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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION
CASE NUMBER 13-21482-CIV-MORENO

VIVIAN KATSANTONIS, an individual,
and JOANNE KATSANTONIS, an
individual,

Plaintiffs,

Courtroom 13-3

vs.

Miami, Florida

MARY REICH SHECHTMAN and
HONEY SHERMAN, as co-trustees
of the Shechtman Family Trust,

February 11, 2014

Defendants.

BENCH TRIAL PROCEEDINGS
BEFORE THE HONORABLE FEDERICO A. MORENO
CHIEF UNITED STATES DISTRICT JUDGE

APPEARANCES:

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EXHIBITS

Exhibits	Marked for Identification		Received in Evidence	
Description	Page	Line	Page	Line
Plaintiffs' Exhibit Numbers 23 and 27	6			3
Defendants' Exhibit Number 1			34	18
Plaintiffs' Exhibit Number 7			48	8

1 (The following proceedings were held at 10:00 a.m.)

2 THE COURT: Defendants are present, plaintiffs are
3 present; counsel for both sides.

4 Call your next witness, please.

5 MR. HARRIS: Your Honor, plaintiffs call Raul
6 Santidrian.

7 THE COURT: Right over here, please, sir. Thank you.
8 Raise your right hand.

9 RAUL SANTIDRIAN, PLAINTIFFS' WITNESS, SWORN.

10 THE COURT: Okay. Have a seat. Tell us your name and
11 spell your last name, please.

12 THE WITNESS: My name is Raul Santidrian. Last name is
13 spelled S-a-n, like Nancy, T, like Thomas, i-d, like David,
14 r-i-a-n, Nancy.

15 THE COURT: Okay. Thank you. Go ahead.

16 MR. HARRIS: Your Honor, through this witness, and I
17 apologize, we have lost our list of admitted exhibits, but I
18 would like to move in 23 and 27 if they're not admitted yet.

19 MR. SOTO: 27?

20 MR. HARRIS: Yes.

21 MR. SOTO: No objection, Your Honor, and I don't think
22 they have been admitted.

23 THE COURT: Okay. 27, the email between Santidrian and
24 Joseph, will be admitted, and the other exhibit was which one?

25 MR. HARRIS: 23, Your Honor.

1 THE COURT: 23. The email between those two
2 individuals will also be admitted. Okay.

3 (Plaintiffs' Exhibit Numbers 23 and 27 were received in
4 evidence.)

5 MR. HARRIS: Thank you, Your Honor.

6 THE COURT: Go ahead.

7 DIRECT EXAMINATION

8 BY MR. HARRIS:

9 Q. Now, Mr. Santidrian, you were the buyers' real estate agent
10 in connection with their attempted purchase of Condo Unit 3807
11 at TDR Trump Tower III in Sunny Isles, correct?

12 A. That is correct.

13 Q. Okay. And you were involved in an exchange of offers and
14 counteroffers between the plaintiffs and the defendants in early
15 February 2013?

16 A. Yes.

17 Q. Okay. Who did you deal with from the defendants in
18 connection with that exchange?

19 A. Their agent, Sean. I believe Joseph is his last name. It's
20 been awhile.

21 Q. When, if ever, did you communicate directly with either
22 Defendant Sherman or Shechtman?

23 A. Never. Never met them.

24 Q. You should have a black exhibit binder in front of you. Can
25 you open it and look at Exhibits 13 and 14?

1 A. Okay.

2 Q. Now, do you recognize Exhibit 14?

3 A. 14?

4 Q. 14.

5 A. Yes, I do.

6 Q. Can you tell me what that is?

7 A. It appears to be a counteroffer signed for 1 million 230, if
8 I'm doing this correctly.

9 THE COURT: Did you introduce 14?

10 MR. HARRIS: It's already been introduced.

11 THE COURT: I didn't have it marked, but you may be
12 right. Any objection?

13 MR. SOTO: No, Your Honor. It was introduced
14 yesterday.

15 THE COURT: Okay. All right. I just didn't mark it.

16 BY MR. HARRIS:

17 Q. I'm sorry. I think I referred you to the wrong exhibit.
18 The one I want to talk about is Exhibit 12.

19 A. 12. Okay.

20 Q. Do you recognize that document?

21 A. Yes.

22 Q. And what is that?

23 A. A counteroffer for 1 million 330.

24 Q. And how did you come to recognize this document?

25 A. Because it was sent to me by the Realtor for the seller.

1 Q. And do you recall when that was sent to you?

2 A. The exact date, probably sometime around February 5th or
3 6th.

4 THE COURT: Whose initials are they? Who signed it?

5 THE WITNESS: I'm not sure who these initials are.

6 THE COURT: Okay.

7 THE WITNESS: I'm assuming the seller.

8 THE COURT: But you don't know?

9 THE WITNESS: No.

10 BY MR. HARRIS:

11 Q. And can you look at Exhibit 22, please?

12 A. Okay.

13 Q. Do you recognize that document?

14 A. Yes.

15 Q. And how did you come to recognize that document?

16 A. That is the counteroffer that was sent to me by Sean on
17 February 7th, in the morning.

18 Q. And can you look for me at Exhibit Number 1, please?

19 A. Okay.

20 Q. Do you recognize that document?

21 A. Yes.

22 Q. And how do you come to recognize that document?

23 A. That is the executed contract that I sent to Sean with both
24 of my buyers' initials.

25 Q. When, if ever, did you get permission to do that?

1 A. When did I get permission to send it?

2 Q. Yes.

3 A. On February 7th.

4 Q. Who did you get that permission from?

5 A. From Vivian and Joanne Katsantonis.

6 Q. Okay. And you said you sent it to Sean Joseph on what date?

7 A. On February 7th.

8 Q. Okay.

9 THE COURT: When you sent it, did it have initials
10 there where it says "sellers' initials"?

11 THE WITNESS: Yes. It was the same page, just altering
12 the price.

13 BY MR. HARRIS:

14 Q. And can you look at Exhibit 2, please?

15 A. Okay. It's an email.

16 Q. And the top email, do you recognize that?

17 A. Yes.

18 Q. Okay. And it talks about the fully executed contract?

19 A. Correct. I'm informing him that I'm sending him the fully
20 executed contract.

21 Q. And is that any of the exhibits that we've looked at so far?

22 A. Yes, it's Exhibit 1, or is it 2? Yeah, 1.

23 Q. So looking at this top exhibit, it has a date of February 7,
24 2013, at 8:26 p.m.?

25 A. Yes.

1 Q. Is that the date and time that you sent --

2 A. Yes.

3 Q. -- Exhibit 1?

4 A. Yes, it is.

5 Q. To Sean Joseph?

6 A. To Sean Joseph.

7 Q. And if you flip to the last page of this exhibit --

8 THE COURT: Before you go through it, you see in that
9 same exhibit that we're talking about, 2, you see the email from
10 February 7th at 11:21 --

11 THE WITNESS: Um-hum.

12 THE COURT: -- where you say, "Sean, as per our phone
13 conversation, have your seller sign the counter for 1.3 and
14 send it to me tonight."

15 THE WITNESS: Yes, I do.

16 THE COURT: Okay. So it wasn't signed by the seller
17 because this is after 8:26, right?

18 THE WITNESS: No, no. This is 11:21 a.m.

19 THE COURT: A.M.?

20 THE WITNESS: Yes.

21 THE COURT: Okay.

22 THE WITNESS: In the morning.

23 THE COURT: Okay. Thank you.

24 BY MR. HARRIS:

25 Q. So this email at 11:21 in the morning, on February 7th, you

1 say, "Sean, as per our phone conversation, please have your
2 seller sign the counter for 1.3."

3 A. Correct.

4 Q. Why did you ask him for a signed counteroffer?

5 A. Because we had a phone conversation. My clients had
6 indicated to me that they were going to fly down the following
7 day to take a look at another property that I was pushing. So
8 this is, let's move on and go with this because they're not
9 budging.

10 So I said to Sean, get me your side to sign the
11 contract; give it to me in my hand, so when I'm with them in
12 person, I can -- literally this is my words -- I can twist their
13 arm and convince them that they should accept the 1.3. So get
14 me that signed and I'll do my best to get my buyers to sign. As
15 it turns out, they didn't even have to fly down. I convinced
16 them to sign that very day.

17 Q. Okay.

18 THE COURT: Whose initials do the plaintiffs say is on
19 the Exhibit 1, Plaintiffs' Exhibit 1 as the seller?

20 MR. HARRIS: You're asking me?

21 THE COURT: Yeah, I'm asking you. You're the
22 plaintiff.

23 MR. HARRIS: What was the question? I'm sorry.

24 THE COURT: Whose initials are these?

25 MR. HARRIS: Well, on Exhibit 1, we have MS, which is

1 Mary Shechtman by the price change.

2 THE COURT: Is there a dispute as to that from the
3 defendants?

4 MR. SOTO: That it's the initials stamp for Mary
5 Shechtman?

6 THE COURT: That she's the one who initialed it.

7 MR. SOTO: Yes, she didn't sign.

8 THE COURT: She did sign it?

9 MR. SOTO: She did not.

10 THE COURT: She did not sign.

11 MR. SOTO: Mr. Joseph testified that he signed it
12 yesterday.

13 MR. HARRIS: Your Honor, we have pretrial stipulations
14 in which the defendants have admitted that Mary Shechtman signed
15 this contract.

16 THE COURT: Yeah, we have gone through that. What do I
17 do with that?

18 MR. HARRIS: I would like you to take judicial notice
19 of the stipulation. It's an agreed fact. They shouldn't be
20 able to contest that at this point.

21 THE COURT: What do you say?

22 MR. SOTO: We disagree, Your Honor. That was an error,
23 obviously.

24 THE COURT: I know, but aren't you stuck?

25 There's an opinion that says once you agree on a

1 pretrial stipulation, you can't really back out of it.

2 MR. SOTO: You can, Your Honor. There has been

3 other --

4 THE COURT: You can?

5 MR. SOTO: Yes.

6 THE COURT: Oh, you've got to give me a case because I
7 have a case that says you cannot.

8 MR. SOTO: I will pull a case for you for a mistake, a
9 common mistake or an error that is --

10 THE COURT: In a pretrial stipulation?

11 MR. SOTO: That is completely contradicted by the
12 defendants. I will pull that case for you and have it for you
13 this afternoon, Your Honor.

14 THE COURT: So whose initials are those? Sean Joseph
15 who wrote MS?

16 MR. SOTO: Correct, Your Honor.

17 THE COURT: And you dispute that?

18 MR. HARRIS: We believe that it was ratified by their
19 pleadings. You can --

20 THE COURT: No, you dispute that?

21 MR. HARRIS: I dispute that.

22 THE COURT: You say MS is what she wrote?

23 MR. HARRIS: I say that MS is what she wrote, yes.

24 THE COURT: Not Sean Joseph for MS?

25 MR. HARRIS: In my view, it doesn't matter which one

1 did it because --

2 THE COURT: I know, but which one is it, first of all?

3 MR. HARRIS: Well, we have heard two different stories.

4 I'll go with Mary Shechtman signed it.

5 THE COURT: Okay. Go ahead.

6 MR. HARRIS: Your Honor, I would just like --

7 THE COURT: Sorry to interrupt.

8 MR. HARRIS: Your Honor, we have the pretrial

9 stipulation.

10 THE COURT: No, no, just ask questions. We will do the
11 legal analysis later. Let's just get him in and out.

12 BY MR. HARRIS:

13 Q. What reason, Mr. Santidrian, did you have, if any, to
14 question whether this was a binding counteroffer if accepted by
15 your clients?

16 THE COURT: Why is that important, what he thinks about
17 a contract?

18 MR. HARRIS: Because he is a representative. He is the
19 real estate agent who's acting on behalf of the plaintiffs, and
20 we're trying to establish the apparent authority. So if he had
21 a reason to --

22 THE COURT: So you want to establish apparent authority
23 through him, not your clients? If he believed that the other
24 Realtor had the authority, that's enough? Realtor with Realtor
25 because it's not purchaser and seller.

