned earlier, there's no termination date on  
13 this LLC and if you're -- if you can only -- if you're  
14 only going to allocate 70/30 -- only going to allocate  
15 50/50 until there's a sale of all the assets, what will  
16 happen is that because Mr. Bidsal is getting a 50  
17 percent allocation on -- on profits, his capital account  
18 is going down and Mr. -- and Mr. Golshani's capital  
19 account is going up. And that's really what -- what  
20 called Mr. Golshani's attention to the fact that the  
21 money is not being distributed properly.

22 So you end up with a situation where  
23 Mr. Golshani gets all of -- Mr. Bidsal gets all of his  
24 money back, and Mr. Golshani is still at -- is basically  
25 still at his original capital investment. That -- I

1 submit that cannot be the intent of the parties or a  
2 proper interpretation of this agreement.

3 THE ARBITRATOR: You said that's not really  
4 what happened, though; right? I mean, for B and E, they  
5 were sold for an amount in excess of their -- their  
6 value attributed to them on the cost segregation report,  
7 and 70 percent of that cost segregation amount was  
8 distributed back to Mr. Golshani. So -- and then the  
9 gain, the profit beyond that amount, was distributed  
10 50/50. So it didn't really -- I mean, there's a  
11 hypothetical where it could occur the way you just  
12 talked about and the way that I brought up with  
13 Mr. Wilcox, but at least as to those two properties --  
14 and we'll set aside the 1031 for now -- it didn't really  
15 happen that way; right?

16 MR. LEWIN: That's true, it didn't happen. But  
17 we all remember, I'm sure -- I'm sure you remember 2008  
18 in Nevada --

19 THE ARBITRATOR: I know --

20 MR. LEWIN: -- and so we have to look at what  
21 the parties intended when they went into the agreement,  
22 and what they intended was Mr. Golshani wanted to get  
23 his money back as quickly as possible.

24 So -- so the deal was you -- we're going to  
25 split -- the money that you were earning by managing the

1 properties, the rent and the -- and the interest you get  
2 the 50 percent of, but if there's a capital transaction,  
3 we start -- we start to reduce the capital disparity  
4 between us.

5 THE ARBITRATOR: Right. And that goes back to  
6 the argument it's sort of presupposing that there was an  
7 intent not to just treat this as rental property  
8 throughout but to treat it as -- as, you know,  
9 properties that we could parcel out and sell.

10 MR. LEWIN: Right. And then you have -- and  
11 you have Mr. Bidsal who says now we never -- we are  
12 going to sell them all as a unit, and we have  
13 Mr. Golshani says -- who says -- who says he gave the  
14 instructions to LeGrand uncontroverted that -- I mean,  
15 you know, my -- other than the money was supposed to be  
16 on capital transactions --

17 THE ARBITRATOR: Okay.

18 MR. LEWIN: -- distributed.

19 THE ARBITRATOR: I understand. Okay.

20 MR. LEWIN: Okay. Thank you.

21 And I want to point out that Mr. Bidsal, who  
22 said -- Mr. Bidsal -- confirmed by Mr. Main that  
23 Mr. Bidsal never asked Mr. Main how to distribute funds,  
24 what constituted capital transactions. He made all of  
25 those decisions about what to distribute -- about --

1 about making the distributions by himself. And that is  
2 shown in the testimony of Mr. Main at 1319 through 1320  
3 and Mr. Bidsal's -- and Mr. Bidsal's testimony at 778,  
4 lines 5 through 12, and Mr. Main's testimony at 1348  
5 through 1349 and 1350.

6 Okay. I read that. Okay. So I've gone over  
7 the -- I've gone over the sales. I've gone over the --  
8 let's see, I'd like to talk about depreciation.

9 Under the -- under Exhibit 8, depreciation was  
10 allocated 50/50, and we contend that one of the  
11 overdistributions that Mr. Bidsal made was that he -- he  
12 distributed cash that was made available by virtue of a  
13 depreciation expense 50/50 instead of 70/30. So we're  
14 not really distributing the depreciation, we're -- it's  
15 actually the depreciation is an -- is an expense.  
16 There's no disagreement about that. And that -- and  
17 that -- that this frees up more cash, more cash  
18 that's -- that is not ordinary in- -- not ordinary part  
19 of operations, but it's something else.

20 Depreciation is an accounting recordation of  
21 events. The -- and the exception for depreciation is in  
22 the real world results -- means that money that would  
23 ordinarily be available to restore property because it  
24 is wearing out over time, you need money to make those  
25 capital expenses -- to make those capital improvements.

1           What Mr. Bidsal did instead of putting the  
2 money towards -- into making capital improvements or  
3 holding in reserve, he distributed the money. So -- and  
4 that -- and the -- I think it's generally accepted that  
5 the depreciation expense is the recordation of a capital  
6 event or a decline in -- from usage in real property is  
7 recognized.

8           Now, Mr. Main -- Mr. Main said at page 1325  
9 that -- and I'm just going to read -- I'm just going  
10 to -- this is a question asked by Mr. Gerrard that -- he  
11 says that, quote:

12           "Is depreciation an ordinary income item or a  
13 capital item?

14           "And a -- and depreciation is a reduction of  
15 ordinary income, rental income. So it's  
16 actually an ordinary deduction. And when you  
17 sell the property, it actually gets recognized  
18 as part of the gain, and there's a recapture."  
19           You can take that down, Spence.

20           And as I read earlier, and Mr. Wilcox testified,  
21 that ordinary income is different than cash flow. So in  
22 order to arrive at ordinary income, you deduct  
23 appreciation. That's at 476, line 11.

24           So what happens, the depreciation reduced the  
25 amount that ordinarily would have been distributed on a

1 50/50 basis as ordinary income from operations. Because  
2 it's not. Because depreciation reduces the amount of  
3 ordinary income.

4 You can take that down, Spence. I'm okay.

5 And there's -- and Mr. Wilcox admitted that  
6 there's nothing in the operating agreement that says  
7 that -- that -- that says that the -- let me start and  
8 then say again.

9 Mr. Wilcox testified that cash is not part of  
10 the ordinary income since ordinary income is after  
11 depreciation. He said that twice. He said it at 497,  
12 line 7, through 498, line 12, and he said it at 547,  
13 line 20, through 548 line 17. And in that last passage,  
14 he admitted that there's nowhere in the operating  
15 agreement that -- where it says that Mr. Bidsal is  
16 entitled to receive distributions on a 50/50 basis from  
17 depreciation. He said it clear out.

18 So if you were going to -- if you were going  
19 to distrib- -- if you were going to allow cash that  
20 becomes available on account of depreciation, it takes  
21 virtually --

22 Spencer, I don't need that anymore.

23 -- it vitiates the whole meaning of the -- of  
24 the specific definition of what is profit from -- what  
25 constitutes profit if it's distributed 50/50. And in



1 this context I want to -- I want to focus on something.  
2 Mr. Wilcox and Mr. Main both said the depreciation gets  
3 recaptured. So if you have \$100,000 of expense, you  
4 have \$100,000 of profit on a sale, that depreciation --  
5 you got to -- you got to account for that, and you have  
6 to pay taxes on it. And as long as Mr. -- as long as  
7 CLA and Bidsal were partners or members of CLA, the  
8 recapture would affect them equally in the way that the  
9 depreciation was allocated, again, for tax purposes.

10 THE ARBITRATOR: Just for the record, members  
11 of GVC, not members of CLA.

12 MR. LEWIN: Right. Members of Green Valley.

13 But what Mr. Wilcox ignores in connection with  
14 his conclusions on depreciation is what happens after  
15 CLA buys Mr. Bidsal's interest? That means that when  
16 that -- when that depreciation expense is recaptured in  
17 the sale, CLA is going to be -- is going to have to pay  
18 the taxes on the interest because Mr. Bidsal is no  
19 longer a member.

20 So it makes sense -- it makes sense that  
21 that -- that depreciation -- the monies that are made  
22 available by way of depreciation are not considered  
23 profits from -- from ordinary income divided from  
24 operations. Because otherwise under this context -- and  
25 I don't -- I don't know whether the parties thought

1 about this or not. I'd say they probably didn't. But  
2 in this context the depreciation -- the depreciation  
3 would be -- the recapture would be totally CLA's  
4 responsibility. And, again, Bidsal never sought advice  
5 from Main as to how to distribute the cash made  
6 available on account of the depreciation deduction.  
7 That's -- that's by Main's testimony at 1352, line 21  
8 through 25.

9           So now we come down to -- and in Mr. Gerety's  
10 schedules, he accounts for the -- all of the  
11 distributions relating to depreciation, and I submit  
12 that if you -- if you don't allow those -- if you don't  
13 acknowledge that those -- those -- that money should  
14 have been distributed 70/30, then CLA's got a double  
15 whammy. On one hand it's -- it's not getting the 70 --  
16 it's not -- Mr. Bidsal is getting 20 percent more of the  
17 distribution than he should have been entitled to. And  
18 number two, CLA is going to have to pay the taxes on the  
19 recapture.

20           I'd like to talk -- and I'm really -- I'm  
21 skipping a lot of pages here.

22           THE ARBITRATOR: And, I mean, we've been going  
23 about two hours on yours. So -- and that's about what  
24 Mr. -- Mr. Gerrard used. So are we getting to the  
25 finish?

1 MR. LEWIN: I have probably -- I have -- we're  
2 getting closer there. I don't think it's going to go  
3 more than 20, 30 minutes. Probably less.

4 THE ARBITRATOR: An extra 20 or 30 minutes?

5 MR. LEWIN: I have -- probably another -- yes,  
6 somewhere in that range, Your Honor. Look, I'm  
7 attempting to give you -- to provide you with the  
8 evidence that I think is important.

9 I want to talk about -- briefly about the  
10 311,000. What Mr. Gerrard didn't mention is that that  
11 was reported as interest, but both accountants  
12 said Mr. Main, who Mr. Gerrard wants to hold up as the  
13 epitome, as the pinnacle, of accounting expertise,  
14 didn't do it right. He allocated his interest. Be that  
15 as it may, it doesn't make any -- the issue is under the  
16 deed in lieu agreement, a portion of the, quote, rent is  
17 allocable -- is paid for periods before CLA acquired the  
18 note. Not CLA. Green Valley acquired the note. And it  
19 is that period -- it is that -- only that amount that is  
20 subject to the 70/30 because as Mr. -- as Mr. Wilcox  
21 acknowledged that -- that -- and Mr. Gerety  
22 acknowledged, the -- the portion of rent which is  
23 allocable to a period before they acquired the note  
24 would be a return of capital, period.

25 So in Mr. Gerety's schedule, he's allocated a

1 portion of that 311,000 as a -- only for that period  
2 that is prior to acquiring the note. We agree that  
3 whether it be interest or rent, it makes no difference,  
4 after the acquisition of the note, Mr. Bidsal gets 50  
5 percent of that. But before -- the period -- before  
6 June 3rd, it is allocable.

7 And the statute of limitations with that  
8 issue -- I think I mentioned before that the statute of  
9 limitations has no bearing on the issue of the -- of the  
10 determ- -- at this point on -- on this point in the  
11 determination of what is unreturned capital. It's not  
12 like -- it's -- this formula is being decided now. And  
13 we have previously provided you with some law on what we  
14 think is the issue having to do with the statute of  
15 limitations. I'm not going to repeat.

16 Regarding prorations, it had to do with the  
17 security deposits. Mr. Wilcox just made -- made that  
18 analysis up. There's no accounting principle that  
19 allows a liability to be reduced by cash on hand.  
20 Mr. -- Mr. Wilcox's theory was, well, we have a -- we  
21 had a \$68,000 liability, but they always had -- the  
22 already -- always had money. There was nothing that  
23 would -- there's nothing that -- there's just no  
24 accounting principle that accounts for it.

25 And Mr. Wilcox agreed at -- at -- and

1 Mr. Wilcox agreed at page 567 at line 12 through 568,  
2 line 7, that security deposits are shown as a liability  
3 on the financial statements of Green Valley, and under  
4 generally [sic] accounting principles, regardless of  
5 whether or not the landlord has money in the bank to pay  
6 the security deposits, the obligation to pay the  
7 security deposits is still a liability. The answer is  
8 "yes." And he's de- -- and he ends up that the amount  
9 of security deposits should be shown on the financial  
10 statements, if any, and the answer is "correct." And  
11 they are shown on the Green Valley financial statements.  
12 So I think that that addresses that.

13 Now, the -- Mr. Gerety has provided you with  
14 schedule -- with scheduling, his Exhibits 200 and 202.  
15 200 is the three pages we talked about earlier this  
16 morning.

17 THE ARBITRATOR: Right.

18 MR. LEWIN: It goes on a year-by-year basis and  
19 he --

20 Well, you don't have to put the -- don't put  
21 this up, Spence. I don't need it.

22 But on a year-by-year basis, he goes through  
23 what the distributions -- what the distributions were --  
24 are pursuant to the tax return, what they should have  
25 been under the operating agreement, and what the

1 difference is in the context whether there's an  
2 overdistribution or not. Interestingly, Mr. Gerrard  
3 doesn't mention this. He doesn't give any explanation.  
4 I mean, there's -- let me -- let me start over.

5 Even using the tax return financial statements  
6 shows that Mr. Bidsal's capital account as of -- as of  
7 the end of 2016 was -- had been reduced to \$730,000,  
8 roughly. Mr. Gerety gives him more credit for that.  
9 He -- he gives him -- he actually adds back -- he  
10 actually adds back money -- assume that he adds back --  
11 he actually adds money back, apparently, because he  
12 comes up to a figure of --

13 THE COURT REPORTER: Repeat the figure, please.

14 MR. LEWIN: \$840,643.

15 But that assumes -- that -- but with that, that  
16 assumes that Mr. Bidsal returns \$289,351, which is the  
17 amount of his overdistribution as of that date. So that  
18 means that -- that means that he has to submit a -- that  
19 in order to have credit for the 840- -- 840,643, he has  
20 to return back 289,000 and some change.

21 Then he addresses the post -- the post-sale  
22 distribution or the post-2000, September 2000  
23 distributions. And he -- those -- those total for an  
24 additional \$505,000, and that does not include any of  
25 the distributions that were made -- it's \$56,000, which

1 you actually pointed out during the discussion with  
2 Mr. Gerety.

3           So if you decide -- if you determine -- and if  
4 you determine -- I'm not going to go -- I wasn't going  
5 to go through -- I'm not going to go through year by  
6 year because it's set forth on the schedule, and I think  
7 it's pretty self-explanatory, unless you had some  
8 questions about any of these -- any of the particular  
9 items. But I think you'll find that they're all  
10 consistent with what I've been discussing.

11           Now, one of the -- one of the -- one of the  
12 principal bases from Mr. Gerety, however, is to  
13 determine what is a capital transaction. And Mr. Gerety  
14 didn't substitute his own interpretation of the capital  
15 transaction as Mr. Gerrard suggested. There is no  
16 definition of what a capital transaction is. So if you  
17 don't -- if there is no definition of a capital  
18 transaction, you have to look -- you have to look at  
19 what's accepted under the general -- or generally  
20 accepted accounting principles.

21           And you have two issues with respect to cash  
22 transaction: You have sales of property, and you have  
23 distributions over ordinary income, both of which  
24 Mr. Gerety said were capital transactions. And I can  
25 quote you -- I can find his testimony about that, if you

1 need it, but -- but he said -- but he said specifically  
2 that -- that any distribution in excess of ordinary  
3 income by virtue would be, in essence -- would be, in  
4 essence, a return of a capital transaction and a return  
5 of income. And that's how he has -- that's how he  
6 has -- those are some of the calculations he did in  
7 preparing his Exhibit 200.

8 Now, you had a discussion with him at page 918,  
9 line 10, through 919, line 22, when you were asking him  
10 about his two alternatives. And he -- and he  
11 basically -- he basically explained, and I think it's  
12 pretty clear, that Alternative A was using the capital  
13 account at the time of the sale and accounting for all  
14 the return -- all of the returned capital, and B was  
15 using the initial capital -- or C, I guess it is, the  
16 way it's labeled. C is labeled as the initial capital  
17 contributed by the parties allocated to the various  
18 properties that were still in existence.

19 It makes no -- the last part using the initial  
20 capital -- using the initial capital doesn't make --  
21 doesn't really make any sense. But no one is -- and no  
22 one -- no one has suggested that that would be a  
23 reasonable approach.

24 I want to talk -- I just want to talk briefly  
25 on a -- on the -- a couple of other issues. Remember,



1 Your Honor, I wanted to brief some of this stuff, but  
2 you didn't want a brief on it. I understand why. But  
3 we have two issues, a couple issues.

4 One, CLA is entitled to interest. CLA would be  
5 entitled to interest on the wrongful distributions that  
6 he made to himself. Seemingly, once you -- if you  
7 determine that the distributions were in excess of what  
8 was allowed, then CLA would be entitled to interest on  
9 that because it should have been -- had that money.

10 The interest rate should be determined by the  
11 case under Kerala Properties, K-e-r-l-a [sic] Properties  
12 vs. Familian, 122 Nev. 601, and should be calculated  
13 from the date of each distribution.

14 THE ARBITRATOR: Do you agree that if I don't  
15 find that the effective date is September 2nd, 2017, that  
16 as a member Mr. Bidsal is entitled to the distributions  
17 that occurred thereafter?

18 MR. LEWIN: Yes.

19 THE ARBITRATOR: Okay. And so there wouldn't  
20 be any interest on that.

21 MR. LEWIN: No. There wouldn't be any interest  
22 on that, although --

23 THE ARBITRATOR: Okay.

24 MR. LEWIN: -- I think you have a couple  
25 different dates you could go from. You could go from

1 the date of the September 2. You can go from the date  
2 of arbitra- -- the judgment. But if that's -- if that  
3 is the effective date -- I'm going to touch on that in a  
4 minute because I think that's a very important issue,  
5 and it has to do with a lot of money.

6 THE ARBITRATOR: Where are we at with the  
7 Supreme Court?

8 MR. LEWIN: The matter has been briefed. It's  
9 been briefed. I expect -- I think we're going to -- you  
10 know, I have talked to -- I have talked to Jim a couple  
11 of times. I think we're probably looking at six to  
12 eight --

13 THE ARBITRATOR: What?

14 (The court reporter interrupts for  
15 clarification of the record.)

16 MR. LEWIN: I think we're probably looking at  
17 six to eight months before that gets -- but it -- it's  
18 been fully briefed.

19 THE ARBITRATOR: All right. All right. Go  
20 ahead. I mean, maybe hit that issue. We have about  
21 four and a half hours of argument on about three and a  
22 half days of testimony.

23 MR. LEWIN: I don't have much -- I don't have  
24 much to say on this. All I'm saying is there's two --  
25 there's two interest rates that need to be -- that need

1 to be addressed here. Number one, there's the pre- --  
2 there's the prejudgment interest rate, which is  
3 controlled by Kerala. Number two is the -- there is  
4 a -- there's an interest rate under the statute which  
5 is -- which determines on the -- as -- is a postjudgment  
6 interest rate. And Mr. Wilcox used a wrong interest  
7 rate and so did Mr. Gerrard [sic] in his calculations.

8           So -- so the -- I believe that the proper  
9 interest rate to be applied would be 5 and a half  
10 percent except -- except with respect to the attorney's  
11 fees, which is subject to the postjudgment interest  
12 rate.

13           My next point is that CLA is entitled to an  
14 offset. If you -- when you go through -- when you --  
15 the way -- the way Mr. Gerety's -- I think he's taking  
16 Alternative A and -- and use that as the basis, add back  
17 the 80- -- add -- but using -- adding back the 81,767 to  
18 determine COP and then -- and then I think that -- and  
19 then adding -- and then subtracting the wrongful  
20 distributions plus interest from that purchase price and  
21 then depending on how you want to deal with credits  
22 could be -- addressing the post sale, the post sale  
23 distributions and attorney's fees and other things.

24           But we are -- but as a matter of law under -- I  
25 can't even pronounce this -- I'm just going to -- I'm

1 going to cite the Aviation Ventures case. It's Aviation  
2 Ventures vs. Joan Morris, Inc., 121 Nev. 113, where the  
3 court stated:

4 "Setoff is an equitable remedy that should be  
5 granted when justice so requires to prevent  
6 inequity. Setoff is a form of a counterclaim  
7 which a defendant may urge by way of a defense  
8 or to obtain a judgment for whatever balance is  
9 due."

10 And it goes on about -- it goes on on that. So  
11 it -- the -- I think that -- and then -- well, I believe  
12 that we are entitled -- CLA is entitled to an offset,  
13 entitled to an offset for the -- I'm going to use the  
14 September 2 date for the -- the post-September 2 date  
15 distributions that you -- if you agree they need to be  
16 returned, plus interest, and for the attorney's fees  
17 that were awarded under the judgment in the event that  
18 the appeal is denied.

19 THE ARBITRATOR: Say that again. An offset for  
20 the attorney's fees that were awarded by --

21 MR. LEWIN: Well, we have -- under arbitration  
22 number one that's this -- nothing that we do here is  
23 really going to become final until that Nevada -- until  
24 that case -- the appeal is decided.

25 THE ARBITRATOR: Right.

1 MR. LEWIN: So in that case, in that matter,  
2 the CLA was awarded attorney's fees of \$298,000 and some  
3 change. I don't remember the --

4 THE ARBITRATOR: Right. So anything I do would  
5 be exclusive of any order that Judge Haberfeld made as  
6 to fees.

7 MR. LEWIN: That's right, but we -- but --  
8 but -- and anything you do is still going to be subject  
9 because they are only going to be final when the Supreme  
10 Court rules.

11 THE ARBITRATOR: Ahhh --

12 MR. LEWIN: Well, what I mean is -- is that --

13 THE ARBITRATOR: -- yes and no. Yes and no. I  
14 mean, the -- the -- that's a good question. I hadn't  
15 thought about that. The arbitration provision, just  
16 like Judge Haberfeld interpreted it, has a fee  
17 provision. Obviously his award of fees would be  
18 conditioned upon the Supreme Court affirming that  
19 decision; right?

20 MR. LEWIN: Right.

21 THE ARBITRATOR: But there's a -- that fee  
22 provision would apply -- the fee provision in the  
23 operating agreement applies to this proceeding as well,  
24 and I'm not sure that if my job is to -- to sort of,  
25 among other things -- let's just narrow it down -- to

1 set a price for the transaction that Judge Haberfeld  
2 approved whether there's -- whether there's going to be  
3 a fee award one way or another for this proceeding and  
4 whether that is dependent at all or conditioned at all  
5 upon what the Supreme Court does. I'm not sure that it  
6 would.

7 If the Supreme Court affirms Judge Haberfeld,  
8 whatever fee award is in this -- is made in this  
9 proceeding, in my proceeding, gets tacked on or offset  
10 some way. If the Supreme Court reverses Judge Haberfeld  
11 long after I've reached a decision, there's an award  
12 which includes a fee award, I'm not sure that -- that  
13 the fees in my case would be dependent on what the  
14 Supreme Court does.

15 Does that make sense?

16 MR. LEWIN: I think that makes sense, Your  
17 Honor. My point is that the transaction can't be  
18 concluded now until the Supreme Court rules. If the  
19 Supreme Court upholds the award --

20 THE ARBITRATOR: I agree with that.

21 MR. LEWIN: -- and then -- then -- then your  
22 decision should make -- it should address as a possible  
23 offset the attorney's fees that were awarded to --  
24 because we can't close the transaction until then --  
25 should offset the attorney's fees that were awarded in

1 the case number one.

2 THE ARBITRATOR: I'm not sure it's an offset on  
3 the purchase price as much as it is there's just an  
4 order out there for fees.

5 MR. LEWIN: And that's my point. I think we're  
6 entitled to offset. And that's what -- I think the  
7 authority that I provided you. There's other authority  
8 as well. I'm going to -- the -- there is a U.S. Supreme  
9 Court decision. It's Studley vs. Boylston,  
10 B-o-y-l-s-t-o-n, National Bank, 229 U.S. 523.

11 There's -- there's a number of -- but I think the -- I  
12 think the Nevada authority, which is also referred to,  
13 and their authority is more than persuasive, that  
14 authority also referred -- is also identified in -- by  
15 the Bankruptcy Appellate Panel in the case of In re RCS  
16 Capital Development, LLC, vs. RCS Capital Development,  
17 LLC, 213 WL, is Westlaw, 3618550, Ninth Circuit.

18 THE ARBITRATOR: All right.

19 MR. LEWIN: Okay. So I just want to touch on  
20 some of Mr. Bidsal's defenses.

21 First of all, the tender issue. As I mentioned  
22 at the outset, the tender issue is gone. It hasn't  
23 been -- it is -- it was subsumed in the judgment, and it  
24 was -- so was the claimed law relating to specific  
25 performance. It's gone. It's an issue that would have

1   been an appropriate -- would have had -- had to have  
2   been raised in the first arbitration and in -- and in  
3   the -- and in the -- and in connection with the judgment  
4   of the -- in the district court.

5           And even the -- but I just want to point out  
6   the authority -- the authority that Mr. Gerrard  
7   specifically referred to in the 7510 Perla Del Mar case,  
8   458 P.3d 348 at 351 (2020). The Court stated:

9           "An actual tender is unnecessary where it is  
10          apparent the other party will not accept it.  
11          The law does not require one to do a vain" --  
12          (The court reporter interrupts for  
13          clarification of the record.)

14          MR. LEWIN: The law does not -- let me start  
15          over.

16          "An actual tender is unnecessary where it is  
17          apparent the other party will not accept it.  
18          The law does not require one to do a vain and  
19          futile thing. Tender of an amount is waived  
20          when the party entitled to payment, by  
21          declaration or by conduct, proclaims that, if a  
22          tender of the amount due is made, an acceptance  
23          of it will be refused. A formal tender is not  
24          necessary where a party has shown by act or  
25          word that it would not be accepted if made."



1 Look, I'm not going to -- we have the whole --

2 THE ARBITRATOR: Yeah. I mean, we've been  
3 through that a couple times, and it's been briefed, and  
4 I think it appears in one or two of my orders.

5 All right. Here's what we're going to do.  
6 We're going to take about a five-minute recess. After  
7 that -- it's been over two and a half hours, and I know  
8 some of it was my questions -- Mr. Lewin, I'm going to  
9 give you about five minutes to wrap up after that.

10 Mr. -- during the break, Mr. Gerrard, use that  
11 time to narrow the focus of any rebuttal to about ten  
12 minutes. And since the surrebuttal is only as to the  
13 counterclaim, I'll give another five minutes after that  
14 for Mr. Lewin. All right? So let's take five minutes.

15 (A recess was taken from 1:45 p.m. to  
16 1:51 p.m.)

17 THE ARBITRATOR: All right. Ready to go back  
18 on the record. Same persons present.

19 Mr. Lewin.

20 MR. LEWIN: Thank you, Your Honor.

21 So -- so to summarize, the -- if you decide  
22 that you are going to award interest, Your Honor, as I  
23 said, the interest calculation presented by Mr. Wilcox  
24 and Mr. Gerrard is post judgment interest, and they're  
25 not entitled to interest before -- without -- before the

1 judgment, number one.

2 Number two, on the issue of the date, the  
3 closing date, this transaction should have closed in  
4 September. It should have closed -- the only reason why  
5 it didn't was Mr. -- Mr. Bidsal refused to proceed to  
6 close the deal. It would be manifestly unfair to allow  
7 Mr. Bidsal or any contracting party to breach a contract  
8 and then -- and then to continue to get benefits from  
9 that contract because he refuses to close the deal.

10 This is -- that is -- I don't know any -- I  
11 don't know -- I don't know any concept of law that  
12 either is -- is common law or equity, that allows a  
13 breaching party to benefit by his own wrongdoing. And  
14 that is what Mr. Gerrard and Mr. Bidsal are urging in  
15 this case.

16 THE ARBITRATOR: So are you saying that if I  
17 find the effective date to be, essentially, you know,  
18 when the Nevada Supreme Court would hypothetically  
19 affirm Judge Kishner, that whatever that amount,  
20 purchase price amount, is, that CLA is entitled to  
21 interest on that amount from September 2nd, 2017,  
22 forward?

23 MR. LEWIN: I'm talking about -- yes -- that's  
24 correct, Your Honor. The answer being -- the answer is  
25 because the transaction shall close, and if Mr. Bidsal

1 had been forthright and raised these issues in 2017 to  
2 begin with, it could have been -- it would have been  
3 resolved in 2017, maybe 2018.

4 THE ARBITRATOR: I mean, I -- what I'm having  
5 trouble with is let's say hypothetically I come up with  
6 a purchase price. I don't care. Pick out whatever it  
7 is. 1. -- I don't know, whatever, split the difference,  
8 1.5 million. Okay. But that's an amount that CLA is  
9 going to pay Mr. Bidsal for his interest; right?

10 MR. LEWIN: That's correct.

11 THE ARBITRATOR: And that we should deduct from  
12 that, interest on a calculated annual basis to reduce  
13 that number.

14 MR. LEWIN: The interest --

15 THE ARBITRATOR: I don't understand the point  
16 of it. Because interest is supposed to be the other  
17 way.

18 MR. LEWIN: No, no, I --

19 THE ARBITRATOR: If Mr. Bidsal -- I mean,  
20 let's -- I guess the way I was -- let me change the  
21 hypothetical. Let me say -- let's say I accept  
22 everything that Mr. Gerety and you have put down, and  
23 the purchase price is whatever, 1 -- I forget -- I had  
24 his final number. Whatever it is, his final number,  
25 which might mean that -- that you might be the

1 prevailing party even, but anyway, for purposes of  
2 interest, you're saying that I would take that amount  
3 and somehow calculate interest on that amount to act as  
4 an offset to what Mr. Golshani has to pay Mr. Bidsal for  
5 his interest?

6 MR. LEWIN: No, no, Your Honor. I've got two  
7 issues on this. No, that -- when I'm talking about  
8 interest is that it's on the -- on the distributions  
9 that Mr. Bidsal took that were the wrongful  
10 distributions. So distributions beforehand were  
11 289,000. Those distributions, the interest should be  
12 calculated on that on a -- on -- from each date. The  
13 interest on the 500- -- 500- -- \$500,500, interest  
14 should be calculated on those from the date of those  
15 distributions. Not -- not -- so -- so let me give you  
16 an example.

17 THE ARBITRATOR: Okay.

18 MR. LEWIN: If the business of Green Valley was  
19 a bank, if Green Valley was a bank and it had a million  
20 dollars in cash -- it had a million dollars in cash and  
21 Mr. Bidsal -- and instead of closing on a date,  
22 Mr. Bidsal withdrew the money and then -- and then  
23 closed later, you wouldn't say that -- you wouldn't say  
24 that he was entitled to withdraw the money if we had  
25 a -- if we had a contract to buy the bank at a -- at

1 a -- his membership interest at a fixed price.

2 The same thing is here. He has devalued the  
3 asset that -- he has devalued the asset that -- that  
4 Green Valley -- sorry. He has devalued the membership  
5 interest that Green -- that CLA was buying by  
6 withdrawing cash out of the -- out of a bank --

7 THE ARBITRATOR: Right. But the --

8 MR. LEWIN: -- and the interest is only --

9 THE ARBITRATOR: -- part of my hypothetical was  
10 that I don't find that the effective date is September  
11 2nd, 2017.

12 MR. LEWIN: If that -- if that's the case, then  
13 the interest should be -- should be calculated on the  
14 289,000 because he was still a member -- he had -- as  
15 of -- as of 12/31/16, he had wrongful distributions of  
16 289,000.

17 THE ARBITRATOR: All right.

18 MR. LEWIN: That money he wrongfully  
19 distributed to himself, and there may be --

20 THE ARBITRATOR: All right.

21 MR. LEWIN: -- wrongfully distributed to  
22 himself and then maybe -- and then Mr. -- as Mr. Gerety  
23 pointed out, there may be some adjustments on that 5- --  
24 on the 500,000 as well. The point is --

25 THE ARBITRATOR: All right. I think I

1 understand now.

2 MR. LEWIN: But I would think -- I would think  
3 the best way of handling that is to defer that, the  
4 interest calculations, until at some point when we know  
5 after your decision what's the wrongful distribution,  
6 what the end date is, things like that.

7 THE ARBITRATOR: All right.

8 MR. LEWIN: The other point that I was making  
9 is -- the point that I was really making is that the  
10 idea that Mr. Bidsal could breach the contract, not  
11 close -- and not close and then withdraw money and  
12 then -- and then to have -- to have the closing date  
13 deemed to be some date in the future is just unfair.  
14 That allows him to breach his contract and to benefit by  
15 it. It's -- how does that work? It doesn't -- every  
16 time it -- and now on top of it, he now said he -- oh,  
17 and now we get it -- we delayed the closing. Now we  
18 want you to pay us post judgment interest on it and want  
19 management fees even though -- on these things.

20 So the issue that I wanted to close with is the  
21 date of the sale. Regardless of the issue of what the  
22 purchase price is, remember, we wanted to change  
23 managers. We wanted to get Mr. Bidsal out. We wanted  
24 to -- you know, so he didn't have to -- he didn't have  
25 the obligation to manage the property. He didn't want

1 to be part of it. We wanted to have a third-party  
2 manager. He resisted every effort. And by doing so, he  
3 basically has built himself up to it -- not -- a  
4 claim -- all right. A claim -- I breached the contract.  
5 I'm not selling.

6 And this assumes, by the way, that we win the  
7 appeal. But I breached the contract. I'm not selling.  
8 In the meantime, I'm going to hold on. I'm going to  
9 earn interest on the money that -- that you owe me at a  
10 rate that's much higher than I could ever get in a bank.  
11 And by the way, I want management fees for the  
12 management that you didn't want to begin with.

13 This would be a travesty. It literally would  
14 be -- it would be allowing someone to breach a contract  
15 and then benefit from it. Sounds like a -- sounds like  
16 a good -- good business tactic, by the way. If I could  
17 do it myself, who knows, but it's not fair. It  
18 shouldn't -- and the date -- the date of the sale  
19 should -- sale should be September.

20 And by the way, I don't think that's unusual.  
21 A lot of times in specific performance cases when  
22 there's rent and things, those rents are allocated back  
23 to the date before the breaching party breached the  
24 contract.

25 So that's my closing statement. I just wanted

1 to make that. I'm sorry I took so long.

2 THE ARBITRATOR: All right. Mr. Gerrard.

3 MR. GERRARD: Your Honor, I'm going to do my  
4 very best to make it ten minutes, but he went --

5 THE ARBITRATOR: All right.

6 MR. GERRARD: -- two and a half hours; so it's  
7 going to be pretty tough.

8 THE ARBITRATOR: Understood.

9 MR. GERRARD: So listen, let's start with where  
10 Mr. Lewin ended because the -- the audacity of the  
11 statements you just heard are astounding.

12 To suggest my client breached any contract is  
13 ridiculous. The original arbitration that happened, you  
14 can search that award. We did it while you were  
15 talking. The word "breach" does not appear in that  
16 award anywhere. My client has never been determined by  
17 anyone to have breached any contract. All he did was  
18 exercise his rights under the agreement to say, Judge,  
19 in the first arbitration, what does the word "fair  
20 market value" mean? That was the only issue in the  
21 first arbitration. That was it. Because he didn't  
22 believe that fair market value could restrict his  
23 ability to have -- exercise his appraisal rights. That  
24 was it.

25 What has happened, though, is that there has



1 never been a performance by Mr. Golshani. You -- that  
2 cannot be overstated enough. You -- in the real world,  
3 if you don't perform, you lose your rights. And to  
4 suggest that Mr. Golshani for --

5 MR. LEWIN: I'm not hearing.

6 MR. GERRARD: -- five years --

7 MR. LEWIN: Is anyone hearing? I'm not  
8 hearing.

9 THE ARBITRATOR: Yes, we're hearing him.

10 MR. GARFINKEL: I can hear you, Rod. I can  
11 hear you.

12 MR. GERRARD: To suggest that --

13 THE ARBITRATOR: Go ahead.

14 MR. LEWIN: Still can't hear.

15 MR. GERRARD: To suggest that Mr. Golshani --

16 MR. LEWIN: Can you hear me? Am I being heard?

17 THE ARBITRATOR: Yes.

18 MR. LEWIN: I cannot hear. I cannot hear.

19 THE ARBITRATOR: Do you want to log back in?  
20 What do you want to --

21 MR. LEWIN: I'm going to leave the room and  
22 rejoin and see if that works.

23 THE ARBITRATOR: Great idea. All right.

24 All right. Hold on, Mr. Gerrard. I'm not  
25 attributing this to your ten minutes.

1 (The Zoom connection of Mr. Lewin was  
2 disconnected, then reestablished.)

3 MR. LEWIN: Can you hear me?

4 THE ARBITRATOR: Can you hear me?

5 MR. LEWIN: I'm still not hearing.

6 THE ARBITRATOR: Well, then it's an issue with  
7 his computer.

8 MR. LEWIN: Let me have my -- let me have  
9 another computer brought in here.

10 (A recess was taken for Zoom audio  
11 difficulties, 2:03 p.m. to 2:05 p.m.)

12 THE ARBITRATOR: Okay. Mr. Gerrard.

13 MR. GERRARD: Thank you.

14 So this fantastical idea that my client has  
15 somehow breached is really ridiculous. The only  
16 obligations under this agreement to my client is to  
17 perform by transferring his membership interest when a  
18 purchase price has been paid. Not only have they never  
19 identified a purchase price, which is why we had to file  
20 this arbitration, because they wouldn't even tell us  
21 what they thought it was that they were supposed to pay,  
22 let alone pay it. But they've never paid anything. The  
23 only breach of the agreement is on the part of  
24 Mr. Golshani and CLA. My client has done nothing to  
25 prevent it.

1           And I asked you at the beginning of this  
2 arbitration to listen carefully for any evidence that my  
3 client ever refused to perform. They just read case law  
4 saying, well, our tender would be excused if my client  
5 refused to perform. He never refused to perform. He  
6 simply said I don't know what your purchase price is.  
7 You've never given us a purchase price. You've never  
8 identified the purchase price. You've never made any  
9 attempt to pay at all. So this idea that my client has  
10 somehow breached the agreement is ridiculous.

11           So let's talk about the crux of this case and  
12 what we've learned. What we've learned is that the  
13 preferred allocation language, the waterfall provision  
14 in Exhibit B, was never triggered. How do we know that?  
15 Well, Mr. Bidsal said when these sales happened, I  
16 didn't think it had been triggered. So I had a  
17 conversation with Mr. Golshani about what to do because  
18 Exhibit B does not take into account individual sales.  
19 Period. Underlined. Exclamation point. It does not  
20 contemplate that.

21           So the result of that is that he had to do what  
22 he believed was reasonable. Now, who else thought that  
23 the preferred allocation language had never been  
24 triggered? Mr. Main, the accountant, the CPA,  
25 Mr. Wilcox in reviewing this, and Mr. Golshani. How do

1 we know that Mr. Golshani didn't believe that the  
2 preferred allocation schedule or waterfall had been  
3 triggered. Because if he had, he would have said  
4 something.

5 Remember, every sale was completed and every  
6 tax return showed not just how the allocations were made  
7 but how the distributions were made, and they clearly  
8 show that the gain from every sale was being distributed  
9 50/50 and allocated 50/50. Mr. Lewin simply does not  
10 want to acknowledge or he doesn't understand the  
11 difference between allocations and distributions because  
12 his argument about that made zero sense.

13 The language of the operating agreement at  
14 Section 5.1.1 is really important, and I want you to  
15 look at it quickly, if I could figure out a share screen  
16 again.

17 THE ARBITRATOR: I have it in front of me.

18 MR. GERRARD: Okay. Perfect.

19 So I have underlined or highlighted what I care  
20 about here. 5.1 says:

21 "Each member's distributive share of these  
22 things, income, gain, loss, deduction, or  
23 credit, shall be determined as follows:"

24 You go to 5.1.1.1, or however many point ones  
25 there are there, and then it talks about:

1 "Items of gain, loss, deduction, or credit  
2 shall be allocated among the members in  
3 proportion to their percentage interests."

4 So what we learn from this is that your  
5 distributions -- your distributive share and your  
6 allocations are both determined to be in accordance with  
7 the percentage interests unless there's a trigger of the  
8 preferred allocation language.

9 That couldn't be more clear. And this  
10 nonsensical argument you just heard from Mr. Lewin that  
11 somehow -- and he said this: He said, "We don't want to  
12 change what's on the tax returns." But their whole case  
13 has been about saying that what's on the tax returns was  
14 wrong. It was allocated 50/50, all gain from all sales  
15 on the tax returns.

16 And what did Mr. Golshani do? Nothing.  
17 Because he knew that that was what was intended by the  
18 parties, that there wasn't a sale of all the property,  
19 and so there was individual sales that were happening,  
20 and he had discussed it with Mr. Golshani and -- I'm  
21 sorry -- with Mr. Bidsal and he had come to an agreement  
22 that this -- I'm sorry? Yeah. Yeah -- that this is the  
23 way they were going to handle it. And each time that's  
24 what happened. It was so transparent. He sent a  
25 breakdown schedule each time, and he sent two checks

1 each time.

2           There's just no way to say Mr. Golshani didn't  
3 know what was going on. It's revisionist history. It's  
4 because he doesn't like where he's at in this and wants  
5 to find offsets, and so that's how they came up with all  
6 this.

7           You notice there was no argument that there --  
8 at the time that these offers were made back and forth  
9 about overdistributions and that the waterfall schedule  
10 hadn't been followed. Do you see anything in the  
11 back-and-forth communications then? No. Didn't exist.  
12 This all came up through Mr. Gerety. This all came up  
13 when they were trying to find a way to reduce the amount  
14 of money that Mr. Golshani would have to pay. That's  
15 all that this is about. That's all its ever been about.  
16 It has zero to do with what the operating agreement  
17 actually says or with what the parties understood that  
18 it meant at the time. Because at the time when it was  
19 all happening, Mr. Golshani never said a word. And he  
20 admitted that he was reviewing his tax returns to see  
21 what was going on with his capital account, how it was  
22 going up and how it was going down. And every  
23 allocation and every distribution shows up on his tax  
24 return and on his K-1s, and he didn't say a word.

25           If he really believed that this was being done

1 wrong, he would have been all over this the minute that  
2 the first distributions were made from the sale of  
3 Building E even if he didn't understand it from the sale  
4 of Building C. It just makes no sense. And it's all  
5 revisionist history where they are trying to create an  
6 argument to create offsets.

7           So let's talk about the formula itself. I  
8 thought it was fascinating that Mr. Lewin went so far as  
9 to say that the language of this -- of the agreement was  
10 being ignored by Mr. Bidsal even though it's in black  
11 and white. That's what he said. He said Mr. Bidsal  
12 wants you to ignore the document -- the document says in  
13 black and white.

14           If we apply what the formula says in black and  
15 white, my client gets another \$1,300,000. And all of  
16 the testimony that Mr. Lewin referred to from Mr. Bidsal  
17 and from Mr. Wilcox during the arbitration was  
18 consistent with that. Each time they said this is the  
19 way we did it because this is what we thought was  
20 reasonable. They never said that that was what their  
21 understanding of what the agreement said. They never --  
22 that testimony never happened.

23           In fact, it's -- Mr. Lewin blatantly  
24 mischaracterized the testimony of Mr. Wilcox. And Your  
25 Honor -- Your Honor asked him to, you know, put up the

1 page that he was talking about so you could read what it  
2 was that he was actually saying about how this formula  
3 should have worked and how Exhibit B should have worked.