1 MR. HARRIS: I was just trying to demonstrate to the
2 fact finder that everyone on the plaintiffs' side of the table
3 believed that this was a valid counteroffer with authority.

4 THE COURT: But what difference is it? Like if they
5 spoke with their cousins, too, would that count?

6 MR. HARRIS: No, Your Honor, but these are the
7 people who were --

8 THE COURT: It counts because he's the Realtor?

9 MR. HARRIS: Yes.

10 THE COURT: Why is that?

11 MR. HARRIS: Because he was negotiating. He's the
12 agent of the plaintiffs, and he's negotiating the deal on their
13 behalf exclusively.

14 THE COURT: So what he thinks is binding?

15 MR. HARRIS: I didn't say what he thinks is binding.

16 THE COURT: So he's not an agent for the plaintiffs?

17 MR. HARRIS: He is an agent of the plaintiffs.

18 THE COURT: Well, if someone is an agent, what he says
19 binds the principal, right?

20 MR. HARRIS: It can.

21 THE COURT: All right. Go ahead.

22 THE WITNESS: Can you repeat the question?

23 BY MR. HARRIS:

24 Q. What reason, if any, did you have to think that this
25 exhibit, the counteroffer, the \$1.3 million counteroffer that

1 you received from Sean Joseph, would be a binding contract if
2 accepted and signed by your clients, the plaintiffs?

3 A. Because Sean was representing the buyers -- I mean, the
4 sellers. He made it very clear.

5 Q. I am saying, did you have any reason to doubt that it was a
6 binding counteroffer?

7 A. None whatsoever.

8 Q. And when, if ever, did Mr. Joseph advise you that the \$1.3
9 million counteroffer that you received required two signatures
10 from the seller?

11 A. He did that in the morning of February 8th, the day after I
12 sent him the executed contract via email, and he did that by
13 text.

14 Q. I'm sorry?

15 A. He did that by way of text.

16 Q. When, if ever, did the defendants' agent advise you that
17 Mary Shechtman intended to use the property if the sale did not
18 go through?

19 A. He never mentioned that.

20 Q. Okay. And today, do you have an understanding of what price
21 you might be able to obtain an 07 line unit at Trump Tower III?

22 MR. SOTO: Objection, Your Honor. He's already been
23 disqualified as an expert witness in this case for failure to
24 disclose him.

25 MR. HARRIS: Your Honor, we are only asking to get his

1 factual knowledge as a lay witness. His opinion testimony is
2 admissible if he has facts and it doesn't require specialized
3 knowledge for the finder of fact and we don't believe this is
4 the kind of scientific or technical expertise that would be
5 required.

6 THE COURT: He doesn't know what he's talking about.

7 MR. HARRIS: No, he does.

8 THE COURT: And the reason he knows what he's talking
9 about is because he is a real estate agent?

10 MR. HARRIS: He is a real estate agent who has --

11 THE COURT: That's an expert, isn't it?

12 MR. HARRIS: Well --

13 THE COURT: You don't have to be a scientific expert.
14 For example, in a criminal case, you can have a cop who says I
15 know how drug deals occur and he is qualified as an expert and
16 he didn't go to Harvard or Virginia or Dartmouth, or anything
17 like that, but he knows what he's talking about.

18 I suspect that you believe that Mr. Santidrian knows
19 what he's talking about when it comes to real estate, right?

20 MR. HARRIS: Absolutely.

21 THE COURT: That's an expert, isn't it?

22 MR. HARRIS: I think that the courts have allowed
23 opinion testimony where expert testimony would not be necessary
24 to explain some sort of issue.

25 THE COURT: Sure, you can have lay testimony, but he's

1 not really giving lay testimony. He is giving expert testimony
2 based on his real estate experience.

3 MR. HARRIS: Okay, Your Honor.

4 THE COURT: A lay person is if we've got someone out of
5 the street and they say, what's this condominium worth? If
6 you've got the average guy, he would probably say \$1.3 million.
7 Are you crazy? That's what the average person would say, don't
8 you think?

9 MR. HARRIS: I do think that and I don't think that --

10 THE COURT: Probably not in your circles, but in my
11 circles, most people would say that. If we had the jurors that
12 neither side wanted, that's what they would say.

13 MR. HARRIS: Well, I don't think that testimony would
14 be admissible. It would have to be somewhere in between.

15 THE COURT: You're right because they don't know
16 enough.

17 MR. HARRIS: But Mr. Santidrian has personal knowledge.

18 THE COURT: Because he is an expert and he's been in
19 real estate.

20 So I'm going to sustain the objection, recognizing that
21 he knows what he's talking about. So it's kind of a compliment,
22 but makes it inadmissible.

23 **This is just lawyer talk.**

24 THE WITNESS: I understand.

25 MR. HARRIS: Thank you, Your Honor. I have no further

1 questions.

2 THE COURT: Cross-examination, if any.

3 MR. SOTO: Thank you, Your Honor.

4 CROSS-EXAMINATION

5 BY MR. SOTO:

6 Q. Mr. Santidrian, I believe that you testified earlier that
7 you had no contact with the defendants in this case.

8 A. Yes, I did.

9 Q. Yes, you did have?

10 A. No. Yes, I testified that I didn't, never.

11 Q. Now, take a look at Exhibit 1, I believe in the black binder
12 that you have there.

13 A. Okay.

14 Q. Who prepared this contract?

15 A. I did.

16 Q. You filled in the sellers?

17 A. Yes, I filled in everything.

18 Q. You filled in the buyers?

19 A. Everything.

20 Q. You filled anything that's type written, correct?

21 A. Yes, that's correct.

22 Q. Okay. Where did you get that information?

23 A. From the local MLS.

24 Q. In the listing itself?

25 A. Um-hum, yes.

1 Q. Does it identify two individuals as the seller?

2 A. No, it does not.

3 Q. What does it identify?

4 A. It identifies some kind of TRS, which stands for trust.

5 Q. Does it have two names there?

6 A. It has two names.

7 Q. And those names are the defendants in this case, correct?

8 A. It appears to be.

9 Q. Okay. And the two plaintiffs are also identified there?

10 A. Yes.

11 Q. Your clients?

12 A. Yes.

13 Q. Let's take a look at the initials in the right side, middle
14 of the page.

15 A. Yes.

16 Q. Do you recognize any of those initials?

17 A. On the bottom right?

18 Q. On the middle right. We are looking at Exhibit 1, correct?

19 THE COURT: Next to 1.3 million.

20 THE WITNESS: Yeah, it appears to be MS and then Joanne
21 and Vivian.

22 BY MR. SOTO:

23 Q. Were you present when any of those initials were put on this
24 contract?

25 A. No.

1 Q. Do you know that the JK and VK to be Joanne Katsantonis and
2 Vivian Katsantonis?

3 A. Yes, I do.

4 Q. Were you told that they were signed by the same individual
5 and not by each individual?

6 A. No.

7 Q. Were you told that Joanne signed for both her and her
8 sister?

9 A. No.

10 Q. Did you know that?

11 A. No.

12 Q. Did you ever receive a Power of Attorney from one or the
13 other that they could sign for their sister?

14 A. No.

15 Q. Did you ever inquire from Mr. Joseph why there wasn't an
16 initial, a second initial from the seller?

17 A. We didn't inquire because didn't need to know. He
18 represented them, not me.

19 Q. He never made any representations to you that Mary Sherman
20 had sole authority?

21 MR. HARRIS: Your Honor, that Mary Sherman is confusing
22 him.

23 MR. SOTO: Mary Shechtman, I apologize.

24 THE COURT: Otherwise, it's hard enough as it is,
25 right?

1 MR. SOTO: Yes. Just keeping the names and the
2 pronunciation straight.

3 THE COURT: Maybe it's a Freudian slip.

4 MR. SOTO: Maybe.

5 THE WITNESS: All email correspondence, even when he
6 mentioned, "She is tough, she will not sell under 1.3;" it's
7 she, she, she. There's no mention in any email of them or they.

8 BY MR. SOTO:

9 Q. Okay. My question was: Did he make any representations to
10 you that Mary Shechtman had the authority?

11 A. It is assumed. He never said I have the authority.

12 Q. Let's take a look at your email which I believe is Exhibit
13 Number 2.

14 A. Okay.

15 Q. Is that the one that you just read from on February 7th at
16 11:20 a.m., correct?

17 A. Correct.

18 Q. Can we flip to the next page, the second page in that
19 exhibit, middle of the page, Wednesday, February 6th. Is that
20 an email that you received from Mr. Joseph?

21 A. Yes, it is.

22 Q. Can you read that email for the Court, please?

23 A. "Raul, I am at a family function this evening. I really
24 don't have anything further to say [sic]. If you have
25 another offer, send it over. However, keep in mind, my

1 seller will not sell for less than 1.3 million. In fact,
2 she has not been agreed to that obviously. She is tough.
3 She is tough. If your buyer is not willing to come up to at
4 least that number, then this will not work."

5 Q. So as of February 6th, at 4:42 p.m., Mr. Joseph told you
6 that he did not have authority and that his seller didn't agree
7 to the 1.3, correct?

8 A. That's not what he said.

9 Q. Okay. Can you read that second to last line, "in fact"?

10 A. "In fact, she has not been agreed to that obviously."

11 Q. You don't interrupt that as saying that his seller hadn't
12 agreed to the 1.3 yet?

13 A. Oh, not agreed yet, yes. But that he had no authority, no.

14 Q. Okay. Did you ever have a telephone call with Mr. Joseph on
15 February 7th prior to 8:26 p.m.?

16 A. Yes.

17 Q. And that's the phone call that you referenced in your email
18 on February 7, 2013, at 8:26 p.m.?

19 A. Exhibit 1?

20 Q. Exhibit 2, first page.

21 A. Yes, that's the one.

22 Q. Isn't it true that Mr. Joseph in that phone conversation
23 told you that he's sending over the counteroffer, but that he
24 didn't have authority from all the parties involved?

25 A. That is not true.

1 Q. I believe there is a white binder in front of you as well.
2 Will you turn to Number 6 in that white binder?

3 A. Okay.

4 Q. Are these texts that you produced under subpoena at your
5 deposition last month?

6 A. Yes. These are text messages that I provided my buyers at
7 their request months earlier, and I had them scanned in my
8 email.

9 Q. Why did you not provide all of the emails that you had with
10 Sean Joseph, I mean, all the text messages, excuse me?

11 A. Couple of months after, I would say April of that same year,
12 Vivian Katsantonis requested me to take a picture of the texts
13 involved and send it to her. So I had sent -- taken a picture
14 from my wife's phone of my phone and then sent them to my email
15 and forwarded it to them, but I kept them in my hard drive.

16 Since then, I upgraded my phone from the iPhone 4 to a
17 Samsung Notepad 3. So I no longer own that phone. So I didn't
18 have the luxury to go back and look.

19 Q. So you were told by the plaintiff, Vivian Katsantonis, to
20 send over pictures of the texts?

21 A. Yes. I mentioned to her -- we had a conversation. This
22 guy -- my words were, this guy's nuts. You know, he's telling
23 me now that he has to get approval from the attorney after the
24 fact that we have an executed contract. So there was this
25 conversation between him and I over text where I'm

1 congratulating him from having an executed contract, and all of
2 a sudden, he is backpedaling on that issue. So I felt that it
3 was important that she has a copy and that I keep a copy.

4 Q. Well, here's my question: Why didn't you feel it was
5 important to keep the other text messages?

6 A. I'm into selling real estate, not into litigation like you
7 are. So I went about my life, and I never know exactly that we
8 were going to be here a year later.

9 Q. So who made the decision to take pictures of those
10 particular text messages?

11 A. I did. I did because those were the only ones that were
12 relevant. There was nothing else that was relevant.

13 Q. Well, let's take a look at it.

14 You sent Sean a text. Let me ask you a question. On
15 the first page, your texts appear on the right, correct?

16 A. The darker ones, the darker ones are mine.

17 Q. And the lighter ones that appear on the left are from
18 Mr. Joseph?

19 A. Correct.

20 Q. And you sent him a text. At what time, we don't know
21 because we don't have the beginning text to that, correct, of
22 when the string falls?

23 A. Apparently not.

24 Q. An it says, "Sean, we have an executed contract. I will
25 send it to you tonight when I get home. They are wiring the

1 50 K to Sotheby's. I will send you an escrow letter
2 tomorrow. Can you send me a seller's disclosure and the
3 condo docs tomorrow."

4 A. Yes, I texted back.

5 Q. And Sean texted you back, "I need to get all that and speak
6 seller."

7 A. Yes.

8 Q. Do you know what he was talking about when he said he needed
9 to speak to the seller?

10 A. "I need to get all that," he's making reference to what I'm
11 asking for, the seller disclosure. And speak to the seller
12 means probably prepare a seller's disclosure. I don't know
13 exactly what he means.

14 Q. And we don't have the beginning text to be able to put that
15 in context, correct?

16 A. No.

17 Q. And you replied, "Okay. You will have the contract as soon
18 as I get home and the escrow letter tomorrow."

19 A. Yes.

20 Q. And so this appears to have been on February 7th at
21 sometime?

22 A. It was on February 7th.

23 Q. Okay. And then we flip to the next page. This is a
24 continuation, correct, just a photocopy?

25 A. Yes.

1 Q. You scrolled down the screen a little bit?

2 A. Correct.

3 Q. Okay. Then we pick up and you said -- he says, "Okay." You
4 said, "Congrats to us both!" He says, "Yes." Correct?

5 A. Yes, that's correct.

6 Q. And at 8:55 that morning, he tells you that --

7 A. The next morning.

8 Q. At 8:55 on February 8th, the date is there, right?

9 A. The next morning because the "Congrats to us both!" and
10 "Yes" was still February 7th.

11 Q. Correct.

12 "I sent the agreement to seller, Attorney Joel
13 Piotrowski. Spoke to him yesterday and asked me."

14 And we don't have anything after that for that
15 continuation of the text, correct?

16 A. Correct.

17 Q. Do you know what he said?

18 A. I believe that he mentioned that the attorney wanted to
19 review the contract.

20 Q. Okay. And you responded back at sometime after that with an
21 exclamatory, "Well, we have an executed contract, fully
22 effective."

23 MR. HARRIS: Objection, Your Honor, to the
24 characterization. I don't know why we're calling it
25 exclamatory. There is no exclamation mark.

1 THE COURT: Overruled. Go ahead.

2 BY MR. SOTO:

3 Q. Correct?

4 A. Yes, that is my text, the one you see there.

5 Q. So is it possible that some time before that particular
6 text, Mr. Joseph obviously texted you and said, we don't have an
7 executed contract?

8 A. Well, on February 8th, he made mention on his original text
9 that the attorney wanted to review the contract, and I said,
10 what's the point. We already have an executed contract. What's
11 there to review?

12 Review means let we look at it and possibly make
13 changes, but if it's executed, there's nothing to review.

14 Q. Well, we don't have that text today because you didn't take
15 a photograph of it?

16 A. Well --

17 Q. That's why we have to ask those questions.

18 A. No.

19 Q. So you don't believe it ever happened prior to February?

20 A. No.

21 Q. Okay. And Mr. Joseph goes on to tell you, "not according to
22 him, not without both signatures," correct?

23 A. Yes, and that is the first time I found out about a second
24 signature.

25 Q. Now, when you looked at the contract and you saw those two

1 names with the TRS, you never thought there were two individuals
2 that were required to sign?

3 A. No, it's not my job to interpret or represent the opposing
4 party. I mean, the sellers were not represented by me. Trust
5 accounts can be controlled by one individual. I am assuming --
6 I'm not an attorney, but there could be a hundred trust accounts
7 controlled by me.

8 Q. Okay. Let's take a look at Page 3 and Page 4. You start
9 out --

10 A. Of the white thing?

11 Q. Yeah, "It's a business agreement, so both parties must
12 sign." And then you go on to say, "no point in you and I
13 arguing --"

14 A. Give me a second. I'm not there. You're talking about 3?

15 Q. No, it's your Exhibit Number 6 in that binder.

16 A. In the black one or the white one?

17 Q. White one, same one we were looking at, but it's the third
18 page and fourth page.

19 A. In Number 6?

20 Q. Yes, sir.

21 A. Okay. Got it. Okay.

22 Q. And it says, "It's a business agreement, so both parties
23 must sign," correct?

24 A. Yes.

25 Q. And the next page appears to be you scrolling down a little

1 bit and sending him back your reply to that?

2 A. Yes, it is.

3 Q. And at the bottom, it says, February 8, 10:45 a.m.

4 A. Yes.

5 Q. So is it safe to assume that everything that happened prior
6 to February 8, 10:45 a.m. is all of these text messages?

7 A. Yes.

8 Q. And you didn't produce any other text messages other than
9 these four pages, correct?

10 A. Correct.

11 MR. SOTO: No further questions, Your Honor.

12 THE COURT: Redirect.

13 REDIRECT EXAMINATION

14 BY MR. HARRIS:

15 Q. Mr. Santidrian, can you look at Plaintiffs' Exhibit 2 in the
16 black binder, please?

17 A. Exhibit 2?

18 Q. Yes. Page 2, I'm looking at the February 6, 2013, the
19 printout from Sean Joseph at 4:42 p.m. and you testified on
20 cross that you thought Mr. Joseph was telling you here that she
21 had not agreed, right, that she had not agreed at that point?

22 A. Yes.

23 Q. And that's on February 6, obviously, right?

24 A. Yes.

25 Q. Did something happen after that to indicate to you that she

1 had agreed?

2 A. Yes.

3 Q. What was that?

4 A. He sent me a signed counteroffer for 1.3.

5 MR. HARRIS: Okay. No further questions, Your Honor.

6 THE COURT: Thank you, sir. You're excused.

7 What say the plaintiffs?

8 THE WITNESS: I'm excused? Okay.

9 THE COURT: You're excused. Most people just get the
10 heck out once they hear that.

11 THE WITNESS: Excused for the day?

12 THE COURT: Yes, sir. See, it's not so bad coming to
13 court.

14 (The witness was excused.)

15 MR. HARRIS: Your Honor, before we close, I would like
16 to specifically request the Court to consider and take notice
17 specifically of the portions of the pretrial stipulation. We
18 have them at Exhibit 35.

19 THE COURT: What part?

20 MR. HARRIS: I'm sorry?

21 THE COURT: What part of the stipulation?

22 MR. HARRIS: There are the defendants' statement of the
23 case on Page 3, about five lines down, it says; "The 'as is'
24 Residential Contract For Sale and Purchase (the offer) which
25 listed both Shechtman and Sherman as sellers, as properly

1 identified them as trustees, was only signed by one
2 co-trustee, Mary Reich Shechtman."

3 Then if you flip to Paragraph 5, which is a concise
4 statement of uncontested facts which will require no proof
5 at trial, Item Q, "Defendant Sherman did not sign or initial
6 the counteroffer; however --"

7 THE COURT: What? I'm sorry.

8 MR. HARRIS: I'm sorry. On Page 5, Item Q, it says,
9 "Uncontested facts that will require no proof at trial."

10 THE COURT: Okay.

11 MR. HARRIS: "Defendant Sherman did not sign or initial
12 the counteroffer; however, the counteroffer was executed and
13 initialed by Defendant Shechtman."

14 So then we would also like the Court to consider the
15 defendants' pleading in this case, which we have provided in our
16 binder at Exhibit 33.

17 THE COURT: What part?

18 MR. HARRIS: On Page 4, Paragraph 33, which is part of
19 their affirmative defenses, and specifically the last line in
20 Paragraph 33, I'll read for the record:

21 "Specifically, the trust did not execute the contract
22 because it was only signed by one of the co-trustees."

23 And finally, Your Honor, the defendants made in their
24 statement of facts in support of their motion to dismiss, which
25 we have provided at Tab 34 --

1 THE COURT: I'm not going to consider a response to a
2 motion to dismiss.

3 MR. HARRIS: Your Honor, this is their affirmative
4 motion to dismiss.

5 THE COURT: I know, but I'm not going to consider that.

6 MR. HARRIS: Okay. Thank you, Your Honor.

7 THE COURT: What say the plaintiffs?

8 MR. HARRIS: We request specific performance.

9 THE COURT: You rest?

10 MR. HARRIS: Oh, we rest.

11 THE COURT: What say the defendants?

12 MR. SOTO: Your Honor, we move for judgment, a directed
13 verdict. I think you ruled on yesterday --

14 THE COURT: It's a motion for judgment as a matter of
15 law, that's what we call it now, pursuant to Rule 50, I'll deny
16 it with leave to reargue at the end of the defense case.

17 MR. SOTO: Thank you, Your Honor.

18 THE COURT: So what say you on behalf of the defendant?

19 MR. SOTO: The defendant calls Mary Shechtman.

20 THE COURT: Okay. You know where the witness stand is.
21 Raise your right hand, please.

22 MARY REICH SHECHTMAN, DEFENDANT HEREIN, SWORN.

23 THE COURT: Tell us your name and spell your last name
24 for us, please.

25 THE WITNESS: Mary, M-a-r-y; Reich, R-e-i-c-h;

1 Shechtman, S-h-e-c-h-t-m-a-n.

2 THE COURT: Thank you. Go ahead.

3 DIRECT EXAMINATION

4 BY MR. SOTO:

5 Q. Ms. Shechtman, when did the trust acquire the property at
6 3807?

7 A. Couple of years ago, around March 2011 I believe.

8 Q. And if you take a look in your binder -- there's a white
9 binder that should be in front of you.

10 A. Yes.

11 Q. Take a look at Number 1.

12 MR. SOTO: Judge, we'd be moving that into evidence.

13 THE COURT: Move what into evidence?

14 MR. SOTO: The white binder, Exhibit Number 1.

15 THE COURT: Defense Exhibit Number 1. Any objection?

16 MR. HARRIS: No objection, Your Honor.

17 THE COURT: It will be admitted.

18 (Defendants' Exhibit Number 1 was received in evidence.)

19 BY MR. SOTO:

20 Q. Do you recognize that document?

21 A. Yes, I do.

22 Q. Is that the Trust Agreement for the trust that holds the
23 property?

24 A. Yes.

25 Q. And does this allow -- let me ask you this question: Does

1 this trust create or assign the powers as trustees to two
2 individuals?

3 A. Yes.

4 Q. Do you know who those individuals are?

5 A. Myself and my sister.

6 Q. And your sister is Honey Sherman, correct?

7 A. Yes.

8 Q. Okay. Now, take a look at 3.2.

9 A. Yes.

10 Q. Now, is it your understanding that the trust allowed you to
11 make unilateral decisions for minor expenditures for the
12 condo --

13 A. Minor?

14 Q. -- for the trust? Yes.

15 A. Minor, but I always did everything in conjunction with my
16 sister.

17 Q. And you'd always talk to her, correct?

18 A. Yes.

19 Q. You guys didn't use email, like we do today, correct?

20 A. No.

21 MR. HARRIS: Your Honor, I'm just going to object to
22 the leading nature of these questions.

23 THE COURT: I'll overrule it.

24 BY MR. SOTO:

25 Q. You and Honey actually telephone each other constantly,

1 correct?

2 A. Yes.

3 Q. Now, in paragraph 3.5 -- 3.2 B, can you read that for the
4 Court?

5 THE COURT: Which exhibit are we talking about?

6 MR. SOTO: Exhibit Number 1, Your Honor, the Trust
7 Agreement.

8 THE COURT: Plaintiffs' or defendants' exhibit?

9 MR. SOTO: Defendants', Your Honor.

10 THE COURT: Okay. And you want her to read to me what
11 part?

12 MR. SOTO: Paragraph Section 3.2 B.

13 THE COURT: And the reason you want her to read that to
14 me is because you don't think I can read.

15 MR. SOTO: Correct, Your Honor.

16 THE COURT: You don't think I can read.

17 MR. SOTO: No, Your Honor. And I am going to move it
18 right along.

19 THE COURT: Yeah, I mean, the Trust Agreement says what
20 it says, right?

21 MR. SOTO: It does, Your Honor.

22 THE COURT: Does it need any explanation?

23 MR. SOTO: None whatsoever.

24 THE COURT: Okay.

25 MR. SOTO: Your Honor, I'm just going to use the

1 plaintiffs' just so I don't have to put in any other contracts.