4 When it came to Exhibit B, he cuts off at the  
5 top of page 381 of his testimony, so what is at the  
6 bottom of that page? That's where Mr. Wilcox says what?  
7 First of all, Mr. Lewin said that Mr. Wilcox agreed with  
8 him that the way that Mr. Bidsal did it was wrong. That  
9 is not what Mr. Wilcox said. It's a blatant  
10 misrepresentation of what he said. What he said at the  
11 bottom of that page was, and I'll read it, he said:

12 "Look, so it seems from a practical standpoint  
13 there would be three ways to do it" -- again  
14 talking about how you get the return of capital.

15 "Way number one is the way Mr. Bidsal did it.  
16 Way number two is somewhere in between. In  
17 that scenario, sales 5 through 8 determine when  
18 we're close to -- close to the substantially  
19 all and allocate them in a way that returns the  
20 greater capital contribution.

21 "And then the third way would be to begin with  
22 the first property and allocate all of it 70/30  
23 to begin with to settle the difference between  
24 the capital contributions. And you might be  
25 done by the middle of Property 3. We hope



1 eventually if we actually sell all eight, all  
2 three scenarios will get you to the same  
3 place."

4 That was his actual testimony. He didn't agree  
5 with Mr. Lewin, and he didn't agree that what Mr. Bidsal  
6 had done was wrong. What he said was what Mr. Bidsal  
7 did was a reasonable approach because the operating  
8 agreement did not contemplate individual sales.

9 So instead of trying to take advantage of what  
10 the operating agreement does say, which was that it  
11 would be split 50/50, what Mr. Bidsal did is tried to  
12 start returning capital, the portion of the capital  
13 attributable to each building sold on a 70/30 basis.  
14 What could be more fair than that? He wasn't trying to  
15 take advantage of Mr. Golshani. That's the thing that's  
16 so alarming about the position of Mr. Golshani  
17 throughout this whole case. He keeps trying to point  
18 the finger at Mr. Bidsal as if Mr. Bidsal did something  
19 wrong when all that Mr. Bidsal did was try to protect  
20 Mr. Golshani.

21 And all of this came up when? After the fact.  
22 Did it come up contemporaneously when these things were  
23 happening? Of course not. Because that's what they had  
24 agreed to. It came up when Mr. Golshani had to reach  
25 into his pocket and pay the money back to Mr. Bidsal

1 that he had to pay him under the formula for the  
2 operating agreement.

3 And did he pay anything? Never. The  
4 identified purchase price? Never. All he did was  
5 search for offsets, search for ways to reduce the amount  
6 that he should have to pay. It's consistent. You can  
7 see the pattern from beginning all the way through  
8 arbitration to now. It's all been about let's find a  
9 way to reduce the amount we have to pay.

10 And all this other -- all this other kind of  
11 peripheral stuff is just noise to the central issue. He  
12 talks about the missing 81,000. If you -- if you  
13 bothered to actually look at the accounting records, you  
14 would know the answer to that. It wasn't something that  
15 was at issue in Mr. Wilcox's report because he wasn't  
16 trying to find offsets against, you know, Mr. -- what  
17 would ultimately have to be paid to Mr. Bidsal.

18 Mr. Gerety comes up with it -- doesn't even  
19 come up with it. He starts with the same numbers. Who  
20 comes up with it? Mr. Lewin. Mr. Lewin, like, well,  
21 you know, there's this 81,000 that nobody's explained.  
22 Guess what? You can't capitalize all expenses from the  
23 purchase of this note and attribute it to the real  
24 property. Under the tax rules, it's not possible.

25 So some portion of the money paid for the note

1 can't be capitalized and can't be picked up in the cost  
2 segregation study because those costs are not able to be  
3 capitalized. It's a simple explanation. You'd think by  
4 listening to Mr. Lewin that, you know, there was some  
5 big nefarious thing going on where somebody was trying  
6 to take advantage of his client.

7           If his client thought that he was supposed to  
8 get the rent divided 70/30, don't you think he'd have  
9 been jumping up and down like a madman when -- when he  
10 didn't get them in the beginning back in 2011? Just --  
11 it's so ridiculous, the arguments that are being made  
12 now that somehow Mr. Golshani has been taken advantage  
13 of.

14           And this whole idea that -- that Mr. Golshani  
15 said from the beginning, that he should get all this  
16 money back. That was the big thing. Ah, you know, you  
17 just heard Mr. Lewin talk about it. From the beginning  
18 Mr. Golshani said I got to get my money back right away.  
19 Where is that in the operating agreement? Where does it  
20 say anywhere in there that the first thing that should  
21 happen is everybody gets their money back and then we  
22 make distributions after that? It would have been a  
23 simple way to draft it if that was really what was  
24 intended, but that's not what was intended.

25           Remember what the business was of Mr. Bidsal

1 that Mr. Golshani so desperately wanted to participate  
2 in because Mr. Bidsal was making a lot of money doing  
3 it. Mr. Bidsal doesn't buy property to sell it. He  
4 buys property that's income-producing, and he generates  
5 rent, and he makes a lot of money, and hopefully, if the  
6 markets stay the way that they normally do -- or even if  
7 they -- even if they take a dive, they always rebound  
8 eventually.

9 The value inherent in the property to begin  
10 with, meaning the purchase price of the property itself,  
11 is always still there. It's constant. What you are  
12 doing is you are realizing a tremendous return on your  
13 money over all these years.

14 What did -- according to Exhibit 201, Schedule  
15 12, Mr. Golshani received \$2.6 million over the eight  
16 years that distributions were made on this thing on a --  
17 on an original -- on an original investment of \$2.8  
18 million. So in eight years he got a -- a 100 percent  
19 return on his money. And there's no suggestion that the  
20 remaining interest in this -- in this LLC is worth less  
21 than the amount of his outstanding capital either.

22 So all this nonsensical talk about he was at  
23 risk and he had all this, that's crazy talk. He wanted  
24 to get in this business because he was going to get a  
25 lot of money from rents. That was the whole idea behind

1 it. And now when he's trying to find offsets, that's  
2 the only time you hear this nonsensical argument about  
3 how he was insisting on getting his money back right  
4 away. Where is that in the operating agreement? To use  
5 Mr. Lewin's language, where is it in the black and  
6 white? It's not there because that was not the intent.

7 But as I pointed out in my closing, even if you  
8 accept their -- their current version to try to create  
9 offsets, it works against him because if that was the  
10 intent from day one, that we were just buying this  
11 property to flip it and to sell it, then it was  
12 inventoried from the beginning, and under the operating  
13 agreement in Exhibit B, second to the last paragraph, it  
14 says:

15 "Cash distributions of profits from operation  
16 shall be allocated and distributed 50 percent  
17 to Shawn Bidsal and 50 percent to CLA  
18 properties," meaning if their argument is  
19 accepted by Your Honor that that's really what this was  
20 about, was getting the money back right away and  
21 flipping the properties and selling them, it's still a  
22 distribution 50/50 under the language of Exhibit B.

23 THE ARBITRATOR: All right. I lost track of  
24 time when we had to reconnect so I don't know where  
25 we're at. I admit I dropped the ball.

## Closing Arguments

## Shawn Bidsal v. CLA Properties, LLC, et al.

Page 1583

1 MR. LEWIN: I think it's about 90 minutes.

2 THE ARBITRATOR: Let's wrap it up.

3 MR. GERRARD: I am trying to do that, Your  
4 Honor. Like I said --

5 THE ARBITRATOR: All right.

6 MR. GERRARD: -- they've already had, like, 30  
7 minutes more than us. So let me just quickly mention a  
8 couple of additional things.

9 THE ARBITRATOR: All right.

10 MR. GERRARD: First of all, there's no question  
11 that the operating agreement is ambiguous.

12 THE ARBITRATOR: They've agreed. They've  
13 conceded that.

14 MR. GERRARD: Now it's up to Your Honor to do  
15 what's reasonable under the circumstances. And  
16 Mr. Lewin's argument that losses were shared 70/30 while  
17 everything else was 50/50 is not reflected in the tax  
18 returns, and it is not reflected in the operating  
19 agreement. It's just an outright fabrication.

20 So the parties did have an understanding of  
21 what they wanted to do, but certainly the buy/sell  
22 formula, which is where this whole thing ends, the  
23 buy/sell formula language, you can't with a straight  
24 face say that it -- what it actually says is what the  
25 parties wanted to actually have happen, because if it

1 is, my client gets another \$1.3 million.

2 THE ARBITRATOR: Right. I know.

3 MR. GERRARD: And the point here is that not  
4 only do they not want to pay what the reasonable  
5 reinterpretation of that is, that Mr. Bidsal has never  
6 tried to take advantage of, they still have never paid  
7 anything. And they want these offsets through all those  
8 things as if they had performed.

9 So finally, Your Honor, I don't -- I don't  
10 think that -- let me just look really quick to see if  
11 there was anything else that was major.

12 THE ARBITRATOR: All right.

13 MR. GERRARD: Give me one second here. Because  
14 I had a lot of things I wanted to cover, but obviously  
15 I'm trying to cut it all completely down.

16 If we're going to do -- if we're going to do  
17 what's reasonable, I think, Your Honor, what we have to  
18 do is be consistent with what was done from the  
19 beginning. The tax returns show what was done from the  
20 beginning. That's the only record we have of  
21 consistency. Right? Because it was what was done.  
22 It's what was distributed to both sides. It's what they  
23 clearly understood was happening, and so it provides the  
24 only track record of what really was intended. Because  
25 the operating agreement language is so ambiguous, but

1 that -- but the records of the tax returns is not. It  
2 shows what was happening, and there is no way to argue  
3 that it was unreasonable, the position that Mr. Bidsal  
4 took.

5 Last point, the parking lot because they made a  
6 big issue out of the parking lot. It is true that the  
7 parking lot -- a piece of the parking lot was not sold  
8 to each member as an outright fee title interest. It's  
9 through the CC&Rs that they get a part of the bundle of  
10 rights that is held by GVC in that parking lot.

11 THE ARBITRATOR: Not the members. You mean  
12 whoever bought E and -- E and B.

13 MR. GERRARD: The purchasers.

14 THE ARBITRATOR: Right. Okay.

15 MR. GERRARD: The purchasers that buy each  
16 building have an undivided right to use that parking lot  
17 through an easement, which is part of a bundle of rights  
18 that is held by the company. And while the company owns  
19 all of it, no big deal. But when it starts to be sold,  
20 then a portion of that right to use the parking lot goes  
21 with it. And that's why it's not reasonable, you know,  
22 to take the position that was taken by Mr. Gerety.

23 And the last thing I want to say is on the 1031  
24 exchange. I do not understand the nonsensical example  
25 that was just used by Mr. Lewin when he said, well, what



1 if 180 days had gone by and the parties had not  
2 completed the 1031 exchange? Well, then that means  
3 that -- you know, that all of our explanation is right  
4 and their explanation is wrong. If 180 days had gone by  
5 and they had not been able to complete the 1031 exchange  
6 because they had timed out, then the gain from the sale  
7 of Building C would have been distributed on a 50/50  
8 basis just like the rest of it was. And then Mr. Bidsal  
9 would have no complaint about losing out on his one-half  
10 of the appreciation from the sale of that property.

11 It only comes up because the 1031 exchange was  
12 completed, and it clearly is not contemplated by either  
13 the formula for COP or by the, you know, Exhibit B  
14 distributions.

15 Again, Your Honor, there's a lot more I can  
16 say, but you get it. You understand it. I know you've  
17 thought very carefully about it.

18 Do you have any questions for me?

19 THE ARBITRATOR: I don't.

20 MR. GERRARD: Okay.

21 THE ARBITRATOR: Mr. Lewin, I'll give you a  
22 couple minutes. I don't know how much of what  
23 Mr. Gerrard just said relates to the counterclaim, but  
24 that's, essentially, where your surrebuttal right lies.  
25 So I'll let you address anything in rebuttal as it

1 relates to the counterclaim.

2 MR. LEWIN: Okay. Well, I'm not -- hard to  
3 adjust -- I think I can.

4 THE COURT REPORTER: I'm having a hard time  
5 hearing you.

6 MR. LEWIN: Are you able to hear me?

7 THE COURT REPORTER: You need to slow down  
8 because there's a delay.

9 MR. LEWIN: All right. I will. Give me seven  
10 minutes, please.

11 Mr. Gerrard said I made up the issue about the  
12 losses. If you look on Exhibit B on Exhibit 5, it  
13 says -- it provides that the losses are allocated  
14 according to the capital accounts. Originally on  
15 Exhibit 91, the capital accounts, the percentage  
16 interest was 30/70. That got changed to 50/50, but  
17 that -- the losses did not get changed, number one.

18 Number two, Mr. Gerrard failed to address the  
19 fact that it wasn't me who said -- it wasn't me who said  
20 that cash is different than tax allocations. That was  
21 every accountant in this case. So if he has a -- if the  
22 issue becomes, as I said, they want to focus on Exhibit  
23 A, the issue is Exhibit A is different than cash  
24 distributions.

25 Now, I don't know where to go with tender. I

1 have a lot of evidence on Mr. Bidsal's refusal including  
2 his refusal to open an escrow, his motions for stay, his  
3 appeal. Unless you think there's -- you want some  
4 specific reference, I'm not going to say any more about  
5 that.

6           What I said about black and white is I -- black  
7 and white has to do within Exhibit B. Exhibit B says in  
8 black and white and defines what cash, what the ordinary  
9 income, what profits are that are to be distributed  
10 50/50. And that's in black and white.

11           And in terms of -- and your job, as I  
12 understand it, Your Honor, is to determine whether the  
13 other references, in plural, to capital transactions,  
14 what those are, because clearly under Exhibit B, the  
15 only amounts that are set forth that Mr. Bidsal gets  
16 distributed are the 50 -- 50 percent of the rents are  
17 interest. If that didn't -- does not have meaning, what  
18 does? It is in black and white.

19           And the other issue is having to do with what  
20 capital transactions are. Also, as I said, every -- all  
21 distributions of money in excess of ordinary income and  
22 the sales, they're all capital transactions.

23           The -- I just want to talk about Mr. --  
24 Mr. Golshani. He started complaining -- you heard his  
25 testimony. He started complaining verbally to

1 Mr. Bidsal that he noticed that there were some slight  
2 differences in the capital accounts. This went on for a  
3 couple of years and only when the difference became more  
4 pronounced did he start taking more action.

5 Then he contacted Mr. Bidsal. Mr. Bidsal --  
6 Mr. Bidsal said, you know, talk to Nora, do this. You  
7 know, look, he did get the checks. He got these sheets,  
8 but he explained that in terms of his business, a lot of  
9 things that -- you know, he was traveling. He didn't  
10 see a lot of these items. The checks he never  
11 deposited. Those were deposited by -- by his -- by his  
12 office.

13 But the bottom line in connection with -- in  
14 connection with this, you know, the purchase, the issue  
15 is -- really is what are -- what is the proper way to  
16 distribute the money? And you can't determine -- when  
17 it says capital transactions with respect to the  
18 distributions from rents, there's that dichotomy. They  
19 don't meet otherwise unless you determine that capital  
20 transactions get distributed 70/30, rents and other  
21 interest get distributed 50/50.

22 I got two more points here.

23 This issue about offsets, there was years  
24 before Mr. -- Mr. Golshani didn't do anything. He  
25 didn't -- he wasn't looking to cheat Mr. Bidsal. He

1 wanted to -- he wanted to buy his membership based on a  
2 process that Mr. Bidsal negated at a lowball offer and  
3 then refused to sell Mr. -- unless Mr. Golshani paid him  
4 based on a number of not 5 million, fair market value,  
5 but 6.3 million. So who is -- how is that bad faith?  
6 How is that trying to take advantage?

7 And lastly -- I'm sorry. I'm having a hard  
8 time reading my number. Oh. The -- Mr. Gerrard's  
9 comments about the \$81,767, none of his explanations  
10 were offered into evidence. There's no evidence about  
11 that. It's just his argument. There is no evidence  
12 that was ever offered about the missing \$81,000.

13 Mr. Wilcox didn't do anything about it.  
14 Apparently Mr. Gerety didn't do anything about it.  
15 Mr. Bidsal never offered any testimony. So the issue  
16 is the fact that there's no evidence except that it's  
17 missing. And determination of COP is reasonable. Very  
18 reasonable to take the full price of the note, not --  
19 the price of the note minus \$81,767. And that's --  
20 that's it.

21 THE ARBITRATOR: All right. Thank you very  
22 much. Let me ask what -- Ms. Court Reporter, what's  
23 your timetable to be able to get even a rough out?

24 (A discussion was held off the  
25 record.)

1 THE ARBITRATOR: Okay. Then I will leave it to  
2 whoever hired you, I suppose, to forward it to me.

3 All right. Let's go back on the record.

4 MR. LEWIN: Well, if we're going to expedite  
5 the transcript, will Bidsal share the cost on it?  
6 Because I ordered -- I ordered the court reporter.

7 MR. GERRARD: Yes, we'll pay half of it.

8 MR. LEWIN: Fair enough. Okay.

9 THE ARBITRATOR: All right. Expedited, it is.  
10 Here's the other thing. And I don't know -- I  
11 don't really recall what happened with Judge Haberfeld.  
12 In cases like these, it's my general protocol to issue  
13 some sort of interim award and then address any issue of  
14 fees -- which is -- if I remember right, are sort of  
15 mandatory in this arbitration provision in the operating  
16 agreement -- and then allow for briefing on fees and  
17 costs after the interim award. And then once that's  
18 done, then have a final award. I don't know if that's  
19 what you did with Judge Haberfeld or not.

20 MR. GARFINKEL: Yes, Your Honor. We -- that's  
21 what happened. There were a couple of interim orders  
22 and then -- you know, I believe there were a couple of  
23 them because there were a couple of different issues.  
24 And then --

25 THE ARBITRATOR: Okay.

1 MR. GARFINKEL: And then there was a final one.

2 THE ARBITRATOR: Okay. All right. So that --  
3 just so that we understand, once the interim award comes  
4 out, what I normally do is in the interim award I  
5 give -- I will identify what I think is the prevailing  
6 party and why and pretty much set forth a briefing  
7 schedule right in the interim award for fees and then  
8 convene either a conference call or a Zoom conference,  
9 whatever you guys want, on that issue before issuing a  
10 final award. That's -- just so that we understand that  
11 would generally be my protocol. All right?

12 MR. GERRARD: Okay.

13 THE ARBITRATOR: All right. Thank you very  
14 much. And like I said, it's going to take me probably  
15 30 days before -- because I probably -- well, hopefully  
16 I can -- it will be a couple weeks, two weeks or so,  
17 before I get the award out. But it's good to know that  
18 I have the 30.

19 (Proceedings concluded at 2:36 p.m.)  
20  
21  
22  
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## REPORTER'S CERTIFICATE

STATE OF NEVADA                    )  
  ) ss  
COUNTY OF WASHOE                )

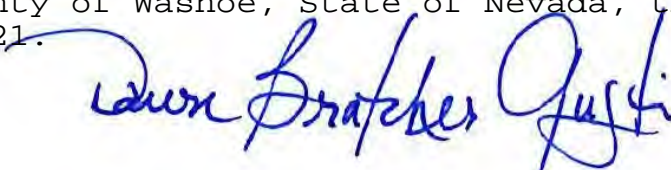
I, Dawn Bratcher Gustin, a duly certified court reporter licensed in and for the State of Nevada, do hereby certify:

That I reported the taking of the proceedings at the time and place aforesaid;

That I thereafter transcribed my shorthand notes into typewriting and that the typewritten transcript of said proceedings is a complete, true, and accurate record of the proceedings to the best of my ability.

I further certify that I am not a relative, employee, or independent contractor of counsel of any of the parties; nor a relative, employee, or independent contractor of the parties involved in said action; nor a person financially interested in the action; nor do I have any other relationship with any of the parties or with counsel of any of the parties involved in the action that may reasonably cause my impartiality to be questioned.

IN WITNESS WHEREOF, I have hereunto set my hand in the County of Washoe, State of Nevada, this 5th day of October 2021.

  
\_\_\_\_\_  
Dawn Bratcher Gustin, CCR 253, RPR, CRR



## Closing Arguments

## Shawn Bidsal v. CLA Properties, LLC, et al.

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\$1,215,000 1414:1	\$3,136,430.58 1455:13	\$6 1504:22 1505:8	(b) 1439:21,25
\$1,300,000 1464:17 1576:15	\$3,244,138 1463:18	\$6.3 1505:15	1
\$1,889,010.35 1451:1	\$3,967,000 1424:22	\$68,000 1463:4 1549:21	1 1411:6 1413:5 1434:18 1488:8 1505:12 1531:21 1564:7,23
\$1.3 1584:1	\$3,967,182.38 1499:3	\$68,998 1462:22	1,215,000 1457:7,20
\$1.8 1505:10	\$3,994,582 1417:19	\$730,000 1516:3 1551:7	1,598,000 1469:1
\$100,000 1528:22 1546:3,4	\$300,000 1476:2	\$74,000 1416:21	1,889,000 1454:9 1464:15
\$110,000 1425:8,10	\$311,265 1417:19 1421:2	\$75,000 1422:17 1425:10	1- 1464:11
\$115,000 1425:7	\$369,957 1507:1	\$790,000 1422:24	1.2 1463:16 1497:20
\$145,000 1452:17	\$395,000 1453:23	\$8 1411:3	1.5 1505:10 1564:8
\$169,225 1421:2	\$395,835 1452:6	\$80,500 1452:13	1.8 1464:12
\$175,000 1452:13	\$4 1479:5	\$803,726 1422:25	10 1444:12 1452:16 1488:20 1518:16 1553:9
\$198,000 1427:19	\$4,048,939 1424:20	\$803,726.18 1455:11	100 1501:22 1581:18
\$2,834,250 1413:25	\$4,048,949 1499:4	\$81,000 1590:12	1001 1518:17
\$2.6 1581:15	\$4,048,959 1494:11	\$81,767 1498:20 1499:14 1501:8,22 1590:9,19	1008 1485:5
\$2.8 1581:17	\$404,250 1483:24	\$82,000 1500:17,19	1009 1518:16
\$229,000 1430:18	\$410,000 1427:19	\$840,643 1551:14	1011 1485:6
\$253,676 1506:24	\$427,000 1425:18	\$846,560.18 1506:4	1014 1485:6 1518:17
\$257,774 1515:23	\$495,000 1451:18	\$850,000 1425:15	1015 1518:18
\$28,581.79 1515:18	\$495,800 1451:6	\$87,767 1498:24	1016 1485:6 1518:18
\$289,351 1551:16	\$5 1433:23 1463:13 1493:1 1504:21 1505:16	\$95,000 1515:19	
\$290,000 1469:4	\$500,500 1565:13	\$957,225 1457:12	

## Closing Arguments

## Shawn Bidsal v. CLA Properties, LLC, et al.

1018 1485:6	1147 1480:12	1422:1	1:51 1562:16
1019 1485:6	1158 1505:17	14 1431:13 1496:13 1506:17	<hr/> 2 <hr/>
1031 1410:16 1422:22 1423:17 1425:9 1446:8 1501:25 1520:7 1541:14 1585:23 1586:2,5,11	1159 1505:18	14.1 1391:2 1482:15	2 1434:16,17,19 1435:13 1463:15 1476:13,19 1482:15 1488:3,8 1495:6 1507:7 1516:21 1555:1 1557:14
104,000 1453:14	119 1492:6	143,000 1426:24	2.10 1416:17
1049 1518:24	12 1488:23 1500:18 1508:20 1543:4 1545:12 1550:1 1581:15	143,954 1457:18	2.11 1416:21
1051 1518:25 1519:12	12/31/16 1566:15	145,000 1453:4,9,15	2.2A 1416:9
1052 1479:7	121 1557:2	15 1391:11 1431:14 1442:21 1444:12	20 1412:6 1458:12 1495:6 1505:17 1545:13 1547:16 1548:3,4
1053 1479:8	122 1554:12	16 1404:17 1474:22 1487:24 1505:12 1509:5	200 1385:10 1386:9,10,15 1388:17 1516:1 1517:2 1550:14,15 1553:7
1059 1484:21	1242 1426:17	164 1482:13 1495:7	2000 1551:22
1060 1484:21	126 1492:6	16th 1404:13 1414:13,23 1415:8	2000- 1427:12 1501:23
1081 1491:24	12:33 1521:1	17 1458:11 1506:2 1519:12 1545:13	2008 1541:17
1099-C 1417:18	12:40 1521:2	175,000 1453:17	201 1451:2,10,14 1452:16 1455:14 1457:13 1464:24 1506:23 1581:14
10:32 1444:16	13 1431:13	17th 1414:7	2010 1411:23 1412:11
10:39 1444:17	131 1492:7	18 1423:25 1433:17 1458:11 1508:21 1518:25	2011 1412:11,13 1413:3 1414:9 1418:13 1419:23 1420:3,10, 13 1421:1 1476:8 1486:15 1488:3 1507:10 1518:9 1580:10
10th 1419:22	1319 1529:24 1543:2	180 1503:16,21 1586:1,4	2012 1404:24 1420:15 1421:1,25 1422:15,20 1425:1 1430:15 1431:13 1432:15 1501:24 1523:8,13,14
11 1518:17 1530:11 1544:23	1320 1529:24 1530:11 1543:2	180,500 1453:17	2013 1422:20 1423:1,14,23 1425:1,6 1430:14 1431:16 1507:10 1515:17
11.190(1)(b) 1421:14	1325 1544:8	181 1503:11	
111 1494:7	1348 1543:4	19 1433:17 1458:11 1467:1	
113 1557:2	1349 1543:5	1990s 1412:2	
114 1534:20	1350 1543:5	1992 1412:5	
1140- 1480:11	1352 1547:7	19th 1413:3	
1146 1480:12	1394 1488:2	1:45 1562:15	
	13th		

## Closing Arguments

## Shawn Bidsal v. CLA Properties, LLC, et al.

2014 1425:6,14 1427:11,18 1431:18 1508:14	25 1547:8	1577:25	380 1538:9,14,21 1539:13
2015 1427:16,17 1429:9 1430:4, 16 1431:19 1508:15	26 1506:17	3,136,430 1456:10	381 1536:15 1538:22 1539:5,13 1577:5
2016 1405:3 1429:19 1430:4,13 1431:22 1432:23 1433:15 1515:25 1516:2 1551:7	27 1427:16,17	3.1 1464:11	395,835 1453:18 1454:15
2017 1432:23 1433:15,17,21,25 1436:6,13 1450:19 1451:5, 11 1452:5,15,22,23 1453:19 1454:11 1458:4,8,16,20 1460:16 1476:13 1481:19,23 1483:7 1505:5 1554:15 1563:21 1564:1,3 1566:11	279 1534:13	30 1389:22 1390:1,4,8,10,21,23 1391:1,7,9 1434:5 1435:1 1436:18 1437:21 1447:14 1449:22 1450:19 1458:19 1459:6 1473:19 1476:16 1479:8 1480:22 1486:2 1515:18 1538:24 1548:3,4 1583:6 1592:15,18	399,193 1455:24
2018 1421:13 1452:12 1466:25 1564:3	27th 1385:10	30/70 1587:16	399,193.81 1511:17
2019 1452:13	28 1436:5 1515:25	30th 1419:4 1451:16	3rd 1413:23 1434:24 1518:9 1549:6
202 1550:14	28,581 1457:18	311,000 1548:10 1549:1	<hr/> 4 <hr/>
2020 1448:21 1451:14	282,000 1498:21	317,000 1425:21	4 1392:12 1435:17 1457:13 1489:7 1491:23 1522:25 1536:14
2021 1385:10 1481:22	284,000 1429:13	317- 1426:21	4,048,000 1500:10
20th 1452:24	289,000 1551:20 1565:11 1566:14,16	31st 1413:21 1436:11	4.1 1409:10 1435:19,25 1463:14
21 1508:20 1518:25 1531:23 1536:15 1547:7	28A 1514:10	333,000 1429:14 1430:18	4.1.1.1 1438:14
213 1560:17	29 1488:5,11 1491:18	338,000 1425:3	4.1.2 1438:15
22 1495:25 1553:9	295,000 1416:25	348 1561:8	4.2 1408:18,20,24 1409:1,4,5 1434:3 1436:4 1447:12 1475:1,6 1479:20 1480:3 1503:14 1533:21 1534:1
220,000 1516:4	29th 1419:3	351 1561:8	40 1485:25 1486:2
229 1560:10	2:03 1571:11	36 1387:4 1388:9 1432:2,9	40,335 1453:16
22nd 1404:22 1415:23 1416:4 1431:22	2:05 1571:11	3618550 1560:17	404,000 1478:24
23 1506:17 1508:3	2:36 1592:19	363 1503:4	413 1499:24
24 1499:24	2H 1522:25	37 1433:24	43 1426:17
	2nd 1436:13 1450:18,24 1451:11,20 1452:4,15 1453:6,7,19,21 1458:4,8,15 1476:23 1488:13 1554:15 1563:21 1566:11	378 1536:14 1539:13	458 1561:8
	<hr/> 3 <hr/>	379 1536:25 1539:8,13	476 1544:23
	3 1424:19 1455:14 1488:20,25 1496:13 1499:6 1507:7	38 1482:24	

## Closing Arguments

## Shawn Bidsal v. CLA Properties, LLC, et al.

478 1535:9	25 1440:16 1445:17,23 1446:12 1465:6 1466:3 1467:14 1468:22 1472:16 1473:13,14 1474:5 1485:14 1489:4 1510:21,22 1513:7 1514:16 1516:12 1517:7,10 1519:9 1522:13 1525:17 1527:3,19,21,25 1528:7,23 1529:15 1530:19,24 1532:2 1534:5 1537:4 1540:15 1541:10 1543:10,13 1545:1, 16,25 1573:9 1574:14 1578:11 1582:22 1583:17 1586:7 1587:16 1588:10 1589:21	6	718 1496:13
479- 1425:19		6	72 1453:10
496 1527:18		1451:10 1479:7 1488:6,7,11, 21 1515:1 1537:1	74,000 1417:2
497 1545:11		6.3 1590:5	75- 1520:9
498 1527:18 1545:12		601 1554:12	7510 1561:7
4th 1430:16		612 1508:2	777,000 1466:23
5	500,000 1566:24	617,000 1429:10	778 1543:3
5	500- 1565:13	64 1484:8	782 1505:11
1395:12 1408:12 1451:1 1464:10,23 1480:17 1489:2, 5 1506:23 1516:19 1538:9 1543:4 1556:9 1577:17 1587:12 1590:4	52,000 1425:19	67 1416:1	797- 1425:16
5- 1566:23	523 1560:10	694 1484:8	7th 1404:22 1418:12
5.1 1397:21 1398:1 1573:20	534 1500:8	695 1484:8	8
5.1.1 1398:6 1528:4 1573:14	535 1500:17	7	8 1491:4,12 1504:22 1543:9 1577:17
5.1.1.1 1398:7 1466:2 1528:8 1532:6 1573:24	547 1545:12	7 1479:16 1488:2 1504:22 1517:14 1545:12 1550:2	8- 1411:3
50 1393:5 1397:20 1400:7 1406:7 1413:12,25 1414:2 1422:4 1426:24 1429:16 1445:19 1446:3,6 1486:1 1523:8 1540:16 1542:2 1549:4 1582:16,17 1588:16	548 1545:13	7- 1509:1	80- 1556:17
50,000 1500:13	567 1550:1	70 1413:11 1426:23 1437:20 1473:19 1478:24 1487:5 1522:9 1539:17 1540:2 1541:7 1547:15	802 1514:8
50- 1473:13	568 1550:1	70/30 1396:22 1401:9 1403:25 1414:3 1421:6 1423:7,20 1425:20 1427:1 1429:14,16, 24 1432:1 1446:14 1467:6, 14,18 1473:14 1474:6 1485:15 1489:4 1506:14 1509:4 1510:20 1515:20 1517:4 1520:4,10 1522:9 1527:2,5 1528:2 1529:15 1534:6 1539:17 1540:1,14 1543:13 1547:14 1548:20 1577:22 1578:13 1580:8 1583:16 1589:20	803 1514:8,25
50/50 1392:17,21,23,24 1393:2 1394:4 1396:8,9,22 1397:3 1398:11,18 1401:7 1404:10 1405:1,8,13,19 1407:19 1408:2,4 1421:3,4 1423:8 1425:4,11,21 1426:10,22 1427:20,21,24 1429:15,25 1430:19,20 1431:14,17,18, 20 1437:14 1438:11,13,19,	57 1506:15	704(a) 1439:21,25	803- 1463:13
	574 1509:1 1510:8		81,000 1500:4,5 1512:3,4 1579:12, 21
	582 1531:22		81,767 1499:21 1556:17
	583 1531:21		82,000 1500:14
	584,000 1429:11		82- 1500:15
	590- 1455:3		840,643 1551:19

## Closing Arguments

## Shawn Bidsal v. CLA Properties, LLC, et al.

840- 1551:19		1398:10 1439:24 1574:6	acted 1394:2
85,237 1457:18	A	account 1428:10 1437:19,24 1438:3, 4 1446:8,18,22 1453:13	action 1589:4
87- 1500:3	a-r 1443:6	1463:11 1466:12 1492:12	actions 1393:9 1428:22 1494:15
88 1386:17 1387:10 1388:11,18	a.m. 1444:16,17 1521:1	1497:7 1506:20 1511:7	activities 1412:5
898,000 1422:16	abandoned 1497:4 1514:3	1516:2 1525:2 1526:21	actual 1397:25 1412:22 1416:24
9	ability 1481:4 1569:23	1527:15 1540:17,19 1545:20	1432:10 1449:10 1456:16
9	absence 1493:21	1546:5 1547:6 1551:6	1463:9 1464:6 1465:2
90 1489:11 1523:1 1583:1	absolute 1411:8	1553:13 1572:18 1575:21	1473:7 1504:20 1506:1,25
91 1404:17 1487:24 1489:5 1587:15	absolutely 1393:16 1534:10	accountant 1405:17 1428:7 1437:9	1511:11,18 1561:9,16
913 1508:10,20	absurd 1523:22	1446:16 1537:25 1572:24	1578:4
917 1501:9	absurdity 1495:19	1587:21	add 1388:12 1408:12 1452:14
918 1553:8	accelerate 1418:22	accountants 1433:7 1439:5,8 1501:15	1453:15 1463:15 1464:12
919 1553:9	accelerated 1418:19 1507:13	1548:11	1511:10 1514:20 1556:16,17
94 1534:13	accept 1407:12 1434:15 1448:14	accounted 1501:18,22	added 1404:14,16 1494:25 1504:6
941,000 1464:12	1450:22 1460:25 1479:23	accounting 1420:9 1438:1,2,9 1485:13	adding 1501:21 1512:4 1556:17,19
945 1534:20	1480:7 1517:21 1533:13	1508:11,14 1530:16,21,24	addition 1482:5
95,000 1520:8,9,17	1561:10,17 1564:21 1582:8	1531:8 1543:20 1548:13	additional 1389:2 1391:10 1551:24
957,000 1464:13	acceptance 1561:22	1549:18,24 1550:4 1552:20	1583:8
957,225 1457:21	accepted 1423:20 1448:10 1459:19	1553:13 1579:13	address 1522:3 1559:22 1586:25
99.040 1451:6	1477:5 1501:7 1533:2	accounts 1439:17 1485:16 1500:6	1587:18 1591:13
9th 1452:23 1453:6	1544:4 1552:19,20 1561:25	1516:5,9 1529:12,16	addressed 1476:1 1483:7 1556:1
	1582:19	1547:10 1549:24 1587:14,15	addresses 1550:12 1551:21
	accepting 1434:7 1463:24	1589:2	addressing 1384:18 1481:22 1556:22
	access 1386:15	accrue 1461:7	adds 1470:4 1551:9,10,11
	accommodated 1483:13	accrued 1465:13	adjectives 1442:3
	accommodator 1422:23	acknowledge 1475:20 1547:13 1573:10	adjust 1587:3
	accomplish 1504:1	acknowledged 1475:22 1548:21,22	adjusting 1530:7
	accordance	acquire 1394:21 1455:23 1485:11,17	adjustments 1566:23
		acquired 1404:21 1406:10,13 1420:3	admission 1387:8
		1484:10 1485:2 1487:8,15	
		1496:6 1548:17,18,23	
		acquiring 1394:18 1496:10 1549:2	
		acquisition 1395:20 1494:10,12 1503:16	
		1549:4	
		act 1561:24 1565:3	

## Closing Arguments

## Shawn Bidsal v. CLA Properties, LLC, et al.

<b>admit</b> 1388:19 1426:8 1582:25 <b>admits</b> 1536:19 <b>admitted</b> 1387:15 1409:20 1419:24 1425:2 1426:1,3,18 1428:4,8 1429:12 1431:12,20 1436:14 1440:7 1449:12 1465:5 1466:10 1483:25 1491:21 1492:24 1495:23 1526:18 1536:12 1545:5,14 1575:20 <b>advance</b> 1385:22 <b>advantage</b> 1393:7,14,21 1394:13 1411:24 1418:19 1427:7 1428:18 1461:21 1463:25 1464:21,22 1470:24 1478:7, 8 1483:4 1505:20 1578:9,15 1580:6,12 1584:6 1590:6 <b>adverbs</b> 1442:4 <b>advertise</b> 1422:4 <b>advice</b> 1491:13 1547:4 <b>advised</b> 1517:16 <b>affect</b> 1388:6 1524:9 1546:8 <b>affirm</b> 1563:19 <b>affirming</b> 1558:18 <b>affirms</b> 1559:7 <b>agree</b> 1388:16 1472:8 1492:19,24 1497:22 1498:3,10 1504:2 1524:21 1525:7 1527:9 1528:19 1549:2 1554:14 1557:15 1559:20 1578:4,5 <b>agreed</b> 1396:9,22,23 1423:4 1430:14 1433:2,5,10 1445:18,20,23 1474:17 1492:10 1497:6,24 1504:1, 16 1513:24,25 1515:9 1518:10 1525:9 1527:17,19 1531:19 1549:25 1550:1 1577:7 1578:24 1583:12	<b>agreement</b> 1386:22,23 1387:19,22 1388:7 1389:16 1390:7,10 1391:1,7 1392:11,12,13,16 1393:11,17,19 1394:1,8,13 1395:13,25 1396:3 1397:1, 15,16,23,25 1398:20 1399:25 1401:18 1402:14,21 1404:9 1405:18 1408:19 1409:15 1410:11 1413:5,19 1414:10,15,17,19 1415:9,13 1416:6,8,12,17,23 1418:8,9 1419:7,10,21,25 1421:16,19 1423:9,10 1429:23 1432:14 1434:4,22 1435:1,12,17,24, 25 1436:17 1437:3,10,15 1439:12,23 1440:2,5,8,13,24 1441:7 1442:14 1446:15 1447:12 1449:17,22 1453:25 1456:20,24 1458:18 1461:5, 22 1463:22,23 1464:1,4 1465:12,16,19 1466:1,19 1467:5,10,16,19 1468:9,11 1470:14 1471:5 1472:7,12, 13,22 1473:7,11 1478:21 1479:6,7,11,19,20 1480:23 1483:11 1485:18 1486:4,14, 15,20,21,23 1487:1,13 1488:4,12,16,19 1489:2 1491:4,5,16 1492:18 1493:3, 4,10 1503:9,14 1513:6 1518:11 1519:22 1521:18,22 1523:6 1524:16 1529:18 1530:10 1531:6 1537:15,17 1541:2,21 1545:6,15 1548:16 1550:25 1558:23 1569:18 1571:16,23 1572:10 1573:13 1574:21 1575:16 1576:9,21 1578:8,10 1579:2 1580:19 1582:4,13 1583:11, 19 1584:25 1591:16 <b>agreements</b> 1419:2 1488:24 <b>ahead</b> 1443:6 1478:24 1519:13 1555:20 1570:13 <b>Ahhh</b> 1558:11 <b>alarming</b> 1578:16 <b>alloca-</b> 1548:17 <b>allocable</b> 1423:25 1506:11 1548:23 1549:6	<b>allocate</b> 1437:4 1440:16 1529:5 1540:14 1577:19,22 <b>allocated</b> 1397:3 1398:9 1400:6 1401:8 1404:10 1405:18 1421:3 1425:4 1427:20,24 1430:19 1431:17,18,19 1437:14 1438:11,13,19 1439:18 1446:12 1466:3 1474:6 1475:23 1498:12,24 1506:25 1508:9,15 1509:4 1510:10 1525:17 1528:5,10, 22,24 1529:3,14 1530:17,23 1532:15 1539:16,18,25 1540:1,2 1543:10 1546:9 1548:14,25 1553:17 1568:22 1573:9 1574:2,14 1582:16 1587:13 <b>allocating</b> 1496:24 1511:2 <b>allocation</b> 1397:5,7,8 1398:12 1399:12, 16 1403:2 1405:1,12 1406:2 1408:5 1423:4,6 1431:14 1440:19 1444:23,25 1445:2 1468:8 1473:13,14 1476:6 1499:25 1508:23 1510:1 1528:11,15,20 1530:15 1537:9 1540:17 1572:13,23 1573:2 1574:8 1575:23 <b>allocations</b> 1405:8 1421:17 1428:12 1430:22 1431:11 1439:10,24 1440:1,9,17 1473:24,25 1474:3,4 1528:16 1529:9 1530:9 1531:14,19 1532:7,9, 20 1573:6,11 1574:6 1587:20 <b>allowable</b> 1499:8 <b>allowance</b> 1503:23 <b>allowed</b> 1411:10 1498:2 1502:3 1507:11 1554:8 <b>allowing</b> 1483:16 1568:14 <b>alluded</b> 1450:3 <b>alternative</b> 1443:24 1444:6 1512:5 1553:12 1556:16	<b>alternatives</b> 1514:5 1553:10 <b>altogether</b> 1385:12 <b>ambiguities</b> 1394:12 1410:20 1422:13 1464:2 1471:6 1472:8,9 <b>ambiguity</b> 1409:8,22 1492:20 1537:16 <b>ambiguous</b> 1393:17 1403:6 1408:9,17 1409:9 1410:7 1434:22 1435:23 1468:6 1583:11 1584:25 <b>America</b> 1534:13 <b>American</b> 1416:7 1420:4,9 <b>amortization</b> 1527:11 <b>amount</b> 1384:8 1421:10 1423:25 1424:17 1436:21 1448:16,18 1450:15 1451:6,21 1452:14 1453:3,8,13,17,19 1460:5 1462:6 1463:4,5,13 1465:2,3 1466:6 1468:25 1479:23 1499:12 1501:11 1507:21 1510:19 1515:5 1526:25 1541:5,7,9 1544:25 1545:2 1548:19 1550:8 1551:17 1561:19,22 1563:19,20,21 1564:8 1565:2,3 1575:13 1579:5,9 1581:21 <b>amounts</b> 1437:18 1457:10 1588:15 <b>analysis</b> 1474:10 1479:18 1503:5 1506:18 1549:18 <b>Angeles</b> 1483:21 <b>animals</b> 1474:3 <b>annual</b> 1564:12 <b>answers</b> 1482:11,13 1495:5,7 <b>antecedent</b> 1533:4 <b>anticipated</b> 1391:24
--	---	--	---