2 THE COURT: Whatever you want. It doesn't matter.

3 BY MR. SOTO:

4 Q. Mary, if you would take a look at the black binder, Exhibit
5 Number 1.

6 A. Number 1?

7 Q. Yeah.

8 A. Sorry. Yes.

9 Q. Do you recognize that as the contract that is in dispute in
10 this case?

11 A. Yes.

12 Q. Did you initial that contract?

13 A. No.

14 Q. Did you ever give approval from Honey for entering into any
15 contract?

16 A. No. I initialed things MRS.

17 Q. That's because your maiden name is Reich?

18 A. Yes.

19 Q. And that's your signature on the third to last page?

20 A. No.

21 Q. Did you ever get Sean Joseph authority to sign your name?

22 A. No.

23 MR. HARRIS: Your Honor, just for the record, I would
24 like to --

25 THE COURT: Everything is for the record. Whenever you

1 say something "for the record," the court reporter just types,
2 "for the record."

3 MR. HARRIS: I don't want to get up every time a
4 leading question is asked. I'm just going to object to the
5 entire line of leading questions.

6 THE COURT: No. If you want to object, you've got to
7 object each time.

8 MR. HARRIS: Objection, Your Honor, leading.

9 THE COURT: Overruled. Go ahead.

10 BY MR. SOTO:

11 Q. Ms. Shechtman, when did you decide to list this property?

12 A. A number of years ago. It wasn't that many years ago.
13 About a year and a half I guess.

14 Q. Okay. Why did you decide to list this property?

15 THE COURT: What difference does it make?

16 MR. SOTO: If it doesn't make a difference to you, Your
17 Honor, I'm going to move on.

18 THE COURT: Well, you tell me. Does it?

19 MR. SOTO: I believe there was a question that you
20 asked yesterday, while I was going on, you actually asked me
21 directly why.

22 THE COURT: Why what?

23 MR. SOTO: So I figured I'd ask the question.

24 If you don't need to know, I'm going to bypass it.

25 THE COURT: What did I ask? Why what?

1 MR. SOTO: I think you asked why did she put it up for
2 sale and why was it listed, the reasoning behind doing it.

3 THE COURT: Well, what I wanted to know is, according
4 to the plaintiffs, they backpedaled on it. So the question
5 would be why --

6 MR. SOTO: -- did they remove it.

7 THE COURT: -- did they remove it. That would be
8 perhaps important, though I'm not sure. I mean, there's either
9 a contract or there isn't.

10 So the only reason that would be interesting is if I
11 make credibility findings as to the motivation why someone would
12 offer something for sale, get an offer, accept it or reject it
13 depending on your point of view, and then say, well, not really.
14 We don't really want to do it. We didn't accept. So that would
15 be the reason. Not why did you put it up for sale, but go down
16 to the 1.3 million, with the last offer. We don't need to know
17 all other offers before that.

18 MR. SOTO: I'm going to go through that, because I
19 think why you put it up for sale, would help answer that
20 question for you, in why it was removed.

21 THE COURT: Why not just ask why it was removed?

22 MR. SOTO: I can do that, too. I can do it in that
23 order.

24 THE COURT: Yeah.

25 BY MR. SOTO:

1 Q. Can you tell us why you had the listing removed?

2 A. My daughter, who had been very ill, was getting better and
3 so after thinking that we wouldn't be able to use the place, we
4 saw that since she was getting better, we'd be able to --

5 THE COURT: Who is "we"? You talk and say "we." You
6 said "we" several times.

7 THE WITNESS: My family.

8 THE COURT: Well, who's the "we." Tell me who the "we"
9 is.

10 THE WITNESS: Myself, my husband, my kids would be
11 living in it.

12 THE COURT: You said "we" decided. I don't know what
13 decision.

14 THE WITNESS: You're right. I'm sorry. I hadn't
15 finished.

16 THE COURT: When did you withdraw the listing?

17 THE WITNESS: Sean had called me and said that there
18 was somebody interested. He had also said that the buyer, the
19 person who was leasing was interesting in renewing, and so
20 everything was happening sort of at the same time and my
21 daughter was getting better. And one of the reasons we had
22 thought we would sell, another factor was the building that was
23 going up next door, and we saw that that wasn't happening. So
24 everything came together.

25 THE COURT: When did all of that come together, because

1 there are offers and counteroffers, right?

2 THE WITNESS: Which I wasn't aware of.

3 THE COURT: You weren't aware of any offer or
4 counteroffer.

5 THE WITNESS: I was only told by Sean that somebody is
6 interested in buying it and he said strong offer and I was
7 going, listen, Sean, things are changing. I'm not really
8 interested and --

9 THE COURT: All of these exhibits that are the offers
10 with the different prices scratched off, you never saw until the
11 lawsuit.

12 THE WITNESS: Never saw, didn't even know they existed,
13 because I was making it very clear.

14 One of the reasons I bought that particular condo is
15 it's two doors away from my sister, and we historically always
16 lived close to each other. There was no place else. Because I
17 had said to Sean, even if I do sell, if I consider selling, I've
18 got to have another place that's close to Honey because --

19 THE COURT: And he wouldn't go back -- he did not have
20 conversations with you, Sean Joseph, about these offers and
21 counteroffers?

22 THE WITNESS: He just general, generic kind of things.
23 I was totally shocked when this happened, shocked.

24 THE COURT: All right. Go ahead.

25 BY MR. SOTO:

1 Q. Take a look at what's been marked as Plaintiffs' Number 8.

2 A. The black?

3 Q. In the black binder, second page.

4 A. Second page?

5 Q. Yes. Starts at the top with "Hi."

6 A. I'm sorry. Number?

7 Q. 8.

8 A. 8, yes.

9 Q. Is this an email that you sent to Sean in response to one of
10 those phone calls?

11 A. The one that says, "once again congratulations"?

12 Q. No, the second page --

13 A. Oh, sorry.

14 Q. -- at the top.

15 A. Yes.

16 Q. Can you read that for the Court?

17 A. "As discussed in the past, the minimum I would be willing to
18 sell for at this time is 1.3. I would also need to know
19 there was someplace else I had to move into down the road.
20 Thanks for trying."

21 Q. And you forwarded that to Sean Joseph, correct?

22 A. Yes, I did.

23 Q. And at that time, you hadn't agreed to any contract,
24 correct?

25 A. Absolutely not.

1 Q. And you hadn't signed or initialled any contract?

2 A. Absolutely not.

3 Q. Now, did you have any conversations at all with the two
4 plaintiffs in this case?

5 A. No.

6 Q. Did you ever have any conversations with Raul Santidrian?

7 A. No.

8 Q. Did you ever expressly give Sean authority to execute a
9 contract on your behalf for the sale of real estate?

10 A. No.

11 Q. Take a look at Exhibit Number 3 in the black binder,
12 Plaintiffs' 3. Do you recognize that document?

13 A. It's a Lease Agreement.

14 Q. Is this a Lease Agreement that bears your name on the second
15 and third pages?

16 A. Yes.

17 Q. And can you tell me what it says where it says lessor's
18 signature?

19 A. "Mary Shechtman per" -- something.

20 Q. I think it's clear on the next page.

21 A. It just -- "Mary Shechtman as per" --

22 Q. Is that an email?

23 A. I don't know if I am looking at the right thing.

24 Q. Okay. The third page back.

25 A. Black binder?

1 Q. In the black binder, middle of the page.

2 A. Oh, okay. "As per email." "Mary Shechtman as per email."

3 Q. Did you ever get a copy of this lease from Sean Joseph?

4 A. I don't recollect.

5 Q. And you gave Sean express authority to enter into that
6 lease, correct?

7 A. Yes. As Sean has said and in the emails, I guess he would
8 find me controlling.

9 THE COURT: This is Plaintiffs' Exhibit 3, is that what
10 we're talking about?

11 MR. SOTO: Yes, Your Honor.

12 THE COURT: Did you sign this lease?

13 BY MR. SOTO:

14 Q. Did you sign the lease?

15 A. I didn't personally sign it. I gave my permission to Sean
16 to sign it on my behalf.

17 Q. Did you have Honey Sherman's authority to enter into that
18 lease prior to telling Sean to execute the lease?

19 A. Yes, we discussed it. And it says MRS.

20 Q. Has your maiden name in there, correct?

21 A. Yes, it's signed MRS.

22 THE COURT: What are we looking at now?

23 MR. SOTO: The lease, Exhibit Number 3, in Plaintiffs'
24 black binder.

25 THE COURT: Where does it say MRS?

1 THE WITNESS: At the bottom, it says landlord.

2 THE COURT: There's an R in there?

3 THE WITNESS: Yeah.

4 THE COURT: Did you put that down?

5 THE WITNESS: I didn't. Sean signed it for me.

6 THE COURT: Well, look at the first page where it says
7 those initials. What do you think that is?

8 THE WITNESS: He didn't put it there.

9 THE COURT: So sometimes he would put MS and sometimes
10 he would put MRS, you think?

11 THE WITNESS: Yes.

12 THE COURT: Why is that?

13 THE WITNESS: I don't know. People tend not -- I'm
14 fairly insistent that my maiden name be on documentation, but
15 very often, people just don't think of it and don't always do
16 it. When I do it, I make sure I sign things MRS.

17 THE COURT: All right.

18 THE WITNESS: But even I slip up.

19 THE COURT: I'm sorry?

20 THE WITNESS: But I'm sure even I slip up.

21 MR. SOTO: Sorry, Your Honor.

22 THE COURT: Go ahead.

23 BY MR. SOTO:

24 Q. Take a look at Number 7.

25 A. Yes.

1 Q. Do you recognize that document?

2 A. Yes.

3 Q. Did you fill out anything on that document other than your
4 signature?

5 A. No.

6 Q. Do you know who filled that out?

7 A. That would have been the contractor.

8 Q. Did you have a conversation with your sister prior to
9 executing this agreement?

10 A. Yes. We both met with the contractor and decided on him
11 jointly.

12 Q. Was Honey involved in the approval or acceptance of this
13 contractor?

14 A. Yes. Honey is pretty much involved in everything.

15 Q. And you signed it as a matter of formality to start the
16 construction?

17 A. Yes. She was there, but she would have been upstairs. She
18 had had surgery and I was downstairs signing, doing the
19 paperwork down in the office, and she couldn't walk.

20 Q. Now, when you listed the property with Mr. Joseph, did you
21 have a conversation with him about what kind of offers you would
22 accept?

23 A. We -- I only said if this is going to happen, the minimum I
24 would take is 1.3, but it was very, very strongly told to him
25 that I must have another place close to my sister.

1 Q. And that's consistent with the email that you sent to him on
2 February 6th?

3 A. Yes.

4 Q. And you never gave him authority to enter into a contract
5 for --

6 THE COURT: Oh, that's a leading question now. I'll
7 sustain it.

8 MR. SOTO: I'm just asking her if she ever gave written
9 authority.

10 THE COURT: Didn't you ask her already?

11 MR. SOTO: I believe I did, but I just want to
12 double-check.

13 THE COURT: You don't need to repeat. I'm here.

14 MR. SOTO: No further questions, Your Honor.

15 THE COURT: Cross-examination.

16 CROSS-EXAMINATION

17 BY MR. HARRIS:

18 Q. If I could ask you to look at that Exhibit 7 you were just
19 looking at.

20 A. Yes.

21 MR. HARRIS: Your Honor, I'm not sure if this has been
22 admitted into evidence, but we'd like to move it in at this
23 time.

24 THE COURT: I don't think it has. You're introducing
25 it?

1 MR. HARRIS: Yes, Your Honor.

2 THE COURT: Any objection?

3 MR. SOTO: Number 7, Your Honor?

4 THE COURT: It will be admitted.

5 MR. SOTO: No objection. I thought it was already
6 entered as --

7 THE COURT: No, it wasn't; just talked about. Okay.

8 (Plaintiffs' Exhibit Number 7 was received in evidence.)

9 BY MR. HARRIS:

10 Q. Ms. Shechtman, you testified that you only entered the
11 signature. Are you referring to the very bottom of the page?

12 A. Oh, I can see I entered my name.

13 Q. In addition to the signature at the bottom, you entered your
14 name?

15 A. Right.

16 Q. Are you talking about the line at the very bottom of the
17 page?

18 A. That's where I signed. On the other side -- the signature
19 is mine. The writing part, it was the contractor.

20 Q. But right next to Mary Shechtman's signature on the bottom,
21 it says, "by Mary Shechtman." So that's the contractor?

22 A. Yes.

23 Q. But above that in the preceding list of entries, above the
24 notary, it says, "signatures of owner or owners' authorized
25 officer, director, partner, manager." Do you see that?

1 A. Yes, it does.

2 Q. And then it says, "Print Name, Mary Shechtman." Is that
3 your handwriting?

4 A. Yes.

5 Q. So you wrote your name there, right?

6 A. Yes.

7 Q. And it says "Title/Office" and you said, "owner," right?
8 You wrote that?

9 A. Yes.

10 Q. So then below that, then back to where you had originally
11 acknowledged you signed, it says, "Verification pursuant to
12 Section 92.525 Florida Statute: Under penalties of perjury,
13 I declare that I have read the foregoing and that the facts
14 stated in it are true to the best of my knowledge and
15 belief." Correct?

16 A. It says that.

17 Q. Okay. And then it says, "Signatures of owner or owners,"
18 plural, "or owner or owners' authorized officer, director,
19 partner, manager who signed above." Correct?

20 MR. SOTO: Objection, Your Honor. The document speaks
21 for itself.

22 THE COURT: Overruled.

23 BY MR. HARRIS:

24 Q. Do you see that?

25 A. Yes.

1 Q. And so you signed, correct?

2 A. Yes.

3 Q. Where on this form did you ever disclose that Honey Sherman
4 was an owner of the property?

5 A. I had disclosed it with the -- the office that this was
6 going to know. The contractor who had just met with us upstairs
7 knew. She was physically --

8 Q. Let me stop you. My question was where on this document
9 that we're looking at, Plaintiffs' Exhibit 7, did you disclose
10 that Honey Sherman was an owner of the property, the condo?

11 A. I didn't have to. It was implicitly known.

12 Q. It's not evident from this document anywhere on it that
13 Honey Sherman is an owner of the condo, correct?

14 A. No.

15 Q. What I said is correct?

16 A. Yes.

17 Q. Okay. And it doesn't reference in any way the trust or your
18 ownership as a co-trustee, correct?

19 A. It didn't need to. They had just seen her.

20 Q. But it doesn't in fact, correct? It does not reference the
21 trust?

22 A. It does not.

23 Q. And you filed this and recorded it in the Miami-Dade land
24 records, correct?

25 A. I presume so. It was the contractor that did it.

1 Q. I would like you to look at the lease that you looked at
2 before.

3 A. Where is that?

4 Q. Plaintiffs' Exhibit 3, if I'm not mistaken.

5 A. Plaintiffs' black or white?

6 Q. Plaintiffs is black.

7 A. And what number?

8 Q. 3.

9 A. Yes.

10 Q. Okay. You said you don't recall if you ever got a copy of
11 the lease?

12 A. No.

13 Q. Okay. But it's possible, right?

14 A. Yes.

15 Q. Probably. Based on what you heard from Sean Joseph
16 yesterday, saying that was his common practice to send the lease
17 to the client, you probably got this, right?

18 A. Yes.

19 Q. And you have not produced it in this case, correct?

20 A. No.

21 Q. Okay. Now, there was a preexisting lease that would have
22 immediately preceded the term of this lease for a one-year
23 period, correct?

24 A. Yes.

25 Q. And you probably were provided with a copy of that lease as

1 well?

2 A. Probably.

3 Q. And you haven't produced that in this litigation either,
4 have you?

5 MR. SOTO: Objection, Your Honor. Outside the direct
6 examination.

7 THE COURT: Overruled. Go ahead.

8 THE WITNESS: No.

9 BY MR. HARRIS:

10 Q. And on this Lease Agreement, it's a fact, right, that you
11 didn't disclose or that Honey Sherman did not sign this Lease
12 Agreement, correct?

13 A. No.

14 Q. So you gave Sean Joseph permission to sign your name, that
15 was your testimony, to this lease?

16 A. Yes, on behalf -- after a conversation with my sister who
17 concurred with doing it.

18 Q. Okay. And under this Lease Agreement, you're entitled to
19 \$6,000 a month, correct?

20 A. Yes.

21 Q. And you have the right to that, right, from the tenant?

22 A. We do.

23 Q. And that's because this is a binding agreement, correct?

24 A. Yes.

25 Q. And it nowhere has Honey Sherman's signature on it, correct?

1 A. No.

2 Q. It does not?

3 A. No, it does not, but it was done with her knowledge.

4 Q. And you've acknowledged that it says that the signature is
5 "as per email"?

6 A. Yes.

7 Q. So are you testifying that you sent an email to Sean Joseph
8 giving him authority to sign your name to this document?

9 A. I would presume so.

10 Q. Okay. And you were here last week when the judge ordered
11 you to produce all emails that you had been sent to Sean Joseph
12 by Thursday at 5 p.m., correct?

13 A. Yes.

14 Q. And did you produce that email?

15 A. No.

16 THE COURT: Why not?

17 THE WITNESS: Well, this is kind of embarrassing, but I
18 am not very good with technology, and I delete things. I don't
19 know if they are somewhere in there. But things going back,
20 every month, I just delete things that I don't find relevant.

21 BY MR. HARRIS:

22 Q. So your typical practice -- strike that.

23 You've retained Mr. Joseph to handle a number of
24 property transactions related to the condo unit on behalf of the
25 trust, correct?

1 A. A couple.

2 Q. Well, there were two leases, right, or there were multiple
3 leases?

4 A. Not multiple. One was a renewal, so I don't know if you
5 consider that.

6 Q. How many leases did you engage Mr. Joseph to represent the
7 sellers or the property owners for?

8 A. Two.

9 Q. Two. Were there seasonal leases as well?

10 A. That's a lease thereof. Well, I don't know how they
11 reference them down here.

12 Q. So your testimony is that there were only two leases and
13 they were both for one year each, correct?

14 A. There was one for six months. Then there was a lease and
15 then there was a renewal. So I don't know how you count that.

16 Q. And then there was also the attempted sales transaction that
17 we're here to talk about today, correct?

18 A. Yes.

19 Q. Okay. Now, typically in communicating instructions to
20 Mr. Joseph in connection with real estate transactions, you
21 would have a discussion or understanding with your sister and
22 then either one or the other of you could communicate those
23 instructions to Mr. Joseph, correct?

24 A. What it would usually be is Honey and I, we have a birth
25 order thing I guess.

1 Q. I'm sorry. What thing?

2 A. A birth order thing. Honey and I would discuss things, and
3 then I might be the mouthpiece for it because she did a lot of
4 traveling.

5 Q. So your typical practice was to have a discussion with
6 Honey?

7 A. Always.

8 Q. And then one of you would communicate your instructions to
9 Mr. Joseph?

10 A. Yes.

11 Q. Okay. On behalf of both of you?

12 A. Yes.

13 Q. Okay. And that arrangement held true for both the two lease
14 transactions on the property, correct?

15 A. Yes.

16 Q. And it also held true for the negotiations with the
17 plaintiffs in February 2013, correct?

18 A. What part of the negotiations? She was aware that it was
19 being put up for sale. She was aware that there were
20 negotiations.

21 Q. Right, but during those negotiations, your practice was to
22 have a discussion with Honey and that one or the other of you
23 would communicate instructions to Mr. Joseph on behalf of the
24 both of you, correct?

25 A. Very strictly if we concurred. If and when we concurred,

1 yes.

2 Q. Well, were there times when you didn't concur and you gave
3 him instructions that were not agreed to?

4 A. No.

5 Q. So every instruction you gave to Mr. Joseph, you had Honey
6 Sherman's authority for, correct?

7 A. I believe so.

8 Q. In connection with the sales negotiations, the
9 counteroffers, the offers, et cetera in February 2013?

10 A. Well, I didn't have approval from her because I didn't know
11 about them.

12 Q. Okay. So I believe that -- well, flip to Exhibit 36 in the
13 black binder there. Black binder, Exhibit 36.

14 A. Yeah.

15 Q. Okay. This is an email that you looked at with Mr. Soto,
16 correct?

17 A. Hold on a second. Yes.

18 Q. And it was your testimony with Mr. Soto that you were
19 shocked and you never knew about any of the specific offers or
20 counteroffers, correct?

21 A. I knew generally that there was something going on and he
22 had mentioned offers.

23 Q. Okay. So you weren't all that shocked, were you? You
24 actually knew that there was an exchange of offers and
25 counteroffers, correct?

1 A. There's always a lot of talk in real estate. It's very
2 different, the reality versus the talk.

3 Q. Okay. Well, your testimony was that you were shocked to
4 find out that there were offers and counteroffers going back and
5 forth?

6 A. I was shocked that there was things put to paper.

7 Q. And so when he says, "I have been working on an offer for
8 purchase on your unit," you don't see that as an offer?

9 A. No, real estate agents can come to you and they say, I've
10 got a buyer ready, waiting, and then you find out that it's
11 nonexistent. It's only when they say, here, piece of paper,
12 sign. That's what makes it real.

13 Q. Isn't it a fact that Mr. Joseph communicated with you
14 regularly when he got purchase offers on the listed property?

15 A. Regularly? I don't know if he would have communicated every
16 single one.

17 Q. Well, are you saying it's not a fact? Isn't it a fact that
18 Joseph communicated with you regularly when he got purchase
19 offers on the listed property?

20 A. I wouldn't know. He could have gotten some and not
21 communicated them. I don't know what he did.

22 Q. If you could look at your deposition testimony, which is at
23 31 in your binder.

24 A. White?

25 Q. Black.

1 A. Yes.

2 Q. Flip, please, to Page 73. I'm sorry. That's your sister's
3 transcript.

4 29. Plaintiffs' Exhibit 29, please.

5 MR. SOTO: Same page, Chris?

6 MR. HARRIS: Yes, Page 73, please.

7 BY MR. HARRIS:

8 Q. Line 9, do you see that? Are you there yet?

9 A. Okay. Got it. Yes.

10 Q. Line 9, it says:

11 "Well, Mr. Joseph communicated with you regularly when
12 he got offers on the property that you had authorized him to
13 list, correct?

14 "Answer: Yes."

15 A. Yes.

16 Q. Are you giving different testimony today, or is that a true
17 statement that you regularly got communications from Mr. Joseph
18 when he got offers on the property?

19 A. I'm saying that I didn't always know what Mr. Joseph did.

20 Q. Is this testimony true that you gave at your deposition?

21 A. As I was aware of, but I've learned different since I gave
22 this.

23 Q. You understand that the plaintiffs made three offers in this
24 case?

25 A. Again, I wasn't aware of that.

1 Q. And yet, you testified that Mr. Joseph regularly kept you
2 advised of the offers that he received?

3 MR. SOTO: Objection, asked and answered, Your Honor.

4 THE COURT: Overruled.

5 THE WITNESS: Okay. I'm sorry. Can you ask --

6 BY MR. HARRIS:

7 Q. And yet, you testified that Mr. Joseph communicated with you
8 regularly when he got offers for the purchase of the property,
9 correct?

10 A. Again, as far as I was aware of, on the day that I said
11 this.

12 Q. Ms. Shechtman, isn't it true that in furtherance of the
13 negotiations for the sale of the property, you authorized
14 Mr. Joseph to deliver signed counteroffers to the plaintiffs?