## Closing Arguments

## Shawn Bidsal v. CLA Properties, LLC, et al.

anticipates 1493:12	appreciated 1507:12	1535:22 1538:6,10,15,19,21 1539:2,4,10,13 1541:3,19 1542:5,17,19 1546:10 1547:22 1548:4 1550:17 1554:14,19,23 1555:6,13,19 1557:19,25 1558:4,11,13,21 1559:20 1560:2,18 1562:2, 17 1563:16 1564:4,11,15,19 1565:17 1566:7,9,17,20,25 1567:7 1569:2,5,8 1570:9, 13,17,19,23 1571:4,6,12 1573:17 1582:23 1583:2,5,9, 12 1584:2,12 1585:11,14 1586:19,21 1590:21 1591:1, 9,25 1592:2,13	arrived 1452:6
anybody's 1512:10,16	appreciation 1392:21,24 1393:2,5 1394:9 1397:12,20 1404:4 1406:8 1423:8 1469:8 1544:23 1586:10	arbitrator's 1489:22,24 1490:10	article 1482:15 1491:4,11,12 1522:25
anymore 1392:3 1460:20 1545:22	approach 1510:20 1515:11,12 1553:23 1578:7	area 1420:18 1506:6,15 1507:22 1508:8,13,16,20,23 1540:3	articles 1413:16
apartments 1519:18	approval 1523:1	areas 1420:22	artificially 1483:10
apparent 1467:6 1498:22 1561:10,17	approved 1429:3 1559:2	argue 1448:17 1585:2	asks 1526:13 1529:25
apparently 1551:11 1590:14	April 1388:20 1430:16 1431:22	argued 1393:8 1407:15 1416:14 1431:25 1499:16 1523:24	assert 1517:23 1523:19
appeal 1390:14 1458:6 1475:4 1557:18,24 1568:7 1588:3	arb- 1490:3	arguing 1393:4	asserted 1450:17 1517:19
appealed 1489:13	arbitra- 1555:2	argument 1389:2 1401:10 1403:17,23 1407:13 1408:4 1417:24 1450:2,14 1467:25 1476:2 1509:12 1512:11,16 1523:22 1525:11 1542:6 1555:21 1573:12 1574:10 1575:7 1576:6 1582:2,18 1583:16 1590:11	assertion 1493:25
appearances 1384:3,22	arbitrat- 1390:6	arises 1429:20	asserts 1523:18
appeared 1498:22	arbitration 1385:20 1388:3 1389:15 1390:20 1392:1 1393:22 1396:14 1403:3 1406:23 1419:17 1426:17 1428:19,20 1447:19,22 1450:17 1454:18 1461:5 1462:4 1471:24 1473:10 1475:4,9,12 1478:12,17 1480:2 1481:22 1482:3,9,17 1491:1 1493:25 1494:6,13 1512:12,17,22 1513:22 1557:21 1558:15 1561:2 1569:13,19,21 1571:20 1572:2 1576:17 1579:8 1591:15	arising 1400:17 1441:9 1515:15 1525:25 1526:2 1534:5	asset 1399:10,18 1402:12,22,23 1404:14,18,19 1415:1,17,19, 22 1440:21,22 1463:10 1507:10 1522:6 1523:3,18 1566:3
appears 1387:5 1409:12 1442:10 1443:10,12 1470:13 1534:10 1562:4	arbitrator 1384:2,7,12,14,21,25 1385:4,7,15 1386:3,17 1387:14 1388:17 1390:2,6, 12,16,22 1391:5 1393:16 1415:3,14 1442:17,22 1443:2,5 1444:11,18 1455:20 1457:22,24 1459:10,16,24 1461:4,14 1462:15,18 1470:3,15,19 1471:18,21 1477:15,18,21 1478:2 1481:1,7 1490:3,14 1492:15 1496:19 1500:25 1501:5 1509:6,10,19 1510:4 1511:19,25 1512:4,7,9 1513:15 1520:6,14,18,23 1521:3,9,12 1528:3 1531:16	arguments 1388:25 1489:25 1491:8 1580:11	assets 1399:22 1400:20 1401:1 1404:6 1406:4,17 1408:6 1409:6 1438:24 1441:12 1442:8,16 1508:25 1517:22 1522:7,14,19 1523:2,21 1524:1 1525:13 1526:9 1527:16 1533:15 1534:8 1535:6 1537:4,18,20 1540:15
Appellate 1560:15		arose 1447:21	assigned 1411:7 1414:8 1497:10
application 1454:22,25 1469:22 1486:12 1540:6		arrangements 1387:18	assigning 1496:24
applied 1417:22 1418:7 1456:16 1465:17 1467:7 1475:8 1499:20 1500:1 1556:9		arrive 1495:17 1515:24 1544:22	assignment 1411:4,6,8,14,19 1418:8 1465:16 1466:10,15
applies 1522:22 1558:23			assigns 1411:9 1413:22
apply 1440:18 1454:25 1463:20,21 1470:12,25 1471:2,4,11,13, 15 1492:17 1526:10 1558:22 1576:14			assistance 1461:14
applying 1456:12			assistant 1385:6 1429:21
appraisal 1408:24 1409:1 1435:21 1436:4,12 1479:25 1480:4, 21 1569:23			assistants 1430:6
appraise 1409:2			

## Closing Arguments

## Shawn Bidsal v. CLA Properties, LLC, et al.

assume 1430:11 1551:10	assume 1412:16 1496:9	1450:10 1454:11 1457:10	1530:18 1545:1,16 1550:18, 22 1556:16 1564:12 1578:13 1586:8
assumed 1504:5 1516:15	assume.com. 1412:17	1460:2,15 1462:17,19 1463:15 1464:14 1476:8,25 1477:2,24 1481:18 1485:23 1511:10 1519:7 1521:3	Bates 1432:10
assumes 1551:15,16 1568:6	audacity 1569:10	1525:1 1538:3,13 1539:1 1540:24 1541:8,23 1542:5 1551:9,10,11,20 1556:16,17 1562:17 1568:22 1570:19 1575:8 1578:25 1580:10,16, 18,21 1582:3,20 1591:3	bear 1433:5
assumption 1516:18 1525:2	audio 1384:8 1385:12 1415:4 1424:8,11 1571:10	back-and-forth 1575:11	bearing 1549:9
astounding 1569:11	August 1404:24 1421:25 1422:1 1429:9 1434:24 1436:5,11 1458:20 1460:15 1480:17 1488:3 1523:8,14,15	bad 1590:5	bears 1494:5
attached 1386:12,13 1436:7	authority 1560:7,12,13,14 1561:6	balance 1485:15 1557:8	bed 1431:8
attempt 1404:23 1448:4,5 1449:21 1469:7 1482:16 1522:5 1572:9	Avenue 1448:20	balances 1514:16	begin 1388:25 1391:18 1526:5 1564:2 1568:12 1577:21,23 1581:9
attempted 1447:20	Aviation 1557:1	ball 1582:25	beginning 1392:14 1393:8 1394:15,21 1395:9 1402:12 1403:13 1406:19 1409:4 1410:24 1415:21 1419:18 1430:4 1452:10 1460:7 1466:14 1467:24 1468:16 1471:3 1476:4 1500:18 1514:25 1536:25 1572:1 1579:7 1580:10,15,17 1582:12 1584:19,20
attempting 1394:12 1548:7	avoid 1466:16,18 1475:3 1494:14 1501:24 1502:23 1517:18 1533:25	bank 1436:7 1534:13 1550:5 1560:10 1565:19,25 1566:6 1568:10	begins 1522:15
attempts 1396:13	avoiding 1502:5	bankruptcy 1484:2 1560:15	begun 1487:17
attended 1413:6	award 1389:17 1489:22,24 1490:4, 11 1558:17 1559:3,8,11,12, 19 1562:22 1569:14,16 1591:13,17,18 1592:3,4,7, 10,17	bargain 1417:8,11 1465:15	behalf 1384:3,6,25 1385:3 1388:25
attending 1385:5	awarded 1557:17,20 1558:2 1559:23, 25	based 1421:15 1433:22 1434:11 1440:2 1456:20 1457:8 1470:11 1480:19 1505:15 1516:3 1532:5 1590:1,4	belabor 1513:25
attention 1430:8 1471:24,25 1475:2,3 1540:20	awful 1456:21 1472:7	bases 1552:12	belied 1494:2
attentive 1391:21		basically 1519:2 1532:12 1540:24 1553:11 1568:3	belief 1487:2 1497:17
attorney 1414:11 1487:12		basis 1393:19 1423:7,19,20 1424:1 1425:18 1426:10,23 1429:13,23 1431:14 1437:14 1438:19,25 1446:4 1455:22 1456:6 1469:5 1472:4 1474:5 1498:6,25 1499:17, 20 1502:7,8 1503:3,6 1506:10,12 1508:19,24 1514:19 1515:20 1516:12 1517:5,6,7,10 1527:5 1528:6	belies 1475:5
attorney's 1556:10,23 1557:16,20 1558:2 1559:23,25			believed 1390:21 1484:25 1510:16 1513:23 1572:22 1575:25
attorney-client 1518:4			believes 1492:16
attributable 1455:22 1456:8 1578:13			Ben 1478:7
attribute 1579:23			
attributed 1456:8 1541:6			
attributing 1570:25			
auction 1413:4,6 1479:3 1484:15			



## Closing Arguments

## Shawn Bidsal v. CLA Properties, LLC, et al.

Ben's 1488:18	7,24 1523:17 1524:13,22 1526:12 1527:2,25 1530:5, 21 1531:3 1533:8 1534:23 1540:16,23 1542:11,21,22, 23 1543:11 1544:1 1545:15 1546:7,18 1547:4,16 1549:4 1551:16 1554:16 1563:5,7, 14,25 1564:9,19 1565:4,9, 21,22 1567:10,23 1572:15 1574:21 1576:10,11,16 1577:8,15 1578:5,6,11,18, 19,25 1579:17 1580:25 1581:2,3 1582:17 1584:5 1585:3 1586:8 1588:15 1589:1,5,6,25 1590:2,15 1591:5	blatantly 1576:23	briefed 1555:8,9,18 1562:3
benefit 1394:17 1456:14,15 1479:6 1502:3 1504:4 1527:13 1563:13 1567:14 1568:15		block 1518:3	briefing 1591:16 1592:6
benefited 1445:4		blocked 1518:3	briefly 1548:9 1553:24
benefits 1469:23 1471:12 1563:8		body 1409:5	briefs 1512:17
bid 1412:14,16 1484:16 1486:17		bolded 1430:24	broader 1532:5 1534:7
bidder 1413:4		booked 1420:13 1531:8	broker 1419:1 1454:16 1483:18 1505:6
bidding 1412:21 1413:9,10		books 1424:23 1462:22	broker's 1433:3 1451:20
bids 1413:8	Bidsal's 1387:12 1394:17 1396:18,19 1399:19 1404:1,8 1411:24 1428:17,21,22 1431:5 1436:3 1437:20 1439:2 1447:6 1449:13 1453:3 1457:5 1463:15 1464:9,18 1468:8 1478:22 1481:20,25 1483:18 1484:12,17 1488:15 1494:1 1495:12,22 1497:19 1505:3,14 1508:11 1510:15, 20 1513:23 1514:8 1516:2, 20 1517:16 1520:1 1525:11 1532:25 1536:13,20 1543:3 1546:15 1551:6 1560:20 1588:1	boot 1520:12,13	brought 1541:12 1571:9
Bidsal 1384:6,22,24 1387:3 1388:25 1393:4,7,8,12,13,21 1394:9,14,18 1400:7 1404:11 1405:14 1406:1,24 1412:3,9,12,13 1413:7,9,10, 16,19,21,25 1414:1,4,12 1415:24 1416:2 1418:16 1420:1,8,14 1421:11 1422:3, 7 1423:2,13,15 1429:21 1430:9,13 1431:24 1432:7, 12,19,24 1433:1,13,21,25 1435:20 1437:12 1445:3,13 1446:3,6 1447:8 1449:14 1450:4,14,24 1451:19 1452:12,21 1453:20,22 1456:16,18 1457:16 1458:21 1459:16,17 1460:8,23 1463:25 1464:22 1466:7,12, 16,23 1467:2 1468:25 1469:8,24 1470:24 1471:3 1472:24 1473:3,17,23 1474:8 1476:19 1478:8,9,14, 15 1479:10,16 1480:9,16,17, 21 1481:9,12,15,21 1482:8, 14 1483:4,9,15,20,24 1484:8,14,19,23 1485:2,11, 24 1487:12 1488:15,21,22, 23 1489:12,13,16 1490:22 1491:2,9,15,20,21 1492:1 1494:8,9,13 1495:3,8 1496:4 1497:2 1498:5,25 1499:2 1502:25 1504:15,16 1505:19 1506:9,14 1509:2 1510:10, 18,21,25 1514:3 1515:16 1516:5,15,24 1517:15,19 1518:3,6,10 1521:15 1522:4,		borrower 1411:2,7,9,10,12 1416:7 1417:18 1485:18	building 1406:19 1407:17 1422:15 1423:17,19 1425:8,15,20 1426:4 1427:6 1429:4,10 1431:6,17,18,19 1432:4,6,22 1446:4,5,7 1455:23,25 1456:6 1469:6 1501:24 1502:21,24 1503:12 1506:1 1513:5 1517:4 1520:2,7 1521:16 1522:8,9 1533:5 1576:3,4 1578:13 1585:16 1586:7
	bifurcated 1451:21,22 1454:17	bothered 1579:13	buildings 1393:6 1401:24 1403:22,23 1404:23 1406:14 1407:14, 16,24 1417:14 1420:17 1422:4 1426:1,2 1455:18 1456:3,4 1457:11,19 1468:14 1470:6 1492:12 1495:15 1501:13,20 1502:12 1506:22 1521:14 1533:6,10, 13 1539:15,24
	big 1402:3 1484:25 1580:5,16 1585:6,19	bought 1434:2 1491:1 1585:12	built 1568:3
	bigger 1451:9	Boylston 1560:9	bundle 1585:9,17
	bill 1431:6	breach 1478:21 1490:12 1563:7 1567:10,14 1568:14 1569:15 1571:23	Bus 1492:6
	billing 1488:14	breached 1568:4,7,23 1569:12,17 1571:15 1572:10	business 1387:23 1388:5 1393:24 1395:14,15,19,24 1396:1,7 1397:10 1407:2,6,14,17 1468:1,4 1535:3 1565:18 1568:16 1580:25 1581:24 1589:8
	binding 1491:12	breaching 1563:13 1568:23	
	bit 1477:7 1509:8 1511:4 1513:3 1530:2	break 1442:19,23 1513:11,12 1520:21,24 1562:10	
	black 1526:13 1576:10,13,14 1582:5 1588:6,8,10,18	breakdown 1405:6 1423:15,21 1425:17 1426:2,3 1427:8 1429:11 1574:25	
	blatant 1577:9	breakdowns 1425:25 1426:19 1429:2 1431:4	

## Closing Arguments

## Shawn Bidsal v. CLA Properties, LLC, et al.

<p>buy 1401:23 1475:8 1479:24 1480:12,15 1481:10,13 1482:22 1502:5 1505:1,24 1520:16 1565:25 1581:3 1585:15 1590:1</p> <p>buy- 1462:17</p> <p>buy/sell 1392:12 1393:1 1396:6 1397:18 1406:6 1408:8 1414:20 1415:13,25 1416:2 1419:5 1462:19 1463:12 1479:19 1480:14 1489:10 1583:21,23</p> <p>buyer 1422:17</p> <p>buying 1407:2 1483:25 1566:5 1582:10</p> <p>buys 1546:15 1581:4</p> <hr/> <p style="text-align: center;">C</p> <hr/> <p>calculate 1565:3</p> <p>calculated 1405:7 1451:12 1480:16 1482:9 1511:8 1554:12 1564:12 1565:12,14 1566:13</p> <p>calculating 1504:19 1511:6</p> <p>calculation 1451:7 1495:13 1511:13,20 1562:23</p> <p>calculations 1507:6 1510:13 1512:12,13, 18 1553:6 1556:7 1567:4</p> <p>call 1465:23 1506:16 1535:1 1592:8</p> <p>called 1400:5 1429:23 1443:15 1450:13 1502:2 1540:20</p> <p>calling 1540:6</p> <p>calls 1421:5 1465:22</p> <p>cancellation 1417:18</p>	<p>canonized 1522:8</p> <p>capital 1393:10 1394:6 1399:3,15, 20 1400:17,24 1401:12,16, 19 1402:25 1406:11 1407:11,23 1408:13 1410:7, 12 1418:2 1427:2 1428:10 1429:24 1437:5,19,24 1438:4 1439:16 1440:12,13, 23 1441:10,15,17,22 1442:5, 14 1443:12 1444:3,6 1445:6, 10 1446:14,18,22 1456:23 1457:5,15 1463:15 1464:13 1467:20,21 1468:14 1472:20 1474:7 1475:24 1476:6 1478:24 1481:16 1482:6,10 1485:15,23 1492:13 1495:16,17 1497:8,19 1504:6 1508:17 1510:25 1513:1,9 1514:2,7,15,17,20, 21,22 1515:2,3,7,13,24 1516:2,4,9,14,15 1517:23 1519:18 1522:2,16,22 1523:19 1524:1 1525:6,8,12, 14,16,18 1526:1,7,11,21,25 1527:1,4 1529:12,16 1530:17,22,23 1533:17 1534:6,7,22,24 1537:6,10 1540:6,17,18,25 1542:2,3, 16,24 1543:25 1544:2,5,13 1548:24 1549:11 1551:6 1552:13,14,16,17,24 1553:4, 12,14,15,16,20 1560:16 1575:21 1577:14,20,24 1578:12 1581:21 1587:14,15 1588:13,20,22 1589:2,17,19</p> <p>capitalize 1579:22</p> <p>capitalized 1580:1,3</p> <p>car 1535:6</p> <p>card 1412:20,24</p> <p>cards 1522:5</p> <p>care 1564:6 1573:19</p> <p>carefully 1572:2 1586:17</p> <p>carried 1424:6,23 1455:21 1503:6</p> <p>carries</p>	<p>1455:24 1456:2</p> <p>carry 1393:18</p> <p>carrying 1456:5</p> <p>case 1392:9 1393:4,15 1394:10 1400:1 1411:22 1414:21 1439:11 1443:19 1444:3 1448:20 1454:23 1459:23,25 1477:2,3 1478:6,9 1479:16 1490:9,10 1492:5,8 1493:14 1527:8 1554:11 1557:1,24 1558:1 1559:13 1560:1,15 1561:7 1563:15 1566:12 1572:3,11 1574:12 1578:17 1587:21</p> <p>cases 1568:21 1591:12</p> <p>cash 1392:20 1396:16 1397:19 1399:3,10,15 1400:5,13,16, 20 1401:4 1404:4 1406:8,15 1407:5 1408:1 1437:25 1438:8 1441:9 1444:9 1446:20 1447:13 1458:19 1473:25 1474:2,6,10,12 1502:4 1515:4,5,6 1517:8, 11,14 1522:1,13,16 1525:23 1526:4,15 1528:16,19 1529:8 1530:25 1531:10 1532:2,9 1534:4,5 1543:12, 17 1544:21 1545:9,19 1547:5 1549:19 1552:21 1565:20 1566:6 1582:15 1587:20,23 1588:8</p> <p>cash-out 1401:1 1404:6 1441:12 1442:8 1517:23 1522:20 1526:9</p> <p>cashed 1427:9 1429:18</p> <p>cashout 1399:22</p> <p>categories 1525:23</p> <p>caused 1437:25 1438:5</p> <p>caution 1392:5</p> <p>CC&amp;RS 1420:15,19 1523:12 1585:9</p>	<p>ceased 1412:5</p> <p>Center 1411:1</p> <p>central 1579:11</p> <p>Chain 1422:3 1483:18 1484:14</p> <p>Chain's 1484:20</p> <p>challenge 1489:16 1490:22</p> <p>change 1388:10 1394:7 1416:18,22, 25 1417:2 1422:16 1425:3 1426:24 1427:7 1429:10 1446:23 1451:12 1522:5 1551:20 1558:3 1564:20 1567:22 1574:12</p> <p>changed 1473:14 1489:3 1587:16,17</p> <p>changing 1438:7</p> <p>characterized 1418:2 1420:12</p> <p>characterizes 1465:19</p> <p>charge 1516:10</p> <p>charged 1510:25</p> <p>cheat 1589:25</p> <p>check 1423:21 1426:23,24</p> <p>checks 1405:7 1426:22 1427:1,3,9 1429:4,15,18 1529:8 1574:25 1589:7,10</p> <p>choose 1460:13 1464:3 1469:20 1471:9,10,14</p> <p>chose 1445:6 1462:7 1505:20</p> <p>Circuit 1560:17</p> <p>circulated 1414:10</p>
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## Closing Arguments

## Shawn Bidsal v. CLA Properties, LLC, et al.

<p>circumstances 1583:15</p> <p>citation 1518:22</p> <p>cite 1449:8 1557:1</p> <p>cited 1477:2</p> <p>CLA 1385:1,3 1393:4,7,9,14,20 1400:8 1407:12 1421:2,7 1425:2,7,17 1426:22 1427:18,23 1429:12,15 1430:17 1433:16 1436:1,6, 16 1445:4 1447:5,9,25 1449:22 1450:17 1456:15 1457:17 1459:3 1460:2 1461:21 1463:22 1464:21 1476:18,24 1478:7,18 1479:20,21,22 1480:5,14,21 1481:10 1482:19,22 1486:16 1497:6,16 1504:25 1505:15, 20 1508:14 1517:16 1539:17 1540:1,7 1546:7,11,15,17 1547:18 1548:17,18 1554:4, 8 1556:13 1557:12 1558:2 1563:20 1564:8 1566:5 1571:24 1582:17</p> <p>CLA's 1434:24 1435:18 1475:11 1476:24 1481:13 1504:17 1547:3,14</p> <p>claim 1412:19 1419:13 1475:13 1517:20 1522:7,11 1532:25 1568:4</p> <p>Claimant 1384:4</p> <p>claimed 1427:2 1438:6 1467:17 1478:11 1495:17 1507:25 1518:3,4 1560:24</p> <p>claiming 1428:2 1436:12 1503:2 1529:5</p> <p>claims 1465:3 1507:22 1508:6 1522:24 1523:17</p> <p>clarification 1524:6 1539:20 1555:15 1561:13</p> <p>classification 1526:11</p>	<p>classifications 1526:4</p> <p>clause 1442:2 1486:25</p> <p>clauses 1443:18</p> <p>clear 1416:9,14 1418:10 1430:14 1447:13 1460:1 1477:4 1497:1 1498:4 1532:7 1533:4,20 1537:16 1545:17 1553:12 1574:9</p> <p>clearer 1534:4</p> <p>client 1471:12 1569:12,16 1571:14,16,24 1572:3,4,9 1576:15 1580:6,7 1584:1</p> <p>close 1434:25 1435:2 1436:7 1454:3 1459:18 1476:16,23 1480:22 1520:24 1559:24 1563:6,9,25 1567:11,20 1577:18</p> <p>closed 1454:11 1503:22 1563:3,4 1565:23</p> <p>closer 1548:2</p> <p>closest 1533:3</p> <p>closing 1388:24 1391:23 1409:13, 16,18 1416:15,20,24 1417:1, 3,16 1422:24 1424:19 1455:5,8 1465:20 1467:10, 24 1478:5 1489:19 1493:5, 21 1494:20,21 1495:20 1497:11,16 1499:4 1509:12 1563:3 1565:21 1567:12,17 1568:25 1582:7</p> <p>Club 1386:21,22 1387:1,6,11,16, 17 1388:4 1479:4 1486:19</p> <p>code 1397:9 1401:13,21 1439:12, 20,25 1440:12,24 1446:16</p> <p>collateral 1394:23</p> <p>collect 1403:13 1407:4,21 1468:2</p>	<p>collected 1411:16 1416:18 1418:1 1425:10</p> <p>colloquy 1514:24</p> <p>comments 1391:22 1590:9</p> <p>Commerce 1387:18,20,21,24 1411:1 1412:14 1413:18 1414:8 1417:17 1428:16,24 1437:2 1438:24 1457:4</p> <p>common 1420:18,22 1448:1 1506:6, 15 1507:22 1508:8,13,16,20, 23 1539:18 1540:2 1563:12</p> <p>communicate 1448:25</p> <p>communications 1575:11</p> <p>company 1394:24 1395:14,15,19,24 1396:1 1398:16 1399:10 1401:23 1402:11,22,24 1404:14,19 1407:2,6,15 1408:21,25 1409:2,7,14,17 1410:10 1412:15 1413:13,23 1414:11,25 1415:19,22 1416:5 1417:9 1418:19 1419:11 1420:4 1422:11 1428:24 1433:4 1440:16,21, 22 1445:18,19 1452:10 1455:6,9 1468:1,4,21 1491:6 1493:7 1494:4 1504:9 1505:20 1508:1 1517:14 1522:6,14 1523:18 1585:18</p> <p>company's 1397:13 1399:18,22 1400:19 1401:1 1405:20 1424:23 1441:12 1442:8 1526:9 1533:15</p> <p>complained 1432:3</p> <p>complaining 1430:4 1588:24,25</p> <p>complaint 1430:1 1431:23 1586:9</p> <p>complete 1436:16,20 1451:16 1516:7 1533:25 1586:5</p> <p>completed 1405:10 1423:24 1425:9</p>	<p>1488:3 1573:5 1586:2,12</p> <p>completely 1405:13 1428:23 1471:12 1584:15</p> <p>compliance 1482:15 1497:5,24</p> <p>comply 1460:21</p> <p>comprised 1417:13,14</p> <p>computation 1481:16</p> <p>computer 1571:7,9</p> <p>computes 1516:19</p> <p>concealed 1495:8</p> <p>conceded 1509:1 1510:8 1583:13</p> <p>concept 1392:16,17,22 1397:14 1442:13 1450:1 1563:11</p> <p>concepts 1399:14</p> <p>concerned 1536:18</p> <p>concession 1536:2</p> <p>conclude 1449:3,7 1533:11</p> <p>concluded 1461:9 1506:18 1559:18 1592:19</p> <p>concludes 1525:23</p> <p>concluding 1502:23</p> <p>conclusion 1459:22 1507:19</p> <p>conclusions 1546:14</p> <p>condition 1448:11</p> <p>conditioned 1558:18 1559:4</p> <p>condo</p>
--	--	---	---

## Closing Arguments

## Shawn Bidsal v. CLA Properties, LLC, et al.

1412:2	1542:24	contradicted	converting
conduct	constitutes	1484:16	1407:3
1561:21	1474:7 1527:7 1545:25	contradicting	convey
conference	construes	1508:7	1476:19
1592:8	1524:3,7,8	contradicts	convoluted
confirmation	consultation	1508:11	1517:24
1447:23	1445:6	contrary	coordinating
confirmed	contacted	1440:9 1529:2	1443:11,13,20
1390:24 1508:18 1542:22	1589:5	contrast	COP
confuses	contained	1400:16 1441:6,9 1444:8,9	1409:9,16 1446:1,5 1455:3,
1503:22	1528:12 1530:9 1532:21	contribute	4,11 1465:1,2 1469:15
confusion	contemplate	1414:2	1470:5 1474:15 1481:16
1535:22	1406:13 1410:14,16 1423:11	contributed	1482:6,10 1483:7 1493:2,4
conjunction	1572:20 1578:8	1414:4 1433:4 1479:5	1494:3,16,22 1495:1,13
1443:11,13,15,20,25	contemplated	1481:16 1482:10 1514:2	1496:18 1497:17 1498:7,11
1506:21	1445:11 1468:10 1523:4	1553:17	1501:8,10,18 1502:16,19
conjunctions	1586:12	contribution	1503:4,7 1505:25 1506:5,20
1443:17	contemplation	1392:20 1397:19 1406:9,12,	1507:5,6,16 1510:24 1511:6,
connect	1524:15,16	15 1408:13 1410:7,8,12	8,12,14,16,18 1512:1
1443:17	contemporaneously	1456:23 1457:6 1463:16	1556:18 1586:13 1590:17
connected	1578:22	1482:7 1495:16 1497:19	copied
1443:25	contend	1504:6 1515:5,6,14 1537:6,	1496:2
connection	1543:10	10 1577:20	copious
1496:10 1497:13 1530:5	contended	contributions	1425:23
1546:13 1561:3 1571:1	1507:14	1404:5 1407:5 1577:24	corporation
1589:13,14	contention	control	1420:5
connective	1490:25 1491:7 1533:13	1484:12 1504:18 1529:8	corporations
1443:15 1444:2	contentions	controlled	1439:7
consideration	1481:20,25	1440:8 1504:16 1505:21	correct
1389:9 1492:4	contesting	1556:3	1388:16 1389:25 1430:22
considered	1474:9	controlling	1431:10 1512:6 1550:10
1441:21 1447:17 1511:16	context	1448:21	1563:24 1564:10
1546:22	1415:18 1422:11 1521:6	controls	correctly
consistency	1546:1,24 1547:2 1551:1	1524:1	1516:16 1526:17 1529:3,6
1584:21	continue	convene	cost
consistent	1513:18 1521:4 1563:8	1592:8	1388:1 1408:11 1409:10,24
1386:1 1399:23 1404:11	continued	convenience	1423:6,19,23 1424:4,14
1405:13 1423:8,14 1438:13	1420:7 1482:25	1506:16	1425:18 1426:23 1429:13,23
1439:1 1442:11,13 1510:15	contract	conversation	1446:1 1455:4,12,18,22
1552:10 1576:18 1579:6	1421:15 1449:23 1450:13	1487:19 1488:14 1572:17	1456:5,7,8 1469:5 1493:5
1584:18	1459:5,11,12 1460:11	conversion	1494:10,11,12,23,24
consistently	1461:13,24 1462:21	1395:20 1487:16	1495:13,15,23,24 1496:7,8,
1438:14	1464:17,20 1476:14,15,22	conversional	15,17 1497:18 1498:6,7,9,
constant	1492:4 1524:12 1534:11,15	1493:23	11,12,16,18,23 1499:1,7,10,
1581:11	1563:7,9 1565:25 1567:10,	convert	11,12,18 1500:9,10 1501:11,
constitute	14 1568:4,7,14,24 1569:12,	1394:22	18,19,20 1502:16,17,18,19,
1448:12	17	converted	21,23,24 1503:2,3,6,8,15
constituted	contracting	1416:12 1493:19	1504:7 1506:1,2,7,14,24
	1563:7		1507:8,10,17,18 1508:9,10,

costs 1422:24 1496:16 1498:24 1506:7 1509:2,3 1510:8,9,18 1520:16 1521:19 1580:2 1591:17	1403:14 1410:21 1453:8 1465:24 1483:10 1484:11 1576:5,6 1582:8	1554:13,15 1555:1,3 1557:14 1563:2,3,17 1565:12,14,21 1566:10 1567:6,12,13,21 1568:18,23	1562:21
counsel 1388:25 1491:6	created 1420:16 1422:12 1438:7 1466:18	date's 1427:12	decided 1407:9 1412:14 1451:23 1473:9 1501:25 1549:12 1557:24
counted 1504:25	creates 1409:8,22	dates 1419:4 1476:24 1523:15 1554:25	deciding 1433:19 1476:5 1484:16
counter 1459:19	credibility 1466:17	David 1414:11 1487:12 1491:5	decision 1388:19 1422:8 1448:21 1467:1 1489:14,15 1490:21 1558:19 1559:11,22 1560:9 1567:5
counterclaim 1389:1,3 1482:19 1557:6 1562:13 1586:23 1587:1	credit 1397:3 1398:4,9,15 1411:15, 17,19 1412:20,24 1466:3 1467:8 1516:10 1528:10 1551:8,19 1573:23 1574:1	Dawn 1539:22	decisions 1484:18 1542:25
counteroffer 1434:10,20,21,24 1435:1,5, 6,14 1447:14 1450:19	credits 1556:21	day 1417:8 1423:9 1436:15 1503:22 1520:9 1582:10	declaration 1420:15 1561:21
Country 1386:21 1387:1,6,11,16,17 1388:4 1479:4 1486:19	critical 1436:13 1447:7	day-to-day 1485:12	declaratory 1458:5
County 1479:4	cross-examination 1424:3	days 1389:20,23 1390:1,4,8,11, 21,23 1391:1,8,10,11 1413:15 1434:5 1435:1 1436:18 1447:14 1449:22 1450:19 1453:5,6 1458:19 1459:6 1476:16 1480:22 1503:11,17,21 1555:22 1586:1,4 1592:15	decline 1544:6
couple 1389:19 1415:4 1472:5 1474:1 1553:25 1554:3,24 1555:10 1562:3 1583:8 1586:22 1589:3 1591:21,22, 23 1592:16	cross-examined 1426:15	de- 1550:8	deduct 1465:1 1514:19 1515:14 1544:22 1564:11
court 1391:3,6 1408:9 1424:10 1448:3,21,22 1449:3,7,19 1454:2,5,24 1458:6 1467:1 1468:17 1480:24 1486:10 1524:5 1534:11 1539:19 1551:13 1555:7,14 1557:3 1558:10,18 1559:5,7,10,14, 18,19 1560:9 1561:4,8,12 1563:18 1587:4,7 1590:22 1591:6	crux 1393:14 1454:23 1572:11	deal 1464:25 1472:15 1534:4 1541:24 1556:21 1563:6,9 1585:19	deducted 1494:24 1498:13,25 1506:20 1507:21 1511:12 1515:16, 17,18,20
covenants 1420:16	curious 1473:11	dealership 1535:7	deducting 1506:1
cover 1392:6 1398:16,19 1433:11 1474:24 1478:4 1584:14	current 1451:8,17 1454:3,12 1463:4, 5,6 1504:12 1582:8	dealing 1414:21 1463:3	deduction 1397:3 1398:4,9,15,17 1438:17 1446:19 1470:25 1517:12 1527:10,11 1528:10 1544:16 1547:6 1573:22 1574:1
covered 1455:7 1498:1	cut 1584:15	deals 1412:3	deductions 1404:10 1499:13 1528:4 1532:14
CPA 1572:24	cuts 1577:4	dealt 1520:3	deducts 1470:5 1515:23
crazy 1581:23		debt 1394:22 1395:20,21 1417:18,22 1418:6,7 1467:8	deed 1410:25 1411:4 1414:7 1416:5,8,10,11,15 1417:6,8, 11,21 1418:9 1465:12,15,19, 20 1467:5,10 1487:14,15 1497:14 1548:16
create		December 1419:22 1451:14 1486:15 1488:5,13,20,23 1524:17	deemed 1567:13
		decide 1408:17 1446:25 1454:22 1461:14 1462:2 1476:11 1480:6 1513:8 1552:3	default 1411:11,12 1485:20



## Closing Arguments

## Shawn Bidsal v. CLA Properties, LLC, et al.

defendant 1557:7	1440:18	1490:23 1492:3 1498:6 1503:15 1527:9 1549:11 1590:17	disagree 1518:5
defense 1557:7	dependent 1503:15 1559:4,13	determinative 1478:11 1482:1,2	disagreement 1495:2 1543:16
defenses 1560:20	depending 1556:21	determine 1409:6 1428:10 1430:21 1437:3,5 1489:9 1509:23 1552:3,4,13 1554:7 1556:18 1577:17 1588:12 1589:16,19	disagrees 1441:23
defer 1567:3	deposit 1448:3 1449:19,21 1462:25 1478:23 1483:24	determined 1398:4 1451:21 1491:3 1492:25 1554:10 1569:16 1573:23 1574:6	disappeared 1467:9 1499:23
defin- 1526:18	deposited 1589:11	determines 1454:2 1556:5	disassociate 1486:4
defined 1401:12 1440:24 1446:1 1455:4 1469:23 1493:3,4 1532:3	deposits 1416:22 1417:2 1463:5 1549:17 1550:2,6,7,9	determining 1501:10,18 1504:9,11 1506:5 1507:16 1518:1	disbursed 1452:25 1463:7
defines 1440:13 1588:8	depreciate 1507:12	devalued 1566:2,3,4	discern 1467:19
definition 1401:16,18,19 1408:19 1409:10 1435:6,7 1436:1 1440:12 1443:23 1446:1,2 1467:18,21 1493:16 1494:3, 16 1522:18 1526:18 1527:24 1545:24 1552:16,17	depreciation 1398:17,18 1418:20,22 1438:3,7,15,17 1446:10,13, 18 1465:25 1466:4,6 1467:13 1499:8 1507:13,15 1517:12 1527:11,12,16 1543:8,9,13,14,15,20,21 1544:5,12,14,24 1545:2,11, 17,20 1546:2,4,9,14,16,21, 22 1547:2,6,11	Development 1560:16	disclose 1439:17
definitions 1435:24	deprived 1458:21	dialogue 1539:1	disconnected 1571:2
Del 1448:19 1561:7	describe 1442:5	dichotomy 1531:3 1589:18	discrepancy 1501:16
delay 1391:25 1482:18 1587:8	describes 1408:20 1442:2	difference 1424:17,21 1437:25 1438:7 1452:17 1453:13 1464:16 1469:2,4 1470:22 1499:11 1511:16 1523:14 1528:15,16 1549:3 1551:1 1564:7 1573:11 1577:23 1589:3	discuss 1434:1 1498:2,15
delayed 1479:10 1567:17	describing 1429:1 1441:16 1511:23	differences 1438:6 1511:13,24 1589:2	discuss- 1498:2
demand 1476:18 1479:25 1480:4	description 1400:24 1403:1 1466:14	differently 1530:2	discussed 1389:2 1413:7 1419:5 1423:2 1427:5 1428:25 1430:12 1431:5 1432:18 1511:14 1574:20
demanded 1480:20,21	designed 1406:7 1442:14 1446:8	difficulties 1424:9 1571:11	discussing 1419:1 1533:22 1552:10
demands 1476:15	desire 1411:23	diligence 1479:18	discussion 1385:7 1429:20 1434:1 1474:25 1486:11 1491:9 1521:6 1531:13,19 1536:11, 19 1552:1 1553:8 1590:24
demonstrate 1434:22	desperately 1494:14 1581:1	dime 1504:23 1508:15	discussions 1423:13,15 1432:17 1518:24
demonstrated 1458:24 1495:22	detail 1507:10	diminished 1478:17	disjunctive 1443:22,23,25 1444:1,5
demonstrates 1435:23 1504:3	detailed 1389:22	direct 1424:3 1433:9	disparity 1542:3
demonstrative 1451:15	determ- 1549:10	directly 1406:25	disposed 1504:14
denied 1450:8 1557:18	determination 1431:10 1461:8 1489:17		disproportionate 1396:14,15,17,23 1445:22 1526:24
denominated			disproportionately

## Closing Arguments

## Shawn Bidsal v. CLA Properties, LLC, et al.

1537:6 dispute 1408:23 1448:2 1460:3 1461:8,11 1480:18,19 1481:11 1482:16 1483:6,23 1494:13 1498:5 1525:5 1527:7 disputed 1505:18 disputes 1461:5 1533:25 distance 1461:23 distinction 1522:1 distinguish 1473:24 1521:19,23 distrib- 1545:19 distributable 1446:20 distribute 1445:5 1468:9 1517:5 1519:16,17 1521:24,25 1537:3,18 1542:23,25 1547:5 1589:16 distributed 1399:5,11,15 1400:7 1401:8 1421:4 1423:19 1425:19,21 1426:21 1427:21 1429:14, 15,24,25 1430:19 1438:25 1445:13 1453:9 1463:1,10 1465:6 1468:22 1474:10 1485:15 1500:17,20,22 1510:20,22 1511:1 1513:6 1515:19 1517:4,8,11 1520:4, 10,17 1522:12,17 1525:17 1527:2,5,21 1528:2,5 1540:21 1541:8,9 1542:18 1543:12 1544:3,25 1545:25 1547:14 1566:19,21 1573:8 1582:16 1584:22 1586:7 1588:9,16 1589:20,21 distributing 1431:24 1520:3 1522:8 1543:14 distribution 1405:5,7 1421:7 1423:15,21 1425:17,25 1426:3,19 1427:3,8 1429:2,11,16 1431:4 1438:1,8 1453:3 1482:20 1509:3 1510:15 1516:11 1522:13 1527:25	1528:24 1530:9,13,15 1532:8 1547:17 1551:22 1553:2 1554:13 1567:5 1575:23 1582:22 distributions 1387:7 1398:5 1399:3 1400:5,13,14,17 1401:4 1405:6,9 1408:1 1421:17 1423:16 1426:10 1428:2 1429:21 1430:22 1431:7,11 1432:4,5,13,18 1437:18 1438:12 1439:10,16,19 1440:1,8 1441:9 1444:9 1445:3 1452:4,10,12,15,18, 21 1453:18 1454:14,19 1458:10 1466:23,25 1482:24 1494:9 1515:14 1516:16 1517:13,18 1522:1,16 1525:12,16,19,21,23,25 1526:1,4 1527:20 1529:10, 15 1530:19,20 1531:20 1532:3,16 1534:5,6 1543:1 1545:16 1547:11 1550:23 1551:23,25 1552:23 1554:5, 7,16 1556:20,23 1557:15 1565:8,10,11,15 1566:15 1573:7,11 1574:5 1576:2 1580:22 1581:16 1582:15 1586:14 1587:24 1588:21 1589:18 distributive 1398:2,3 1573:21 1574:5 district 1561:4 dive 1581:7 divide 1423:5 1487:25 1514:19 1519:9 divided 1401:6 1425:11 1432:1 1485:14 1506:12,13,14 1514:16 1546:23 1580:8 dividing 1423:8 document 1416:14 1419:1 1474:15 1479:13 1495:25 1509:5 1510:2,6 1513:18 1514:10 1526:13 1576:12 documents 1405:17 1412:23 1418:4 1422:6 1439:11 1530:3 dollars	1469:25 1487:3 1565:20 double 1547:14 doubling 1476:10,20 Doug 1384:5,11,16 1385:17 1389:25 Doug's 1384:11 draft 1414:16,19 1415:8,9 1419:6, 9 1478:25 1488:11,12,16 1491:19 1580:23 drafted 1397:23 1402:20 1471:9 1489:7,9 1490:17 1492:14 1519:21 drafter 1489:13 1490:5,23 1491:3 1492:2,3,19 drafting 1472:13 1492:20 drafts 1402:21 1404:16 1414:9 1488:6 draftsmanship 1456:21 1472:8 1492:3 draw 1414:22 1415:15 dropped 1582:25 drove 1483:21 due 1428:3 1450:9,16 1466:7 1479:18 1557:9 1561:22 duration 1424:24 <hr/> E <hr/> earlier 1410:15 1419:20 1489:8 1523:5 1528:14 1540:12 1544:20 1550:15 early 1412:2,11,13 1432:23	earn 1568:9 earning 1541:25 easement 1507:3 1585:17 easements 1506:21 1510:17 easier 1403:7 easily 1402:25 Easton 1492:5 easy 1455:3 economic 1440:3,5 effect 1440:3,6 1486:13 1510:17 1534:16 effect- 1458:7 effective 1419:23 1450:18,23 1453:21 1454:3 1458:2,3,8,15 1523:24 1524:3,9 1554:15 1555:3 1563:17 1566:10 effects 1530:16 efficiently 1521:11 effort 1403:10 1421:13 1422:1,5 1568:2 elect 1434:16 1436:3 elected 1434:17 1481:10 1482:22 election 1505:24 element 1446:10 1462:20 1466:4 1482:21 1493:2 1504:8,9 elemental 1473:4 elements 1482:6
--	---	--	---