15 A. No.

16 Q. Can you turn to Page 85 in your deposition testimony,
17 please, Line 1? Are you with me?

18 A. On 85, yeah.

19 Q. Yeah.

20 "Okay. But in furtherance of those negotiations, you
21 authorized him to deliver signed counteroffers to the
22 plaintiffs, correct?

23 "Mr. Soto: Objection.

24 "Go ahead.

25 "The Witness: Yes."

1 Do you see that?

2 A. Yep.

3 Q. So your testimony at the time of deposition was that you did
4 authorize Mr. Joseph to deliver signed counteroffers to the
5 plaintiffs, correct?

6 A. That's what it says.

7 Q. Is that truthful testimony at the time you gave it?

8 A. How do I say this? I was very nervous at this thing. I am
9 not a stupid person, but in this sort of a situation, I get very
10 nervous and very tense. So was I telling the truth? Yes. Was
11 I focused as I should be? No.

12 So the reality is what I'm saying today, because this
13 is like the second time, you know, dealing with you, what I'm
14 saying today is the truth. I did not know he was doing it. I
15 did not know he had put anything to paper. So it wasn't that I
16 was lying.

17 Q. Is this testimony truthful, what we just read from your
18 deposition testimony?

19 A. It's what I said.

20 Q. Is it truthful?

21 A. I guess the answer would be, then, no.

22 Q. It's not. So you gave untrue testimony at your deposition?

23 A. I guess, then, if that's the way you see it, yes.

24 Q. Well, isn't it a fact?

25 A. What?

1 Q. It's not just the way I see it. You're telling me that this
2 is not a truthful statement that we read from your deposition,
3 correct?

4 A. Correct.

5 Q. Now, with respect to the \$1.3 million counteroffer, you and
6 your sister and Mr. Joseph had previously had a conversation in
7 which you all had decided that he could sell the property if,
8 assuming other conditions were met, he could get a minimum price
9 of \$1.3 million, correct?

10 A. If all the other conditions were met, that was the minimum
11 price.

12 Q. Right. And what were all those other conditions?

13 A. Closing date, I'd have another place to live that was close
14 to my sister and one that would fit my whole family.

15 Q. Okay. And you weren't looking to the plaintiffs to provide
16 you with another place to live, correct?

17 A. No.

18 Q. Okay. And you weren't imposing any obligations upon
19 Mr. Joseph, either, were you?

20 A. It was the criteria. The price was only one part of it. He
21 was -- in any conversations that we had with him, there were
22 very definite criteria. Price was only one part. If the other
23 criteria couldn't be met, then it wasn't going to happen because
24 my sister had had a grandchild in the meantime, so it became
25 very, very important that the time frame was met, as well as I

1 wanted to be close to her grandchild and my kids wanted to be
2 close to my sister. So that was equally important.

3 Q. Right, but you weren't imposing any obligation on
4 Mr. Joseph, right? You were just stating a fact.

5 A. Well, it was an obligation. If I'm asking a real estate
6 agent to do something for me, he can't just say, okay, I pick
7 one of the four things that's important to you.

8 Q. So your testimony now is that you were imposing an
9 obligation on Mr. Joseph to find you another place?

10 A. I was talking to him about it. One had to go with the
11 other. The only way I was willing to sell on behalf of my
12 sister and myself was that if we could stay close.

13 Q. Ms. Shechtman, I am merely trying to get your testimony as
14 to whether this alleged requirement, that you needed another
15 place to live, was an obligation you were imposing on Mr. Joseph
16 in connection with the negotiation of the attempted purchase of
17 the condo unit.

18 MR. SOTO: Objection, Your Honor. Is that a question
19 or a statement?

20 THE COURT: I don't know. Is that a statement or a
21 question from you?

22 MR. SOTO: It's an objection, Your Honor.

23 THE COURT: Well, then what's the basis for the
24 objection?

25 MR. SOTO: Relevancy. He didn't --

1 THE COURT: What's the relevance of that?

2 MR. SOTO: Excuse me?

3 THE COURT: What is the relevance of that?

4 MR. SOTO: It has no relevance.

5 THE COURT: No, I'm not asking you; I am asking the
6 other person.

7 What is the relevance of that?

8 MR. HARRIS: Well, the relevance is that for a contract
9 to be accepted, there has to be mutual assent to the essential
10 terms of the contract.

11 THE COURT: I thought a purchase of land in Florida
12 requires or property requires a written document.

13 MR. HARRIS: Correct, Your Honor.

14 THE COURT: Am I right?

15 MR. HARRIS: Yes.

16 THE COURT: And I thought that the plaintiffs say there
17 is a written contract here, which is Plaintiffs' Exhibit 1.

18 MR. HARRIS: Correct, Your Honor.

19 THE COURT: So what difference does it make whether she
20 asked the Realtor to get her another place or not?

21 MR. HARRIS: They have contested or they have
22 asserted --

23 THE COURT: What difference does it make to your case?

24 MR. HARRIS: It's merely a rebuttal to their assertion
25 that Mr. Joseph was not given actual authority to make the \$1.3

1 million counteroffer.

2 THE COURT: And what does that have to do with finding
3 another apartment?

4 MR. HARRIS: The defendants' claim is that --

5 THE COURT: What does it have to do in your case with
6 finding another apartment?

7 MR. HARRIS: In my case, I don't need to know -- I
8 mean, it's an irrelevant fact.

9 THE COURT: So you agree with your opponent that's
10 irrelevant. I'll sustain the objection. We probably should
11 have done it in less time, but you know, I would rather have the
12 agreement from both sides since there's very little agreement.
13 Might as well.

14 Next question.

15 BY MR. HARRIS:

16 Q. Ms. Shechtman, you've never taken an action with respect to
17 the property without having specific discussion with Honey about
18 it, correct?

19 A. I might have changed a faucet. I mean, it depends on how
20 extreme you want to get.

21 Q. Okay. But you've never exercised a trust power -- you
22 understand the Trust Agreement provides you with certain powers
23 as a co-trustee?

24 A. Yes.

25 Q. And you've never exercised a trust power or any action with

1 respect to the trust property under the Trust Agreement without
2 Honey's authority or approval, correct?

3 A. I couldn't say that definitively. I can say it definitively
4 about this particular case.

5 Q. Isn't it a fact that you never exercised a trust power or
6 any action with respect to trust property without Honey's
7 authority or approval?

8 A. To the best of my knowledge, I needed her approval, consent.
9 I'm sorry.

10 Q. I'm not asking if you needed it; I'm asking if you had it.

11 A. We would discuss it, yes, to the best of my knowledge.

12 Q. Okay. So isn't it a fact that you never exercised a trust
13 power or any action with respect to the trust property without
14 Honey's authority and approval?

15 MR. SOTO: Objection, asked and answered, Your Honor.

16 THE COURT: Overruled.

17 THE WITNESS: To the best of my knowledge.

18 BY MR. HARRIS:

19 Q. Yes, to the best of your knowledge, that's true?

20 A. Yes.

21 Q. So when you signed the Notice of Commencement to allow the
22 renovation work, you had Honey's approval, correct?

23 A. Yes, we had just had a -- she was there. We were physically
24 there together with the contractor.

25 Q. Okay. And when you signed the current Lease Agreement on

1 behalf of the co-trustees, you also had her approval or when you
2 directed Sean Joseph to sign it?

3 A. Yes, we had discussed it.

4 Q. And you also had her approval when you signed or allowed
5 Joseph to sign your name to the February 7, 2013 counteroffer on
6 behalf of the seller, as well, didn't you?

7 A. No.

8 Q. So you're telling me that Joseph just went off and did that
9 by himself?

10 A. Yes.

11 Q. And that's why you're here, right, in this lawsuit?

12 A. Yes.

13 Q. Okay. So you must have been pretty upset, right?

14 A. I was.

15 Q. But not enough to --

16 A. I am.

17 Q. Not upset enough to fire him as your real estate agent,
18 correct?

19 A. I, and I discussed this with my lawyer --

20 MR. SOTO: Stop. You are not permitted to say anything
21 that you discussed with your attorney.

22 THE COURT: Well, wait a second.

23 MR. SOTO: It's attorney/client privilege.

24 THE COURT: Wait a second. Who says that?

25 MR. SOTO: Excuse me?

1 THE COURT: Who says that, that you're not permitted?
2 Whose privilege is it?

3 MR. SOTO: Attorney/client privilege.

4 THE COURT: Whose privilege is it?

5 MR. SOTO: It's the client's privilege, but I'm just --

6 THE COURT: So you do not get up and say you are not
7 allowed. She is allowed to say it. It's her privilege, not
8 yours.

9 MR. SOTO: If she waives the privilege, Your Honor, but
10 if I --

11 THE COURT: It's up to her to waive it. You cannot
12 tell a witness that she cannot say something. So you rose and
13 you said what?

14 MR. SOTO: Your Honor --

15 THE COURT: What did you say when you got up?

16 MR. SOTO: I told her to stop; it's --

17 THE COURT: You cannot do that. You can never, ever,
18 ever, ever, ever tell a witness stop, do not say that.

19 MR. SOTO: I apologize, Your Honor. I was just being
20 an advocate for my client in case she did not --

21 THE COURT: You cannot do that at a deposition. You
22 cannot do that at trial.

23 MR. SOTO: I apologize, Your Honor.

24 THE COURT: She's the one who can exercise the
25 attorney/client privilege. It's not your privilege; it's hers.

1 Right?

2 MR. SOTO: Your Honor, I understand it's my duty to
3 protect my client.

4 THE COURT: To tell someone to stop?

5 MR. SOTO: To have my client protected at all times
6 from saying something they don't realize they have a privilege
7 not to say.

8 THE COURT: And does she have a privilege not to say?

9 MR. SOTO: Yes.

10 THE COURT: Okay. What is the question that you want
11 to ask.

12 MR. HARRIS: My question was, weren't you pretty upset
13 with Mr. Joseph? And she had said yes. And I said, but not
14 enough to fire him as your real estate agent, correct?

15 THE COURT: And then she started answering, and answer
16 it however you want to answer it. It's up to you.

17 THE WITNESS: I find it difficult to affect somebody's
18 livelihood regardless of what they've done. So have I stopped
19 associating with him? Yes. If I see him, will I say hello? I
20 find it difficult. So the association isn't there.

21 BY MR. HARRIS:

22 Q. Okay. But we looked at Lease Agreement, Exhibit 3,
23 Plaintiffs', and you authorized him to sign your name four
24 months after the lawsuit had been filed in this case; isn't that
25 a fact?

1 A. I wasn't aware of the lawsuit or that this all was going on
2 initially. Sean didn't tell me. There was a lot of it
3 happening that I didn't know. So as far as the timing goes,
4 it's a combination of he didn't inform me, plus my being a wimp.

5 Q. Okay. But you said you weren't aware that the lawsuit was
6 filed?

7 A. The first I heard about it was Sean said there's a problem
8 and that he's been trying to deal with it. I wasn't informed at
9 the beginning.

10 Q. Can you look at Plaintiffs' Exhibit 32, please?

11 A. Um-hum.

12 Q. Do you recognize that document?

13 A. Yes.

14 Q. And weren't you served with this Complaint in or about April
15 of 2013?

16 A. Yes.

17 Q. Okay. So you were aware of the lawsuit in April of 2013,
18 correct?

19 A. I guess so.

20 Q. And four months later, you sent an email. Your testimony is
21 you sent an email to Sean Joseph to go ahead and sign your name
22 to the Lease Agreement we looked at, correct?

23 A. Yes.

24 Q. Okay.

25 MR. HARRIS: No further questions, Your Honor.

1 THE WITNESS: As I said, I'm a wimp.

2 THE COURT: You can answer. Did you finish?

3 THE WITNESS: It's just, he had said to me, don't
4 worry, it's not a big thing, I'm taking care of it. And again,
5 I have to look at somebody who has a child, and I admit that
6 it's a failing, I guess, in my personality, that I'm going to
7 take away somebody's livelihood. So it was a combination of
8 those two things or a few things.