## Closing Arguments

## Shawn Bidsal v. CLA Properties, LLC, et al.

<p><b>elicit</b> 1424:16</p> <p><b>email</b> 1386:13,14 1391:9 1415:23 1418:25 1429:21 1432:8,12 1488:21</p> <p><b>emails</b> 1387:3 1429:1 1432:9</p> <p><b>EMR</b> 1494:21</p> <p><b>end</b> 1412:11 1426:14 1436:18 1452:11 1453:7 1454:20 1477:13 1481:22 1488:15 1491:7 1494:10 1515:24 1516:1 1519:19 1520:9 1526:19 1529:11 1536:16 1540:22 1551:7 1567:6</p> <p><b>ended</b> 1491:23 1569:10</p> <p><b>ends</b> 1451:14 1550:8 1583:22</p> <p><b>enforce</b> 1464:4</p> <p><b>enforcing</b> 1464:5</p> <p><b>entered</b> 1412:3 1413:4 1416:7</p> <p><b>entire</b> 1394:10 1428:23 1458:24 1461:20 1463:15 1472:12 1478:23 1522:4 1526:6 1538:25</p> <p><b>entirety</b> 1419:25 1521:21,22</p> <p><b>entitled</b> 1450:25 1451:3,19,25 1453:10,14,22 1454:8,9,13 1458:10 1459:4,6,8,14 1460:8,10 1476:13 1478:10, 18 1480:15 1545:16 1547:17 1554:4,5,8,16 1556:13 1557:12,13 1560:6 1561:20 1562:25 1563:20 1565:24</p> <p><b>entity</b> 1395:10 1416:6 1485:9</p> <p><b>entries</b> 1530:7</p> <p><b>envisioned</b> 1509:12,15</p>	<p><b>epitome</b> 1548:13</p> <p><b>equal</b> 1396:10,21 1443:14 1444:7 1445:21 1472:25 1473:1,17, 18 1498:18</p> <p><b>equalized</b> 1485:16</p> <p><b>equally</b> 1397:12 1404:3 1432:14 1445:17 1546:8</p> <p><b>equitable</b> 1557:4</p> <p><b>Equities</b> 1412:16 1413:3,21</p> <p><b>equity</b> 1396:8 1563:12</p> <p><b>err</b> 1392:5</p> <p><b>erratas</b> 1386:13</p> <p><b>escrow</b> 1409:12,16,18 1410:1,3,5 1416:23 1417:1,3,9 1424:19 1434:25 1435:2 1449:12,16, 18 1455:5,7 1460:24 1465:20 1469:13,16 1480:22 1493:5 1495:20 1497:15 1520:13 1588:2</p> <p><b>essence</b> 1491:15 1522:11 1536:19 1553:3,4</p> <p><b>essentially</b> 1451:17 1472:19 1495:1 1499:20 1527:14 1563:17 1586:24</p> <p><b>establish</b> 1386:7</p> <p><b>estate</b> 1394:16 1395:23 1411:25 1412:5,7,15 1458:23</p> <p><b>evaluations</b> 1505:6</p> <p><b>event</b> 1399:9,17 1440:20 1441:18 1442:6 1444:7 1446:14 1533:16 1535:2,23,24 1540:6 1544:6 1557:17</p> <p><b>events</b> 1400:18,25 1441:10,15,16, 23 1443:13 1444:4 1487:21</p>	<p>1526:2,8 1535:10,21 1536:3 1543:21</p> <p><b>eventually</b> 1392:23 1394:4 1578:1 1581:8</p> <p><b>evidence</b> 1386:21 1387:15 1388:4 1392:6,15 1393:13,25 1396:12 1402:4 1404:7 1408:10 1410:20,23 1412:17,19,21,22 1413:2 1418:23 1422:5 1451:13 1462:24 1470:9 1478:15,22 1489:22 1490:2,9 1492:13 1497:3 1500:21 1524:19 1548:8 1572:2 1588:1 1590:10,11,16</p> <p><b>exact</b> 1456:12</p> <p><b>examination</b> 1424:3 1426:14</p> <p><b>examples</b> 1526:5,6 1533:3</p> <p><b>exception</b> 1397:8 1516:25 1522:12,13 1543:21</p> <p><b>exceptions</b> 1440:17</p> <p><b>excess</b> 1423:5 1432:1 1466:23 1504:6 1517:8 1541:5 1553:2 1554:7 1588:21</p> <p><b>exchange</b> 1410:16 1422:22 1423:18 1425:9 1446:8 1485:18 1502:1,2,10,15 1503:20,21, 24 1520:8 1535:19 1585:24 1586:2,5,11</p> <p><b>exchanged</b> 1385:21</p> <p><b>Exclamation</b> 1394:24 1572:19</p> <p><b>exclusive</b> 1558:5</p> <p><b>exclusively</b> 1439:6</p> <p><b>excused</b> 1572:4</p> <p><b>executed</b> 1411:1</p>	<p><b>Executive</b> 1492:6</p> <p><b>exemplifies</b> 1533:9</p> <p><b>exercise</b> 1397:18 1460:17 1505:24 1569:18,23</p> <p><b>exhibit</b> 1385:10,19 1386:9,10,15,17, 23 1387:2,3,9,10,13,22 1388:9,11,17,18 1392:11 1395:12 1396:4,25 1397:6, 15,24 1398:21,22,24,25 1400:3 1401:11 1402:8,19 1403:1 1404:9,13,16,17,20 1407:4,18,25 1413:5 1414:14,18,24 1415:7,10,11, 18,20,21,25 1422:4,12 1423:4,24 1424:19 1432:2,9 1433:24 1438:22 1439:22 1441:7 1442:12 1451:2,10, 14,15 1452:16 1455:14 1457:13 1464:24 1466:1 1468:5 1473:5,16 1482:13, 24 1486:24 1487:24 1488:2, 6,7,10,21 1489:2,3,5 1492:9 1494:7 1495:7 1506:2,3,23 1515:25 1516:1 1517:1,19, 25 1519:24 1521:17,21,25 1522:15,21 1523:8 1524:2, 14 1528:12 1529:18,22 1530:10 1531:4,5,7,12 1532:1,5,21 1533:19,21 1534:2 1536:21 1543:9 1553:7 1572:14,18 1577:3,4 1581:14 1582:13,22 1586:13 1587:12,15,22,23 1588:7,14</p> <p><b>exhibits</b> 1384:18 1386:24 1395:4,5 1492:14 1506:17 1509:20 1550:14</p> <p><b>exist</b> 1394:12 1456:3 1575:11</p> <p><b>existed</b> 1417:23</p> <p><b>existence</b> 1424:24 1501:14 1553:18</p> <p><b>exists</b> 1410:23 1457:2</p> <p><b>expand</b> 1388:3</p> <p><b>expect</b> 1555:9</p>
--	--	---	---



## Closing Arguments

## Shawn Bidsal v. CLA Properties, LLC, et al.

expedite 1591:4	expressly 1439:21	Familian 1554:12	1564:24 1591:18 1592:1,10
Expedited 1591:9	extensive 1394:18	Famous 1486:10	finalized 1524:15,17
expense 1499:9 1527:14 1543:13,15 1544:5 1546:3,16	extra 1548:4	fantastical 1571:14	finally 1406:5 1419:22 1429:9 1467:16 1476:9 1492:2 1533:18 1536:7,10 1584:9
expenses 1432:25 1433:5,8,10,11 1496:9 1543:25 1579:22	extremely 1406:25 1412:8	fascinating 1396:11 1576:8	financial 1530:4 1550:3,9,11 1551:5
experience 1394:17,18,20 1396:18 1411:24 1412:1,4,7,8 1439:9 1446:16	<hr/> F <hr/>	fashion 1449:20 1450:15	financing 1400:20 1401:2 1441:12 1442:9 1517:23 1526:9
experienced 1437:9	fabrication 1583:19	fast 1539:23	find 1417:25 1421:9 1500:9 1502:4 1516:18 1521:18,23 1526:14 1552:9,25 1554:15 1563:17 1566:10 1575:5,13 1579:8,16 1582:1
expert 1405:23 1407:1 1428:4 1447:18	face 1537:17 1583:24	faster 1510:3	fine 1389:10 1390:11 1431:16,20
expert's 1465:7	fact 1389:21 1475:14,15 1476:17,20,21 1482:14 1484:9 1492:16 1502:1 1504:25 1507:1 1508:2 1521:14 1523:11,15 1529:2 1535:14 1536:22 1537:1 1540:20 1576:23 1578:21 1587:19 1590:16	fathom 1454:5	finger 1578:18
expertise 1414:5 1548:13	facts 1449:14 1470:9	favor 1456:17 1464:10,18 1489:4	finish 1442:25 1443:4 1547:25
experts 1492:10 1497:2,23 1504:15	failed 1449:22 1475:1,2,20 1495:9 1587:18	February 1427:11,16,17 1430:10,13 1452:22,23 1453:1,6	finished 1488:1,22,24 1491:20
expires 1391:10	failing 1474:15 1482:15	fee 1394:22 1395:21 1407:3 1433:2,3 1493:22 1558:16, 21,22 1559:3,8,12 1585:8	five-minute 1442:19,23 1520:21,24 1562:6
explain 1486:22	fails 1475:1	feedback 1384:8,20	fix 1503:7
explained 1418:16 1428:7 1430:10 1499:15,22 1511:15 1553:11 1579:21 1589:8	failure 1474:8	fees 1451:20 1454:16 1556:11,23 1557:16,20 1558:2,6,17 1559:13,23,25 1560:4 1567:19 1568:11 1591:14,16 1592:7	fixed 1410:8 1455:3 1566:1
explaining 1429:22	fair 1384:7 1408:11,16,21 1409:3 1433:22 1434:11 1445:8,13 1455:2 1479:23, 24 1480:6,7,16,19 1482:5 1492:25 1500:23 1501:6 1504:10,11,18,21 1505:15, 21 1514:18 1568:17 1569:19,22 1578:14 1590:4 1591:8	felt 1515:10	fixes 1503:3
explains 1407:4 1432:12	faith 1590:5	figure 1551:12,13 1573:15	flip 1582:11
explanation 1430:6 1551:3 1580:3 1586:3,4	falls 1401:15	figured 1533:25	flipping 1468:18 1582:21
explanations 1590:9	false 1483:17	figures 1498:14	flow 1528:20 1531:10 1544:21
express 1400:12 1401:10 1407:25 1411:18 1414:17 1415:10 1438:22 1463:17 1469:22		file 1462:4 1571:19	focus 1531:4 1540:9 1546:1 1562:11 1587:22
expressing 1443:23		filed 1413:16 1421:1 1425:2,6 1427:18 1430:16 1433:15	follow 1463:17
		final 1419:5 1473:7 1489:1 1534:18 1557:23 1558:9	forceful 1535:19

## Closing Arguments

## Shawn Bidsal v. CLA Properties, LLC, et al.

<p>foreclose 1481:4 1485:20</p> <p>foreclosure 1395:21 1411:21 1416:6,16 1418:9 1487:14</p> <p>foreclosures 1484:4</p> <p>forever 1472:20 1535:15,16</p> <p>forfeited 1449:24</p> <p>forget 1388:20 1564:23</p> <p>forgiven 1418:6 1465:13,18 1467:9</p> <p>form 1417:18 1485:9 1557:6</p> <p>formal 1561:23</p> <p>forms 1498:6 1535:11</p> <p>formula 1387:23 1392:25 1393:2 1396:6 1397:16 1402:8,19 1406:6,11 1408:8,11 1410:14 1414:20,25 1415:12 1419:6,7,11 1434:12 1446:7 1454:22,24 1455:4 1456:13, 17,22 1457:7 1461:7 1462:19,23 1463:12,17,21 1464:6 1469:4,11 1471:1,4 1474:14 1475:7,10 1481:12 1489:10 1492:11,17 1498:1 1504:2 1511:20 1513:24 1514:14 1549:12 1576:7,14 1577:2 1579:1 1583:22,23 1586:13</p> <p>formulate 1512:1</p> <p>formulated 1402:13,20</p> <p>forthright 1564:1</p> <p>forward 1419:3 1421:25 1424:23 1425:5,14 1455:24 1503:6 1563:22 1591:2</p> <p>found 1414:5 1451:5 1481:25 1482:11 1484:21 1505:11,17</p>	<p>foundation 1507:18</p> <p>fourth 1536:9</p> <p>frankly 1538:23</p> <p>frauds 1486:13</p> <p>frees 1543:17</p> <p>frivolous 1483:10 1517:20</p> <p>front 1506:3 1573:17</p> <p>froze 1415:4</p> <p>frozen 1477:11,25</p> <p>full 1412:17 1414:24 1464:2 1470:4 1472:8 1498:8 1590:18</p> <p>fully 1555:18</p> <p>function 1442:3 1448:23</p> <p>fundamental 1393:14,18 1397:11,13</p> <p>funding 1484:4</p> <p>funds 1412:17,25 1542:23</p> <p>futile 1561:19</p> <p>future 1392:18 1449:2,6 1468:3 1567:13</p>	<p>1544:18 1573:8,22 1574:1, 14 1586:6</p> <p>gains 1401:7 1437:4,14 1528:4</p> <p>gallery 1477:19,20</p> <p>gambling 1505:22</p> <p>Garfinkel 1385:2 1389:24,25 1390:4,8, 13,18 1471:19 1477:9,10,17, 20,22 1570:10 1591:20 1592:1</p> <p>gave 1405:6 1432:9 1437:16 1460:16 1461:2 1464:23 1468:24 1536:6,7 1542:13</p> <p>general 1397:9 1420:10,13 1440:15, 18 1449:9 1552:19 1591:12</p> <p>generally 1448:10 1544:4 1550:4 1552:19 1592:11</p> <p>generate 1394:24 1395:1 1407:7,10</p> <p>generated 1400:14 1422:18 1468:21 1517:9</p> <p>generates 1581:4</p> <p>generating 1429:10</p> <p>gentlemen 1487:2</p> <p>Gerarrd 1384:5</p> <p>Gerety 1386:5 1398:14 1401:9 1417:25 1420:11 1421:9 1427:22 1439:13 1440:4,11, 25 1458:1 1464:25 1465:23 1466:5,8 1468:24 1469:3,6, 18 1470:4 1471:16 1474:13, 17 1475:21 1500:24 1501:7 1504:19 1508:18 1511:13,17 1512:1,5,13 1514:5 1527:8 1528:19 1540:11 1548:21 1550:13 1551:8 1552:2,12, 13,24 1564:22 1566:22 1575:12 1579:18 1585:22 1590:14</p>	<p>Gerety's 1407:12 1428:6 1446:13 1466:22 1511:21 1516:1 1517:1 1547:9 1548:25 1556:15</p> <p>germane 1389:9</p> <p>Gerrard 1384:5,23 1390:9,23 1391:14,17 1415:6,15 1424:12 1442:17,21,25 1443:3,7 1444:15,18,19 1455:21 1457:23 1458:17 1459:11,21,25 1461:10 1462:17,19 1470:4,17,20 1471:23 1472:4 1475:1 1484:9 1487:24 1489:18 1490:6 1492:24 1497:22 1499:5,16 1506:6 1513:2 1523:10,24 1524:13 1529:2, 24 1533:22 1535:2,19 1536:1 1544:10 1547:24 1548:10,12 1551:2 1552:15 1556:7 1561:6 1562:10,24 1563:14 1569:2,3,6,9 1570:6,12,15,24 1571:12,13 1573:18 1583:3,6,10,14 1584:3,13 1585:13,15 1586:20,23 1587:11,18 1591:7 1592:12</p> <p>Gerrard's 1444:13 1476:10 1477:8 1482:22 1590:8</p> <p>get all 1580:15</p> <p>give 1388:14 1406:7 1420:19 1427:13 1446:2,5 1457:12 1463:22 1477:6 1509:11 1526:5 1533:6 1548:7 1551:3 1562:9,13 1565:15 1584:13 1586:21 1587:9 1592:5</p> <p>glossed 1484:9</p> <p>going-forward 1485:8</p> <p>Golshani 1385:3 1387:4 1394:7,8,12, 16,19 1396:16 1403:11,24 1404:25 1405:4,21 1411:23 1412:6,12 1413:6,9,10,15,24 1414:12 1415:24 1416:3 1418:24 1419:4,9,16,24 1421:4,19 1423:2,16,20</p>
G			
<p>gain 1397:2 1398:3,8,15 1404:9 1405:2,13,19 1425:8,20 1426:10,21,25 1427:19,20, 24 1429:5,14,17 1430:18,19 1431:14,17,18,19 1438:10 1439:17 1446:3,6 1466:2 1483:8 1501:25 1502:6 1504:4,8,24 1527:20 1528:9 1530:17,23 1532:13 1541:9</p>			

## Closing Arguments

## Shawn Bidsal v. CLA Properties, LLC, et al.

<p>1424:2,13,25 1425:24  1426:18 1427:4 1428:6,14,  15,25 1429:1,3,8 1430:2,3,  11,12,20,23 1431:9,20,25  1432:8,13,16,19,24 1433:12,  14,25 1434:15 1435:25  1436:16 1437:17 1438:6  1445:7,14,22 1447:25  1448:7 1449:11,18 1456:14  1460:1 1464:21,22 1465:4  1466:11,15 1468:9 1469:23  1471:16 1472:24 1473:1,17,  18 1478:7,23 1479:5,9  1480:11 1481:17 1483:3,16,  21,22,23 1484:13,15 1485:3,  5 1486:6,16 1487:4 1489:4  1491:22,25 1492:2,14  1505:23 1518:8,16,23  1519:3,5,11 1524:24  1526:16,20 1540:23,24  1541:8,22 1542:13 1565:4  1570:1,4,15 1571:24  1572:17,25 1573:1 1574:16,  20 1575:2,14,19 1578:15,16,  20,24 1580:12,14,18 1581:1,  15 1588:24 1589:24 1590:3</p> <p><b>Golshani's</b>  1401:3,22 1405:15 1406:23  1412:1,19 1414:15 1418:11  1419:13 1426:14 1429:22  1430:6 1431:4,23 1432:16  1433:21,24 1470:22,23  1479:12,13 1480:9 1484:7  1540:18,20</p> <p><b>good</b>  1520:20 1558:14 1568:16  1592:17</p> <p><b>Goshani</b>  1394:11</p> <p><b>governed</b>  1421:18 1439:10</p> <p><b>gradual</b>  1468:13</p> <p><b>grammar</b>  1400:21 1441:1 1443:4,5</p> <p><b>grammatical</b>  1523:23</p> <p><b>grant</b>  1417:8,10 1465:15 1507:2</p> <p><b>granted</b>  1506:21 1557:5</p> <p><b>grantee</b>  1507:3</p>	<p><b>great</b>  1479:14 1501:2 1570:23</p> <p><b>greater</b>  1437:20 1502:24 1577:20</p> <p><b>Green</b>  1386:22 1387:18,20,24  1411:1 1412:14 1413:17  1414:8 1417:12,17 1428:16,  24 1437:2 1438:24 1457:3  1478:18 1479:2,4 1483:17  1484:17 1485:2,16 1486:18  1487:13,16 1494:11,12  1496:5,6 1501:24,25  1503:17 1504:7,13 1505:4  1517:22 1530:6 1535:4  1546:12 1548:18 1550:3,11  1565:18,19 1566:4,5</p> <p><b>Greenway</b>  1409:20 1410:5,10,13  1422:23 1445:25 1455:9,12,  21,23 1456:5 1457:2  1463:13 1469:7,15 1470:2  1493:20 1494:21 1497:18  1501:20,23 1502:22,24  1503:2,4,10,20 1504:20,24  1505:9 1506:2 1511:10,17,  18 1520:17</p> <p><b>guarantee</b>  1490:11</p> <p><b>guaranteed</b>  1504:23</p> <p><b>guess</b>  1391:9 1461:17 1509:16  1531:25 1553:15 1564:20  1579:22</p> <p><b>gun</b>  1479:22</p> <p><b>guy</b>  1478:14 1479:14 1483:5,16  1505:21 1522:8</p> <p><b>guys</b>  1384:12 1389:18 1592:9</p> <p><b>GVC</b>  1413:18 1414:10 1415:16  1416:6,11 1420:7,16,21  1433:22 1447:8 1546:11  1585:10</p> <hr/> <p style="text-align: center;"><b>H</b></p> <hr/> <p><b>Haberfeld</b>  1478:11,20 1481:24  1489:12,21 1517:24 1558:5,</p>	<p>16 1559:1,7,10 1591:11,19</p> <p><b>Haberfeld's</b>  1390:14,15 1489:15 1490:4,  20</p> <p><b>half</b>  1408:12 1442:24 1463:14  1464:12 1555:21,22 1556:9  1562:7 1569:6 1591:7</p> <p><b>hand</b>  1424:12,13 1547:15 1549:19</p> <p><b>handed</b>  1386:4</p> <p><b>handle</b>  1438:11 1483:7 1574:23</p> <p><b>handled</b>  1521:15</p> <p><b>handling</b>  1567:3</p> <p><b>happen</b>  1404:12 1437:22 1540:16  1541:15,16 1580:21 1583:25</p> <p><b>happened</b>  1411:23 1416:4 1426:16  1436:19,23 1460:9 1481:20  1490:1,8 1495:1 1499:23  1541:4 1569:13,25 1572:15  1574:24 1576:22 1591:11,21</p> <p><b>happening</b>  1428:15 1574:19 1575:19  1578:23 1584:23 1585:2</p> <p><b>hard</b>  1587:2,4 1590:7</p> <p><b>hate</b>  1489:18</p> <p><b>health</b>  1480:10 1505:23</p> <p><b>hear</b>  1385:14 1418:24 1509:14  1512:20,21 1570:10,11,14,  16,18 1571:3,4 1582:2  1587:6</p> <p><b>heard</b>  1403:24 1417:24 1436:25  1439:4,5,9 1441:2 1446:9  1447:17 1569:11 1570:16  1574:10 1580:17 1588:24</p> <p><b>hearing</b>  1386:20 1388:20 1471:24  1486:11 1498:20 1570:5,7,8,  9 1571:5 1587:5</p>	<p><b>heart</b>  1461:18 1537:14</p> <p><b>held</b>  1415:17 1416:10 1463:1,2,6  1478:20 1585:10,18 1590:24</p> <p><b>Henderson</b>  1487:25 1493:22 1495:21,23  1497:11 1498:11 1505:7  1523:6</p> <p><b>herring</b>  1421:22 1473:23</p> <p><b>hey</b>  1512:20</p> <p><b>high</b>  1439:7 1477:7 1509:22</p> <p><b>higher</b>  1537:6,10 1568:10</p> <p><b>highlight</b>  1472:5</p> <p><b>highlighted</b>  1573:19</p> <p><b>highlighting</b>  1410:17</p> <p><b>highly</b>  1456:17</p> <p><b>hints</b>  1503:14</p> <p><b>hired</b>  1591:2</p> <p><b>hires</b>  1487:12</p> <p><b>historical</b>  1481:3</p> <p><b>history</b>  1428:24 1575:3 1576:5</p> <p><b>hit</b>  1509:21 1555:20</p> <p><b>hold</b>  1389:13 1411:10 1415:3  1419:11 1468:2 1535:5  1548:12 1568:8 1570:24</p> <p><b>holding</b>  1411:13 1463:9 1544:3</p> <p><b>homes</b>  1533:7,9,12</p> <p><b>Honestly</b>  1490:5</p>
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## Closing Arguments

## Shawn Bidsal v. CLA Properties, LLC, et al.

<p>Honor 1386:18 1388:15 1389:24 1390:5,10 1391:17 1392:8 1395:2 1398:23 1402:1 1403:4 1406:10 1407:1 1408:17 1410:17,21 1415:7 1425:22 1426:13 1427:14 1430:25 1433:20 1435:22 1439:22 1444:10 1446:24 1447:1,21 1450:3,20 1451:2, 9,22 1452:11 1454:21 1462:11 1470:8,21 1471:17, 20,22 1477:9 1478:3 1481:6, 13 1482:12 1483:9 1489:8 1495:11 1506:7 1509:16,24 1511:22 1513:11 1516:8 1518:7 1520:12 1521:5,7 1548:6 1554:1 1559:17 1562:20,22 1563:24 1565:6 1569:3 1576:25 1582:19 1583:4,14 1584:9,17 1586:15 1588:12 1591:20</p> <p>Honor's 1433:19</p> <p>hope 1402:2 1497:8 1535:18 1577:25</p> <p>hopelessly 1403:6</p> <p>hour 1442:23 1509:9,21</p> <p>hours 1509:12 1547:23 1555:21 1562:7 1569:6</p> <p>huge 1385:23 1403:10 1464:15</p> <p>hundred 1452:13</p> <p>hundreds 1483:22</p> <p>hypothetical 1537:8 1541:11 1564:21 1566:9</p> <p>hypothetically 1458:3 1563:18 1564:5</p> <hr/> <p>I</p> <hr/> <p>idea 1395:9 1431:1 1445:9 1483:2,3 1514:1 1567:10 1570:23 1571:14 1572:9 1580:14 1581:25</p>	<p>ideas 1472:5</p> <p>identified 1448:7 1483:19 1494:9 1496:17 1560:14 1571:19 1572:8 1579:4</p> <p>identify 1592:5</p> <p>ignore 1469:20 1479:21 1526:12 1576:12</p> <p>ignores 1546:13</p> <p>ignoring 1523:21</p> <p>illustrated 1503:10</p> <p>imagine 1487:21</p> <p>immediately 1413:14 1428:1</p> <p>impact 1516:9 1524:4,10,11</p> <p>implicitly 1522:7</p> <p>importance 1420:25 1443:14</p> <p>important 1396:2 1398:2 1402:1 1403:18 1406:5,25 1414:13 1416:8 1419:19 1420:19 1421:8 1422:10 1426:13 1427:22 1428:9 1430:2 1432:8 1437:7,16 1445:16 1448:6 1454:24 1472:10 1488:17 1492:18 1507:16 1513:22 1514:12 1518:2,12 1519:25 1532:24 1548:8 1555:4 1573:14</p> <p>importantly 1411:19</p> <p>impossible 1429:7</p> <p>impression 1484:11</p> <p>improper 1482:20</p> <p>improvements 1543:25 1544:2</p>	<p>in- 1543:18</p> <p>in-person 1434:1</p> <p>inaccurate 1420:1</p> <p>inclination 1388:14,15 1389:12</p> <p>inclined 1388:10,22</p> <p>include 1433:16 1495:13 1504:12 1509:2 1511:10 1551:24</p> <p>included 1414:17 1415:9 1417:19 1419:6 1422:17 1466:25 1494:22 1496:8 1503:1 1504:19,20 1505:25 1506:15,23 1508:9,16 1510:9,19,24 1517:11,15 1534:19</p> <p>includes 1466:3 1467:4 1527:10 1559:12</p> <p>including 1394:1 1398:16 1420:10 1442:24 1456:3 1461:6 1486:4 1588:1</p> <p>income 1392:17,22 1394:3,4,24 1397:2 1398:3,8,15 1400:15 1401:14 1404:9 1407:7,18 1425:3 1427:19 1430:18 1438:1,2,9,13,16,18,19 1439:6,10,15,17 1446:11,19, 20 1465:5,9 1466:2,5 1467:7 1468:22 1472:15 1485:13 1502:1 1503:7 1516:10 1517:10 1525:22 1527:8,10, 21 1528:4,9,22 1529:14 1532:8,10,13,17 1544:12,15, 21,22 1545:1,3,10 1546:23 1552:23 1553:3,5 1573:22 1588:9,21</p> <p>income-producing 1394:19 1468:2 1581:4</p> <p>incomes 1528:2</p> <p>inconsistent 1405:15 1439:12 1467:15</p> <p>incorrectly 1516:13</p>	<p>increase 1403:21 1459:1</p> <p>increased 1502:21</p> <p>increasing 1499:8 1501:20</p> <p>incurred 1496:9</p> <p>individual 1403:21 1406:13 1410:15 1420:20 1423:3,6 1498:18 1572:18 1574:19 1578:8</p> <p>individually 1406:19</p> <p>individuals 1439:8</p> <p>inequity 1557:6</p> <p>information 1395:5 1495:9 1510:1</p> <p>inherent 1581:9</p> <p>initial 1397:19 1493:14 1495:16 1497:17 1514:1 1515:6 1553:15,16,19,20</p> <p>initially 1495:9 1497:20</p> <p>initiated 1479:19 1482:8</p> <p>initiation 1494:6</p> <p>inserted 1419:5,9,11</p> <p>insisting 1582:3</p> <p>inspected 1483:21</p> <p>instance 1433:7 1458:3 1459:18 1461:6</p> <p>instances 1440:19</p> <p>instructions 1518:13,24 1519:23 1542:14</p> <p>integration 1486:25</p>
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## Closing Arguments

## Shawn Bidsal v. CLA Properties, LLC, et al.

<p><b>intended</b> 1403:9 1409:23 1456:20 1466:13 1471:7,8 1475:10 1534:2 1541:21,22 1574:17 1580:24 1584:24</p> <p><b>intending</b> 1504:1</p> <p><b>intent</b> 1388:6 1393:19 1394:2,3,25 1400:12 1401:10 1402:3,7, 17 1405:14 1407:13 1414:17 1415:10 1419:14 1423:9 1438:22 1470:11 1475:5,7 1513:20 1518:1 1525:15 1526:22 1533:1 1534:2,19 1541:1 1542:7 1582:6,10</p> <p><b>intention</b> 1418:23 1533:21</p> <p><b>intentionally</b> 1387:15</p> <p><b>intentions</b> 1524:12</p> <p><b>interactive</b> 1389:7</p> <p><b>interest</b> 1396:15,17 1398:11 1401:7 1408:22,23 1409:5 1413:12, 25 1414:3 1417:19 1418:3 1420:12 1421:3,5,12 1433:22 1434:10 1438:20 1447:6 1451:4,8 1454:10,19 1458:13 1459:8,15 1460:10 1461:7 1465:9,13,20 1470:7 1476:11,14,19,21,25 1478:19 1481:14 1485:13 1489:3 1504:11,17 1505:14 1528:7,11 1542:1 1546:15, 18 1548:11,14 1549:3 1554:4,5,8,10,20,21 1555:25 1556:2,4,6,9,11,20 1557:16 1562:22,23,24,25 1563:21 1564:9,12,14,16 1565:2,3,5, 8,11,13 1566:1,5,8,13 1567:4,18 1568:9 1571:17 1581:20 1585:8 1587:16 1588:17 1589:21</p> <p><b>interesting</b> 1406:22 1425:12,22 1434:14 1465:7 1472:14 1476:10</p> <p><b>interestingly</b> 1392:25 1401:6 1551:2</p> <p><b>interests</b> 1574:3,7</p>	<p><b>interim</b> 1591:13,17,21 1592:3,4,7</p> <p><b>Internal</b> 1401:20 1439:20</p> <p><b>interpose</b> 1457:22</p> <p><b>interpret</b> 1405:25 1406:1 1408:10 1410:21 1422:13 1466:19 1470:10 1472:11 1534:11</p> <p><b>interpretation</b> 1387:9,19 1392:10 1399:19 1439:2 1443:21 1456:19 1466:13 1468:23 1483:11 1492:5 1517:19,25 1519:24 1524:2 1532:25 1533:2,14 1534:15 1536:13,20 1541:2 1552:14</p> <p><b>interpreted</b> 1393:18,20 1405:23 1437:10,12,13 1441:3 1494:22 1558:16</p> <p><b>interpreting</b> 1388:7 1486:23</p> <p><b>interprets</b> 1393:16</p> <p><b>interrogatories</b> 1482:11</p> <p><b>interrogatory</b> 1436:15 1495:6 1516:20</p> <p><b>interrupt</b> 1442:17 1489:18,19</p> <p><b>interruption</b> 1424:8</p> <p><b>interruptions</b> 1524:5 1539:19 1555:14 1561:12</p> <p><b>introduced</b> 1385:20 1387:3</p> <p><b>inventoried</b> 1582:12</p> <p><b>inventory</b> 1407:16 1468:21</p> <p><b>invest</b> 1485:24</p> <p><b>investigated</b> 1500:7</p> <p><b>investing</b> 1412:13</p>	<p><b>investment</b> 1394:17 1479:13 1485:23 1540:8,25 1581:17</p> <p><b>investor</b> 1458:22</p> <p><b>involved</b> 1411:25 1447:18</p> <p><b>IRS</b> 1534:22</p> <p><b>issue</b> 1384:20 1390:14,20 1402:3 1424:14 1431:8 1446:25 1447:1,5,7 1451:23 1464:25 1465:25 1475:10,17,20,25 1476:11 1477:1 1493:24 1506:5 1509:17 1513:3 1529:20 1535:1 1548:15 1549:8,9,14 1555:4,20 1560:21,22,25 1563:2 1567:20,21 1569:20 1571:6 1579:11,15 1585:6 1587:11, 22,23 1588:19 1589:14,23 1590:15 1591:12,13 1592:9</p> <p><b>issued</b> 1417:17 1530:8</p> <p><b>issues</b> 1386:25 1389:9 1410:17 1420:2 1446:24 1458:6 1466:17 1478:4 1483:5 1492:8,20,23 1512:19 1552:21 1553:25 1554:3 1564:1 1565:7 1591:23</p> <p><b>issuing</b> 1482:17 1592:9</p> <p><b>italics</b> 1441:13</p> <p><b>item</b> 1446:19 1544:12,13</p> <p><b>items</b> 1398:8 1443:14 1444:8 1466:2 1528:9 1552:9 1574:1 1589:10</p> <hr/> <p style="text-align: center;"><b>J</b></p> <hr/> <p><b>January</b> 1429:19 1430:10,13</p> <p><b>Jeff</b> 1422:3 1483:18</p> <p><b>Jim</b> 1384:5,8 1389:25 1390:23 1405:16 1437:1 1438:10</p>	<p>1555:10</p> <p><b>Jim's</b> 1386:14</p> <p><b>Joan</b> 1557:2</p> <p><b>job</b> 1417:25 1466:14 1558:24 1588:11</p> <p><b>joins</b> 1443:13</p> <p><b>joint</b> 1449:16</p> <p><b>Judge</b> 1390:14,15,19 1430:24 1432:10 1458:6 1461:19 1463:20 1478:1,10,20 1481:24 1489:11,14,15,18, 21 1490:3,20,21 1517:24 1558:5,16 1559:1,7,10 1563:19 1569:18 1591:11,19</p> <p><b>judgment</b> 1475:16 1490:13,20 1491:2 1555:2 1557:8,17 1560:23 1561:3 1562:24 1563:1 1567:18</p> <p><b>July</b> 1433:20,25 1460:16 1479:16 1517:14</p> <p><b>jump</b> 1389:8</p> <p><b>jumped</b> 1388:13</p> <p><b>jumping</b> 1580:9</p> <p><b>June</b> 1413:23 1414:7,9 1419:23 1420:25 1421:13 1518:9 1523:25 1549:6</p> <p><b>Jur</b> 1449:8</p> <p><b>justice</b> 1557:5</p> <p><b>justification</b> 1521:18</p> <hr/> <p style="text-align: center;"><b>K</b></p> <hr/> <p><b>K-1</b> 1437:19 1439:14,17 1532:17</p>
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## Closing Arguments

## Shawn Bidsal v. CLA Properties, LLC, et al.

<b>K-1S</b> 1428:10,13 1431:2 1530:8 1575:24 <b>K-E-R-L-A</b> 1554:11 <b>Kerala</b> 1554:11 1556:3 <b>key</b> 1436:25 <b>keys</b> 1439:3 <b>kind</b> 1389:17 1436:21 1437:7 1477:22 1481:2 1490:15 1492:15,21 1509:21 1512:22 1579:10 <b>kinds</b> 1417:24 <b>Kishner</b> 1478:21 1481:25 1489:15 1563:19 <b>Kishner's</b> 1458:6 1490:21 <b>knew</b> 1422:21 1427:4 1428:14 1431:15 1441:4 1500:17 1505:19,23 1524:11 1574:17 <b>knowing</b> 1481:14 <hr/> <div style="text-align: center;"><b>L</b></div> <hr/> <b>label</b> 1432:10 <b>labeled</b> 1479:21 1553:16 <b>lack</b> 1497:11 1523:22 <b>landlord</b> 1550:5 <b>language</b> 1392:12 1393:1,11,17 1396:3,5 1397:5,21 1398:1, 8,22,23,25 1399:2,13,20 1400:11,22 1401:10 1402:8, 13,18,19 1403:2,5,8 1404:13,16 1405:23,25 1406:2,6,21 1407:25 1408:5 1409:12 1410:4,11,22 1414:17,20,24 1415:2,10,11, 18,20,25 1416:2 1419:6 1422:12 1435:11,17 1438:23 1440:7,19 1442:10 1444:23 1445:1,2 1455:10 1456:12, 17,24 1462:12 1463:17,19, 21 1465:16 1468:8 1469:14 1470:10,13 1471:1,9,11,13 1488:18 1489:24 1491:23 1492:11 1497:5 1498:1 1524:14 1525:15 1572:13,23 1573:13 1574:8 1576:9 1582:5,22 1583:23 1584:25 <b>larger</b> 1540:7 <b>Las</b> 1486:8 <b>lastly</b> 1486:3 1517:13 1590:7 <b>late</b> 1432:23 1443:8 <b>law</b> 1435:5 1448:4,9,15 1449:25 1450:5,6,11,16 1459:5,11,23 1460:1 1462:10 1467:15 1549:13 1556:24 1560:24 1561:11,14,18 1563:11,12 1572:3 <b>learn</b> 1574:4 <b>learned</b> 1572:12 <b>leases</b> 1411:5 <b>leave</b> 1437:6 1467:23 1538:5,11 1570:21 1591:1 <b>leaving</b> 1516:14 <b>led</b> 1433:13 <b>ledger</b> 1420:10,13 <b>left</b> 1422:21 1456:10,21 1514:16 1518:7 1519:17 <b>legal</b> 1418:15 1419:12 1421:24 1434:21 1435:6 1491:6 <b>Legrand</b> 1414:11,14 1416:3 1419:5 1487:11,12 1488:5,9,11,20, 21 1490:16 1491:6,10,13,17, 18,19 1518:2,6,10,14,20,24 1519:1,5,6,10,13,20,21,23 1533:24 1542:14 <b>Legrand's</b> 1488:14 1518:14 <b>lender</b> 1411:7,8,11,13,16,18 <b>length</b> 1527:18 <b>lesson</b> 1400:21 1441:1 <b>let alone</b> 1571:22 <b>letter</b> 1385:10,17 1436:5,6,11 1479:24 1480:20 <b>letting</b> 1484:13 <b>Lewin</b> 1385:2,4,5 1386:10,16,18 1390:25 1396:12 1416:13 1420:10 1424:15 1426:15 1436:5 1441:2,23 1444:14 1465:23 1471:16,18,20,22 1477:12,24 1478:3 1480:25 1481:6,8 1489:20,23 1490:13,19 1492:22 1496:20,22 1501:3,6 1509:6, 8,16,24 1510:6 1511:19,22 1512:2,6,8,24 1513:17 1520:11,15,22 1521:4,5,10, 13 1524:7 1528:8 1531:18 1535:25 1538:8,14,16,20,25 1539:3,7,12,15,21 1541:16, 20 1542:10,18,20 1546:12 1548:1,5 1550:18 1551:14 1554:18,21,24 1555:8,16,23 1557:21 1558:1,7,12,20 1559:16,21 1560:5,19 1561:14 1562:8,14,19,20 1563:23 1564:10,14,18 1565:6,18 1566:8,12,18,21 1567:2,8 1569:10 1570:5,7, 14,16,18,21 1571:1,3,5,8 1573:9 1574:10 1576:8,16, 23 1577:7 1578:5 1579:20 1580:4,17 1583:1 1585:25 1586:21 1587:2,6,9 1591:4,8 <b>Lewin's</b> 1443:21 1582:5 1583:16 <b>liabilities</b> 1408:15 1462:20 1463:16 1482:8,10 <b>liability</b> 1445:17 1462:21 1463:6,8 1464:15 1549:19,21 1550:2, 7 <b>license</b> 1411:9 <b>lie</b> 1484:20,24 <b>lien</b> 1416:10 <b>liens</b> 1416:10,12,15 <b>lies</b> 1586:24 <b>lieu</b> 1416:5,8,12,16 1417:6 1418:9 1465:12,19,20 1467:5,10 1487:14 1497:14 1548:16 <b>likewise</b> 1405:24 1444:24 1508:12 <b>limit</b> 1472:21 <b>limitations</b> 1421:12,14 1475:18 1476:1, 2,3,8 1526:10 1549:7,9,15 <b>limited</b> 1412:8 1445:17 1526:8 <b>limiting</b> 1533:2 <b>lines</b> 1505:12 1508:20 1543:4 <b>lion's</b> 1479:10 <b>liquidate</b> 1407:9 <b>list</b> 1443:14 1444:8 <b>listed</b> 1403:15 1505:4 1523:9 <b>listen</b> 1408:9 1569:9 1572:2 <b>listened</b> 1392:15 1396:11 <b>listening</b> 1580:4 <b>listing</b> 1419:2 1523:15,16			
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## Closing Arguments