9 MR. HARRIS: Thank you.

10 THE COURT: Redirect?

11 MR. SOTO: Thank you, Your Honor.

12 REDIRECT EXAMINATION

13 BY MR. SOTO:

14 Q. Will you please turn to your deposition? It's in the black
15 binder. Exhibit 29 in the black binder, which is Plaintiffs'.

16 A. Um-hum.

17 Q. You were asked earlier under oath -- can you flip to Page
18 85?

19 A. Yes.

20 Q. Okay. At the top of the page, you were asked:

21 "Okay. But in furtherance of those negotiations, you
22 authorized him to deliver signed counteroffers to the
23 plaintiffs, correct?"

24 You answered, "Yes."

25 Correct?

1 A. Yes.

2 Q. And question, on Line 8, "And you're aware that Mr. Joseph
3 delivered this -- Plaintiffs' 5 to the plaintiffs --"

4 Your answer?

5 A. "No."

6 Q. "Question: -- on or about February 4th, 2013?" Answer?

7 A. "No."

8 Q. So you weren't aware of the offers, but you had talked to
9 Sean, correct?

10 A. In generalities, yes.

11 Q. And he had notified you about --

12 THE COURT: Well, don't ask leading questions on
13 redirect.

14 BY MR. SOTO:

15 Q. What did he notify you about in those telephone calls?

16 A. Just that there was interest in the property.

17 Q. And he was throwing around numbers, correct?

18 A. Yes, as all Realtors --

19 THE COURT: Don't ask leading questions.

20 MR. SOTO: Yes, Your Honor.

21 THE WITNESS: Real estate agents are always -- was I
22 saying something wrong?

23 MR. SOTO: Could she answer that question, Judge?

24 THE COURT: What was the question?

25 MR. HARRIS: The one that I asked that you said was

1 leading.

2 THE COURT: So ask it again without making it leading.

3 BY MR. SOTO:

4 Q. What did you discuss with Sean during this period of
5 February 4th?

6 A. Just generally that there was interest in the property.

7 Q. Did you ever authorize him to enter into a contract?

8 MR. HARRIS: Objection, Your Honor, leading.

9 THE COURT: Overruled.

10 THE WITNESS: No.

11 BY MR. SOTO:

12 Q. Do you know if Honey Sherman ever authorized him to enter
13 into a contract?

14 A. Absolutely not.

15 MR. SOTO: Okay. Nothing further, Your Honor.

16 THE COURT: Thank you, ma'am. You may step down.

17 What say the defendant?

18 MR. SOTO: Your Honor, I would like five minutes with
19 Mr. Harris to go over something relative to this pretrial stip,
20 that I believe he is going to withdraw his argument to you about
21 the pretrial stip.

22 THE COURT: Oh, you can do that during lunch.

23 MR. SOTO: Okay. I call Honey Sherman, Your Honor.

24 THE COURT: Okay. Raise your right hand, please.

25 HONEY SHERMAN, DEFENDANT HEREIN, SWORN.

1 THE COURT: Okay. Have a seat and tell us your name,

2 THE WITNESS: I just forgot my glasses.

3 MR. SOTO: I'll get them for you. Go ahead.

4 THE WITNESS: My name is Honey Sherman. And it's
5 S-h-e-r-m-a-n.

6 THE COURT: Go ahead.

7 MR. SOTO: Thank you, Your Honor.

8 DIRECT EXAMINATION

9 Q. Can you please flip through Exhibit 1 of defendants',
10 Exhibit 1 in the white book to your left.

11 Do you recognize that document?

12 A. The Trust Agreement?

13 Q. Yes, ma'am.

14 A. Yes.

15 Q. And is the property, Unit 3807, held by that trust?

16 A. Yes.

17 Q. Take a look at Plaintiffs' Exhibit Number 1. That would be
18 the black binder.

19 A. Sotheby's "As Is" Residential Contract.

20 Q. Yes, ma'am. It's Exhibit Number 1. When you grab the tab,
21 it's behind Exhibit Number 1.

22 A. Yes.

23 Q. Prior to the lawsuit in this case, had you ever seen that
24 document before?

25 A. No.

1 Q. Did you ever authorize Sean Joseph to execute that document?

2 A. No.

3 Q. Did you ever give Mary authority to execute that document?

4 A. No.

5 Q. Did you ever give your sister, Mary, authority to authorize

6 Sean Joseph to execute that contract?

7 A. No.

8 Q. Turn to Exhibit Number 3 in the black binder, please. Let

9 me ask you this question before you do that. Go back to Number

10 1.

11 Looking at Line Number 1, is that your and your

12 sister's names on the parties line?

13 A. Yes.

14 Q. And does TRS stand for trustee to your knowledge?

15 A. Yes.

16 Q. Take a look at Exhibit Number 3. Do you know what that

17 document is?

18 A. A lease for the apartment.

19 Q. And did you have a discussion with your sister relative to

20 this lease? And I think the date is on the second page on the

21 right.

22 A. I didn't have a discussion specifically with my sister on

23 this lease. I knew -- Mary and I had discussed that Mary is

24 going to be leasing the apartment on our behalf and we had

25 discussed there was first -- I'm not sure which lease this is.

1 There was one lease and then a second lease and the second lease
2 was renewed. So I never saw the leases, but I was fully aware
3 and in full agreement that Mary, on our behalf, was either
4 signing directly or giving Sean Joseph permission to go into a
5 Lease Agreement with the shorter term lease and then Mary and I
6 had decided at the time that it was better that the condominium
7 be leased again and so we agreed that it would be leased again
8 and that was a year lease and that was renewed.

9 Q. Okay. Take a look at Exhibit Number 7. Do you recognize
10 that document?

11 A. This is the -- give me one second. This is the document to
12 do some improvements on the condominium.

13 Q. And had you discussed this document with your sister, Mary?

14 A. Again, Mary and I were, we happen to be together this time.
15 I am not sure about this date. So we met with the contractor
16 and decided that we would do some improvements to the
17 condominium but she was signing on our behalf.

18 Q. Does this writing in paragraphs one, two, three, four, and
19 eight appear to be that of your sister's?

20 A. The printing?

21 Q. Yes.

22 A. No, I don't know. I can't recognize that it is or it is
23 not.

24 Q. Okay. Do you know if she filled this out or the contractor
25 did?

1 A. I only know that she said that he did but I wouldn't know.

2 Q. And that's her signature at the bottom left, correct?

3 A. Yes.

4 Q. And you knew she was signing this document, correct?

5 A. Yes.

6 Q. One second. And you never gave -- Let me ask you this:

7 THE COURT: Don't ask leading questions. Who, what,
8 when, where, how, those are nonleading questions.

9 BY MR. SOTO:

10 Q. In any of the counteroffers or agreements that have been
11 entered into evidence in this matter, did you give your
12 authority to sign any of them?

13 A. No.

14 MR. SOTO: No further questions, Your Honor.

15 THE COURT: Cross-examination.

16 CROSS-EXAMINATION

17 BY MR. HARRIS:

18 Q. Ms. Sherman, it's true, isn't it, that you and your sister
19 never had any written or signed agreement to allow one trustee
20 to act without the other trustee as to any task or act, correct?

21 A. I believe so.

22 Q. That's true, right, there's no written agreement?

23 A. No.

24 Q. And you and Mary essentially speak on a daily basis,
25 correct?

1 A. Yes.

2 Q. Now, despite the nonexistence of a written agreement, you
3 nonetheless generally allowed Mary to handle the day-to-day
4 operations of the condo as well as trust income and related
5 financial transactions regarding the trust assets, correct?

6 A. It depends what you mean by that. I was pretty much aware
7 of what went on, not to the specifics. I obviously did know
8 that there was rent being paid, and I did know that that rent
9 was being used for the expenses of the condominium. Did I know
10 the rent was approximately \$3,000? Yes. Do I know what exactly
11 the outgoing checks are? No, I do not, nor do I know the dates.
12 I did not know the details. I do know the generalities.

13 Q. Okay. Well, you're talking about lease payments?

14 A. In this case, yes, just as an example.

15 Q. Okay. So the lease payments are trust assets, right?

16 A. The rent.

17 Q. Right, the payments that come in, that's trust income.

18 A. I believe they go into the trust, yes.

19 Q. Okay.

20 A. And they're used to offset expenses.

21 Q. Right. And the Trust Agreement you understand requires you
22 to act by majority between you and your sister, correct?

23 A. Yes.

24 Q. And that would apply to any disposition of trust property,
25 wouldn't it?

1 A. Yes.

2 Q. So what kind of access do you have to the lease payments?

3 A. I don't have access. Should I need -- what would I need
4 access for?

5 Q. Well, don't they go into Mary Shechtman's personal bank
6 account?

7 A. I don't know what bank account they go into.

8 Q. Right. You don't even know what account they go into?

9 A. I believe that they are in a TD account.

10 Q. Right. And no rights to access, to look at that account or
11 withdraw funds from that account, anything?

12 A. I don't have a right or not a right. I could if I wanted
13 to. I could if I felt there was something untoward.

14 Q. Well, your name is not on the account, correct?

15 A. To the best of my knowledge, it is not.

16 Q. So you don't have a right legally to withdraw funds?

17 A. Legally, no, I do not.

18 Q. And in fact, you don't track the money and how it's spent
19 out of that account; correct? Correct?

20 A. Correct.

21 Q. So it's true that you essentially allow Mary to manage the
22 financial affairs of the trust, correct, on a day-to-day basis?

23 A. Yes.

24 Q. Okay. So you said you and Mary speak on a daily basis,
25 right?

1 A. Correct.

2 Q. She did not do anything regarding the trust or the trust
3 property without conferring with you, right?

4 A. Specifically writing a check? No, she did not confer with
5 me with each and every check. Generally speaking, I am aware
6 that she wrote checks or writes checks in order to ensure that
7 we are in good standing regarding the condominium.

8 Q. My question was, she did not do anything regarding the trust
9 or the trust property without conferring with you, right?

10 A. We confer. We confer regarding the property, yes. Is that
11 the answer? I'm sorry. I'm sorry. I apologize.

12 Q. I'll slow it down.

13 A. Try again. No, you don't have to slow it down. I just --

14 Q. Mary did not do anything regarding the trust or the trust
15 property without conferring with you.

16 A. That is correct.

17 Q. So when Mary alone signed the Notice of Commencement, she
18 had your authority to do that, correct?

19 A. Yes, she did.

20 Q. And you never had a written agreement giving Mary rights to
21 sign that on your behalf, correct?

22 A. No, we were there together.

23 Q. Okay. You never had a written agreement with Mary -- I'm
24 sorry. When Mary alone signed and initialed her name, or
25 directed Joseph to do so, to the Lease Agreement commencing on

1 September 15, 2013, she had your authority to execute that
2 agreement on behalf the co-trustees as well, correct?

3 A. I did not know the date. I wouldn't know the exact date
4 but --

5 Q. I'm asking for the commencement period, starting on
6 September 15, 2013.

7 A. To be honest with you, I didn't even know that it started in
8 September or October, but we absolutely did discuss that Mary is
9 going to rent it out under the Trust Agreement on our behalf,
10 yes.

11 Q. Right. So the existing lease, we don't need to get into
12 dates, there's an existing lease on the property, right?

13 A. Correct, the renewal.

14 Q. Okay. So when Mary alone signed and initialed, or directed
15 Sean Joseph to sign and initial her name to it and initials, to
16 that Lease Agreement, she had your authority to do that,
17 correct?

18 A. Yes.

19 Q. And there was no written agreement between you and Mary
20 setting forth her right to do that on your behalf, correct?

21 A. No.

22 Q. That is correct what I said?

23 A. Yes.

24 Q. Okay. And when she signed her name and initials, or
25 instructed Joseph to do so, to the two counteroffers that were

1 sent to the plaintiffs in early February 7, 2013, she also had
2 your authority, correct?