## Shawn Bidsal v. CLA Properties, LLC, et al.

<b>Lita</b> 1429:22 1430:11 <b>literal</b> 1469:10 <b>literally</b> 1492:17 1493:17 1568:13 <b>litigate</b> 1386:25 1387:11 <b>live</b> 1497:17 <b>LLC</b> 1399:6 1411:1 1412:16 1413:18,22 1472:21 1473:13 1540:13 1560:16,17 1581:20 <b>LLCS</b> 1439:7 <b>loan</b> 1411:17 1465:18 1467:12 <b>lodge</b> 1389:10 <b>log</b> 1570:19 <b>logical</b> 1459:22 <b>logically</b> 1522:23 <b>long</b> 1391:25 1440:3 1453:1 1486:16 1507:24 1546:6 1559:11 1569:1 <b>long-time</b> 1483:18 <b>longer</b> 1391:24 1417:22 1451:23 1452:1,5 1468:5 1546:19 <b>looked</b> 1412:12 1500:12,15 <b>Los</b> 1483:21 <b>lose</b> 1448:5 1539:17 1540:2 1570:3 <b>losing</b> 1586:9 <b>loss</b> 1397:2 1398:3,8,15 1466:3 1473:14 1528:9 1532:14 1573:22 1574:1	<b>losses</b> 1437:4 1473:19 1528:4 1583:16 1587:12,13,17 <b>lost</b> 1424:10 1454:11 1459:3 1462:14 1510:6 1582:23 <b>lot</b> 1386:8 1416:4 1417:15 1420:18,23 1424:2 1458:23 1470:5,7 1489:6 1493:24 1506:6,16,19,25 1508:5,6 1509:3 1510:1,9,13,19 1511:1,11 1547:21 1555:5 1568:21 1581:2,5,25 1584:14 1585:5,6,7,10,16,20 1586:15 1588:1 1589:8,10 <b>lots</b> 1510:22,23 <b>Louis</b> 1385:2 1389:24 1477:9 <b>lowball</b> 1480:13 1504:25 1590:2 <b>lunch</b> 1513:11 <hr/> M <hr/> <b>made</b> 1386:20 1387:8 1395:6 1401:9 1402:3 1403:3 1421:18 1422:8 1423:18 1426:10 1428:12 1432:13,18 1433:21 1434:20,24 1435:18 1439:19,24 1440:2,9 1445:3 1447:13,19,21 1449:12 1450:19 1457:15 1459:7 1460:15 1467:1 1473:8,24 1474:4 1478:25 1480:13 1481:9,13 1489:20 1490:15 1491:8,16 1494:1,8,9 1497:20 1503:16 1504:17,25 1505:5 1512:13,14 1516:16 1517:11,13 1524:18 1533:4 1536:2 1542:24 1543:11,12 1546:21 1547:5 1549:17 1551:25 1554:6 1558:5 1559:8 1561:22,25 1572:8 1573:6,7,12 1575:8 1576:2 1580:11 1581:16 1585:5 1587:11 <b>madman</b> 1580:9 <b>MAI</b> 1408:24	<b>main</b> 1405:16 1437:1,9,23 1438:10,21 1444:24 1446:10,21 1474:1,12 1485:8 1525:9 1527:9 1528:13,16 1529:2,21 1530:2 1542:22,23 1543:2 1544:8 1546:2 1547:5 1548:12 1572:24 <b>Main's</b> 1473:21 1543:4 1547:7 <b>maintained</b> 1419:16 <b>maintenance</b> 1420:24 <b>major</b> 1584:11 <b>make</b> 1392:6 1406:17,18 1431:7 1447:3 1448:4,5,10,13 1451:9 1458:19,23 1459:18 1460:22 1462:13 1471:6 1477:25 1479:17 1481:4 1482:23 1484:3 1487:17 1492:18 1497:1 1502:2 1510:3 1521:8 1530:6 1534:11 1537:12 1539:7 1543:24,25 1548:15 1553:20,21 1559:15,22 1569:1,4 1580:22 <b>makes</b> 1387:4 1400:16 1402:9 1403:17 1404:17,20 1406:21 1407:8 1415:22 1416:9 1442:2,18 1468:5 1503:22 1521:25 1531:25 1546:20 1549:3 1553:19 1559:16 1576:4 1581:5 <b>making</b> 1433:13 1434:10 1449:18,19 1481:8 1484:18 1489:25 1491:17 1523:22 1534:10 1543:1 1544:2 1567:8,9 1581:2 <b>MALE</b> 1391:2 <b>manage</b> 1394:23 1403:12 1420:7 1468:1 1567:25 <b>managed</b> 1412:2 1420:6 <b>management</b> 1395:23 1396:20 1412:4 1414:6 1420:8 1433:2,9	1451:19,25 1454:16 1485:12 1567:19 1568:11,12 <b>manager</b> 1485:12 1523:1 1568:2 <b>managers</b> 1485:11 1567:23 <b>managing</b> 1394:19 1413:20 1420:6 1433:1,12 1451:24 1452:2 1541:25 <b>mandatory</b> 1591:15 <b>manifested</b> 1396:25 1397:15 <b>manifestly</b> 1563:6 <b>manner</b> 1388:5 1393:20 1410:22 1445:2 1466:20 <b>Mar</b> 1448:19 1561:7 <b>March</b> 1420:15 1422:20 1423:1,14, 23 1433:15 1523:12,14 <b>marked</b> 1495:7 <b>market</b> 1404:23 1408:11,16,21 1409:3 1433:22 1434:12 1455:2 1479:23,25 1480:7, 16,19 1482:5 1492:25 1504:10,11,18,21 1505:15, 22 1514:18 1569:20,22 1590:4 <b>marketing</b> 1422:2 <b>markets</b> 1581:6 <b>massaged</b> 1491:23 <b>match</b> 1533:19 <b>materials</b> 1422:3 <b>math</b> 1498:19 <b>matter</b> 1391:19 1462:11 1465:8,10 1475:6 1480:18 1481:18 1507:25 1508:2 1521:17
---	--	--	--

## Closing Arguments

## Shawn Bidsal v. CLA Properties, LLC, et al.

1523:11 1529:1 1534:3 1535:14 1536:22 1555:8 1556:24 1558:1	1422:8 1445:18 1532:15 1546:7,10,11,12 1574:2 1585:11	1451:3 1496:15 1555:4 1576:1	1542:15 1543:22,24 1544:2, 3 1547:13 1549:22 1550:5 1551:10,11 1554:9 1555:5 1565:22,24 1566:18 1567:11 1568:9 1575:14 1578:25 1579:25 1580:16,18,21 1581:2,5,13,19,25 1582:3,20 1588:21 1589:16
<b>mattered</b> 1397:11	<b>members'</b> 1528:6	<b>minutes</b> 1415:4 1442:21 1444:12,13 1520:25 1548:3,4 1562:9,12, 13,14 1569:4 1570:25 1583:1,7 1586:22 1587:10	<b>monies</b> 1479:10 1546:21
<b>matters</b> 1511:7	<b>membership</b> 1396:22 1409:5 1433:22 1447:6 1476:19,25 1481:14 1504:10 1505:14 1566:1,4 1571:17 1590:1	<b>mischaracterized</b> 1576:24	<b>month</b> 1426:16
<b>meaning</b> 1398:5 1408:12 1416:10 1440:21 1442:2 1454:3 1460:22 1462:11 1464:2 1467:20 1523:19,20 1534:7 1545:23 1581:10 1582:18 1588:17	<b>mention</b> 1500:2 1507:21 1533:22 1548:10 1551:3 1583:7	<b>misconstrues</b> 1524:8	<b>months</b> 1390:17 1391:12,13 1392:4 1555:17
<b>meaningless</b> 1534:12	<b>mentioned</b> 1394:8 1410:15 1440:23 1481:24 1500:5 1512:2 1517:3 1523:5 1528:14 1540:12 1549:8 1560:21	<b>misrepresentation</b> 1577:10	<b>morning</b> 1550:16
<b>meanings</b> 1443:24	<b>Mercer</b> 1534:13	<b>missed</b> 1501:15 1512:3	<b>Morris</b> 1557:2
<b>means</b> 1400:10 1407:16 1409:9,10 1417:20 1434:18,19 1435:18 1449:22 1450:21 1455:4 1462:12 1464:7 1469:14 1471:14 1472:19 1474:11 1522:17 1524:3,9 1526:19 1543:22 1546:15 1551:18 1586:2	<b>meritless</b> 1491:7	<b>missing</b> 1494:16 1498:21 1499:13 1500:4 1501:21 1579:12 1590:12,17	<b>motion</b> 1480:17
<b>meant</b> 1434:25 1441:5 1575:18	<b>method</b> 1399:6	<b>model</b> 1393:24 1396:7 1397:10	<b>motions</b> 1588:2
<b>meantime</b> 1568:8	<b>methodology</b> 1497:7	<b>modification</b> 1488:15	<b>move</b> 1419:3 1421:25 1425:14 1427:11 1429:19 1490:18
<b>measured</b> 1406:9,12 1408:14 1456:25	<b>mid-2012</b> 1420:4,8	<b>modifications</b> 1491:18	<b>multiple</b> 1424:16 1432:9
<b>meet</b> 1403:1 1589:19	<b>middle</b> 1426:5 1577:25	<b>modified</b> 1507:17	<b>Musser</b> 1534:13,20
<b>meeting</b> 1430:9,12 1433:25	<b>million</b> 1411:3 1433:23 1463:13,14, 15,16 1464:10,11,12 1469:25 1479:5 1493:1 1497:20 1504:21,22 1505:8, 11,15,16 1564:8 1565:19,20 1581:15,18 1584:1 1590:4,5	<b>modifier</b> 1441:19,22 1442:1	<b>mute</b> 1384:11
<b>member</b> 1392:19,23 1394:5 1397:4, 12,18 1406:7 1408:13,20 1413:20 1421:4 1432:14 1434:5,7,11 1435:19 1436:1 1439:14 1446:12 1452:11 1458:9 1480:5 1482:7 1504:4 1537:5,10 1546:19 1554:16 1566:14 1585:8	<b>millions</b> 1487:3	<b>Modifiers</b> 1442:3	<b>muted</b> 1384:16,19 1385:13
<b>member's</b> 1398:3 1408:12,22 1429:22 1434:8,15 1439:15 1573:21	<b>mind</b> 1403:19 1415:2	<b>modifies</b> 1441:14	<hr/>
<b>members</b> 1392:18 1398:10 1399:6 1404:2 1407:11 1409:20	<b>mine</b> 1384:19 1477:25	<b>modifying</b> 1441:14,19	<b>N</b>
	<b>minimally</b> 1509:9	<b>money</b> 1392:23 1393:3 1411:16,17 1413:12,24 1417:5,10 1420:24 1421:10 1425:10 1431:25 1436:7,8,22 1445:15 1447:25 1448:24 1449:21 1454:12 1457:7 1458:21,23,25 1459:1,5,13 1460:7,24 1461:1,3 1462:9, 25 1463:7,9 1465:3 1468:10 1473:2 1475:22 1478:9 1480:9 1484:7 1485:25 1487:5 1506:13 1519:7,8,16 1520:3 1525:1 1526:16 1527:2,4 1528:24 1529:3,6 1540:21,24 1541:23,25	<hr/>
	<b>minus</b> 1408:11,15 1462:20 1515:6 1590:19		<b>named</b> 1429:22
	<b>minute</b> 1403:19 1406:10 1437:11		<b>narrow</b> 1558:25 1562:11
			<b>National</b> 1560:10
			<b>nature</b> 1461:16
			<b>necessarily</b> 1385:23 1497:15
			<b>necessity</b> 1504:12 1517:15



needed 1519:7	nonsensical 1574:10 1581:22 1582:2 1585:24	1491:1 1495:6 1499:6 1512:5 1516:21 1521:8 1528:12,13 1547:18 1556:1, 3 1557:22 1560:1,11 1563:1, 2 1564:13,24 1577:15,16 1587:17,18 1590:4,8	occurred 1453:18 1503:1 1554:17
nefarious 1580:5	Nora 1589:6		occurs 1411:11,12 1527:1
negated 1590:2	normal 1461:8 1487:21	numbered 1420:17	October 1404:22 1418:12 1488:5
negotiate 1487:13	note 1401:23 1402:14 1404:15 1407:3 1410:1,4,25 1411:3 1412:15 1413:6,13,22,24 1414:5,8 1415:1,17,19 1421:8 1422:17 1425:10 1456:8 1474:16,18,23 1475:23 1483:17,25 1485:2, 10,17,19,20 1486:18,25 1487:16 1493:15,18,23 1494:11,20 1495:14,24 1496:8 1497:13,16,18 1498:6,9,12,18 1499:12,21 1500:1,23 1501:6,19 1506:12 1507:17 1511:9 1512:1 1548:18,23 1549:2,4 1579:23,25 1590:18,19	numbering 1397:22	offer 1433:13,21,24 1434:8,9,16, 19 1435:8,9,10,13,15,18,20 1436:2 1448:24,25 1449:9 1459:7 1460:15 1475:8 1479:17,21 1480:13 1481:9, 13 1494:19,23 1504:17,25 1505:6,8 1517:14,16 1533:23 1590:2
net 1422:16 1425:16 1429:10 1432:1 1439:7,15 1446:20 1465:21 1485:13 1516:9 1519:8,9,16		numbers 1395:8 1424:23 1452:7,14 1453:15 1456:1,6 1457:24, 25 1498:8 1499:2,3 1512:14 1579:19	offered 1386:25 1387:1 1458:20 1480:8,15 1505:16 1535:2 1590:10,12,15
Nev 1492:6 1534:13,20 1554:12 1557:2		O	offering 1387:10 1408:13,20 1434:6, 7,11,15 1435:3,19 1436:1 1461:2
Nevada 1413:17 1416:7 1420:4,9 1448:9,21 1458:5 1505:7 1541:18 1557:23 1560:12 1563:18	notes 1390:3 1425:24 1432:16,17, 19,20 1509:20 1513:13 1531:17	object 1435:20	offers 1433:20 1575:8
nice 1478:14 1479:14 1483:5,16 1505:21 1522:8	notice 1421:7,20 1426:9 1428:5 1575:7	objected 1405:2,8 1429:17	office 1428:17,21 1533:5,6,10,12 1589:12
nickel 1504:23	noticed 1589:1	objection 1385:24 1389:10 1423:22 1427:10 1429:18 1481:18	official 1479:13
night 1443:8	noting 1494:5	objections 1424:6	offset 1463:10 1556:14 1557:12, 13,19 1559:9,23,25 1560:2,6 1565:4
Ninth 1560:17	notion 1497:4	oblig- 1447:9	offsets 1417:25 1465:24 1466:10 1575:5 1576:6 1579:5,16 1582:1,9 1584:7 1589:23
nobody's 1579:21	nouns 1441:15,17	obligation 1445:4 1447:10 1452:1 1460:4 1466:16,18 1550:6 1567:25	omission 1516:17
noise 1579:11	November 1419:3 1425:14 1452:18,24 1453:3,9 1488:10,11 1491:18	obligations 1460:18 1461:12,23 1507:4 1524:4,10 1571:16	omitted 1482:21 1493:8,9
noncash 1446:19		observed 1477:7	one-half 1586:9
nonexclusive 1506:20 1507:2		obtain 1408:24 1523:1 1557:8	open 1449:16 1588:2
nonexistent 1507:22		obtained 1503:11 1523:25	opened 1449:12
nonrecurring 1400:18,25 1441:10,16,18, 23 1442:6 1443:13 1444:4,7 1526:2,7 1533:16 1535:2,12, 21,24 1536:3,9	NRS 1421:14 1451:5	obtaining 1493:22	opening 1392:8 1449:18 1460:23 1499:17
nonrefundable 1483:24	number 1410:12 1424:19,22 1433:23 1434:16,17,18,19 1446:5 1447:17 1451:18 1453:5,6 1455:2,14 1456:13 1457:12, 20 1460:6 1463:4 1464:23 1469:6,11,15,24 1478:4 1482:25 1484:4 1490:25	obvious 1391:21 1462:8 1469:7,18	
nonsense 1497:12		occasions 1482:25	
		occur 1449:1,6 1525:13 1541:11	

## Closing Arguments

## Shawn Bidsal v. CLA Properties, LLC, et al.

<p>operate 1395:10,11 1404:2 1487:7</p> <p>operated 1388:5</p> <p>operating 1386:22 1387:19,22 1388:7 1390:7,10 1391:1,7 1392:10, 11,13,16 1393:11,17 1394:1, 13 1395:13,25 1396:3 1397:1,14,16,25 1398:20 1399:25 1401:18 1402:14,21 1404:8 1405:18 1407:3 1408:18 1410:11 1413:19 1414:10,15,16,19 1415:9 1419:7,10,21,24 1421:15,18 1423:9,10 1432:25 1434:3 1435:1,12,17,25 1436:17 1437:3,15 1439:11,23 1440:2,5,8,13,24 1441:7 1442:14 1446:11,15 1447:12 1449:22 1453:25 1458:18 1461:4,22 1463:21 1466:1 1467:16,19 1468:11 1471:4 1479:6,11,20 1480:23 1486:14,15,23 1487:1,13 1488:4,12,16,19,23 1489:2 1491:4 1492:18 1493:3,9 1513:5 1521:18,22 1523:6 1529:17 1530:10 1537:15,17 1545:6,14 1550:25 1558:23 1573:13 1575:16 1578:7,10 1579:2 1580:19 1582:4,12 1583:11,18 1584:25 1591:15</p> <p>operation 1395:22 1582:15</p> <p>operations 1400:6,10,15 1401:5 1408:1 1516:8 1517:9 1525:17 1527:3,22 1528:2 1534:5 1543:19 1545:1 1546:24</p> <p>operative 1386:10 1439:11</p> <p>opinion 1466:9,22 1468:24 1493:23</p> <p>Opp 1492:6</p> <p>opportunities 1412:12</p> <p>opportunity 1396:19 1414:4,6 1459:3 1483:19 1484:12,17 1487:20 1509:11</p> <p>opposed 1505:16</p>	<p>opposite 1418:10 1440:25 1444:6 1468:15</p> <p>opposition 1386:19 1443:24</p> <p>option 1434:9 1436:4</p> <p>oral 1486:20</p> <p>order 1388:22 1408:10 1427:17 1448:23 1458:7 1487:17 1495:10,17 1513:7 1517:18 1530:6 1544:22 1551:19 1558:5 1560:4</p> <p>ordered 1482:12 1591:6</p> <p>orders 1562:4 1591:21</p> <p>ordinarily 1435:9 1543:23 1544:25</p> <p>ordinary 1400:15 1401:14 1407:18 1438:16,18 1446:11,19 1465:5,9 1466:5 1467:7 1468:22 1516:10 1517:10 1525:22 1527:8,10,21 1528:1 1543:18 1544:12,15, 16,21,22 1545:1,3,10 1546:23 1552:23 1553:2 1588:8,21</p> <p>organization 1413:16</p> <p>original 1390:3 1392:20 1393:3 1394:25 1406:8 1424:1,17, 18 1434:18 1435:9,10,13,15 1436:2 1455:18,22 1456:7 1494:25 1499:17,20,25 1501:18 1503:2 1506:11 1507:17 1511:9 1515:13 1540:25 1569:13 1581:17</p> <p>originally 1391:24 1406:16 1411:2 1445:11 1485:25 1499:16 1506:7 1587:14</p> <p>ostensibly 1387:5</p> <p>out-and-out 1484:20</p> <p>outcome 1478:11 1482:1,2 1494:14</p>	<p>outcome- determinative 1517:25</p> <p>outline 1472:4</p> <p>outright 1583:19 1585:8</p> <p>outset 1402:6,7 1560:22</p> <p>outstanding 1482:7 1581:21</p> <p>over-distributed 1465:4</p> <p>over-distributions 1438:5 1446:23</p> <p>overdistribute 1516:17</p> <p>overdistributed 1516:24</p> <p>overdistribution 1551:2,17</p> <p>overdistributions 1516:23 1543:11 1575:9</p> <p>overemphasize 1466:9</p> <p>overstated 1570:2</p> <p>owe 1568:9</p> <p>owed 1422:11 1448:16 1465:3 1495:4</p> <p>owned 1402:12,15,22 1404:14 1408:25 1409:2,7,14,17 1411:2 1417:13 1420:21 1451:23 1455:6,9 1474:21, 22 1493:6 1494:4,17,18,19, 23 1495:15</p> <p>owner 1447:8 1452:1,5 1467:3</p> <p>owners 1420:20 1473:17</p> <p>ownership 1445:20 1489:3</p> <p>owning 1478:18</p> <p>owns</p>	<p>1415:19 1504:13 1585:18</p> <hr/> <p>P</p> <hr/> <p>P.3d 1561:8</p> <p>p.m. 1562:15,16 1571:11 1592:19</p> <p>package 1524:21</p> <p>pages 1385:22 1386:4,6 1403:17 1426:17 1480:11 1484:8,21 1485:5 1518:16,17 1536:16 1538:21 1547:21 1550:15</p> <p>paid 1421:11 1424:17,20 1449:15 1451:4,25 1453:23 1454:1 1459:13 1460:7,10 1462:6 1463:13 1464:14 1468:25 1469:15 1499:21 1505:15 1548:17 1571:18,22 1579:17,25 1584:6 1590:3</p> <p>Panel 1560:15</p> <p>paper 1524:22</p> <p>paragraph 1399:24 1400:9,23 1401:11 1411:6 1438:22 1441:7 1442:12 1475:6 1522:15 1525:15,18,22 1532:4 1533:1,11,18,21 1534:18 1582:13</p> <p>paragraphs 1400:3</p> <p>paraphrase 1510:3</p> <p>parcel 1417:13,14 1502:12 1506:15 1542:9</p> <p>parceling 1387:25</p> <p>parcels 1402:15 1418:15 1419:12 1420:20 1424:1 1468:20 1485:21 1488:1 1496:25 1498:13,18 1499:13,18 1502:20 1506:8,9 1510:16</p> <p>pardon 1488:8 1531:22</p>
--	--	--	--

## Closing Arguments

## Shawn Bidsal v. CLA Properties, LLC, et al.

parenthetical 1395:7	party's 1402:25	1404:18,20 1407:8 1415:22 1573:18	phrase 1441:13,14,19 1442:1 1533:5,8
parking 1417:14 1420:18,23 1424:2 1470:5,7 1506:6,16,19,25 1508:5,6 1509:3 1510:1,9, 13,19,22,23 1511:1,11 1585:5,6,7,10,16,20	passage 1545:13	perfectly 1404:10	phrases 1443:17
parol 1408:10 1410:23	path 1490:7	perform 1448:1,4,5 1449:14,23 1450:3,12 1454:6 1459:4,17 1476:15 1570:3 1571:17 1572:3,5	pick 1442:18 1444:20 1460:13 1464:3 1469:19 1471:10,11, 14 1564:6
part 1396:1 1417:16 1433:4,11, 13 1443:4 1446:11 1455:3 1456:22 1458:11 1462:8,9 1464:4 1471:11 1475:22 1489:23 1490:9 1492:14 1505:25 1506:15 1507:9 1508:7,8 1509:3,25 1510:10, 24 1513:1 1517:14 1535:23 1543:18 1544:18 1545:9 1553:19 1566:9 1568:1 1571:23 1585:9,17	pattern 1579:7	performance 1450:2,5,6,7 1459:23 1462:10 1560:25 1568:21 1570:1	picked 1402:2 1580:1
partial 1487:17	pause 1497:16	performances 1476:18	Picking 1510:7
partially 1385:8	pay 1420:24 1433:7 1435:4 1436:22 1447:10 1448:2,16 1449:9,21 1460:4 1462:13 1463:23 1466:12,16 1481:15 1503:23 1546:6,17 1547:18 1550:5,6 1564:9 1565:4 1567:18 1571:21,22 1572:9 1575:14 1578:25 1579:1,3,6, 9 1584:4 1591:7	performed 1447:9,10 1448:18 1454:4,8 1479:17 1584:8	piece 1585:7
participate 1394:16,20 1413:11 1483:16 1581:1	paying 1391:20 1393:9 1423:6 1430:8 1460:24 1471:25 1501:24	performing 1450:5 1460:18	piecemeal 1406:20
parties 1388:6 1394:2 1396:9,23 1400:12 1402:5 1403:8 1409:23 1413:23 1419:22 1420:22 1445:17,20 1466:13,20 1470:12 1483:20 1491:12 1492:10 1497:23 1498:3 1503:25 1513:21 1514:2 1524:11,20 1525:3 1526:22 1541:1,21 1546:25 1553:17 1574:18 1575:17 1583:20,25 1586:1	payment 1418:3,7 1436:8,20 1447:13 1448:10,14,24 1449:1,5,10, 13,19 1458:19 1460:22 1465:17,20 1466:18 1467:11 1496:8 1507:4 1561:20	period 1389:16 1394:24 1459:8 1479:12 1548:19,23,24 1549:1,5 1572:19	pieces 1422:9
parties' 1486:22	payments 1457:15,18 1484:3 1494:8	periods 1548:17	pinnacle 1548:13
partners 1532:8,10 1546:7	people 1508:3 1512:17 1527:13,14	peripheral 1579:11	place 1387:16 1388:19 1415:24 1416:19 1425:15 1433:3 1473:8 1484:2 1487:22 1502:11,13 1522:4 1578:3
partnerships 1439:7	percent 1393:5 1397:20 1400:7 1406:8 1413:12,25 1414:2 1426:23,25 1429:16 1437:20,21 1445:19 1446:3, 6 1453:10 1473:19 1478:24 1485:25 1486:1,2 1487:5 1515:18 1523:1 1539:17 1540:2,17 1541:7 1542:2 1547:16 1549:5 1556:10 1581:18 1582:16,17 1588:16	Perla 1448:19 1477:2,3 1561:7	plan 1394:21 1401:22 1403:12, 13,20 1406:18 1407:14,21, 23 1418:20,24 1419:17 1524:18,24
parts 1471:2 1492:17 1509:2	percentage 1398:11 1437:19 1438:20 1489:2 1519:4 1528:6,11 1574:3,7 1587:15	permit 1418:18 1469:8	planned 1404:2
party 1393:3 1472:20 1531:6 1561:10,17,20,24 1563:7,13 1565:1 1568:23 1592:6	percentages 1437:24 1438:5 1446:18,22	permitted 1491:10	planning 1402:5 1436:22 1513:11,16
	perfect	person 1465:22 1480:4 1519:21	play 1450:1,6
		personal 1428:7	plenty 1505:3
		persons 1562:18	plural 1488:24 1522:17,19,20,23 1523:3 1588:13
		perspective 1415:19 1463:8 1468:6,7	pocket 1578:25
		persuasive 1560:13	point 1386:4,19 1390:18 1392:18 1394:25 1399:13 1402:16,18 1403:3,19 1407:9,10 1412:1 1437:7 1449:2,6 1458:22 1460:8 1462:12 1468:3
		pertinent 1487:10	
		Phillips 1534:12	

## Closing Arguments

## Shawn Bidsal v. CLA Properties, LLC, et al.

<p>1473:5,10 1475:1,2 1476:3 1480:2 1481:8 1484:23 1487:1,23 1489:11 1490:1, 19 1492:15,21 1498:10 1501:7 1505:9 1507:5 1513:25 1527:6 1533:19 1534:21 1537:1,8 1538:2 1540:9 1542:21 1549:10 1556:13 1559:17 1560:5 1561:5 1564:15 1566:24 1567:4,8,9 1572:19 1573:24 1578:17 1584:3 1585:5</p> <p>point- 1490:6</p> <p>pointed 1401:17 1419:15 1443:19 1444:1 1446:7 1448:6 1468:15 1487:24 1499:5 1523:12 1540:4 1552:1 1566:23 1582:7</p> <p>points 1402:21 1477:7 1485:8 1498:2 1509:22 1521:7,8 1589:22</p> <p>poorly 1397:23</p> <p>portion 1400:19 1401:1 1441:11 1442:8 1448:3 1454:17 1506:19,24 1508:6 1511:1 1521:19 1526:8 1531:21 1533:15 1536:24,25 1539:17 1540:2 1548:16,22 1549:1 1578:12 1579:25 1585:20</p> <p>position 1385:9,16 1386:2 1401:3,22 1404:1,8 1405:15 1406:24 1418:11 1446:13 1447:4 1458:14 1464:19 1470:22,23 1471:14 1473:11 1474:21 1476:22 1480:12 1488:18 1490:15,22 1494:2 1495:4,8, 19 1497:6 1502:19 1531:3 1578:16 1585:3,22</p> <p>positions 1478:12 1482:2 1494:3</p> <p>possibilities 1494:18</p> <p>possibly 1437:22 1472:22</p> <p>post 1551:21 1556:22 1562:24 1567:18</p>	<p>post-2000 1551:22</p> <p>post-sale 1551:21</p> <p>post-september 1557:14</p> <p>postjudgment 1556:5,11</p> <p>potentially 1490:17</p> <p>practical 1463:8 1577:12</p> <p>practices 1439:6</p> <p>pre- 1556:1</p> <p>precept 1397:13</p> <p>predicate 1539:9</p> <p>preferred 1397:5,7,8 1398:12 1399:16 1423:3 1440:17 1528:11,23, 24 1532:20 1572:13,23 1573:2 1574:8</p> <p>prejudgment 1556:2</p> <p>prejudice 1386:8</p> <p>prepare 1433:7 1487:12</p> <p>prepared 1420:9,14 1437:1 1472:2 1479:1 1491:5 1497:17 1498:23</p> <p>preparing 1479:11 1553:7</p> <p>present 1384:6 1385:3 1448:25 1451:20 1454:14 1562:18</p> <p>presentation 1395:2 1400:22 1472:2,17 1481:5 1482:22 1513:2</p> <p>presented 1497:4 1562:23</p> <p>presents 1392:16</p> <p>pressure</p>	<p>1479:17</p> <p>presupposing 1542:6</p> <p>pretty 1389:22 1425:23 1443:5 1552:7 1553:12 1569:7 1592:6</p> <p>prevailing 1565:1 1592:5</p> <p>prevent 1449:17 1557:5 1571:25</p> <p>prevented 1450:4,14</p> <p>previously 1388:9 1389:4 1549:13</p> <p>price 1408:20 1409:17 1417:4 1424:20 1435:2 1436:10 1445:25 1447:11,18 1448:2, 7 1449:15,17 1450:8,25 1454:9,19 1460:3 1461:2,6 1462:3,5,7,14 1463:18 1466:11 1469:1,3,12,16 1470:2,4 1476:5 1495:18,21 1498:9 1504:18 1512:1 1516:19 1556:20 1559:1 1560:3 1563:20 1564:6,23 1566:1 1567:22 1571:18,19 1572:6,7,8 1579:4 1581:10 1590:18,19</p> <p>prices 1505:4</p> <p>primarily 1392:9</p> <p>primary 1469:4</p> <p>principal 1465:13 1489:12 1490:23 1491:3 1552:12</p> <p>principle 1549:18,24</p> <p>principles 1550:4 1552:20</p> <p>prior 1412:3 1422:6 1432:17 1494:6 1521:6 1549:2</p> <p>priority 1474:5</p> <p>privilege 1518:4</p>	<p>problem 1384:14 1478:1 1498:17 1503:5 1511:4</p> <p>problems 1424:4,25 1429:18 1466:8, 22 1472:13 1480:10 1505:23</p> <p>procedure 1409:1</p> <p>proceed 1478:16 1480:21 1484:5,6 1563:5</p> <p>proceeding 1451:22 1458:24 1461:20 1487:10 1490:8 1558:23 1559:3,9</p> <p>proceedings 1395:7 1592:19</p> <p>proceeds 1422:16,24 1423:5 1425:16 1429:11 1445:3,5,13 1478:17 1506:13 1513:4,5 1519:9 1521:19 1537:4</p> <p>process 1461:9,11 1479:11,19 1487:17 1496:23 1590:2</p> <p>proclaims 1561:21</p> <p>produce 1421:10</p> <p>production 1448:24</p> <p>profit 1401:25 1432:1 1504:16,19, 24 1515:19 1520:4,5,6,11, 12,17 1521:20,25 1541:9 1545:24,25 1546:4</p> <p>profits 1400:5,10,13 1401:4 1404:3 1408:1 1429:25 1437:4 1444:9 1486:1 1517:4,6 1525:16,19,24 1526:5 1532:3 1540:17 1546:23 1582:15 1588:9</p> <p>prohibit 1447:23</p> <p>project 1412:2</p> <p>projects 1411:25 1480:10</p> <p>promise 1448:10</p>
--	---	---	---

## Closing Arguments

## Shawn Bidsal v. CLA Properties, LLC, et al.

pronounce 1556:25	proportion 1398:10 1528:10 1574:3	14,16 1461:2,6,25 1462:2,5, 7,13 1463:18,22 1464:5 1466:11 1469:1,3,6,12,16 1470:2 1475:11,23 1476:5, 25 1483:17 1493:5,6,11,13, 14,18,20 1495:14,18,21 1496:7 1498:9 1499:10,11, 25 1501:17 1502:12 1503:8, 15,19,20 1504:17 1506:12 1516:19 1520:15 1556:20 1560:3 1563:20 1564:6,23 1567:22 1571:18,19 1572:6, 7,8 1579:4,23 1581:10 1589:14	<hr/> Q <hr/>
pronounced 1589:4	proposed 1410:4 1414:14		qualifications 1533:3
proof 1412:17,25 1505:2	proposition 1473:12		qualified 1412:15 1503:12
prop- 1498:13	prorated 1408:15 1453:17 1462:20 1470:6 1519:18		qualify 1412:20
proper 1497:6 1514:6 1530:8 1533:14 1541:2 1556:8 1589:15	proration 1453:8		quarrel 1495:3
properly 1513:6 1540:21	prorations 1549:16		question 1387:4 1396:21 1430:8 1447:15 1457:22 1458:2 1496:5,14,22 1500:14,18 1514:13,21,23,25 1519:12 1529:25 1530:2 1531:15,22, 24 1532:11,18 1535:13 1537:1,11,13,22,23,25 1539:9 1544:10 1558:14 1583:10
properties 1385:1 1387:17,25 1394:19 1403:14 1410:15 1418:21 1422:2,6 1423:11 1433:1 1457:17 1468:2 1483:22 1486:17 1487:7 1494:24,25 1500:1 1505:5,7 1506:11 1511:3,10 1515:15 1523:9 1524:25 1525:6 1535:10 1541:13 1542:1,9 1553:18 1554:11 1582:18,21	prospect 1449:1,5 1535:3	purchased 1409:25 1410:10,14 1422:23 1457:3 1478:19 1479:3 1486:17,18 1494:25	question-answer 1496:3
property 1392:19,21 1394:23 1395:1, 10,16 1396:1 1397:13,17 1401:24 1402:6,7,16 1403:12 1404:2,21 1406:9, 12,20 1407:4,6,7,10 1408:14,25 1409:2,14,17,19, 20,25 1410:9,10,13 1411:2, 21 1413:1 1416:13 1417:4, 13 1418:23 1419:14 1420:3, 6,7 1422:9,23 1423:7 1424:18 1433:12 1445:9 1450:8 1451:24 1455:6,9,12 1456:9 1457:1,2,3 1467:17 1468:1,18,19 1469:7,9,17 1472:16 1474:16,18,19,21, 22,23 1479:3 1484:10 1485:10,12 1486:19 1487:15,20,25 1493:6,12,16, 17,20,23 1494:4,8,17 1495:21,24 1496:7,11,16 1497:8 1498:11,24 1502:4,5, 6,7,8 1503:3,18 1504:5,7,13 1508:24 1520:16 1523:7 1524:1,19 1525:8 1527:16 1535:14 1540:11 1542:7 1543:23 1544:6,17 1552:22 1567:25 1574:18 1577:22,25 1579:24 1581:3,4,9,10 1582:11 1586:10	protect 1393:9 1578:19	purchaser 1450:7	questioned 1437:18 1535:8
	protocol 1591:12 1592:11	purchasers 1585:13,15	questions 1389:8 1391:21 1396:12 1414:16 1426:15 1526:17 1540:5 1552:8 1562:8 1586:18
	prove 1497:9	purchases 1493:14 1497:8	quick 1584:10
	proven 1482:14	purchasing 1408:14 1410:9 1456:25 1495:23 1496:15	quicker 1410:19
	provide 1412:22 1495:9 1534:1 1548:7	purpose 1482:18 1483:8 1527:23	quickly 1541:23 1573:15 1583:7
	provided 1395:5 1405:20 1413:2 1425:17 1429:12 1436:8 1514:5 1524:21,22 1530:3,4 1549:13 1550:13 1560:7	purposes 1386:10 1387:20 1401:20 1418:15 1473:25 1499:19,20 1502:1 1503:4,6 1528:15,20 1529:9 1531:19 1535:10 1546:9 1565:1	quote 1395:18 1409:11 1411:15,20 1427:25 1432:2 1435:7 1442:6 1456:25 1481:25 1486:6 1488:15,16,22 1489:8 1491:5,22 1492:7 1493:4 1494:10 1496:1,3 1500:8,18 1501:9 1508:22 1514:9,11,12 1517:24 1519:6,11,12,19 1522:6 1523:18 1527:18 1529:20 1534:14 1544:11 1548:16 1552:25
	providing 1412:16 1445:19	pursuant 1550:24	quoting 1489:23 1499:19
	provision 1389:16 1397:18 1408:24 1473:18 1475:5 1486:4 1489:10 1527:19 1558:15, 17,22 1572:13 1591:15	put 1389:19 1396:16 1397:14 1402:20 1413:11,23,24 1414:1 1422:22 1427:14 1428:5 1431:8 1441:13 1447:25 1458:25 1461:3 1478:23 1479:9,13 1483:23 1487:3,5 1495:25 1509:5 1514:10 1527:15 1529:22,23 1531:12 1538:8,9 1539:1 1550:20 1564:22 1576:25	
	provisions 1392:10 1403:5 1440:5 1480:14 1486:24 1534:12	puts 1426:9	
	purchase 1395:22 1408:11 1409:10, 13,17,19,24 1410:1,3 1413:1,5,22,24 1414:4 1417:4 1433:21 1434:8,9,10, 16,18 1435:2 1436:10,16,20 1446:2 1447:6,10,18 1448:2, 7 1449:15,17,24 1450:8,23, 25 1454:9,18 1455:4,6,8 1456:5,7 1457:1,2 1460:3,	putting 1433:3 1473:1,2 1544:1	



## Closing Arguments

## Shawn Bidsal v. CLA Properties, LLC, et al.

<b>R</b>	<b>realizing</b> 1581:12	1571:10	1421:22 1473:22
<b>raise</b> 1475:14 1490:24	<b>reason</b> 1384:10 1399:24 1402:2 1418:16,18 1422:10 1430:24 1437:17 1442:10 1446:22 1450:4 1454:4 1459:14,17 1460:9 1482:17 1484:6 1486:5,7 1491:19 1499:14 1508:13 1521:23 1526:23 1563:4	<b>recipient</b> 1479:22	<b>reduce</b> 1457:9 1542:3 1564:12 1575:13 1579:5,9
<b>raised</b> 1475:15 1481:18,21 1490:25 1561:2 1564:1	<b>reasonable</b> 1393:19 1410:22 1445:25 1446:4 1455:13 1456:11,19 1457:9 1462:23 1464:1,9,10, 16 1466:13,20 1468:11 1470:11 1471:13 1483:6,12, 13 1497:23 1515:10 1553:23 1572:22 1576:20 1578:7 1583:15 1584:4,17 1585:21 1590:17,18	<b>recital</b> 1491:4	<b>reduced</b> 1486:2 1502:17,20 1508:12 1529:12,16 1544:24 1549:19 1551:7
<b>ran</b> 1421:12	<b>reasons</b> 1462:8 1472:22 1498:15 1525:10	<b>recitals</b> 1491:11	<b>reduces</b> 1545:2
<b>range</b> 1548:6	<b>rebound</b> 1581:7	<b>recognize</b> 1474:9,15	<b>reducing</b> 1495:16
<b>rate</b> 1451:5,12 1554:10 1556:2,4, 6,7,9,12 1568:10	<b>rebuttal</b> 1562:11 1586:25	<b>recognized</b> 1544:7,17	<b>reduction</b> 1438:16 1497:19,20 1508:19 1511:12 1527:15 1544:14
<b>rates</b> 1555:25	<b>recall</b> 1389:14,15 1390:9 1514:8 1531:16 1535:22 1591:11	<b>recognizes</b> 1449:9	<b>reductions</b> 1497:25
<b>RCS</b> 1560:15,16	<b>recapture</b> 1544:18 1546:8 1547:3,19	<b>recollection</b> 1536:1,4	<b>reestablished</b> 1571:2
<b>reach</b> 1485:18 1498:13 1578:24	<b>recaptured</b> 1546:3,16	<b>reconnect</b> 1582:24	<b>refer</b> 1409:3,24 1413:18 1432:16 1441:18 1500:3,4 1534:12 1538:21
<b>reached</b> 1407:8 1485:3 1518:9 1519:3 1559:11	<b>receive</b> 1404:4 1411:9 1434:2 1485:25 1545:16	<b>reconsider</b> 1388:19	<b>reference</b> 1395:6,13,15,16 1409:21 1423:12 1432:10 1447:21 1489:20 1490:4 1525:4 1588:4
<b>read</b> 1386:19 1391:16 1392:1 1404:19 1415:17 1419:24 1438:21 1496:2 1498:14 1512:11 1522:21 1526:6 1529:23 1531:20 1532:13 1536:17,23,24,25 1538:10, 12,16,17,20,23,24,25 1543:6 1544:9,20 1572:3 1577:1,11	<b>received</b> 1401:5 1404:25 1405:4,7 1411:16,18,20 1417:21 1418:5 1421:1,20 1425:2,7, 25 1426:6,18,22 1427:2,8,9, 18,23 1429:13,15 1430:2,17 1431:3 1433:16 1452:4,12, 18,21,23 1454:14,20 1457:6, 10,18 1458:11 1462:25 1465:14 1466:23 1467:4,11 1495:10 1505:6,8 1581:15	<b>record</b> 1384:2,3 1385:8,25 1386:6, 11 1388:21 1412:18 1417:10 1418:13,14 1423:12 1489:21,23 1521:4 1524:6 1538:22,23 1539:20 1546:10 1555:15 1561:13 1562:18 1584:20,24 1590:25 1591:3	<b>referenced</b> 1439:22 1448:20
<b>reading</b> 1469:10 1480:24 1590:8	<b>receiving</b> 1425:2 1426:2,3,8 1445:15	<b>recordation</b> 1417:12,21 1543:20 1544:5	<b>references</b> 1395:3 1419:16 1490:7 1588:13
<b>Ready</b> 1562:17	<b>recess</b> 1444:16 1521:1 1562:6,15	<b>recorded</b> 1417:8,11 1420:16 1465:15 1523:12	<b>referred</b> 1441:14 1443:11 1491:11 1498:20 1560:12,14 1561:7 1576:16
<b>real</b> 1394:16 1395:23 1402:15 1411:25 1412:5,7,15 1413:3, 21 1417:13 1450:7 1458:22 1468:1 1474:18 1487:7 1492:8 1502:10,15 1504:12 1527:16 1543:22 1544:6 1570:2 1579:23		<b>records</b> 1420:9 1428:16,21 1508:12 1530:4 1579:13 1585:1	<b>refers</b> 1398:6 1400:13 1401:5 1408:18 1493:11 1522:1
<b>realistically</b> 1523:13		<b>recoup</b> 1537:7,11	<b>refinance</b> 1525:14
<b>realize</b> 1403:22		<b>recover</b> 1421:13,23,24 1458:13	<b>refinanced</b> 1522:15
<b>realized</b> 1392:2		<b>recovering</b> 1540:7	<b>refinancing</b> 1399:9,17,22 1404:6 1440:20 1517:23 1522:20 1526:15
		<b>rectified</b> 1501:16	<b>reflect</b> 1417:4
		<b>recurring</b> 1535:10,23 1536:10	
		<b>red</b>	

## Closing Arguments

## Shawn Bidsal v. CLA Properties, LLC, et al.

reflected 1425:3 1426:12 1429:6 1430:17 1488:1 1583:17,18	relevance 1507:15	rents 1394:4 1395:1 1401:5,6,15 1403:13 1407:4,21 1411:5,6, 7,10,11,13,15,20 1416:18,25 1417:20 1418:1,5,8 1420:12 1421:2 1425:7 1464:25 1465:4,5,14,21 1467:4,11 1468:2 1486:1 1568:22 1581:25 1588:16 1589:18,20	requiring 1447:13
reflecting 1469:16	relevant 1387:8 1388:8 1486:21 1499:8	reoccurrent- 1535:20	reserve 1544:3
reflection 1476:21	reliance 1453:24 1507:25	repayment 1402:25	residential 1533:7,9
reflects 1416:24 1421:2 1425:7 1427:19 1465:21	relied 1437:3	repeat 1449:5 1507:14 1512:17 1549:15 1551:13	residual 1525:20 1526:3,10
refusal 1484:2,3 1505:14 1588:1,2	relies 1507:7	repeated 1519:2 1536:7	resisted 1568:2
refused 1433:12 1449:14,15 1459:4 1480:19 1561:23 1563:5 1572:3,5 1590:3	relieve 1461:12	repeatedly 1396:13 1416:13 1424:14 1428:25 1441:2 1472:6 1489:20 1507:24 1531:4 1536:5	resolution 1461:9,11
refuses 1563:9	relitigate 1475:9 1480:1	replied 1488:23	resolved 1564:3
refusing 1478:16	rely 1502:25 1508:4	report 1541:6 1579:15	resort 1492:7
regurgitate 1512:21	relying 1507:9	reported 1418:13 1534:22 1548:11	respect 1386:25 1387:9 1479:2 1485:16 1498:16 1552:21 1556:10 1589:17
reimbursed 1433:10	remainder 1423:17	reporter 1391:3,6 1424:10 1480:24 1524:5 1539:19 1551:13 1555:14 1561:12 1587:4,7 1590:22 1591:6	respond 1385:11 1434:6 1533:23
reinterpretation 1584:5	remaining 1408:22 1423:19 1434:5 1469:17 1480:5 1514:15,17, 20,21 1515:2,4,20 1581:20	reports 1439:14,16	Respondent 1384:25
rejected 1434:19 1436:2	remedy 1557:4	representing 1491:13	Respondent's 1385:9
rejecting 1434:9	remember 1390:3 1392:3 1393:24 1397:6 1398:1 1419:7 1422:19 1426:13 1430:3 1434:3 1437:17 1439:22 1440:4 1461:24 1507:24 1528:5 1535:18 1541:17 1553:25 1558:3 1567:22 1573:5 1580:25 1591:14	request 1478:23	responds 1387:4
rejection 1434:21 1435:13,15	remembered 1486:14	require 1393:12 1482:16 1561:11,18	response 1387:6 1403:10 1414:15 1432:7 1436:3
rejects 1435:10	remembers 1398:23 1425:23	required 1420:23 1452:3 1459:12 1477:4 1480:22 1482:16	responses 1436:15
rejoin 1570:22	remind 1516:7	requires 1458:18 1476:22 1522:25 1557:5	responsibility 1547:4
related 1429:20 1432:25 1447:7	rent 1432:1 1465:19 1475:20 1485:13 1519:8,9,16 1542:1 1548:16,22 1549:3 1568:22 1580:8 1581:5		rest 1464:6 1521:17 1538:6,7,8, 17 1539:2 1586:8
relates 1586:23 1587:1	rental 1407:7 1427:19 1430:18 1438:18 1542:7 1544:15		restore 1543:23
relating 1547:11 1560:24			restrict 1512:10,15 1569:22
relationship 1432:23 1486:23 1503:7			restricted 1522:24
released 1416:11			result 1402:24 1440:6 1446:18 1469:24 1517:12 1534:9 1540:7 1572:21
releases 1417:9			

## Closing Arguments

## Shawn Bidsal v. CLA Properties, LLC, et al.

<p><b>resulted</b> 1407:18 1418:14 1445:14</p> <p><b>resulting</b> 1400:15 1446:20 1517:10 1525:21</p> <p><b>results</b> 1465:12 1543:22</p> <p><b>retaining</b> 1502:7</p> <p><b>return</b> 1394:5 1404:4 1407:5,11,23 1418:2 1421:1,21 1425:1,6 1426:12 1427:18 1430:16,24 1431:12,17,18,19 1433:15 1445:5,10 1452:3 1453:20, 22 1457:7 1468:13 1474:5, 11 1475:24 1476:7 1508:16, 25 1510:25 1513:1 1514:17 1515:25 1516:3 1548:24 1550:24 1551:5,20 1553:4, 14 1573:6 1575:24 1577:14 1581:12,19</p> <p><b>returned</b> 1397:19 1399:21 1442:15 1497:8 1513:1,9 1514:7,14 1515:7,24 1516:5 1526:21 1553:14 1557:16</p> <p><b>returning</b> 1510:18 1578:12</p> <p><b>returns</b> 1404:25 1405:1,11,12,20 1424:6 1425:11 1427:23 1428:5,8,9 1429:6 1431:2,13 1433:8,17 1437:2 1438:14 1439:18 1444:24 1473:22 1474:4 1476:6 1485:14 1492:13 1495:17 1508:1,4,7, 19 1516:14 1528:25 1529:4, 6 1530:7 1531:9 1534:25 1551:16 1574:12,13,15 1575:20 1577:19 1583:18 1584:19 1585:1</p> <p><b>reveal</b> 1482:9</p> <p><b>Revenue</b> 1401:20 1439:20</p> <p><b>reversed</b> 1489:15 1490:21</p> <p><b>reverses</b> 1559:10</p> <p><b>review</b> 1428:15 1509:13</p>	<p><b>reviewed</b> 1405:17,18 1428:9 1431:2</p> <p><b>reviewing</b> 1431:15 1572:25 1575:20</p> <p><b>revise</b> 1491:21</p> <p><b>revisionist</b> 1575:3 1576:5</p> <p><b>revisions</b> 1488:22 1491:20</p> <p><b>revolve</b> 1492:9</p> <p><b>reward</b> 1445:21</p> <p><b>ridiculous</b> 1466:21 1569:13 1571:15 1572:10 1580:11</p> <p><b>rights</b> 1413:22 1420:19,22 1448:5 1449:24 1460:18 1461:24 1462:10,14 1524:4,10 1569:18,23 1570:3 1585:10, 17</p> <p><b>risk</b> 1396:10,21,23,24 1445:17, 21,22,23 1472:25 1473:1,18 1479:9,14 1484:1,7 1581:23</p> <p><b>Rod</b> 1389:25 1570:10</p> <p><b>Rodney</b> 1385:2 1477:12</p> <p><b>rollover</b> 1469:5</p> <p><b>room</b> 1384:12 1570:21</p> <p><b>rough</b> 1590:23</p> <p><b>roughly</b> 1551:8</p> <p><b>rule</b> 1397:9 1412:21 1440:15,18 1448:10 1449:9 1492:7 1533:2 1534:15</p> <p><b>ruled</b> 1489:12</p> <p><b>rules</b> 1420:16 1558:10 1559:18 1579:24</p>	<p><b>ruling</b> 1388:10 1458:6 1518:5</p> <p><b>run</b> 1410:18,19 1451:15</p> <p><b>run-through</b> 1470:9</p> <p><b>running</b> 1451:16</p> <hr/> <p style="text-align: center;"><b>S</b></p> <hr/> <p><b>sale</b> 1392:24 1393:10 1397:17 1399:9,17,21 1400:18,25 1402:23 1404:5 1405:2,5,19 1406:3,16 1407:17 1408:6 1415:21 1417:8,11 1422:4, 15,18,21,24 1423:17 1425:8, 15,19,20 1426:1,2,4 1427:6, 24 1429:3,9,24 1431:6 1432:22 1438:23 1440:20 1441:11 1442:5,7,15 1445:3, 13 1446:3 1450:18,23 1453:1 1454:2,10 1457:19 1465:15 1467:17 1468:14 1469:9 1472:16 1476:12 1502:4,6,11,18 1503:1,19,21 1505:5 1506:13,21 1507:22 1508:24 1510:17 1517:4,21 1521:20 1522:6 1523:18,21 1524:1 1525:5,7,13 1526:8, 14 1527:20 1530:16,18 1533:14 1534:8 1535:9 1538:1 1540:5,15 1546:4,17 1553:13 1556:22 1567:21 1568:18,19 1573:5,8 1574:18 1576:2,3 1586:6,10</p> <p><b>sales</b> 1393:6 1394:10 1401:8 1405:9 1406:13 1410:14 1422:16 1423:3,6 1437:5 1438:11 1444:23,25 1457:10 1468:10,21 1487:18 1492:12 1494:7,8 1497:7 1501:17 1508:10,13,15 1509:4 1510:11 1515:20 1521:14 1522:19 1534:21 1536:3,10 1537:4 1543:7 1552:22 1572:15,18 1574:14,19 1577:17 1578:8 1588:22</p> <p><b>sand</b> 1414:22 1415:15</p> <p><b>satisfied</b> 1448:12</p>	<p><b>scenario</b> 1538:2 1577:17</p> <p><b>scenarios</b> 1578:2</p> <p><b>schedule</b> 1398:13 1399:16 1451:1,7, 10,13 1452:9,16,20 1455:14, 15,16,17 1457:13 1464:23 1499:6 1506:23 1507:7 1515:16 1516:19 1528:12,24 1530:9 1539:25 1548:25 1550:14 1552:6 1573:2 1574:25 1575:9 1581:14 1592:7</p> <p><b>schedules</b> 1405:5 1451:3 1500:6 1507:20 1514:4 1547:10</p> <p><b>scheduling</b> 1550:14</p> <p><b>screen</b> 1392:7 1437:8 1470:16 1500:25 1573:15</p> <p><b>screens</b> 1477:10</p> <p><b>screwy</b> 1397:22</p> <p><b>search</b> 1569:14 1579:5</p> <p><b>seconds</b> 1538:24</p> <p><b>Secretary</b> 1413:17</p> <p><b>section</b> 1392:12 1397:21 1398:1,7 1408:18,19 1409:10 1416:9, 17,21 1434:3 1435:17,19,24 1436:4 1439:21,24 1447:12 1457:16 1466:1 1475:1 1479:20 1480:3 1482:15 1489:7 1491:23 1503:14 1507:9 1522:25 1533:20 1573:14</p> <p><b>sections</b> 1438:14 1440:1 1507:8</p> <p><b>secured</b> 1394:21 1395:20 1407:2 1411:4</p> <p><b>security</b> 1416:22 1417:2 1549:17 1550:2,6,7,9</p> <p><b>Seemingly</b></p>
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## Closing Arguments

## Shawn Bidsal v. CLA Properties, LLC, et al.

1554:6 <b>segregated</b> 1423:25 <b>segregation</b> 1388:1 1423:24 1424:4,14 1456:9 1498:7,16,23 1499:1, 7,18 1500:11 1501:12 1507:11,18 1539:25 1541:6, 7 1580:2 <b>seize</b> 1420:11 1421:10 <b>self-explanatory</b> 1552:7 <b>sell</b> 1394:25 1395:10 1401:24 1402:5,7,17,23 1403:14,15 1404:23 1406:19,20 1407:7, 14,21,24 1418:20,23 1419:14,18 1422:2,5,9 1468:3,20 1480:15,19 1481:10 1482:23 1485:21 1487:20 1505:14,24 1523:1 1524:21,25 1535:4,5,6,14 1537:3,18 1542:9,12 1544:17 1578:1 1581:3 1582:11 1590:3 <b>seller</b> 1502:3 <b>seller's</b> 1484:2,3 1504:6 <b>selling</b> 1393:3 1395:16,25 1403:22 1423:11 1480:14 1482:7 1504:3,4 1524:16 1568:5,7 1582:21 <b>send</b> 1391:9 <b>sending</b> 1488:6 <b>sends</b> 1436:11 1488:11,21 <b>sense</b> 1402:9 1404:18,20 1406:17, 18,21 1407:8 1415:22 1442:18 1471:6 1503:22 1523:23 1531:25 1537:12 1546:20 1553:21 1559:15,16 1573:12 1576:4 <b>sentence</b> 1399:7,8,23,24 1441:24 1444:3 1522:21	<b>sentences</b> 1443:18 <b>separate</b> 1387:25 1388:22 1411:4 1419:12 1486:9 <b>separated</b> 1532:2 <b>September</b> 1385:9 1404:13,17,22 1414:9,13,23 1415:8,23 1416:4 1419:8 1420:4 1422:14,20 1425:1,5 1436:13 1450:18,23 1451:5, 11,16,20 1452:4,15 1453:6, 7,11,19,21 1458:4,8,15 1459:18 1474:22 1476:13, 19,23 1487:14,23 1551:22 1554:15 1555:1 1557:14 1563:4,21 1566:10 1568:19 <b>serve</b> 1448:23 <b>services</b> 1414:6 <b>set</b> 1385:9,17 1394:1 1395:9,24 1396:4 1398:21 1407:5 1413:17 1433:23 1434:13 1451:1 1480:16,17,18 1498:25 1501:11 1504:17, 18,21,22 1529:18 1532:19 1541:14 1552:6 1559:1 1588:15 1592:6 <b>Setoff</b> 1557:4,6 <b>sets</b> 1475:6 1531:7 <b>settle</b> 1482:16 1577:23 <b>Shapiro</b> 1384:5,10,13,15,23 1385:11, 14,16 1388:12,15 1436:11 <b>share</b> 1392:7 1393:5,10 1394:9 1397:12 1398:2,3 1404:3 1439:15 1453:4 1464:13 1469:8 1470:6,16 1471:22 1479:10 1506:11 1519:18 1527:3 1573:15,21 1574:5 1591:5 <b>shared</b> 1472:16 1583:16 <b>sharing</b>	1473:18 <b>Shawn</b> 1384:6 1385:18 1582:17 <b>sheets</b> 1589:7 <b>short</b> 1498:20 1499:14 1501:8 1513:12 <b>shortly</b> 1422:7 1523:7 <b>show</b> 1387:1,12 1405:1,12 1412:24 1417:3 1431:14 1452:6 1483:9 1488:7 1507:8 1508:7 1573:8 1584:19 <b>showed</b> 1412:9 1424:20 1425:18 1429:13 1439:18 1573:6 <b>showing</b> 1403:4 1423:16,18 1508:10 1532:17 <b>shown</b> 1395:11 1413:20 1422:6 1425:16 1452:16 1485:14 1488:6 1489:4,5 1506:2 1517:1 1543:2 1550:2,9,11 1561:24 <b>shows</b> 1394:2 1415:25 1416:1 1417:5 1431:17,18,19 1439:16 1451:7 1452:9 1455:16 1457:14 1478:15,22 1488:2,8,11 1499:6 1507:8,9 1523:3 1551:6 1575:23 1585:2 <b>shred</b> 1524:22 <b>sic</b> 1498:24 1519:19 1550:4 1554:11 1556:7 <b>side</b> 1392:5 1512:21 <b>sides</b> 1479:24 1492:19 1584:22 <b>signaled</b> 1447:2 <b>signed</b> 1386:23 1402:15 1419:22,25 1486:15 1488:4,24,25 1523:6 1524:12	<b>significance</b> 1434:21 <b>significant</b> 1483:25 <b>significantly</b> 1459:1 <b>silly</b> 1493:24 <b>similar</b> 1387:17 <b>similarly</b> 1483:23 <b>simple</b> 1392:16,22 1393:23 1394:22 1395:21 1396:7 1397:10 1438:6 1442:13 1443:1 1580:3,23 <b>simply</b> 1403:12 1413:1 1481:15 1485:19 1537:15 1572:6 1573:9 <b>simultaneous</b> 1502:9 <b>single</b> 1404:14 1418:25 1419:1 1468:10 <b>single-family</b> 1533:7,9,12 <b>singular</b> 1399:10 1415:22 1440:21 <b>sir</b> 1480:24 <b>sit</b> 1460:2 <b>situation</b> 1410:21 1427:8 1540:22 <b>six-year</b> 1421:14 <b>skip</b> 1425:5,12 <b>skipping</b> 1547:21 <b>slice</b> 1465:10 <b>slight</b> 1589:1 <b>slightest</b> 1507:15
---	--	--	--

## Closing Arguments

## Shawn Bidsal v. CLA Properties, LLC, et al.

slow 1480:25 1587:7	1477:8	stated 1436:9 1448:22 1479:23 1489:8 1492:5 1516:2 1534:3 1557:3 1561:8	strangely 1398:21
smaller 1468:20	Spence 1531:1,12 1535:17 1544:19 1545:4 1550:21	statement 1409:13,16,18 1410:1,3,6 1416:24 1417:1,3 1424:19 1436:7 1455:5,8 1465:21 1469:13,16 1478:5 1493:6, 22 1494:17,20,21 1495:20 1497:11,16 1499:4,17 1506:14 1568:25	strict 1474:20 1492:11 1497:4,24
sold 1392:19 1407:6,22 1420:21 1440:22 1445:10,11 1456:4, 10 1470:6 1494:24 1495:15 1498:12 1499:13 1501:20,24 1502:8 1503:3 1506:8,9 1508:6,8 1510:16 1511:9 1522:14 1539:15,24 1540:3 1541:5 1578:13 1585:7,19	Spencer 1385:4,5 1510:2 1514:10 1529:22 1532:22 1545:22	statements 1534:19 1550:3,10,11 1551:5 1569:11	strictly 1464:4,5 1470:13 1471:1 1502:3
sole 1413:20	spend 1489:6	states 1434:4 1436:6 1439:25 1466:2 1525:15	structured 1441:25
solely 1401:5	spent 1391:19 1441:2 1493:24 1513:2	stating 1418:10 1444:5 1491:4 1506:8	structures 1533:7,10
somebody's 1489:19	split 1392:17,21,22,24 1393:2 1394:3 1396:8 1398:18 1403:25 1407:19 1408:2,4 1446:14 1467:6,14,18 1541:25 1564:7 1578:11	statute 1421:12,14 1475:18,25 1476:1,3,8 1486:13 1549:7, 8,14 1556:4	Studley 1560:9
sooner 1529:15	spot 1442:18	statutory 1451:5,12	study 1423:24 1424:4,15 1456:9 1498:7,17,23 1499:1,2,7,18 1500:11 1501:12 1507:11,18 1580:2
sort 1388:13 1389:3,7 1470:24 1472:5 1494:7 1513:13 1542:6 1558:24 1591:13,14	spreadsheet 1517:1	stay 1384:16 1447:21,23 1581:6 1588:2	stuff 1481:1,3,5 1484:25 1554:1 1579:11
sought 1450:7 1547:4	square 1528:3	stays 1410:8	sub- 1495:14
sounds 1568:15	stack 1522:5	stenographer 1491:25	subdivide 1403:14,21 1407:13,24 1419:18 1468:20 1485:21 1487:17 1524:19
speak 1384:17,19 1508:3	staff 1530:5	step 1393:12 1538:3	subdivided 1404:22 1500:2 1523:7
speaker 1477:18	standpoint 1530:13,25 1531:8 1577:12	step-down 1399:11	subdividing 1524:15
special 1397:4 1403:2 1406:2 1408:5 1439:23 1440:19 1444:23,25 1445:1 1468:7 1537:9	stark 1470:22	stipulated 1390:19	subdivision 1418:14 1488:2
specific 1387:20,23 1416:23 1431:23 1434:17 1442:3 1450:2,5,6,7 1459:23 1462:10 1475:4 1525:14,15 1527:24 1533:1, 21 1534:2,19 1545:24 1560:24 1568:21 1588:4	start 1410:24 1478:5 1488:9 1493:3 1502:18 1539:21 1542:3 1545:7 1551:4 1561:14 1569:9 1578:12 1589:4	stipulation 1391:10	subject 1397:4 1398:12 1476:7 1528:11 1532:20 1548:20 1556:11 1558:8
specifically 1389:14,15 1408:18 1425:24 1440:18 1454:7 1466:18 1480:3 1529:21 1534:1 1553:1 1561:7	started 1385:18,21 1392:1,4 1426:17 1428:19 1479:16 1504:5 1588:24,25	stopped 1460:23,24	submit 1482:18 1541:1 1547:11 1551:18
speech	starting 1498:10 1499:12 1501:7,9	straight 1450:11 1583:23	submitted 1391:16
	starts 1417:24 1526:16 1579:19 1585:19	strained 1432:24	subpart 1435:13
	State 1413:17	strange 1477:23	substantial 1400:19 1401:1 1440:3,5 1441:11 1442:7 1526:8 1533:15
			substantially 1406:3,17 1438:24 1517:22

## Closing Arguments

## Shawn Bidsal v. CLA Properties, LLC, et al.

1522:19 1537:20 1577:18 substitute 1440:12 1552:14 substituted 1386:9,15 1388:18 substituting 1533:5 subsumed 1475:12 1560:23 subtract 1453:14 1463:16 1464:14 1465:8 1466:5 1511:9 subtracted 1462:22 subtracting 1501:19 1556:19 subtraction 1495:14 successful 1413:4 sudden 1508:5 sufficient 1449:2,6 suggest 1472:21 1473:22 1482:1 1514:6 1569:12 1570:4,12, 15 suggested 1552:15 1553:22 suggestion 1493:21 1497:10 1581:19 Suites 1492:6 sum 1451:4 summarize 1518:19,20 1562:21 summary 1410:19 1433:17 1436:24 1494:7 superseded 1486:21 superseding 1486:13 supplemental 1482:13 1495:5,12 1516:20	supplied 1499:2 support 1430:5 supported 1446:15 supports 1404:8 1406:24 1418:25 1483:14 suppose 1591:2 supposed 1398:18 1401:8 1404:12 1407:19 1416:19 1421:5,11, 18 1427:1 1454:10,25 1529:1 1542:15 1564:16 1571:21 1580:7 supposedly 1489:25 1490:8 Supreme 1448:21 1458:5 1555:7 1558:9,18 1559:5,7,10,14, 18,19 1560:8 1563:18 surplusage 1442:11 surrebuttal 1389:3 1562:12 1586:24 survey 1418:13,14 1488:3 survive 1416:15 suspended 1461:16 switch 1479:24 sympathy 1483:9 <hr/> T <hr/>	1511:7 1513:11 1556:15 1589:4 talk 1396:14 1397:7 1400:22 1408:8 1439:3 1443:9 1446:24 1454:21,25 1466:8 1543:8 1547:20 1548:9 1553:24 1572:11 1576:7 1580:17 1581:22,23 1588:23 1589:6 talked 1393:23 1397:21 1419:20 1432:21 1473:20 1474:14 1519:4 1540:11 1541:12 1550:15 1555:10 talking 1385:18 1387:22 1391:4 1397:24 1399:15 1432:5 1453:2 1473:21 1474:14 1489:7 1509:25 1521:13 1529:20 1532:7,9 1539:11, 22 1563:23 1565:7 1569:15 1577:1,14 talks 1399:17 1400:9 1404:9 1415:21 1416:17,21 1464:6 1475:18 1573:25 1579:12 tax 1397:9 1401:12,15 1404:25 1405:1,11,20 1418:15 1421:1,21 1423:6 1424:6 1425:1,6,11 1426:12 1427:18,23 1428:4,7,9 1429:6 1430:16,24 1431:2, 12,13 1433:7,15,17 1437:1 1438:14 1439:12,18 1440:11,24 1444:24 1446:16 1467:15,21 1473:22,24,25 1474:3,4,11 1485:14 1499:19,20 1502:1,3,6,7,25 1503:6,8,13,23 1507:10,25 1508:4,7,18,19,25 1515:25 1516:3 1527:12,13 1528:15, 20,25 1529:4,6,9 1530:7 1531:8,19 1534:24 1535:11 1546:9 1550:24 1551:5 1573:6 1574:12,13,15 1575:20,23 1579:24 1583:17 1584:19 1585:1 1587:20 tax-free 1503:13 taxation 1439:6 taxes 1453:23 1501:25 1546:6,18	1547:18 technical 1511:4 technically 1435:18,25 telephone 1488:14 telling 1505:13 tells 1409:5 1432:16 1525:18,20 ten 1389:20 1562:11 1569:4 1570:25 tenants 1433:3 tender 1436:20 1447:1,3,8,24 1448:12 1449:4,7,8,10 1450:12,15 1459:25 1462:13 1475:12,17 1477:4 1560:21, 22 1561:9,16,19,22,23 1572:4 1587:25 tender's 1477:3 tendered 1450:9 1454:7 term 1408:16 1409:3,9 1410:7 1435:14 1440:22 1446:1 1469:23 1523:19 terminates 1435:10 termination 1435:15 1540:12 terms 1387:24 1411:18 1416:23 1435:9,16 1436:17 1437:14 1449:23 1453:24 1460:21 1461:15 1476:4 1501:10 1511:6 1513:20 1522:24 1532:1 1588:11 1589:8 test- 1518:7 testified 1398:14 1404:11 1423:13 1424:13 1427:23 1430:9,23 1437:2,6,17,23 1438:3,10, 12,15,21 1439:9,14,20 1440:15 1441:20 1444:22 1445:1,12,18,24 1446:9,17
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## Closing Arguments

## Shawn Bidsal v. CLA Properties, LLC, et al.

1465:8 1480:11 1483:19,22 1484:8,14 1485:5 1499:24 1501:9 1505:10 1508:3 1518:23 1519:3 1528:14,18 1544:20 1545:9	thirds 1473:1	1487:16 1493:19,22 1496:6, 10 1523:25 1585:8	transcript 1388:21 1392:2 1395:6 1403:17 1426:18 1484:22 1485:7 1489:11 1491:24 1505:11 1591:5
testify 1490:16 1491:10 1518:7	Thirty 1391:8	today 1435:22 1458:4	transfer 1411:21 1416:18,19,21,25 1465:21 1502:9 1503:11,17 1523:2
testifying 1518:14	thought 1388:13 1390:1 1421:5,19 1436:9 1443:1 1445:7 1465:6 1480:9 1490:4 1546:25 1558:15 1571:21 1572:22 1576:8,19 1580:7 1586:17	told 1392:8,14 1413:10 1420:1 1460:25 1467:24 1482:23 1491:20 1506:7 1518:10,25 1519:1,5,10,20	transferred 1417:6 1507:2
testimony 1386:5,6 1403:11 1405:16, 22 1409:21 1418:17 1419:13 1424:15,16 1428:6 1431:1,3, 5,7 1437:16 1439:4 1441:21 1444:21 1449:13 1465:5 1473:22 1484:17,19,20,21 1485:1 1495:22 1496:1,2 1497:2 1505:3,17 1513:23 1514:8 1518:1,8,13,19 1519:25 1527:17 1529:24 1536:23 1538:17 1543:2,3,4 1547:7 1552:25 1555:22 1576:16,22,24 1577:5 1578:4 1588:25 1590:15	thoughts 1447:2	top 1398:22,25 1399:2 1455:19 1457:16 1492:8 1567:16 1577:5	transferring 1571:17
theory 1458:10 1483:15 1549:20	throttle 1536:1	total 1424:20,21 1452:17 1453:18 1498:17 1551:23	transmitted 1412:24 1419:8
thereof 1516:11	tied 1472:20 1480:10	totaling 1425:19	transparent 1428:23 1574:24
thing 1389:13 1410:5 1418:12 1420:25 1422:14 1432:5 1443:9 1446:21 1448:6 1450:10 1454:24 1461:18 1477:14 1484:24 1490:10 1512:9 1532:2 1561:19 1566:2 1578:15 1580:5,16, 20 1581:16 1583:22 1585:23 1591:10	time 1384:17 1386:23 1389:16 1391:5,19,20,25 1402:10,16, 18,22 1404:15 1405:5 1408:14 1409:13,19 1410:9 1412:1 1413:19 1414:24 1418:21 1419:14 1420:21 1422:11 1423:1,5,11 1428:16,18 1432:21 1441:3 1447:16 1448:8 1450:13 1454:14 1455:6,8 1456:25 1459:5 1460:8,11,22 1462:6 1467:2,9 1471:8 1472:21 1474:22 1475:14 1479:17 1481:9,10 1487:7 1489:6 1493:6,9,11,24 1494:19 1495:4 1496:5,6 1502:3,14 1507:24 1513:3 1520:20 1523:13 1536:8,10,18 1538:3 1543:24 1553:13 1562:11 1567:16 1574:23,25 1575:1,8,18 1576:18 1582:2, 24 1587:4 1590:8	totals 1452:6	traveling 1589:9
things 1389:21 1392:3 1395:3 1397:11 1402:10,12 1405:19 1406:22 1416:4 1434:20 1436:23,25 1438:2 1441:4 1444:8 1461:21 1469:20,21 1471:10 1472:4 1483:14 1484:1,4 1520:25 1527:6,10 1531:7 1532:13,14 1556:23 1558:25 1567:6,19 1568:22 1573:22 1578:22 1583:8 1584:8,14 1589:9	timed 1586:6	touch 1472:3 1474:24 1555:3 1560:19	travesty 1568:13
thinks 1408:20 1490:1	timely 1448:25	tough 1569:7	treat 1444:24 1468:16,17 1542:7, 8
third-party 1568:1	times 1394:3 1403:16 1408:12 1424:2,16 1462:25 1473:2 1474:1 1475:23 1490:24 1555:11 1562:3 1568:21	Town 1492:6	treated 1388:1,4 1507:25
	timetable 1590:23	track 1582:23 1584:24	treating 1540:5
	title 1394:22 1395:21 1407:3 1416:13 1420:7 1485:10,19	transaction 1401:12,16,20 1417:6,17 1426:4 1429:5 1437:5 1440:12,14,23 1441:17 1442:6 1444:6 1458:14,15 1459:18 1467:20,22 1474:7 1476:23 1478:16 1484:5,6 1503:12 1520:2 1522:2,18 1525:6,8 1526:11 1527:4 1530:17,18,22 1533:17 1542:2 1552:13,15,16,18,22 1553:4 1559:1,17,24 1563:3, 25	treatment 1502:25 1503:8,13
		transactions 1399:4,15 1400:17,24 1441:10,15,22 1443:12 1444:4 1502:13 1522:16,22 1523:20 1525:12 1526:1 1527:2 1530:24 1534:6,7,22, 24 1542:16,24 1552:24 1588:13,20,22 1589:17,20	tremendous 1581:12
			trigger 1403:2 1423:3 1574:7
			triggered 1406:2 1408:5,7 1440:20 1444:23 1445:2 1468:8 1523:21 1537:9,24 1572:14, 16,24 1573:3
			triggering 1444:25
			triggers 1467:19 1536:13
			trouble 1564:5
			true 1413:1,6,7 1450:24 1461:10 1468:16 1488:19 1502:15,23 1503:23 1541:16 1585:6

## Closing Arguments

## Shawn Bidsal v. CLA Properties, LLC, et al.

trust 1410:25 1411:4,21 1414:7 1416:10 1448:20	1514:13 1518:8 1520:1 1576:21 1583:20	1544:6	vis-a-vis 1402:5
turn 1391:15 1401:24 1484:3 1501:23 1507:7	understandings 1519:2	V	vitiates 1545:23
turned 1396:20 1520:7	understood 1419:23 1569:8 1575:17 1584:23	vain 1561:11,18	vociferously 1407:15
turns 1465:10	undisputed 1448:2 1460:5 1462:14,24	valid 1448:12 1449:10	VOICE 1391:2
types 1438:12	undivided 1585:16	Valley 1386:22 1387:18,20,21,24 1411:1 1412:14 1413:17 1414:8 1417:12,17 1428:16, 24 1437:2 1438:24 1457:4 1478:18 1479:2,4 1483:17 1484:17 1485:2,17 1486:18 1487:13,16 1494:11,12 1496:6 1501:24,25 1504:7, 13 1505:4 1530:6 1535:4 1546:12 1548:18 1550:3,11 1565:18,19 1566:4	W
typo 1493:7	unenforceable 1475:14	Valley's 1503:17 1517:22	waived 1561:19
U	unequivocally 1407:19 1460:1	valuations 1496:24	walk 1402:4 1450:20 1451:2
U.S. 1560:8,10	unfair 1563:6 1567:13	variation 1492:11	walked 1459:22
ultimately 1420:23 1445:15 1579:17	unit 1542:12	varied 1522:24	Wall 1496:19
unable 1470:18	universe 1526:7	varies 1435:8	wanted 1389:17 1411:24 1412:14 1413:11 1422:8 1433:9 1443:3 1472:18 1474:20 1477:6,25 1479:18 1541:22 1554:1 1567:20,22,23 1568:1,25 1581:1,23 1583:21,25 1584:14 1590:1
unconditionally 1492:25	unlike 1439:5	Vegas 1486:8	wanting 1394:16 1484:11
uncontradicted 1485:1	unnecessary 1534:10 1561:9,16	venture 1396:10	watched 1432:19
uncontroverted 1412:18 1542:14	unquote 1491:6	Ventures 1557:1,2	waterfall 1423:4 1467:20 1474:6 1517:21 1522:12,22,23 1523:20 1526:23 1536:14 1540:6 1572:13 1573:2 1575:9
underlined 1572:19 1573:19	unreasonable 1487:22 1525:2 1585:3	verbally 1588:25	ways 1403:20 1407:20 1419:19 1433:13 1466:15 1467:25 1469:13,22 1470:10 1516:25 1577:13 1579:5
underlying 1394:23 1401:24 1408:25 1414:8 1475:3	unreturned 1514:22 1515:2 1516:14 1549:11	version 1415:5 1582:8	wearing 1543:24
underpin 1474:9	untrue 1506:14	view 1468:6,7 1477:18,19,20	weeks 1389:19 1592:16
understand 1391:22 1403:7 1437:21 1447:4 1457:25 1458:1 1470:3 1471:7 1472:1 1481:6 1483:2 1490:15,18 1520:19 1537:13 1542:19 1554:2 1564:15 1567:1 1573:10 1576:3 1585:24 1586:16 1588:12 1592:3,10	unusual 1568:20	violates 1533:1	well-drafted 1472:7
understandable 1468:5	unwarranted 1503:9	virtually 1545:21	Westlaw 1560:17
understanding 1387:2,12 1485:3,4,9 1486:20,22 1487:6,9	upholds 1559:19	virtue 1543:12 1553:3	
	upload 1386:14		
	urge 1533:8 1557:7		
	urging 1563:14		
	usage		

## Closing Arguments

## Shawn Bidsal v. CLA Properties, LLC, et al.

whammy 1547:15	1534:16 1561:25 1569:15,19 1575:19,24	<hr/> Y <hr/>	
whatsoever 1492:13	words 1395:16 1398:2,15 1401:4, 13 1433:6 1441:6,8,16,22	year 1404:24 1405:10 1422:19	
When's 1416:19	1442:4 1443:25 1460:6,12 1461:13 1480:5 1486:10	1425:5 1428:10 1429:6 1431:2 1452:22 1453:7	
white 1526:13 1576:11,13,15 1582:6 1588:6,7,8,10,18	1497:24 1503:8 1506:24 1510:21 1516:3 1522:5 1523:18 1524:1,3,8 1534:3	1502:14 1523:10 1537:18 1538:1 1552:5,6	
whoops 1455:16	work 1485:4,17 1486:8 1487:25 1513:24 1526:19 1536:14,21 1538:4 1567:15	year-by-year 1550:18,22	
Wilcox 1398:14 1405:22 1407:1 1437:11 1439:4 1440:15 1441:4,20 1444:21 1445:12, 24 1446:14,17 1451:10 1452:24 1455:17 1457:14 1465:8 1469:2,5 1470:5 1474:13,17 1475:21 1498:5, 25 1499:5,22,24 1501:8 1502:25 1506:18,23 1507:6, 23 1508:5 1509:1 1510:8,12, 16 1511:14,17,23 1512:3,14 1514:3 1515:10,21,23 1516:5,13 1525:6,7 1526:18 1527:8,17 1528:18 1531:14, 18 1535:8,11,19 1536:12,19 1541:13 1544:20 1545:5,9 1546:2,13 1548:20 1549:17, 25 1550:1 1556:6 1562:23 1572:25 1576:17,24 1577:6, 7,9 1590:13	worked 1486:16 1514:14 1577:3	years 1412:6 1421:21 1570:6 1581:13,16,18 1589:3,23	
	working 1484:15 1486:22	<hr/> Z <hr/>	
	works 1393:1 1531:6 1570:22 1582:9	Zoom 1424:8 1571:1,10 1592:8	
	world 1543:22 1570:2		
	worth 1439:7 1445:19 1581:20		
	wrap 1562:9 1583:2		
	wrapping 1520:25		
	write 1388:22 1529:8		
	writing 1434:6		
	written 1431:23 1448:24 1471:5 1479:6 1486:21		
	wrong 1421:20 1427:12,13,15 1448:18 1510:13 1518:21,22 1556:6 1574:14 1576:1 1577:8 1578:6,19 1586:4		
	wrongdoing 1563:13		
	wrongful 1554:5 1556:19 1565:9 1566:15 1567:5		
	wrongfully 1566:18,21		
	wrote 1533:24		
win 1408:3 1568:6			
wished 1394:20			
withdraw 1536:2 1565:24 1567:11			
withdrawing 1566:6			
withdrew 1565:22			
witnesses 1436:25 1441:3 1518:2			
WL 1560:17			
word 1442:1 1443:10,11,16,22 1444:4 1493:7,8,9,16 1524:8			

# EXHIBIT 272



1 JAMS  
2 BEFORE HONORABLE DAVID T. WALL (Ret.), ARBITRATOR

3 \* \* \* \* \*

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5 SHAWN BIDSAL, an individual,  
6 Claimant/Counter-Respondent,

7 vs.

JAMS Ref No.  
1260005736

8 CLA PROPERTIES, LLC, a  
9 California limited liability  
company,

10 Respondent/Counterclaimant.  
11 \_\_\_\_\_

12

13

14 TRANSCRIPT OF HEARING PROCEEDINGS

15 Taken on January 5, 2022

16 at 8:01 a.m.

17 By a Certified Court Reporter

18 Las Vegas, Nevada

19

20

21 Stenographically reported by:

22 Heidi K. Konsten, RPR, CCR

23 Nevada CCR No. 845 - NCRA RPR No. 816435

24 OASIS JOB NO. 47602

25



1 Transcript of Proceedings, remotely taken  
2 stenographically in Las Vegas, Nevada, on  
3 Wednesday, January 5, 2022, at 8:01 a.m., before  
4 Heidi K. Konsten, Certified Court Reporter in and  
5 for the State of Nevada.

6

7

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1 LAS VEGAS, NEVADA  
2 Wednesday, January 5, 2022  
3 8:01 a.m.  
4 TRANSCRIPT OF PROCEEDINGS

5 \* \* \* \* \*

6  
7 THE ARBITRATOR: Good morning. This is  
8 David Wall.

9 Who do I have on the line on behalf of  
10 Mr. Bidsal?

11 MR. BIDSAL: Your Honor, this is Shawn  
12 Bidsal.

13 MR. SHAPIRO: Good morning, Your Honor.  
14 Jim Shapiro.

15 MR. GERRARD: And Doug Gerrard.

16 THE ARBITRATOR: Okay. And on behalf of  
17 CLA?

18 MR. LEWIN: Good morning, Your Honor.  
19 Rodney Lewin. Louis Garfinkel is also on the  
20 line, and Mr. Golshani is also, as well.

21 MR. GARFINKEL: Judge, this is Louis  
22 Garfinkel. Good morning. I just wanted to let  
23 you know that I do have to leave here early. So I  
24 don't know how long the hearing is going to go,  
25 but I do have to participate in another matter.

1 So I'll be here for about a half hour, a little  
2 less, so ...

3 THE ARBITRATOR: Okay. All right. But  
4 you're okay if we continue in your absence?

5 MR. GARFINKEL: Of course.

6 MR. LEWIN: And we ordered the court  
7 reporter.

8 THE ARBITRATOR: Okay. That's what I  
9 was going to ask, because I see on the screen that  
10 there is seven.

11 THE COURT REPORTER: Yes. This is Heidi  
12 Konsten. I'm the court reporter.

13 THE ARBITRATOR: Okay. All right. So  
14 that will constitute the appearances.

15 This is on for a hearing on the  
16 application for fees and costs. I've obviously  
17 read and received the original application, the  
18 opposition, the reply brief, the supplemental  
19 opposition, and the -- let me get the title  
20 right -- response to CLA's rogue supplemental  
21 opposition.

22 Okay. So let me start with this issue  
23 of the actual statements from the law firms being  
24 submitted to me in camera. Generally not an  
25 unusual thing for me to have them submitted in

1 camera. They were redacted somewhat, which is  
2 also not unusual.

3 But I want to start with the idea that  
4 Respondents need not receive even redacted bills  
5 and statements from the law firms in light of the  
6 case law that's been provided by Respondents. And  
7 I guess I'll start with a question for either  
8 Mr. Gerrard or Mr. Shapiro, whoever is going to  
9 handle it.

10 Is it -- is it not necessary for them to  
11 receive those only because of your position that  
12 no determination of the reasonableness of fees is  
13 an issue?

14 MR. GERRARD: Your Honor, this is Doug  
15 Gerrard. And before I answer your question, I  
16 just want to let you know that I, likewise, only  
17 have about 45 minutes this morning. So if I have  
18 to leave, Mr. Shapiro will certainly very capably  
19 take over.

20 But the answer to your question is that  
21 the -- the awarding of fees in this case, as has  
22 been the entire arbitration, is based 100 percent  
23 completely and solely upon the contractual  
24 language of the operating agreement. It is the  
25 operating agreement that creates the obligation

1 for attorney's fees to be paid or awarded to the  
2 prevailing party.

3 And the arbitration has commenced under  
4 substantive law, you know, from the state of  
5 Nevada, but the procedural aspects of the case are  
6 based upon, you know, the rules of JAMS and the  
7 arbitration rules that we have, you know, briefed  
8 thoroughly in the past.

9 There's no place in the contract that  
10 requires that we produce our billing statements to  
11 the opposing party. As you mentioned, it's very  
12 common -- or at least, in your words, not unusual  
13 for -- at the conclusion of a case, if there are  
14 fees sought, for an in-camera review of the bills  
15 to be provided to the Court simply because you  
16 don't wish to have -- take any chance at all of  
17 waiving any of your work-product privilege or your  
18 attorney-client privilege.

19 And that's fairly common, and it's --  
20 you know, yes, could we go through all of the  
21 billing statements and try to redact every single  
22 thing that, you know, might waive that privilege  
23 or those privileges? Yes, that can be done. But  
24 in a case like this, there is no law that requires  
25 us to produce our billing statements to the

1 opposing party.

2 They haven't cited any Nevada authority  
3 that says that, because there isn't any. The only  
4 authority that they provided deals with actual  
5 judicial proceedings, not arbitrations.

6 Arbitrations are unique. As Your Honor  
7 is well aware, there's a statute in Nevada that  
8 permits, you know, awards to be confirmed by a  
9 court, and there is a body of case law that  
10 interprets the statute as well that deals  
11 primarily with enforcement of the arbitration  
12 provision and when that will be enforced and when  
13 that will not be enforced.

14 There is no body of law, either  
15 statutory or common law, in reported cases from  
16 the state of Nevada that governs how attorney fees  
17 are to be awarded and what are the requirements  
18 for the awarding of attorney fees in an  
19 arbitration. There's a simple reason for that.  
20 Arbitrations are based upon a contract. The  
21 contract is the language that controls.

22 This contract has one provision that  
23 deals with attorney fees. It's in Article 3,  
24 Section 14.1 of the operating agreement. It does  
25 not have anything in that provision that requires

1 the prevailing party to provide their billing  
2 statements to the party that didn't prevail.

3 It's very straightforward. It just  
4 simply says the arbitrator shall award costs and  
5 expenses, including the costs of the arbitration  
6 previously advanced and the fees and expenses of  
7 attorneys, accountants, and other experts to the  
8 prevailing party, end quote.

9 There's nothing that says that we have  
10 to have those bills evaluated for reasonableness,  
11 although we believe they're completely reasonable.  
12 It's not like we tried to pad our bills. I mean,  
13 our client had to pay these bills as they went  
14 forward. You're certainly not alleging after --  
15 go ahead.

16 THE ARBITRATOR: Let me stop you there.  
17 And partly because everybody is -- I'm  
18 interrupting because everyone has time  
19 constraints.

20 MR. GERRARD: That's fine.

21 THE ARBITRATOR: So is it your position  
22 that no matter what the bills are, that -- I mean,  
23 look, here is what I -- my -- I'm thinking. Okay?  
24 I haven't fully decided this, but the language in  
25 the operating agreement makes the award of fees



1 and costs somewhat mandatory. I don't have  
2 discretion to say, "Yeah, you know, I'm just not  
3 going to award fees, because this has been going  
4 on too long," something like that.

5 In terms of the amount, is it your  
6 position that whatever you submitted to me,  
7 because the operating agreement is worded the way  
8 it is, that there's no determination of  
9 reasonableness? That if you decided on this case  
10 that you were going to charge Mr. Bidsal 10,000 an  
11 hour, that -- and same for costs. If the  
12 accounting firm suddenly put -- you know, the  
13 bills show they had 14 people working on this and  
14 billed 3 million for the report, that I have --  
15 that I have no discretion to determine  
16 reasonableness of what the fees are?

17 Because that's sort of the position that  
18 you're taking, saying, "Look, you have no  
19 obligation, Mr. Arbitrator, to determine whether  
20 the fee is reasonable."

21 MR. GERRARD: Well, I don't think that  
22 that's the position we've taken. What we've  
23 stated is that the language of the operating  
24 agreement itself does not include any  
25 reasonableness standard. I mean, I think we can

1 all agree that that language is not there.

2 Having said that, we have never taken  
3 the position in any of our pleadings that we think  
4 that Your Honor wouldn't have the discretion to  
5 conclude what's reasonable and what isn't. I  
6 mean, look, throughout this case, we've asked  
7 Your Honor to do what is reasonable. Right?

8 THE ARBITRATOR: I understand that. I  
9 mean, you said reasonable -- reasonableness is not  
10 an issue. That the reason they don't need to see  
11 the statements is because reasonableness is not an  
12 issue. You've said that.

13 Even though, on the flip side, you have  
14 given me all of the analysis of the Brunzell  
15 factors, and the Brunzell factors are only there  
16 to determine reasonableness.

17 MR. GERRARD: So let me just make this  
18 quick and easy. If Your Honor wants to give them  
19 the bills and wants them to have an opportunity to  
20 review them, we'll provide them. We're not going  
21 to provide them without Your Honor telling us that  
22 we have to, because we don't want to waive any  
23 potential privileges.

24 I think I made that pretty abundantly  
25 clear in the proceeding, that that's the primary

1 reason. The primary reason we did not provide our  
2 bills to them isn't because we think there's  
3 anything to hide. You have seen them. You know  
4 what our billing statements show.

5 THE ARBITRATOR: Right.

6 MR. GERRARD: It's just that there's no  
7 obligation under the contract between the parties  
8 that we have to provide them. And that's a  
9 secondary -- and then the issue of whether or not  
10 they're reasonable or not is a secondary issue to  
11 that. Right? The obligation is supposed to arise  
12 per contract.

13 There was no authority that says we have  
14 to give our billing statements to them whether  
15 Your Honor has the discretion to determine whether  
16 they're reasonable or not, which is a separate  
17 issue.

18 THE ARBITRATOR: Yeah, here is my  
19 concern. Look, I have no -- I don't care -- well,  
20 let me put this a different way.

21 I don't have any desire to force a  
22 waiver of any privilege. I think that Respondents  
23 would probably agree that providing redacted  
24 billing statements wouldn't open up any privilege  
25 and would be used only for the purpose of

1 determining fees.

2 Here is my thing. I read Love versus  
3 Love, and I don't agree with Claimants that its  
4 application to this case is tenuous. I  
5 Shepardized it, however, and found a case called  
6 Golden Road Motor Inn, Inc., versus Islam, 132  
7 Nevada 476, and it basically held the same thing,  
8 although it's a little unclear from the case.  
9 It's a commercial case where the entitlement to  
10 fees came in part from the contract.

11 Now, the language of the contract  
12 isn't -- I didn't see it in the opinion. So all I  
13 really care about is getting this issue correct  
14 and being able to preserve the ruling on this  
15 issue, so --

16 MR. GERRARD: So to be clear,  
17 Your Honor, if you would like us to provide our  
18 billing statements to the other side -- redacted,  
19 of course -- we have no problem doing that if  
20 that's what Your Honor would ask us to do. We'll  
21 do it.

22 THE ARBITRATOR: Okay.

23 MR. GERRARD: The point here is we were  
24 not going to do it unless we had to do it, because  
25 there's no reason to do it.

1 THE ARBITRATOR: Understood. I don't  
2 disagree with any of that.

3 Mr. Lewin and Mr. Garfinkel, you would  
4 agree that by providing those -- that these  
5 billing statements would not reopen or open up any  
6 attorney-client privilege such that there's some  
7 waiver of the attorney-client privilege in  
8 providing those to you; is that right?

9 MR. GERRARD: Or work product,  
10 Your Honor.

11 THE ARBITRATOR: Or work product.

12 MR. LEWIN: This is Rod Lewin.

13 Yes, typically when those are submitted,  
14 they don't open up a privilege, provided that  
15 they're narrowly redacted. We agree with that.

16 THE ARBITRATOR: Okay. All right. Give  
17 me a timetable.

18 MR. LEWIN: Well, before we go there,  
19 Your Honor, I think that the issue is a little bit  
20 broader. I understand, you know, we had -- I  
21 think that there's an issue that we would like a  
22 hearing on -- a ruling on, as well.

23 We think that the -- that Mr. Bidsal  
24 made a conscious litigation decision that was  
25 tactical, and we suggested that in our opposition.

1 That was a gamble that he took, and it's now too  
2 late to start over.

3 THE ARBITRATOR: No, I disagree. I  
4 disagree. They were submitted to me, and there's  
5 no -- even in your opposition, there wasn't any  
6 law suggesting that they had to provide those to  
7 you. It was only in the sort of rogue pleading,  
8 which I didn't even need to consider, frankly, and  
9 could have stricken because it was -- it was  
10 inconsistent with the briefing schedule that I had  
11 set out in the interim order -- or interim award,  
12 so --

13 MR. LEWIN: But that's really because  
14 the issue in the Brunzell case really controls  
15 this. And despite what Mr. Gerrard said, he said  
16 that the contract doesn't -- you know, the  
17 contract controls.

18 The contract doesn't say that they get  
19 all of their attorney fees like they said in their  
20 pleading. The contract doesn't say that the  
21 attorney fees and costs have to be -- doesn't have  
22 to be reasonable, because that's implied.

23 Brunzell controls that. Brunzell  
24 actually controls in this case. They know it.  
25 Nevada law controls, and the contract says it.

1 And by them -- and they say -- the only issue that  
2 they have said is, they said, well, just because  
3 this matter is in arbitration, Brunzell doesn't  
4 count.

5 Well, I don't think that is the law. I  
6 think that they have made -- I understand your --  
7 I understand what your position is, your ruling,  
8 but I think that it's wrong in terms of giving  
9 them another bite at the apple when they made a  
10 conscious litigation decision not to submit the --  
11 not to submit their bills, redacted or otherwise,  
12 and they should be held to it.

13 THE ARBITRATOR: Well, my response would  
14 be twofold: One, they did submit them to me.  
15 Two, they did submit affidavits from counsel  
16 without the redacted billings to you. And, third,  
17 it was sort of your suggestion at the end of your  
18 opposition that if I'm going to allow further  
19 briefing by Claimants, that you should have an  
20 opportunity to respond.

21 And so I agree wholeheartedly with your  
22 suggestion at the end of your opposition. So --  
23 okay.

24 MR. LEWIN: But my suggestion was  
25 twofold. Number one, my suggestion was that their

1 motion should be denied except for the time that  
2 they spent in front of you where you could  
3 independently -- and that we had the opportunity  
4 to -- to observe the work as opposed to the --

5 THE ARBITRATOR: Right. Right.

6 MR. LEWIN: But, alternatively, and not  
7 waiving our rights to -- and our claim that their  
8 motion should be denied is the -- was the issue  
9 that, alternatively --

10 THE COURT REPORTER: I'm sorry. I'm not  
11 able to hear you.

12 MR. LEWIN: What part didn't you hear?

13 (Whereupon, the record was read.)

14 MR. LEWIN: Alternatively was our  
15 suggestion that if you weren't going to deny it,  
16 then we should have an opportunity to review and  
17 follow up with a pleading based on the bills and  
18 as they're submitted.

19 THE ARBITRATOR: Okay. Well, I'm not  
20 going to deny it, because I don't think there's  
21 a -- there's an insufficiency that would require  
22 denial on its face.

23 I'm going to adopt your well-reasoned  
24 alternatives, Mr. Lewin, and allow for additional  
25 briefing and to give you the opportunity to



1     respond.

2                   Mr. Shapiro and Mr. Gerrard, give me a  
3     timetable to be able to provide those to  
4     respondent.

5                   MR. GERRARD:   Jim?

6                   MR. SHAPIRO:   I can do it in a week.

7                   THE ARBITRATOR:   Okay.   So if you  
8     could -- Mr. Gerrard, do you need a week for  
9     yours?

10                  MR. GERRARD:   Well, no, Your Honor.   All  
11     that we're going to -- Mr. Shapiro already has all  
12     of the bills.   So if we can submit all of the  
13     bills in a week, that's all we're going to do.  
14     We're not just going to --

15                  THE ARBITRATOR:   Right.

16                  MR. GERRARD:   -- make any additional  
17     briefings.   We're just going to disclose the  
18     redacted bills.

19                  THE ARBITRATOR:   Okay.   But I didn't  
20     know -- I didn't know he had yours.

21                  MR. GERRARD:   Yes.

22                  THE ARBITRATOR:   All right.   So let's go  
23     January 12.

24                  Now, having those bills, Respondent  
25     would be able to file an additional brief, and

1 then I would -- I would anticipate a reply from --  
2 from the Claimant.

3 MR. GERRARD: Correct.

4 THE ARBITRATOR: So, Mr. Lewin,  
5 Mr. Garfinkel, you receive the bills on the 12th.

6 Can you have a second supplemental  
7 opposition to me by, say, the 21st?

8 MR. LEWIN: Your Honor, that's -- that  
9 is short time for us. I think that we would like  
10 to -- at least -- at least two weeks.

11 THE ARBITRATOR: Okay. The 26th.

12 Mr. Shapiro, Mr. Gerrard, a supplemental  
13 reply brief.

14 MR. SHAPIRO: So I've got a trial that's  
15 scheduled to begin on Monday the 31st, and it's  
16 scheduled to go that week. So, I mean, assuming  
17 that week is out, we would have to have until  
18 February 16, because we're going to lose pretty  
19 much -- from the time we get the opposition  
20 through the 4th is going to be black for us.

21 THE ARBITRATOR: How about the 11th?

22 MR. SHAPIRO: We'll do it by the 11th.

23 THE ARBITRATOR: All right. And then  
24 let's set a new conference call date -- let's see.  
25 It's going to take me a minute to bring up my

1 calendar.

2 So how about Friday, February 25th? And  
3 if we're going to do it that late, then I can give  
4 you until the 16th for that reply.

5 MR. GERRARD: Your Honor, this is Doug  
6 Gerrard. I'm going to be in a trial that day.

7 THE ARBITRATOR: Okay. How about the  
8 28th?

9 MR. GERRARD: That works for me,  
10 Your Honor.

11 THE ARBITRATOR: Is your trial ongoing?

12 MR. GERRARD: No. It's a two-day trial  
13 going the 24th and the 25th. So I'm fine that  
14 next week.

15 THE ARBITRATOR: Okay. So let's do the  
16 28th. Let's do 9:00 a.m. Pacific.

17 Does that work?

18 MR. GERRARD: Yes.

19 MR. LEWIN: I believe it does, yes.

20 MR. SHAPIRO: I'm just looking at my  
21 calendar, but I think that's fine, Your Honor.

22 (Indiscernible crosstalk.)

23 MR. SHAPIRO: -- until the 16th?

24 THE ARBITRATOR: Yes. Yes, given that.

25 Now, there's no -- there's no -- here's

1     what I have. I have the bills to be produced  
2     January 12. I have Respondent's second  
3     supplemental opposition due January 26. I have  
4     Claimant's reply due -- supplemental reply due  
5     February 16. There's no additional briefing  
6     without leave of the arbitrator.

7             Is that understood?

8             MR. LEWIN: Yes, Your Honor.

9             THE ARBITRATOR: All right. And the --  
10     is there an agreement to -- I mean, I think we had  
11     30 days for the interim award, and that came out.  
12     And I don't know if the 30-day time limit then  
13     extends to the final award or what, but I just  
14     want to make sure that we're on solid ground  
15     there.

16             Is it necessary to stipulate to extend  
17     that, or are we still within the -- because the  
18     interim award is out, are we still within the time  
19     limits?

20             MR. SHAPIRO: We're okay with -- go  
21     ahead.

22             MR. GERRARD: I was going to say, to the  
23     extent that we need to stipulate, we're willing to  
24     stipulate, and I think we're fine. But we're  
25     willing to stipulate that we're fine.

1 THE ARBITRATOR: I just don't remember  
2 the language of the operating agreement on this.

3 MR. SHAPIRO: Well, we did require an  
4 expedited -- the JAMS expedited rule, but we  
5 waived that in the very beginning. And so we  
6 already, right out of the gate, waived the  
7 expedited procedures. So we're in the normal  
8 procedures and that -- that was by stipulation at  
9 the beginning.

10 THE ARBITRATOR: Okay. All right.  
11 Anything else we need to reach today?

12 MR. LEWIN: I don't think so. This is  
13 Rob Lewin.

14 MR. GERRARD: No, Your Honor.

15 THE ARBITRATOR: Okay. I will set a --  
16 go ahead, Mr. Garfinkel.

17 MR. GARFINKEL: I was going to say,  
18 Judge, thank you for your time.

19 THE ARBITRATOR: Oh, all right. Thank  
20 you.

21 I'll get something out. I'll get an  
22 e-mail out that has these dates in it. And then  
23 we'll reconvene on February 28. All right?

24 MR. LEWIN: Perfect. Thank you very  
25 much.

1 THE ARBITRATOR: All right. Thank you,  
2 everyone.

3 MR. GERRARD: Have a great day.

4 (Whereupon, the proceedings  
5 concluded at 8:25 a.m.)

6 \* \* \* \* \*

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## 1 CERTIFICATE OF REPORTER

2

3 STATE OF NEVADA )  
4 ) ss  
County of Clark )

5

6 I, Heidi K. Konsten, Certified Court  
7 Reporter, do hereby certify:

8 That I reported in shorthand (Stenotype)  
9 the proceedings had in the above-entitled matter at  
10 the place and date indicated.

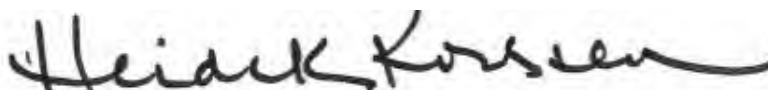
11 That I thereafter transcribed my said  
12 shorthand notes into typewriting, and that the  
13 typewritten transcript is a complete, true, and  
14 accurate transcription of my said shorthand notes.

15 IN WITNESS WHEREOF, I have set my hand in  
16 my office in the County of Clark, State of Nevada,  
17 this 17th day of January, 2022.

18

19

20

  
Heidi K. Konsten, RPR, NV CCR #845

21

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## Hearing Proceedings

## Shawn Bidsal v. CLA Properties, LLC, et al.

1	30-day 21:12	16:21	attorney-client 7:18 14:6,7
10,000 10:10	31st 19:15	agreement 6:24,25 8:24 9:25 10:7,24 21:10 22:2	attorneys 9:7
100 6:22	4	ahead 9:15 21:21 22:16	authority 8:2,4 12:13
11th 19:21,22	45 6:17	alleging 9:14	award 9:4,25 10:3 15:11 21:11,13, 18
12 18:23 21:2	476 13:7	alternatively 17:6,9,14	awarded 7:1 8:17
12th 19:5	4th 19:20	alternatives 17:24	awarding 6:21 8:18
132 13:6	8	amount 10:5	awards 8:8
14 10:13	8:25 23:5	analysis 11:14	aware 8:7
14.1 8:24	9	anticipate 19:1	B
16 19:18 21:5	9:00 20:16	appearances 5:14	based 6:22 7:6 8:20 17:17
16th 20:4,23	A	apple 16:9	basically 13:7
2	a.m. 20:16 23:5	application 5:16,17 13:4	begin 19:15
21st 19:7	absence 5:4	arbitration 6:22 7:3,7 8:11,19 9:5 16:3	beginning 22:5,9
24th 20:13	abundantly 11:24	arbitrations 8:5,6,20	behalf 4:9,16
25th 20:2,13	accountants 9:7	arbitrator 4:7,16 5:3,8,13 9:4,16,21 10:19 11:8 12:5,18 13:22 14:1,11,16 15:3 16:13 17:5, 19 18:7,15,19,22 19:4,11,21, 23 20:7,11,15,24 21:6,9 22:1,10,15,19 23:1	Bidsal 4:10,11,12 10:10 14:23
26 21:3	accounting 10:12	arise 12:11	billed 10:14
26th 19:11	actual 5:23 8:4	Article 8:23	billing 7:10,21,25 9:1 12:4,14,24 13:18 14:5
28 22:23	additional 17:24 18:16,25 21:5	aspects 7:5	billings 16:16
28th 20:8,16	adopt 17:23	assuming 19:16	bills 6:4 7:14 9:10,12,13,22 10:13 11:19 12:2 16:11 17:17 18:12,13,18,24 19:5 21:1
3	advanced 9:6	attorney 8:16,18,23 15:19,21	bit 14:19
8:23 10:14	affidavits 16:15	attorney's 7:1	bite 16:9
30 21:11	agree 11:1 12:23 13:3 14:4,15		



## Hearing Proceedings

## Shawn Bidsal v. CLA Properties, LLC, et al.

black 19:20	17:7	correct 13:13 19:3	disagree 14:2 15:3,4
body 8:9,14	Claimant 19:2	costs 5:16 9:4,5 10:1,11 15:21	disclose 18:17
briefed 7:7	Claimant's 21:4	counsel 16:15	discretion 10:2,15 11:4 12:15
briefing 15:10 16:19 17:25 21:5	Claimants 13:3 16:19	count 16:4	Doug 4:15 6:14 20:5
briefings 18:17	clear 11:25 13:16	court 5:6,11,12 7:15 8:9 17:10	due 21:3,4
bring 19:25	client 9:13	creates 6:25	<hr/>
broader 14:20	commenced 7:3	crosstalk 20:22	E
Brunzell 11:14,15 15:14,23 16:3	commercial 13:9	<hr/>	<hr/>
<hr/>	common 7:12,19 8:15	D	e-mail 22:22
C	completely 6:23 9:11	date 19:24	early 4:23
<hr/>	concern 12:19	dates 22:22	easy 11:18
calendar 20:1,21	conclude 11:5	David 4:8	end 9:8 16:17,22
call 19:24	concluded 23:5	day 20:6 23:3	enforced 8:12,13
called 13:5	conclusion 7:13	days 21:11	enforcement 8:11
camera 5:24 6:1	conference 19:24	deals 8:4,10,23	entire 6:22
capably 6:18	confirmed 8:8	decided 9:24 10:9	entitlement 13:9
care 12:19 13:13	conscious 14:24 16:10	decision 14:24 16:10	evaluated 9:10
case 6:6,21 7:5,13,24 8:9 10:9 11:6 13:4,5,8,9 15:14,24	constitute 5:14	denial 17:22	expedited 22:4,7
cases 8:15	constraints 9:19	denied 17:1,8	expenses 9:5,6
chance 7:16	continue 5:4	deny 17:15,20	experts 9:7
charge 10:10	contract 7:9 8:20,21,22 12:7,12 13:10,11 15:16,17,18,20,25	desire 12:21	extend 21:16
cited 8:2	contractual 6:23	determination 6:12 10:8	extends 21:13
CLA 4:17	controls 8:21 15:14,17,23,24,25	determine 10:15,19 11:16 12:15	extent 21:23
CLA's 5:20		determining 13:1	<hr/>
claim			F
			<hr/>
			face

## Hearing Proceedings

## Shawn Bidsal v. CLA Properties, LLC, et al.

17:22	4:19,21,22 5:5 14:3 19:5	Honor	18:23 21:2,3
factors	22:16,17	4:11,13,18 6:14 8:6 11:4,7,	Jim
11:15	gate	18,21 12:15 13:17,20 14:10,	4:14 18:5
fairly	22:6	19 18:10 19:8 20:5,10,21	Judge
7:19	Generally	21:8 22:14	4:21 22:18
February	5:24	hour	judicial
19:18 20:2 21:5 22:23	Gerrard	5:1 10:11	8:5
fee	4:15 6:8,14,15 9:20 10:21	I	K
10:20	11:17 12:6 13:16,23 14:9		
fees	15:15 18:2,5,8,10,16,21	idea	Konsten
5:16 6:12,21 7:1,14 8:16,18,	19:3,12 20:5,6,9,12,18 21:22	6:3	5:12
23 9:6,25 10:3,16 13:1,10	22:14 23:3	implied	L
15:19,21	give	15:22	
file	11:18 12:14 14:16 17:25	in-camera	language
18:25	18:2 20:3	7:14	6:24 8:21 9:24 10:23 11:1
final	giving	include	13:11 22:2
21:13	16:8	10:24	late
fine	Golden	including	15:2 20:3
9:20 20:13,21 21:24,25	13:6	9:5	law
firm	Golshani	inconsistent	5:23 6:5,6 7:4,24 8:9,14,15
10:12	4:20	15:10	15:6,25 16:5
firms	Good	independently	leave
5:23 6:5	4:7,13,18,22	17:3	4:23 6:18 21:6
flip	governs	indiscernible	Lewin
11:13	8:16	20:22	4:18,19 5:6 14:3,12,18 15:13
follow	great	Inn	16:24 17:6,12,14,24 19:4,8
17:17	23:3	13:6	20:19 21:8 22:12,13,24
force	ground	insufficiency	light
12:21	21:14	17:21	6:5
forward	guess	interim	likewise
9:14	6:7	15:11 21:11,18	6:16
found	H	interprets	limit
13:5		8:10	21:12
frankly	half	interrupting	limits
15:8	5:1	9:18	21:19
Friday	handle	Islam	litigation
20:2	6:9	13:6	14:24 16:10
front	hear	issue	long
17:2	17:11,12	5:22 6:13 11:10,12 12:9,10,	4:24 10:4
fully	hearing	17 13:13,15 14:19,21 15:14	lose
9:24	4:24 5:15 14:22	16:1 17:8	19:18
G	Heidi	J	Louis
	5:11		4:19,21
gamble	held	JAMS	Love
15:1	13:7 16:12	7:6 22:4	13:2,3
Garfinkel	hide	January	
	12:3		

## Hearing Proceedings

## Shawn Bidsal v. CLA Properties, LLC, et al.

<hr/>	ongoing 20:11	people 10:13	11:25
M	open 12:24 14:5,14	percent 6:22	proceedings 4:4 8:5 23:4
made 11:24 14:24 16:6,9	operating 6:24,25 8:24 9:25 10:7,23 22:2	Perfect 22:24	produce 7:10,25
make 11:17 18:16 21:14	opinion 13:12	permits 8:8	produced 21:1
makes 9:25	opportunity 11:19 16:20 17:3,16,25	place 7:9	product 14:9,11
mandatory 10:1	opposed 17:4	pleading 15:7,20 17:17	provide 9:1 11:20,21 12:1,8 13:17 15:6 18:3
matter 4:25 9:22 16:3	opposing 7:11 8:1	pleadings 11:3	provided 6:6 7:15 8:4 14:14
mentioned 7:11	opposition 5:18,19,21 14:25 15:5 16:18, 22 19:7,19 21:3	point 13:23	providing 12:23 14:4,8
million 10:14	order 15:11	position 6:11 9:21 10:6,17,22 11:3 16:7	provision 8:12,22,25
minute 19:25	ordered 5:6	potential 11:23	purpose 12:25
minutes 6:17	original 5:17	preserve 13:14	put 10:12 12:20
Monday 19:15	<hr/>	pretty 11:24 19:18	<hr/>
morning 4:7,13,18,22 6:17	P	prevail 9:2	Q
motion 17:1,8	Pacific 20:16	prevailing 7:2 9:1,8	question 6:7,15,20
Motor 13:6	pad 9:12	previously 9:6	quick 11:18
<hr/>	paid 7:1	primarily 8:11	quote 9:8
N	part 13:10 17:12	primary 11:25 12:1	<hr/>
narrowly 14:15	participate 4:25	privilege 7:17,18,22 12:22,24 14:6,7, 14	R
Nevada 7:5 8:2,7,16 13:7 15:25	parties 12:7	privileges 7:23 11:23	reach 22:11
normal 22:7	partly 9:17	problem 13:19	read 5:17 13:2 17:13
Number 16:25	party 7:2,11 8:1 9:1,2,8	procedural 7:5	reason 8:19 11:10 12:1 13:25
<hr/>	past 7:8	procedures 22:7,8	reasonable 9:11 10:20 11:5,7,9 12:10,16 15:22
O	pay 9:13	proceeding	reasonableness 6:12 9:10 10:9,16,25 11:9, 11,16
obligation 6:25 10:19 12:7,11			receive 6:4,11 19:5
observe 17:4			

## Hearing Proceedings

## Shawn Bidsal v. CLA Properties, LLC, et al.

received 5:17	Rod 14:12	single 7:21	14:25
reconvene 22:23	Rodney 4:19	solely 6:23	suggesting 15:6
record 17:13	rogue 5:20 15:7	solid 21:14	suggestion 16:17,22,24,25 17:15
redact 7:21	rule 22:4	sort 10:17 15:7 16:17	supplemental 5:18,20 19:6,12 21:3,4
redacted 6:1,4 12:23 13:18 14:15 16:11,16 18:18	rules 7:6,7	sought 7:14	supposed 12:11
remember 22:1	ruling 13:14 14:22 16:7	spent 17:2	<hr/> T <hr/>
reopen 14:5	<hr/> S <hr/>	standard 10:25	tactical 14:25
reply 5:18 19:1,13 20:4 21:4	schedule 15:10	start 5:22 6:3,7 15:2	taking 10:18
report 10:14	scheduled 19:15,16	state 7:4 8:16	telling 11:21
reported 8:15	screen 5:9	stated 10:23	tenuous 13:4
reporter 5:7,11,12 17:10	secondary 12:9,10	statements 5:23 6:5 7:10,21,25 9:2 11:11 12:4,14,24 13:18 14:5	terms 10:5 16:8
require 17:21 22:3	Section 8:24	statute 8:7,10	thing 5:25 7:22 13:2,7
requirements 8:17	separate 12:16	statutory 8:15	thinking 9:23
requires 7:10,24 8:25	set 15:11 19:24 22:15	stipulate 21:16,23,24,25	time 9:18 17:1 19:9,19 21:12,18 22:18
respond 16:20 18:1	Shapiro 4:13,14 6:8,18 18:2,6,11 19:12,14,22 20:20,23 21:20 22:3	stipulation 22:8	timetable 14:17 18:3
respondent 18:4,24	Shawn 4:11	stop 9:16	title 5:19
Respondent's 21:2	Shepardized 13:5	straightforward 9:3	today 22:11
Respondents 6:4,6 12:22	short 19:9	stricken 15:9	TRANSCRIPT 4:4
response 5:20 16:13	show 10:13 12:4	submit 16:10,11,14,15 18:12	trial 19:14 20:6,11,12
review 7:14 11:20 17:16	side 11:13 13:18	submitted 5:24,25 10:6 14:13 15:4 17:18	two-day 20:12
rights 17:7	simple 8:19	substantive 7:4	twofold 16:14,25
Road 13:6	simply 7:15 9:4	suddenly 10:12	typically 14:13
Rob 22:13		suggested	

## Hearing Proceedings

Shawn Bidsal v. CLA Properties, LLC, et al.

U	work-product 7:17	
unclear 13:8	working 10:13	
understand 11:8 14:20 16:6,7	works 20:9	
understood 14:1 21:7	wrong 16:8	
unique 8:6		
unusual 5:25 6:2 7:12		
V		
versus 13:2,6		
W		
waive 7:22 11:22		
waived 22:5,6		
waiver 12:22 14:7		
waiving 7:17 17:7		
Wall 4:8		
wanted 4:22		
week 18:6,8,13 19:16,17 20:14		
weeks 19:10		
well-reasoned 17:23		
wholeheartedly 16:21		
worded 10:7		
words 7:12		
work 14:9,11 17:4 20:17		

# EXHIBIT 273

1 JAMS

2 BEFORE HONORABLE DAVID T. WALL (Ret.), ARBITRATOR

3

4

5 SHAWN BIDSAL, an individual, )

6 Claimant/Counter-Respondent, )

7 vs. )

8 CLA PROPERTIES, LLC, a ) JAMS REF NO.

9 California limited liability ) 1260005736

10 company, )

11 Respondent/Counterclaimant. )

12 )

13 )

14 )

15 TRANSCRIPT OF TELEPHONIC HEARING PROCEEDINGS

16 Taken on Monday, February 28, 2022

17 At 8:02 a.m.

18 At 400 South Seventh Street

19 Las Vegas, Nevada

20

21

22

23

24 Job No. 48335, Firm No. 061F

25 Reported by: Tracy A. Manning, CCR 785

1 APPEARANCES:

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1 APPEARANCES: (Cont'd)

2 Also present:

3 Shawn Bidsal

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1 MONDAY, FEBRUARY 28, 2022

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3 TRANSCRIPT OF PROCEEDINGS

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6 ARBITRATOR WALL: Good morning. This is  
7 David Wall.

8 Who do I have on the line on behalf of  
9 Mr. Bidsal?

10 MR. SHAPIRO: James Shapiro, so far. Doug  
11 should be joining.

12 MR. GERRARD: Doug Gerrard.

13 ARBITRATOR WALL: And Mr. Bidsal's on.  
14 All right. On behalf of CLA.

15 MR. LEWIN: Rod Lewin, Your Honor. Good  
16 morning.

17 ARBITRATOR WALL: Good morning.

18 MR. GARFINKEL: And Louis Garfinkel, Your  
19 Honor. Good morning.

20 ARBITRATOR WALL: Good morning.

21 THE REPORTER: Your Honor, I'm Tracy  
22 Manning. I'm the court reporter today.

23 ARBITRATOR WALL: Tracy, what's your last  
24 name?

25 THE REPORTER: Manning, M-a-n-n-i-n-g.

1 ARBITRATOR WALL: All right. And is  
2 Mr. Golshani on as well?

3 MR. LEWIN: No, Your Honor.

4 ARBITRATOR WALL: Okay. So this is  
5 everybody.

6 So it's the argument as to the application  
7 for fees. I have received since the last time we  
8 spoke on January 5th CLA's second supplemental  
9 opposition to the application for fees and costs. I  
10 received claimant's second supplemental reply in  
11 support of Mr. Bidsal's application for fees.

12 Mr. Gerrard or Mr. Shapiro, anything you  
13 want to add to what's in the brief?

14 MR. GERRARD: Well, this is Mr. Gerrard.

15 I think what we put in the brief is pretty  
16 self-explanatory. But I'm happy to make the  
17 arguments if you would like us to. I certainly will  
18 be making the same arguments that are in the briefs.  
19 I think there is one thing I would like to perhaps  
20 emphasize, if that's okay with you.

21 ARBITRATOR WALL: Uh-huh.

22 MR. GERRARD: The one thing that's clear  
23 about this is -- and the place where the analysis  
24 has to start as it does in every case is what is the  
25 controlling authority. And I have been quite

1 surprised through this briefing to see that the  
2 other side's beliefs that some California common law  
3 somehow trumps the operating agreement, which is the  
4 only controlling authority in this matter.

5 And when you look at the operating  
6 agreement, I want to focus the Court's attention on  
7 one thing. When you look at Section 14 of Article  
8 3, which is on page 7 of the operating agreement,  
9 I'd like for Your Honor to look at the first  
10 sentence of Section 14, which is titled deadlock.  
11 Which is what gave rise to us being in front of Your  
12 Honor. There it says, in the event that members  
13 reach a deadlock that cannot be resolved with a  
14 respect to an issue that requires 90 percent vote  
15 for approval, that either member may compel  
16 arbitration of the disputed matter. So here in the  
17 first paragraph it talks about "an issue".

18 When we look at Section 14.1 that follows,  
19 the first sentence of that section says that if  
20 there is this dispute or disagreement between the  
21 members as to what? The interpretation of any  
22 provision of this agreement, and then in  
23 parentheses, or the performance of obligations  
24 hereunder. That's what was before this tribunal.  
25 Was a dispute or disagreement between CLA and Bidsal

1 about how to interpret certain provisions of the  
2 agreement, and the performance required under the  
3 agreement.

4 When you then turn to the next page of the  
5 operating agreement, which is still in that same  
6 Section 14.1, there is the language that controls,  
7 that says the fees and expenses of JAMS and the  
8 arbitrator shall be shared equally by the members in  
9 advance by them from time to time as required,  
10 provided that at the conclusion of the arbitration,  
11 the arbitrator shall award costs and expenses,  
12 including costs of the arbitration previously  
13 advanced, and the fees and expenses of attorneys,  
14 accountants, and other experts to the prevailing  
15 party.

16 Who is the prevailing party? It's the  
17 party that prevailed on the issues that were set  
18 before the Court for decision. Meaning the dispute  
19 about the interpretation of the agreement or the  
20 performance of the obligations under the agreement.

21 Not the discovery disputes, not the  
22 disputes over, you know, witnesses being allowed to  
23 testify or not testify. It's the dispute about the  
24 interpretation of the operating agreement and the  
25 obligations of the parties thereunder.

1           And yet what we see as a defense to our  
2     request for fees is a very tortured argument that  
3     somehow, that language shouldn't apply and that the  
4     Court should read into the operating agreement  
5     limitations and language that does not exist. And  
6     that somehow we should parse out each and every  
7     motion that was ever heard before the arbitrator to  
8     decide what fees are awardable and which fees are  
9     not.

10           And I just ask the Arbitrator, where in  
11     the controlling authority, which is the operating  
12     agreement, do such limitations appear? They do not  
13     appear.

14           And it's not California common law that we  
15     use to interpret this contract or the parties'  
16     performance. It's this language of this operating  
17     agreement which is clear, and Nevada law that  
18     discusses how you interpret a contract.

19           And the Nevada law that deals with  
20     interpreting a contract says that the contract must  
21     be (indiscernible) construed --

22           THE REPORTER: Must be --

23           MR. GERRARD: -- in accordance with the  
24     actual terms contained therein. Not what the other  
25     side wants to read into the agreement, but what's

1 actually there. And the Court does not have the  
2 authority to interpolate into the contract things  
3 that are not there. But yet that's the entire  
4 argument. Is that we should read something into  
5 this that's not there, and we should try to apply  
6 some legal authority that certainly does not apply  
7 to this application for fees.

8 So that's what I wanted to emphasize to  
9 the Court. Because the rest of it -- the rest of  
10 the opposition is -- that we received is really kind  
11 of irrelevant.

12 You know, they argue about the David  
13 Legrand delay and the briefing. I remind the Court  
14 again, that doesn't matter under the standard that's  
15 set forth in the operating agreement. But if it  
16 did, it wasn't Mr. Bidsal's side that wanted to  
17 brief this issue and delay the arbitration, it was  
18 Mr. Golshani's side. And we certainly complied with  
19 what Your Honor asked us to do. But we did not ask  
20 for briefing. Your Honor had already made a  
21 decision at the trial and they did not like that  
22 decision as it related to Mr. Legrand's testimony  
23 and so they asked for time to brief it.

24 And then they -- when it came time for the  
25 hearing, they hadn't done what Your Honor asked them

1 to do, so they asked for time to supplement their  
2 briefing. And ultimately that, you know, five or so  
3 months' delay resulted in a lot of extra work in  
4 terms of trying to go back and prepare for the  
5 closing of the trial.

6 I also point out, the CLA is not entitled  
7 under any authority to our unredacted bills. We  
8 didn't provide the bills to them in the first  
9 instance because there is no authority that says  
10 that we're required to. We only have to aver in an  
11 affidavit what the fees and costs were. We did  
12 provide the bills to Your Honor so that it would be  
13 clear what had been done, and Your Honor can make  
14 the review.

15 We later, as Your Honor requested,  
16 provided redacted bills to the other side. But  
17 again, there's a complaint about what was redacted.  
18 As if, you know, somehow they should be the arbiters  
19 of what privileged information they should be able  
20 to see.

21 You know, attorney-client privilege and  
22 attorney work product privilege in Nevada are very  
23 clear concepts. They're not hard to understand.  
24 And our bills are full of privileged information.  
25 Both attorney-client communications that are



1 described in the billing references, and work  
2 product. The things that we were interested in, the  
3 things that we were concerned about show up in  
4 description in our billings.

5 And so again, we're not required to  
6 provide that information to them. And there's no  
7 authority that they've cited that said that we are.

8 So, Your Honor, I think it's pretty  
9 straightforward. The fees we charged were certainly  
10 reasonable. You know, our fees are exactly in line  
11 with what the other side was charging, their fees as  
12 well. And we know that from previous billings in  
13 the first arbitration. We know what rates they were  
14 charging. You know, they were charging slightly  
15 more than what we were charging in this case in  
16 terms of hourly rates. But they're basically the  
17 same, and they're certainly within keeping of  
18 normal, reasonable hourly rates in the industry.

19 If you looked at our bills, you'll see  
20 that there was no duplication of efforts.  
21 Mr. Shapiro's office primarily prepared all of the  
22 different pleadings and the motions and the things  
23 that were done. And my office, meaning just me,  
24 reviewed those things to make corrections that I  
25 thought were necessary before the final product was

1 sent out. And I was involved obviously in kind of  
2 leading the trial or the evidentiary hearing. And  
3 certainly there was nothing unreasonable about that.

4 So, Your Honor, based upon what we have  
5 presented, I see no basis for the Court not to  
6 comply, or the arbitrator not to comply, with the  
7 clear mandate of the arbitration agreement in  
8 awarding the fees and costs of \$444,225 in fees and  
9 \$155,644.84 in costs.

10 And I would point out that, you know, we  
11 appreciate that they pointed out a few billing  
12 errors in the bills that, of course, was  
13 inadvertent. We weren't trying to pass something  
14 off on them that we shouldn't have. But we reduced  
15 our fee application by the \$2,650 that was  
16 incorrectly billed to this matter that should have  
17 been billed to other matters.

18 And so unless you have any questions, Your  
19 Honor, I think that that's really the points we want  
20 to emphasize. It's all laid out in the brief.

21 ARBITRATOR WALL: I do have a couple of  
22 questions.

23 One was the issue of a flat fee that I saw  
24 in the redacted billing records that was raised by  
25 respondent. I saw in your second supplemental brief

1     that you indicate that there was no flat fee, and  
2     that -- and that all of the requested fees were  
3     actually paid by claimant and not handled on a flat  
4     fee basis.

5             There's reference to your amended  
6     affidavit, which is Exhibit 12, and Mr. Shapiro's,  
7     which is Exhibit 11. Your amended -- Mr. Gerrard,  
8     your amended affidavit reflects that it wasn't  
9     handled on a flat fee basis and that all of your  
10    fees were actually paid. I didn't see that in  
11    Mr. Shapiro's amended affidavit.

12            MR. SHAPIRO: Your Honor, Jim Shapiro.  
13    This is Jim Shapiro, and I can add some clarity.

14            The amounts that are being billed or  
15    sought from Smith & Shapiro, there are some of those  
16    invoices that are outstanding, and so I did not  
17    include that same statement. But I, as stated in  
18    that affidavit, did not bill this matter on a flat  
19    fee basis. And the attorney fees that we're seeking  
20    are attorney fees that were actually incurred. The  
21    flat fee, I think, probably showed up on my invoice.  
22    That's -- that is kind of a catchall issue where we  
23    address kind of unique billing issues. But  
24    certainly, this case was not a flat fee basis.

25            ARBITRATOR WALL: Okay. Is there

1        somewhere in your amended affidavit that said that?

2                MR. SHAPIRO:    Says -- what part of what I  
3        said? I mean, yes, it should have. I mean, that's  
4        my recollection is it does say -- and I'm going to  
5        pull it up and look at it.

6                ARBITRATOR WALL:    It will take me a minute  
7        to pull it up. Hold on a second.

8                It would be Exhibit 11 to your second  
9        supplemental.

10               MR. SHAPIRO:    No. 6, the amounts  
11        constitute -- below constitute the amount --

12               THE REPORTER:    Excuse me, sir? Can you  
13        read that a little slower, please?

14               MR. SHAPIRO:    Paragraph 6, the amounts  
15        contained below constitute the amount, to the best  
16        of my knowledge and belief, that have been incurred  
17        as a result of arbitration referenced in this  
18        caption.

19               And my apologies, Your Honor, I thought  
20        that it did address flat fee issue. I'm surprised  
21        that it's not there. My understanding was that it  
22        was in that amended affidavit, but somehow it did  
23        not make it in. It was an aversion. Certainly we  
24        can submit a supplemental affidavit or you can take  
25        my representation as an officer of the Court that is

1 the case.

2 MR. GERRARD: One step beyond that, Your  
3 Honor, you have the bills. It's very -- that it was  
4 done on an hourly basis. I mean, there's nothing in  
5 there that shows this was billed on a flat rate  
6 basis. There might have been some entries that said  
7 flat rate where they were billing something at a  
8 flat rate. For instance, doing some sort of a --  
9 you know, some task that they billed at a flat rate,  
10 maybe one or two of those might show up in there  
11 somewhere. But if you look at the bills themselves,  
12 all of their time is billed hourly.

13 ARBITRATOR WALL: Okay. I will accept it  
14 as a statement by Mr. Shapiro as an officer of the  
15 Court. I mean, it's in the brief as well that way.  
16 I just didn't see it referenced in the second  
17 affidavit.

18 Another question. As it relates to costs.  
19 The total of \$85,423.70 for Mr. Wilcox's firm -- is  
20 it pronounced Eide Bailly, E-i-d-e. I went through  
21 those. I don't know who Mr. Kur, K-u-r, is,  
22 although the bills referenced him as a director of  
23 the firm.

24 \$57,190 of the 85,000 plus was incurred by  
25 Mr. Kur. He was never referenced in the testimony.

1 I went back through Mr. Wilcox's entire arbitration  
2 testimony transcript. I didn't see references to,  
3 "we determined this," or that he had the assistance  
4 of any partner. Virtually every reference he makes  
5 was to what he did, what he saw, what he calculated,  
6 what he interpreted. For the most part, it was not  
7 we. So I don't know who Mr. Kur is, and I don't  
8 know what his contribution was.

9 There's -- there's about \$5,000 by other  
10 people, including a Mr. -- I think it's Mr., I don't  
11 remember, Lawless, L-a-w-l-e-s-s, and a few minor  
12 entries of others. I get that there may be some  
13 assistants in his firm, but that's kind of different  
14 from Mr. Kur.

15 So am I incorrect that there's ever been a  
16 reference to Mr. Kur, or any contributions he made  
17 to Mr. Wilcox anywhere in the arbitration  
18 proceedings?

19 MR. GERRARD: This is Doug Gerrard  
20 speaking again.

21 I don't think that it was referenced in  
22 Mr. Wilcox's report, you know. Certainly, Mr. Kur  
23 is the director -- is a director in their litigation  
24 support part of the firm. Eide Bailly is a national  
25 accounting firm. And Chris Wilcox, who is a local

1 Nevada CPA, was the expert who provided the actual  
2 opinions and testified about those opinions in  
3 court.

4 But Mr. Kur was involved in the analysis  
5 in going through all of the records, all of the  
6 accounting records, and creating all of the  
7 schedules that Your Honor saw. He actually prepared  
8 all the schedules which were then verified by  
9 Mr. Wilcox and used by Mr. Wilcox for his opinions.

10 But certainly, you know, just as I use an  
11 associate in my firm to do a lot of the legwork in a  
12 matter before I may be -- you know, handle a hearing  
13 or handle, you know, a substantive trial, it's the  
14 same concept. Mr. Kur worked with -- together with  
15 Mr. Shapiro and I very closely in -- and you can see  
16 that, also, in the billing records.

17 You know, obviously we redacted out things  
18 we were talking about, but you'll see lots of  
19 references in the billing records to communications  
20 between myself or Mr. Shapiro or Aimee Cannon at  
21 Mr. Shapiro's firm.

22 And Mr. Kur, while we were putting  
23 together and developing the arguments and the  
24 factual background of what actually happened. And,  
25 of course, as you know, we had to go back and look

1 through -- because of the argument the other side  
2 was making about trying to recharacterize all these  
3 distributions that were done over the years, that's  
4 what Mr. Kur was primarily involved in, is going  
5 back really from the beginning of time.

6 He created an analysis that showed all  
7 distributions from the beginning. Whether they were  
8 right, whether they were wrong, you know, prepared  
9 all of the accounting information that later  
10 Mr. Wilcox, then, was able to review. And he made  
11 some corrections to the things that he thought  
12 needed to be corrected before the final schedules  
13 were prepared. And then he was ready to use those  
14 schedules in preparing his report.

15 Mr. Kur assisted him in drafting that  
16 report. Mr. Wilcox then made all the changes to the  
17 things that Mr. Kur had found in his review of the  
18 accounting records. And then -- and then put  
19 together his own opinions based upon all that  
20 information.

21 So a lot of the background information, or  
22 the -- kind of the data that is relied upon by  
23 Mr. Wilcox in his report and for his opinions, was  
24 compiled by Mr. Kur.

25 So that's basically what you see there.



1 And although it might not -- his work -- his work  
2 may not be referenced by his name, you certainly can  
3 see in the billing records where, you know, that's  
4 where we were going to get a lot of information  
5 because he's the one that compiled all the  
6 information.

7 ARBITRATOR WALL: Okay. All right,  
8 Mr. Lewin or Mr. Garfinkel.

9 MR. LEWIN: Yes, Thank you, Your Honor.  
10 Just to get --

11 THE REPORTER: Who is this?

12 MR. LEWIN: This is Mr. Lewin.

13 On that last point, without looking at  
14 Mr. Wilcox's testimony, I don't recall him saying  
15 that anyone but himself prepared the report or did  
16 the analysis. And I don't think that Mr. Gerrard's  
17 statement -- this motion hearing constituted other  
18 evidence to support 57,000 plus of charges by Mr. --

19 ARBITRATOR WALL: To be fair, it's not an  
20 issue you raised. So there wouldn't have been any  
21 response to it in the second supplemental. It's  
22 just something I saw when I went through the  
23 billing.

24 MR. LEWIN: Your Honor, we raised the  
25 issue of --

1 THE REPORTER: Excuse -- Mr. Lewin, you're  
2 breaking up.

3 MR. LEWIN: Is this better? Can you hear  
4 me better now?

5 THE REPORTER: Your volume was okay, you  
6 were just breaking up. Let's try it again.

7 MR. LEWIN: I moved to a different  
8 location.

9 THE REPORTER: Great.

10 MR. LEWIN: Your Honor, you raised the  
11 issue -- we raised the issue of their failure to set  
12 forth reasonable evidence to justify the expert  
13 costs. That would have been included in it.

14 And so, on this same note, on that same  
15 token, we object to the -- those portions of the  
16 supplemental affidavits and verification of costs,  
17 to the extent that they add new evidence to support  
18 their burden of proof that could have been included  
19 in their moving papers.

20 What you ordered at the last hearing was  
21 that they provide the billing statements. I thought  
22 they were going to be unredacted except as to  
23 attorney-client communications, but we'll address  
24 that in a second. That was -- it did not permit, as  
25 I understand it, that they could add to their burden

1 of proof requirements that were -- that was supposed  
2 to be satisfied in their motion by adding additional  
3 proof in their -- their reply -- their second reply,  
4 which we had no chance to oppose.

5 So I don't think -- I object to those  
6 portions of those -- of the two affidavits to the  
7 extent they attempt to add additional evidence  
8 supporting their burden of proof with respect to the  
9 attorneys' fees, their costs.

10 The issue concerning -- the primary issue  
11 that Mr. Gerrard has talked about, and it's in their  
12 moving papers, is that their claim is that you have  
13 no discretion whatsoever to -- except to order the  
14 payment of any fee or cost that they claim that they  
15 incurred in connection with this proceeding.  
16 Ignoring Brunsell and all the other authority we  
17 have cited.

18 So in theory, if they had attended the  
19 hearing and had ten lawyers working on it and ran up  
20 \$5 million in fees and costs, according to the  
21 Bidsal position, you have no authority to -- or  
22 discretion to challenge that or just -- you just  
23 have to do the arithmetic and order it paid. That's  
24 an absurd proposition. It ignores -- it ignores all  
25 the cases under the laws of Nevada or elsewhere.

1 And the (indiscernible), which by itself  
2 incorporates the laws under the Nevada law. And the  
3 frivolousness of that is that contention is  
4 demonstrated by Nevada law in their motion. They  
5 continue to do this in their latest reply.

6 So I think that they have to meet the  
7 requirements of Brunsell, and they have to provide  
8 sufficient evidence to provide -- to determine  
9 whether or not the case was overstaffed, whether the  
10 time spent by attorneys were duplicative or  
11 reasonable, properly expended. For that reason,  
12 that's my response.

13 ARBITRATOR WALL: Why is it potentially  
14 overstaffed, when they had the same number of  
15 lawyers involved, maybe less, than you did?

16 MR. LEWIN: Well, the fact of the matter  
17 is, I'm not saying it's overstaffed in terms of some  
18 things. We can't tell exactly what lawyer did what  
19 in terms of things that were done in terms of  
20 paperwork and other things that were not done at the  
21 hearing.

22 But I just want to -- we had, for the most  
23 part -- the fact of the matter is to have two  
24 attorneys attend every hearing and every -- and  
25 arbitration. That would not necessarily mean that

2 THE REPORTER: To the payment of what?

3 MR. LEWIN: If they had two attorneys at  
4 every hearing, that would not necessarily mean that  
5 they are entitled to be compensated for two  
6 attorneys. The question is whether two attorneys  
7 present were reasonable. One example --

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8           ARBITRATOR WALL:  Hold on, let me stop you
9   for a second.

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10                   Mr. Lewin, are you somewhere where there's  
11   a landline?

12 MR. LEWIN: Yes.

13 ARBITRATOR WALL: You're -- it just seems  
14 like there's spotty cell service where you are.

15 MR. LEWIN: I'll call it right now.

16 ARBITRATOR WALL: All right. Perfect.  
17 We'll take a brief break.

18 (Off record.)

19 ARBITRATOR WALL: Back on the record.

20 THE REPORTER: All right.

21 MR. LEWIN: So, if I put -- my point being  
22 is if they could have as many attorneys as they  
23 wanted at the hearings, for example, but that  
24 doesn't mean that it's reasonable or that they  
25 should be awarded the fees of two attorneys for the

1       hearings. Unless Your Honor determines it was  
2       reasonable for them to do so.

3               And we know that at the hearings,  
4       Mr. Gerrard did everything except, I believe, the --  
5       putting up some documents and the direct examination  
6       of Mr. Bidsal, which, in fact, was done by  
7       Mr. Shapiro.

8               In connection with your other -- so if we  
9       had won the case and we had submitted for a claim  
10      for two attorneys, they would be justified in  
11      attacking that. Especially if we didn't show by  
12      competent evidence that two attorneys were  
13      necessary. And I think that is the point I was  
14      making there.

15              ARBITRATOR WALL: Well, I think they were  
16      necessary. I'll just tell you that right now. I  
17      think it was necessary, just as I think it was  
18      necessary for you. I mean, I know you did primarily  
19      most of the witnesses, but I know how important  
20      Mr. Garfinkel's contributions were, and we made sure  
21      to schedule things so that all four lawyers could be  
22      present.

23              In fact, with respect to the privilege  
24      issue, I mean, there was even another lawyer  
25      incorporated on your side. Which I recognize that

1     being important. So that issue probably isn't going  
2     to have a lot of play with me.

3                 MR. LEWIN: Very well. I'm done with my  
4     pitch on that issue, anyway.

5                 So, with respect to the providing of  
6     competent evidence and redaction.

7                 The wholesale redactions that were -- that  
8     took place in the bills really deprived us from  
9     looking at and determining what work was done and  
10    work may have been duplicated. We can't tell. And  
11    as we pointed out, and I accept the fact that there  
12    were some mistakes in the bill, in the submission.  
13    Everyone makes mistakes, so not criticizing either  
14    Mr. Shapiro or Mr. Gerrard for having some billing  
15    entries that don't apply to this case.

16                But we can't determine what -- to the  
17    extent that -- how much time was spent on a  
18    particular issue in order to properly challenge it  
19    because of the redactions.

20                We specifically agreed that if they --  
21    that there would be no waiver of the attorney-client  
22    work product privilege at the last hearing. And I  
23    presumed that if there was going to be any  
24    redactions, there would be redactions related to  
25    communications between either Mr. Gerrard or

1 Mr. Shapiro and their client, which would be normal.

2 But to redact everything -- virtually  
3 everything after the word regarding or ready, in  
4 order to deprive us of the opportunity to be able to  
5 properly review it and challenge it, is -- denies us  
6 due process and it's inappropriate.

7 And there's not -- that is the purpose of  
8 Brunsell, it is the burden of the people -- person  
9 seeking fees to be able to establish that.

10 Now, I want to point -- going back to the  
11 flat fee billing issue. Because I think the  
12 redaction on that issue is important to note. Not  
13 only did Mr. Shapiro's declaration or affidavit fail  
14 to say that he billed on an hourly basis, not on a  
15 flat fee basis, but he had basically said I billed  
16 for all the work that was done. Billed on a flat  
17 fee basis, that can be for all the work that was  
18 done, also.

19 But what he -- what they also did in  
20 connection with that is that they redacted the --  
21 they redacted the amount of the actual charges. So  
22 it's not only that -- it's not only that they  
23 redacted the flat fee issues, but they actually --  
24 the Smith & Shapiro bills obliterate the amount  
25 actually being billed so we couldn't even tell what



1 was being billed or what was being paid for. And I  
2 think that's a failure of the burden of proof in  
3 connection with that.

4 So again, according -- Mr. Gerrard says  
5 you have to award whatever they billed no matter  
6 what, but that's not the law. They didn't -- they  
7 shouldn't be compensated for matters that they  
8 didn't succeed on.

9 And those matters -- those matters  
10 include, for example, his tender issue, which they  
11 pursued at some length that they lost on. The  
12 interest issue, at some length, that they lost on.  
13 The motion to compel answers to interrogatories, the  
14 motion to continue, our motion to amend, the motion  
15 to -- adding CLA to the bank account, which they did  
16 after we filed the motion, and motion to withdraw  
17 Exhibit 188. All of these motions were basically  
18 contested and they lost. So there should be --  
19 there should be a -- there should be a -- they  
20 shouldn't be awarded fees or costs in connection  
21 with those matters.

22 And because of the massive redaction, it's  
23 no way to determine how much of the claim that  
24 they're seeking actually relate to these items that  
25 I just discussed.

1                   So, you know, I don't know how to -- how  
2     to address the redaction any more about -- the  
3     redaction issue, because it's hard -- if we had --  
4     if we are unable to look at what work they did by  
5     attorney to see if there's duplication or to see if  
6     there is perhaps over- -- work that was done on  
7     issues that don't relate -- don't relate to the  
8     matters at hand, that we're denied due process and  
9     the ability to properly challenge this fee motion.

10                  And I don't know how you address it in  
11     connection with -- in connection with their motion.  
12     I guess you do have -- you do have unredacted bills,  
13     which we don't have. But they've never challenged  
14     our arithmetic in connection with that. In  
15     connection with the redaction matters. Our  
16     arithmetic was that the Smith & Shapiro billings  
17     account to about \$115,000 worth of billing. And  
18     the -- Mr. Gerrard's billing is \$9840.

19                  Comes back to the Legrand motion, which  
20     the time -- the time -- during that time period was  
21     a total of 45,7- -- roughly \$700. I complained at  
22     the time that the Legrand motion, this whole issue  
23     with David Legrand, we were sandbagged because it  
24     was brought up -- and Mr. Legrand, you know, was  
25     designated as an expert -- as a witness, was

1 designated to come and testify, who talked about him  
2 testifying to the very beginning of the trial.

3 There was no motion in limine concerning his  
4 testimony. And it wasn't until he actually was  
5 appearing for trial that this issue was raised.

6 Had that been properly -- and there's a  
7 great deal of time, according to Mr. Gerrard, that  
8 was spent. Because the time lapse required --  
9 required them to revisit and, you know, reread  
10 things that they wouldn't have had to do if the  
11 matter proceeded without having that issue brought  
12 up.

13 I don't believe CLA should be charged with  
14 that time. They -- they caused that delay. We were  
15 justified in having the matter briefed and having  
16 the matter ruled on. Even if we don't agree with  
17 the ultimate ruling, it was justified for us to do  
18 so. And CLA should not be charged by the revisiting  
19 or redoing of time caused by that delay.

20 So, unless Your Honor has any questions, I  
21 believe I've said all I intend to say about this.

22 Oh, just one other thing. In their brief,  
23 they indicate that there's -- the issue of  
24 overlapping billing didn't really exist with respect  
25 to the first arbitration because it ended. But, in

1 fact, it had ended. There are two appeals -- there  
2 are two appeals that are still pending and --  
3 they're still pending. We're expecting a ruling  
4 fairly quickly on that. But those matters were  
5 still in play, briefing was being done, research was  
6 being done. And we can't tell because of the  
7 redacted billing what -- what the time on that --  
8 what time might have been spent on that matter, on  
9 those appeal matters in the first arbitration simply  
10 because of the redactions.

11 With that I'll submit.

12 ARBITRATOR WALL: Okay. Thank you.

13 Mr. Gerrard, before you respond, just to  
14 give you all an idea of my position on certain of  
15 those issues so there may or may not be a need to  
16 respond.

17 I agree with the interpretation of the  
18 operating agreement as I set forth in the interim  
19 award, that the prevailing party is entitled to an  
20 award of fees.

21 I agree with what Mr. Lewin said, that the  
22 operating agreement incorporates Nevada law.

23 I agree that the Brunsell factors are ripe  
24 for my consideration in this case, that is a  
25 reasonable fee. Not only that Nevada law, but in

1 your original motion, Mr. Gerrard, you cite to the  
2 Brunsell factors, which are based on an overarching  
3 concern for reaching a reasonable fee award. I  
4 don't have any problem with the Brunsell factors  
5 themselves as they relate to Mr. Gerrard,  
6 Mr. Shapiro, and their firms. So I believe that it  
7 is my obligation to award a reasonable fee, taking  
8 into consideration the Brunsell factors and all of  
9 the information that's been provided so far.

10 With that backdrop, Mr. Gerrard, is there  
11 anything else you want to add?

12 MR. GERRARD: Thank you, Your Honor.

13 Again, this is Doug Gerrard speaking.

14 We have never argued that the Court does  
15 not have discretion. That's not an argument we've  
16 made. We have summarily pointed out that the  
17 operating agreement doesn't say that there is  
18 supposed to be some, you know, analysis, for  
19 instance, under even Brunsell, which, you know, is  
20 really addressed to attorney fee motions that are  
21 made under the statutes and/or, you know, offers of  
22 judgment in Nevada.

23 But we agree 100 percent that the choice  
24 of law provision in the operating agreement adopts  
25 Nevada law. That's why we made an argument under

1     Brunsell. Because we think that it's appropriate  
2     for the Court to apply Brunsell. We're just  
3     pointing out, I don't know whether that's been  
4     actually adopted by the operating agreement standard  
5     that's set out, but that's never been an argument  
6     that we pressed.

7             We aren't saying Your Honor doesn't have  
8     discretion to do what you think is appropriate and  
9     reasonable. And if we were on the other side of  
10    this, we'd want you to be reasonable as well.  
11    Right? So we're not saying the Court shouldn't act  
12    reasonably; we think you should. But we don't think  
13    anything we've done is unreasonable. That's the  
14    point. We think the fees and costs are reasonable.

15            And there's no Nevada law that says you're  
16    supposed to parse out, you know, motions that  
17    somebody in discovery working the case up for the  
18    trial, that there's -- you know, supposed to parse  
19    out things that you won on and things that you  
20    didn't. And the operating agreement, I think, is  
21    pretty clear on that. That it's who's the  
22    prevailing party on the issues that were presented  
23    to the Court for decision. And we were the  
24    prevailing party on those issues, according to Your  
25    Honor's order. So we believe that we are entitled

1 to all of our fees and costs.

2 Just one more comment on Mr. Kur's, you  
3 know, work that was done as it relates to the expert  
4 witness fee. We did provide Your Honor the complete  
5 billings for the -- for the Eide Bailly firm. You  
6 can see exactly what he did. And you know how much  
7 work would be required to go back and essentially  
8 run through all the accounting for this company for  
9 a period of almost ten years.

10 And so I think we're happy with what we  
11 presented to Your Honor. You've got all the bills,  
12 you've got everything that you would need to make a  
13 decision, and we're happy to accept whatever  
14 decision Your Honor makes.

15 ARBITRATOR WALL: Okay. Thank you. I'm  
16 going to take a second to look at some of these  
17 things. I'm going to prepare a final award that --  
18 that adds to the interim award a reasonable award of  
19 fees and costs to the prevailing party as provided  
20 for in the operating agreement.

21 A couple of things on my plate, so it may  
22 not get to you for about ten days or so. But I'm  
23 going to do my best to expedite that and get that  
24 out as quickly as possible.

25 Anything else that needs to come before me

1 at this time?

2 MR. GERRARD: This is Mr. Gerrard. Not  
3 from our side.

4 MR. LEWIN: No, thank you, Your Honor.  
5 Have a nice day.

6 ARBITRATOR WALL: All right. Thank you  
7 all, very much. I appreciate it. And like I say,  
8 I'll try to get that out as quickly as I can.

9 MR. GERRARD: Thank you.

10 MR. LEWIN: Thank you.

11 (Proceedings concluded at 8:45 a.m.)  
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1 REPORTER'S CERTIFICATE.

2

3 STATE OF NEVADA)  
4 ) ss  
5 COUNTY OF CLARK)

6

7 I, Tracy A. Manning, a duly commissioned  
8 Certified Court Reporter, Clark County, State of  
9 Nevada, do hereby certify:

10

11

12 That I reported the taking of the proceedings,  
13 at the time and place aforesaid;

14

15 That I thereafter transcribed my said shorthand  
16 notes into typewriting and that the typewritten  
17 transcript of said proceeding is a complete, true  
18 and accurate record of statements provided by the  
19 parties at said time to the best of my ability.

20

21 I further certify that I am not a relative,  
22 employee, or independent contractor of counsel of  
23 any of the parties involved in said action; nor a  
24 person financially interested in the action; nor do  
25 I have any other relationship with any of the  
parties or with counsel of any of the parties  
involved in the action that may reasonably cause my  
impartiality to be questioned.

26

27

28 IN WITNESS WHEREOF, I have hereunto set my hand  
29 in the County of Clark, State of Nevada, this 21st  
30 day of March 2022.

31

32

33

34

  
Tracy A. Manning, CCR 785

## Hearing Proceedings

## Shawn Bidsal v. CLA Properties, LLC, et al.

		accept 15:13 25:11 33:13	33:20
\$	3	accordance 8:23	Aimee 17:20
\$115,000 28:17	3 6:8	account 27:15 28:17	allowed 7:22
\$155,644.84 12:9	4	accountants 7:14	amend 27:14
\$2,650 12:15	45,7- 28:21	accounting 16:25 17:6 18:9,18 33:8	amended 13:5,7,8,11 14:1,22
\$444,225 12:8	5	act 32:11	amount 14:11,15 26:21,24
\$5 21:20	57,000 19:18	actual 8:24 17:1 26:21	amounts 13:14 14:10,14
\$5,000 16:9	5th 5:8	add 5:13 13:13 20:17,25 21:7 31:11	analysis 5:23 17:4 18:6 19:16 31:18
\$57,190 15:24	6	adding 21:2 27:15	and/or 31:21
\$700 28:21	6 14:10,14	additional 21:2,7	answers 27:13
\$85,423.70 15:19	7	address 13:23 14:20 20:23 28:2,10	apologies 14:19
\$9840 28:18	7 6:8	addressed 31:20	appeal 30:9
1	8	adds 33:18	appeals 30:1,2
100 31:23	85,000 15:24	adopted 32:4	appearing 29:5
11 13:7 14:8	8:45 34:11	adopts 31:24	application 5:6,9,11 9:7 12:15
12 13:6	9	advance 7:9	apply 8:3 9:5,6 25:15 32:2
14 6:7,10	90 6:14	advanced 7:13	approval 6:15
14.1 6:18 7:6	A	affidavit 10:11 13:6,8,11,18 14:1,22, 24 15:17 26:13	arbiters 10:18
188 27:17	a.m. 34:11	affidavits 20:16 21:6	arbitration 6:16 7:10,12 9:17 11:13 12:7 14:17 16:1,17 22:25 29:25 30:9
2	ability 28:9	agree 29:16 30:17,21,23 31:23	arbitrator 4:6,13,17,20,23 5:1,4,21 7:8, 11 8:7,10 12:6,21 13:25 14:6 15:13 19:7,19 22:13 23:8,13, 16,19 24:15 30:12 33:15 34:6
2022 4:1	absurd 21:24	agreed 25:20	argue 9:12
28 4:1		agreement 6:3,6,8,22 7:2,3,5,19,20,24 8:4,12,17,25 9:15 12:7 30:18,22 31:17,24 32:4,20	

## Hearing Proceedings

## Shawn Bidsal v. CLA Properties, LLC, et al.

argued 31:14	awardable 8:8	30:7	challenge 21:22 25:18 26:5 28:9
argument 5:6 8:2 9:4 18:1 31:15,25 32:5	awarded 23:25 27:20	billings 11:4,12 28:16 33:5	challenged 28:13
arguments 5:17,18 17:23	awarding 12:8	bills 10:7,8,12,16,24 11:19 12:12 15:3,11,22 25:8 26:24 28:12 33:11	chance 21:4
arithmetic 21:23 28:14,16	<hr/> <b>B</b> <hr/>	break 23:17	charged 11:9 29:13,18
Article 6:7	back 10:4 16:1 17:25 18:5 23:19 26:10 28:19 33:7	breaking 20:2,6	charges 19:18 26:21
assistance 16:3	backdrop 31:10	briefed 29:15	charging 11:11,14,15
assistants 16:13	background 17:24 18:21	briefing 6:1 9:13,20 10:2 30:5	choice 31:23
assisted 18:15	Bailly 15:20 16:24 33:5	briefs 5:18	Chris 16:25
associate 17:11	bank 27:15	brought 28:24 29:11	cite 31:1
attacking 24:11	based 12:4 18:19 31:2	Brunsell 21:16 22:7 26:8 30:23 31:2, 4,8,19 32:1,2	cited 11:7 21:17
attempt 21:7	basically 11:16 18:25 26:15 27:17	burden 20:18,25 21:8 26:8 27:2	CLA 4:14 6:25 10:6 27:15 29:13, 18
attend 22:24	basis 12:5 13:4,9,19,24 15:4,6 26:14,15,17	<hr/> <b>C</b> <hr/>	CLA's 5:8
attended 21:18	beginning 18:5,7 29:2	calculated 16:5	claim 21:12,14 24:9 27:23
attention 6:6	behalf 4:8,14	California 6:2 8:14	claimant 13:3
attorney 10:22 13:19,20 28:5 31:20	belief 14:16	call 23:15	claimant's 5:10
attorney-client 10:21,25 20:23 25:21	beliefs 6:2	Cannon 17:20	clarity 13:13
attorneys 7:13 22:10,24 23:3,6,22,25 24:10,12	Bidsal 4:9 6:25 21:21 24:6	caption 14:18	clear 5:22 8:17 10:13,23 12:7 32:21
attorneys' 21:9	Bidsal's 4:13 5:11 9:16	case 5:24 11:15 13:24 15:1 22:9 24:9 25:15 30:24 32:17	client 26:1
authority 5:25 6:4 8:11 9:2,6 10:7,9 11:7 21:16,21	bill 13:18 25:12	cases 21:25	closely 17:15
aver 10:10	billed 12:16,17 13:14 15:5,9,12 26:14,15,16,25 27:1,5	catchall 13:22	closing 10:5
aversion 14:23	billing 11:1 12:11,24 13:23 15:7 17:16,19 19:3,23 20:21 25:14 26:11 28:17,18 29:24	caused 29:14,19	comment 33:2
award 7:11 27:5 30:19,20 31:3,7 33:17,18		cell 23:14	common 6:2 8:14
			communications

## Hearing Proceedings

## Shawn Bidsal v. CLA Properties, LLC, et al.

10:25 17:19 20:23 25:25	contention 22:3	David 4:7 9:12 28:23	direct 24:5
company 33:8	contested 27:18	day 34:5	director 15:22 16:23
compel 6:15 27:13	continue 22:5 27:14	days 33:22	disagreement 6:20,25
compensated 23:5 27:7	contract 8:15,18,20 9:2	deadlock 6:10,13	discovery 7:21 32:17
competent 24:12 25:6	contribution 16:8	deal 29:7	discretion 21:13,22 31:15 32:8
compiled 18:24 19:5	contributions 16:16 24:20	deals 8:19	discussed 27:25
complained 28:21	controlling 5:25 6:4 8:11	decide 8:8	discusses 8:18
complaint 10:17	controls 7:6	decision 7:18 9:21,22 32:23 33:13,14	dispute 6:20,25 7:18,23
complete 33:4	corrected 18:12	declaration 26:13	disputed 6:16
complied 9:18	corrections 11:24 18:11	defense 8:1	disputes 7:21,22
comply 12:6	cost 21:14	delay 9:13,17 10:3 29:14,19	distributions 18:3,7
concept 17:14	costs 5:9 7:11,12 10:11 12:8,9 15:18 20:13,16 21:9,20 27:20 32:14 33:1,19	demonstrated 22:4	documents 24:5
concepts 10:23	couple 12:21 33:21	denied 28:8	Doug 4:10,12 16:19 31:13
concern 31:3	court 4:22 7:18 8:4 9:1,9,13 12:5 14:25 15:15 17:3 31:14 32:2, 11,23	denies 26:5	drafting 18:15
concerned 11:3	Court's 6:6	deprive 26:4	due 26:6 28:8
concluded 34:11	CPA 17:1	deprived 25:8	duplicated 25:10
conclusion 7:10	created 18:6	description 11:4	duplication 11:20 28:5
connection 21:15 24:8 26:20 27:3,20 28:11,14,15	creating 17:6	designated 28:25 29:1	duplicative 22:10
consideration 30:24 31:8	criticizing 25:13	determine 22:8 25:16 27:23	<hr/> E <hr/>
constitute 14:11,15	<hr/> D <hr/>	determined 16:3	E-I-D-E 15:20
constituted 19:17		determines 24:1	efforts 11:20
construed 8:21		determining 25:9	Eide 15:20 16:24 33:5
contained 8:24 14:15	data 18:22	developing 17:23	emphasize 5:20 9:8 12:20

## Hearing Proceedings

## Shawn Bidsal v. CLA Properties, LLC, et al.

ended 29:25 30:1		full 10:24	heard 8:7
entire 9:3 16:1	<hr/> F <hr/>	<hr/> G <hr/>	hearing 9:25 12:2 17:12 19:17 20:20 21:19 22:21,24 23:4 25:22
entitled 10:6 23:1,5 30:19 32:25	fact 22:16,23 24:6,23 25:11 30:1	Garfinkel 4:18 19:8	hearings 23:23 24:1,3
entries 15:6 16:12 25:15	factors 30:23 31:2,4,8	Garfinkel's 24:20	hereunder 6:24
equally 7:8	factual 17:24	gave 6:11	Hold 14:7 23:8
errors 12:12	fail 26:13	Gerrard 4:12 5:12,14,22 8:23 13:7 15:2 16:19 21:11 24:4 25:14, 25 27:4 29:7 30:13 31:1,5, 10,12,13 34:2,9	Honor 4:15,19,21 5:3 6:9,12 9:19, 20,25 10:12,13,15 11:8 12:4, 19 13:12 14:19 15:3 17:7 19:9,24 20:10 24:1 29:20 31:12 32:7 33:4,11,14 34:4
essentially 33:7	failure 20:11 27:2	Gerrard's 19:16 28:18	Honor's 32:25
establish 26:9	fair 19:19	give 30:14	hourly 11:16,18 15:4,12 26:14
event 6:12	fairly 30:4	Golshani 5:2	<hr/> I <hr/>
evidence 19:18 20:12,17 21:7 22:8 24:12 25:6	FEBRUARY 4:1	Golshani's 9:18	idea 30:14
evidentiary 12:2	fee 12:15,23 13:1,4,9,19,21,24 14:20 21:14 26:11,15,17,23 28:9 30:25 31:3,7,20 33:4	Good 4:6,15,17,19,20	ignores 21:24
examination 24:5	fees 5:7,9,11 7:7,13 8:2,8 9:7 10:11 11:9,10,11 12:8 13:2, 10,19,20 21:9,20 23:25 26:9 27:20 30:20 32:14 33:1,19	great 20:9 29:7	Ignoring 21:16
Excuse 14:12 20:1	filed 27:16	guess 28:12	important 24:19 25:1 26:12
Exhibit 13:6,7 14:8 27:17	final 11:25 18:12 33:17	<hr/> H <hr/>	inadvertent 12:13
exist 8:5 29:24	firm 15:19,23 16:13,24,25 17:11, 21 33:5	hand 28:8	inappropriate 26:6
expecting 30:3	firms 31:6	handle 17:12,13	include 13:17 27:10
expedite 33:23	flat 12:23 13:1,3,9,18,21,24 14:20 15:5,7,8,9 26:11,15, 16,23	handled 13:3,9	included 20:13,18
expended 22:11	focus 6:6	happened 17:24	including 7:12 16:10
expenses 7:7,11,13	found 18:17	happy 5:16 33:10,13	incorporated 24:25
expert 17:1 20:12 28:25 33:3	frivolousness 22:3	hard 10:23 28:3	incorporates 22:2 30:22
experts 7:14	front 6:11	hear 20:3	incorrect 16:15
extent 20:17 21:7 25:17			
extra 10:3			

## Hearing Proceedings

## Shawn Bidsal v. CLA Properties, LLC, et al.

incorrectly 12:16	32:22,24	language 7:6 8:3,5,16	lot 10:3 17:11 18:21 19:4 25:2
incurred 13:20 14:16 15:24 21:15	items 27:24	lapse 29:8	lots 17:18
indiscernible 8:21 22:1	J	latest 22:5	Louis 4:18
industry 11:18	James 4:10	law 6:2 8:14,17,19 22:2,4 27:6 30:22,25 31:24,25 32:15	M
information 10:19,24 11:6 18:9,20,21 19:4,6 31:9	JAMS 7:7	Lawless 16:11	M-A-N-N-I-N-G 4:25
instance 10:9 15:8 31:19	January 5:8	laws 21:25 22:2	made 9:20 16:16 18:10,16 24:20 31:16,21,25
intend 29:21	Jim 13:12,13	lawyer 22:18 24:24	make 5:16 10:13 11:24 14:23 33:12
interest 27:12	joining 4:11	lawyers 21:19 22:15 24:21	makes 16:4 25:13 33:14
interested 11:2	judgment 31:22	leading 12:2	making 5:18 18:2 24:14
interim 30:18 33:18	justified 24:10 29:15,17	legal 9:6	mandate 12:7
interpolate 9:2	justify 20:12	Legrand 9:13 28:19,22,23,24	Manning 4:22,25
interpret 7:1 8:15,18	K	Legrand's 9:22	massive 27:22
interpretation 6:21 7:19,24 30:17	K-U-R 15:21	legwork 17:11	matter 6:4,16 9:14 12:16 13:18 17:12 22:16,23 27:5 29:11, 15,16 30:8
interpreted 16:6	keeping 11:17	length 27:11,12	matters 12:17 27:7,9,21 28:8,15 30:4,9
interpreting 8:20	kind 9:10 12:1 13:22,23 16:13 18:22	Lewin 4:15 5:3 19:8,9,12,24 20:1,3, 7,10 22:16 23:3,10,12,15,21 25:3 30:21 34:4,10	meaning 7:18 11:23
interrogatories 27:13	knowledge 14:16	limine 29:3	meet 22:6
invoice 13:21	Kur 15:21,25 16:7,14,16,22 17:4, 14,22 18:4,15,17,24	limitations 8:5,12	member 6:15
invoices 13:16	Kur's 33:2	litigation 16:23	members 6:12,21 7:8
involved 12:1 17:4 18:4 22:15	L	local 16:25	million 21:20
irrelevant 9:11	L-A-W-L-E-S-S 16:11	location 20:8	minor 16:11
issue 6:14,17 9:17 12:23 13:22 14:20 19:20,25 20:11 21:10 24:24 25:1,4,18 26:11,12 27:10,12 28:3,22 29:5,11,23	laid 12:20	looked 11:19	minute 14:6
issues 7:17 13:23 26:23 28:7 30:15	landline 23:11	lost 27:11,12,18	

## Hearing Proceedings

## Shawn Bidsal v. CLA Properties, LLC, et al.

mistakes 25:12,13	obliterate 26:24	parentheses 6:23	24:13 26:10 32:14
MONDAY 4:1	offers 31:21	parse 8:6 32:16,18	pointed 12:11 25:11 31:16
months' 10:3	office 11:21,23	part 14:2 16:6,24 22:23	pointing 32:3
morning 4:6,16,17,19,20	officer 14:25 15:14	parties 7:25	points 12:19
motion 8:7 19:17 21:2 22:4 27:13, 14,16 28:9,11,19,22 29:3 31:1	operating 6:3,5,8 7:5,24 8:4,11,16 9:15 30:18,22 31:17,24 32:4,20 33:20	parties' 8:15	portions 20:15 21:6
motions 11:22 27:17 31:20 32:16	opinions 17:2,9 18:19,23	partner 16:4	position 21:21 30:14
moved 20:7	opportunity 26:4	party 7:15,16,17 30:19 32:22,24 33:19	potentially 22:13
moving 20:19 21:12	oppose 21:4	pass 12:13	prepare 10:4 33:17
<hr/>	opposition 5:9 9:10	payment 21:14 23:1,2	prepared 11:21 17:7 18:8,13 19:15
N	order 21:13,23 25:18 26:4 32:25	pending 30:2,3	preparing 18:14
national 16:24	ordered 20:20	people 16:10 26:8	present 23:7 24:22
necessarily 22:25 23:4	original 31:1	percent 6:14 31:23	presented 12:5 32:22 33:11
needed 18:12	outstanding 13:16	Perfect 23:16	pressed 32:6
Nevada 8:17,19 10:22 17:1 21:25 22:2,4 30:22,25 31:22,25 32:15	over- 28:6	performance 6:23 7:2,20 8:16	presumed 25:23
nice 34:5	overarching 31:2	period 28:20 33:9	pretty 5:15 11:8 32:21
normal 11:18 26:1	overlapping 29:24	permit 20:24	prevailed 7:17
note 20:14 26:12	overstaffed 22:9,14,17	person 26:8	prevailing 7:14,16 30:19 32:22,24 33:19
number 22:14	<hr/>	pitch 25:4	previous 11:12
<hr/>	P	place 5:23 25:8	previously 7:12
O	paid 13:3,10 21:23 27:1	plate 33:21	primarily 11:21 18:4 24:18
object 20:15 21:5	papers 20:19 21:12	play 25:2 30:5	primary 21:10
obligation 31:7	paperwork 22:20	pleadings 11:22	privilege 10:21,22 24:23 25:22
obligations 6:23 7:20,25	paragraph 6:17 14:14	point 10:6 12:10 19:13 23:21	privileged 10:19,24

## Hearing Proceedings

## Shawn Bidsal v. CLA Properties, LLC, et al.

problem 31:4	12:18,22 29:20	21,23 30:7	requires 6:14
proceeded 29:11	quickly 30:4 33:24 34:8	redaction 25:6 26:12 27:22 28:2,3,15	reread 29:9
proceeding 21:15	<hr/> R <hr/>	redactions 25:7,19,24 30:10	research 30:5
proceedings 4:3 16:18 34:11	raised 12:24 19:20,24 20:10,11 29:5	redoing 29:19	resolved 6:13
process 26:6 28:8	ran 21:19	reduced 12:14	respect 6:14 21:8 24:23 25:5 29:24
product 10:22 11:2,25 25:22	rate 15:5,7,8,9	reference 13:5 16:4,16	respond 30:13,16
pronounced 15:20	rates 11:13,16,18	referenced 14:17 15:16,22,25 16:21 19:2	respondent 12:25
proof 20:18 21:1,3,8 27:2	reach 6:13	references 11:1 16:2 17:19	response 19:21 22:12
properly 22:11 25:18 26:5 28:9 29:6	reaching 31:3	reflects 13:8	rest 9:9
proposition 21:24	read 8:4,25 9:4 14:13	relate 27:24 28:7 31:5	result 14:17
provide 10:8,12 11:6 20:21 22:7,8 33:4	ready 18:13 26:3	related 9:22 25:24	resulted 10:3
provided 7:10 10:16 17:1 31:9 33:19	reason 22:11	relates 15:18 33:3	review 10:14 18:10,17 26:5
providing 25:5	reasonable 11:10,18 20:12 22:11 23:7, 24 24:2 30:25 31:3,7 32:9, 10,14 33:18	relied 18:22	reviewed 11:24
provision 6:22 31:24	recall 19:14	remember 16:11	revisit 29:9
provisions 7:1	received 5:7,10 9:10	remind 9:13	revisiting 29:18
pull 14:5,7	recharacterize 18:2	reply 5:10 21:3 22:5	ripe 30:23
purpose 26:7	recognize 24:25	report 16:22 18:14,16,23 19:15	rise 6:11
pursued 27:11	recollection 14:4	reporter 4:21,22,25 8:22 14:12 19:11 20:1,5,9 23:2,20	Rod 4:15
put 5:15 18:18 23:21	record 23:18,19	representation 14:25	roughly 28:21
putting 17:22 24:5	records 12:24 17:5,6,16,19 18:18 19:3	request 8:2	ruled 29:16
<hr/> Q <hr/>	redact 26:2	requested 10:15 13:2	ruling 29:17 30:3
question 15:18 23:6	redacted 10:16,17 12:24 17:17 26:20,	required 7:2,9 10:10 11:5 29:8,9 33:7	run 33:8
questions		requirements 21:1 22:7	



## Hearing Proceedings

## Shawn Bidsal v. CLA Properties, LLC, et al.

<hr/> <p style="text-align: center;">S</p> <hr/> <p>sandbagged 28:23</p> <p>satisfied 21:2</p> <p>schedule 24:21</p> <p>schedules 17:7,8 18:12,14</p> <p>section 6:7,10,18,19 7:6</p> <p>seeking 13:19 26:9 27:24</p> <p>self-explanatory 5:16</p> <p>sentence 6:10,19</p> <p>service 23:14</p> <p>set 7:17 9:15 20:11 30:18 32:5</p> <p>Shapiro 4:10 5:12 13:12,13,15 14:2, 10,14 15:14 17:15,20 24:7 25:14 26:1,24 28:16 31:6</p> <p>Shapiro's 11:21 13:6,11 17:21 26:13</p> <p>shared 7:8</p> <p>show 11:3 15:10 24:11</p> <p>showed 13:21 18:6</p> <p>shows 15:5</p> <p>side 8:25 9:16,18 10:16 11:11 18:1 24:25 32:9 34:3</p> <p>side's 6:2</p> <p>simply 30:9</p> <p>sir 14:12</p> <p>slightly 11:14</p>	<p>slower 14:13</p> <p>Smith 13:15 26:24 28:16</p> <p>sort 15:8</p> <p>sought 13:15</p> <p>speaking 16:20 31:13</p> <p>specifically 25:20</p> <p>spent 22:10 25:17 29:8 30:8</p> <p>spoke 5:8</p> <p>spotty 23:14</p> <p>standard 9:14 32:4</p> <p>start 5:24</p> <p>stated 13:17</p> <p>statement 13:17 15:14 19:17</p> <p>statements 20:21</p> <p>statutes 31:21</p> <p>step 15:2</p> <p>stop 23:8</p> <p>straightforward 11:9</p> <p>submission 25:12</p> <p>submit 14:24 30:11</p> <p>submitted 24:9</p> <p>substantive 17:13</p> <p>succeed 27:8</p>	<p>sufficient 22:8</p> <p>summarily 31:16</p> <p>supplement 10:1</p> <p>supplemental 5:8,10 12:25 14:9,24 19:21 20:16</p> <p>support 5:11 16:24 19:18 20:17</p> <p>supporting 21:8</p> <p>supposed 21:1 31:18 32:16,18</p> <p>surprised 6:1 14:20</p> <hr/> <p style="text-align: center;">T</p> <hr/> <p>taking 31:7</p> <p>talked 21:11 29:1</p> <p>talking 17:18</p> <p>talks 6:17</p> <p>task 15:9</p> <p>ten 21:19 33:9,22</p> <p>tender 27:10</p> <p>terms 8:24 10:4 11:16 22:17,19</p> <p>testified 17:2</p> <p>testify 7:23 29:1</p> <p>testifying 29:2</p> <p>testimony 9:22 15:25 16:2 19:14 29:4</p> <p>theory 21:18</p> <p>thereunder</p>	<p>7:25</p> <p>thing 5:19,22 6:7 29:22</p> <p>things 9:2 11:2,3,22,24 17:17 18:11,17 22:18,19,20 24:21 29:10 32:19 33:17,21</p> <p>thought 11:25 14:19 18:11 20:21</p> <p>time 5:7 7:9 9:23,24 10:1 15:12 18:5 22:10 25:17 28:20,22 29:7,8,14,19 30:7,8 34:1</p> <p>titled 6:10</p> <p>today 4:22</p> <p>token 20:15</p> <p>tortured 8:2</p> <p>total 15:19 28:21</p> <p>Tracy 4:21,23</p> <p>transcript 4:3 16:2</p> <p>trial 9:21 10:5 12:2 17:13 29:2,5 32:18</p> <p>tribunal 6:24</p> <p>trumps 6:3</p> <p>turn 7:4</p> <hr/> <p style="text-align: center;">U</p> <hr/> <p>Uh-huh 5:21</p> <p>ultimate 29:17</p> <p>ultimately 10:2</p> <p>unable 28:4</p>
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## Hearing Proceedings

Shawn Bidsal v. CLA Properties, LLC, et al.

understand 10:23 20:25	won 24:9 32:19	
understanding 14:21	word 26:3	
unique 13:23	work 10:3,22 11:1 19:1 25:9,10,22 26:16,17 28:4,6 33:3,7	
unreasonable 12:3 32:13	worked 17:14	
unredacted 10:7 20:22 28:12	working 21:19 32:17	
<hr/> V <hr/>	worth 28:17	
verification 20:16	wrong 18:8	
verified 17:8	<hr/> Y <hr/>	
virtually 16:4 26:2	years 18:3 33:9	
volume 20:5		
vote 6:14		
<hr/> W <hr/>		
waiver 25:21		
Wall 4:6,7,13,17,20,23 5:1,4,21 12:21 13:25 14:6 15:13 19:7, 19 22:13 23:8,13,16,19 24:15 30:12 33:15 34:6		
wanted 9:8,16 23:23		
whatsoever 21:13		
wholesale 25:7		
Wilcox 16:17,25 17:9 18:10,16,23		
Wilcox's 15:19 16:1,22 19:14		
withdraw 27:16		
witnesses 7:22 24:19		