3 A. I think this is where we have a problem.

4 Q. So your answer is no?

5 A. The answer is that Mary never signed anything.

6 Q. Okay. But Joseph signed her name and initials, would you
7 concede that, to the counteroffers that were delivered to the
8 plaintiffs?

9 A. I know that now, yes.

10 Q. Okay. And you had authorized Mary to sign those names and
11 initials, correct?

12 A. I never authorized Mary to sign anything. Mary and I had a
13 conversation about the potential sale of the conditional unit.

14 Q. Well, you had agreed to allow her to sell the property for
15 1.3 million, right?

16 A. I think it was 1.3 million plus and I believe that there
17 were several aspects that had to be met for the sale of the
18 property. One of them was a minimum price of 1.3 million. The
19 other one was a replacement property. The third need being that
20 it had to be somewhere in the same vicinity. There had to be,
21 you know, references to timelines and there was also some issues
22 -- there were issues -- not issues. There were potential issues
23 regarding we wanted to investigate, and I specifically wanted to
24 investigate. I wasn't sure what the taxation issues are,
25 because we are Canadians.

1 Q. Okay. And you don't know of any specific taxation issues?

2 A. I do not.

3 Q. And you never actually --

4 A. But one wants to investigate before you sell something that
5 it is -- that it's appropriate for you to sell it and not to
6 your detriment.

7 Q. Okay. But you never actually had any discussions with any
8 lawyers or accountants regarding those taxation issues?

9 A. I did not.

10 Q. And Mary didn't either?

11 A. I do not know.

12 Q. To the best of your knowledge, she did not?

13 A. To the best of my knowledge, I don't think she did.

14 Q. Okay. And isn't it true that you had a discussion with Sean
15 Joseph, your real estate agent, where you had discussed those
16 parameters that you're talking about?

17 A. I don't believe I ever had a conversation with Sean.

18 Q. So it's your testimony that you did not have a conversation
19 with Sean Joseph regarding the parameters that you were
20 requiring for the sale or attempted sale of the condo unit?

21 A. I think I already said that I don't believe that I had a
22 conversation with Sean to the best of my recollection.

23 Q. Okay. I'd like to look at your deposition testimony, which
24 is 31.

25 A. Is that in the white?

1 Q. In the black binder.

2 A. And it's Number 31?

3 Q. Yes.

4 A. On what page is that?

5 Q. Page 26, Line 14. Are you there?

6 A. Not yet. Shortly.

7 Q. Sure. 26, Line 14. Question:

8 A. Can you give me a moment, please?

9 Q. I'm sorry?

10 A. Can you give me a moment, please?

11 Q. Sure.

12 A. It says here that I stated that I did have a conversation
13 and that I don't actually --

14 Q. I haven't asked my question yet.

15 A. Okay. Sorry.

16 Q. So let me ask you question.

17 A. Sure.

18 Q. Line 14:

19 "Question: And how about with respect to the purchase
20 transaction that's the subject of the lawsuit that we're
21 here for today, did you have specific discussions with
22 Mr. Joseph regarding any of those negotiations?

23 "Answer: Not the negotiations, no, but the
24 parameters --"

25 21: "Question: Okay.

1 22: "Answer: -- I think at one point."

2 And if you look over on Page -- do you see that?

3 A. I see that.

4 Q. Is that true testimony?

5 A. That is my testimony. And I believe that I said here, I
6 think at one point because I was not certain at that time
7 either, nor am I certain now, whether I did or did not have a
8 conversation with Sean Joseph.

9 Q. Okay.

10 A. And then I said, "sorry. I have no idea."

11 Q. So your testimony is you thought you did, but you weren't
12 sure?

13 A. I'm neither sure now, nor was I sure then.

14 Q. You're not sure but you thought you had at one point?

15 A. I'm not sure. I don't think yes or no. I'm not sure.

16 Q. I'm sorry, Line 22, "I think at one point."

17 A. I think at one point, but I'm not certain.

18 Q. Okay. So your not certain, but you think you did, right?

19 A. I am not certain.

20 Q. Let's look at Page 28, Line 3. It should be right there.

21 "Question: Okay. Do you remember any specific
22 discussions, whether they be by phone or face to face, that
23 you had with Mr. Joseph regarding negotiation of any deal or
24 exchange of offers regarding the subject property?

25 "Answer: I have no recollection as to the offers.

1 I don't think that -- no, I have no recollection."

2 "Question: Okay. So the discussion was only about the
3 parameters, right?"

4 "Answer: (Nod in the positive.)"

5 So I ask again: "Sorry. Yes?"

6 "Answer: Yes."

7 Was that truthful testimony?

8 A. If you continue reading it, it says, "You think it was over
9 the phone or email," and I said -- and I answered, "I would
10 guess," because I actually have no recollection now, nor did I
11 then know whether or not I actually did have a conversation with
12 him, whether it was by phone or email. I have no recollection
13 now, nor did I then.

14 And you said, "Do you remember a phone call?" "I am
15 afraid not." "Do you have a clear recollection [sic]? I do
16 not."

17 Q. So your testimony now is that you have no clear recollection
18 of discussing the parameters with Mr. Joseph? That's your
19 testimony?

20 A. That is correct, nor did I then.

21 Q. Okay. Let's go down to Page 29, Line 3:

22 "Question: But you don't have a specific recollection
23 of a discussion where you set forth those parameters and
24 communicated that to Mr. Joseph?

25 "Answer: Of how I communicated, no.

1 "Question: Okay.

2 "Answer: As to when, no.

3 "Okay. But as to what?

4 "Answer: As to what, yes."

5 And then you proceeded to discuss the parameters,
6 correct? Isn't it true, Ms. Sherman, that you had a discussion
7 with Mr. Joseph --

8 A. Could you repeat, please?

9 Q. -- regarding the specific parameters?

10 A. I'm telling you --

11 THE COURT: You've got to read or ask the question
12 slowly. You cannot interrupt each other; otherwise, you're
13 going to get tired of hearing my voice. I can't believe you're
14 not tired already. I'm tired of my own voice.

15 MR. HARRIS: Sorry, Your Honor.

16 THE COURT: You must be really tired.

17 Okay. Go ahead.

18 THE WITNESS: I'm sorry. I'm sure it's frustrating for
19 you, but unfortunately, I have no recollection.

20 BY MR. HARRIS:

21 Q. Okay. But isn't your testimony here on Page 29 --

22 A. That is correct, that is what it says here on the printed
23 page. And I believe at some point, either before or after, I
24 said to you that I was extremely confused at this point, that I
25 was being turned around and that I under -- I was feeling that I

1 didn't know what I was saying any longer. And I am telling --

2 Q. And --

3 A. Excuse me.

4 Q. Go.

5 A. Thank you. So what I'm saying here is, I understand what
6 this says. You are correct in what it says. I don't disagree
7 with what this says.

8 What I am saying to you, at this point, is that I do
9 not now, nor did I then, recollect whether I did or did not have
10 a conversation with Mr. Joseph. That's number one.

11 Number two is that the fact that, in fact, by Page 29,
12 I may have even said that at this point, that I was so confused
13 by then, that I did not know whether or not I had or had not had
14 a conversation. But I can tell you then and now that had I had
15 a conversation, if I had a conversation, which I do not recall
16 having that conversation, or not recall that conversation, I'm
17 doing the best that I can here. I really am, but I cannot help
18 that I do not recall.

19 And I am simply saying to you, had I had the
20 conversation, I would have most definitely set out the rules or
21 the reasons or the needs and necessities in order to make the
22 sale go through, in order to make any potential offer come to
23 fruition, but I do not know now -- and you can ask me as many
24 times as you'd like, I honestly don't remember.

25 Q. But in this testimony we looked at on Page 29, you said you

1 didn't remember as to the when, right --

2 A. I'm not disagreeing with your question.

3 Q. -- or the how it was communicated?

4 THE COURT: You can't interrupt. Please, do not
5 interrupt each other.

6 Is it your goal to convince her or convince me?

7 MR. HARRIS: To convince you, Your Honor.

8 THE COURT: Okay.

9 MR. HARRIS: I'll move on, Your Honor.

10 THE COURT: How much longer do you think you have?

11 MR. HARRIS: Not very long, Your Honor.

12 THE COURT: I don't know what that means. Length is
13 like beauty, you know.

14 MR. HARRIS: Five minutes or less.

15 THE COURT: How much?

16 MR. HARRIS: I doubt five minutes.

17 THE COURT: Oh, that will be short.

18 BY MR. HARRIS:

19 Q. Wasn't it your position at the time that you were discussing
20 the \$1.3 million offer that the decision to sell the property
21 was Mary's to make as long as the price fell within your
22 reasonable parameters that you all had discussed?

23 A. Can you repeat that?

24 Q. Wasn't it your position at the time you decided to agree to
25 the \$1.3 million price that the decision to sell the property

1 was Mary's to make as long as the price fell within those
2 parameters that you all had discussed?

3 A. I believe that I -- there is no question that Mary and I
4 have these conversations and make these decisions together. We
5 have to weigh the pros and the cons. One of the parameters, one
6 of the conditions would be that there would be a minimum price
7 of 1.3 million. There were other circumstances and other
8 requirements that needed to be met.

9 Q. Let me stop you, because, my question is not what the
10 parameters were.

11 THE COURT: Oh, you don't stop a witness, either. You
12 can't stop the witness.

13 MR. HARRIS: I'd just like her to ask the question that
14 I asked, Your Honor.

15 THE COURT: Well, she's answering it. Go ahead.

16 MR. HARRIS: Sorry.

17 THE COURT: Go ahead. Finish your answer.

18 THE WITNESS: That there were other requirements that
19 needed to be met in order to have this come to fruition. I
20 apologize if I didn't answer your question correctly.

21 BY MR. HARRIS:

22 Q. No need to apologize. Let me ask it again.

23 Wasn't it your position at the time that you agreed to
24 sell the property or that you were okay with the price, the \$1.3
25 million price, that the decision to sell the property was Mary's

1 to make as long as the price fell within those parameters that
2 you had discussed?

3 A. The decision?

4 MR. SOTO: No. Go ahead. Sorry.

5 THE WITNESS: As I've already stated, we made these
6 decisions. We had these conversations together. There was
7 actually no decision that ever needed to be made because there
8 was no contract that we needed to decide for. Okay, here is the
9 contract. We have to decide, are we going to accept it or not?
10 That never came to fruition. That's first of all.

11 Second of all, even had that contract materialized or
12 been presented to us, the other portions of the need for the
13 sale of the condominium, those requirements were not met.

14 Q. Okay. I would like you to look at Page 31 of your
15 deposition testimony. Line 1 -- let's go to Line 25, on Page
16 30. Let's start at Line 23. "I know that Mary --

17 A. Page 30?

18 Q. Okay. Line 21, Page 30:

19 "Question: Okay. So what other parameters, other than
20 Mary needing a replacement place?

21 "Answer: I know that Mary wanted to have a certain
22 asking price at minimum."

23 25:

24 "And what was that price?"

25 Page 31, Line 1:

1 "Answer: Well, I don't remember if I knew it then, but
2 I certainly know now that the minimum was 1.3 million.

3 "Question: And you were fine with that at the time,
4 right?

5 "Answer: Yes.

6 "Question: I mean, it sounds like it was really Mary's
7 decision to make.

8 "Go ahead."

9 "The Witness," this is your answer:

10 "It's Mary's decision within reasonable parameters.
11 It's not going to be a hundred thousand dollars and it's not
12 going to be \$10 million. It's Mary's reasonable decision
13 within certain -- you know, whatever the reasonable market
14 value was and what she needed in order to service her
15 parameters and her goals."

16 Is that true testimony?

17 A. That is correct.

18 Q. Okay.

19 A. May I speak?

20 Q. I am sure your counsel can ask you further questions.

21 A. Sure.

22 Q. And Mary had your authority to provide Mr. Joseph with
23 instructions regarding the sale of the property based on the
24 conversations that you and Mary had previously had, right?

25 A. To have conversations with Sean regarding investigating the

1 potential sale of the condominium.

2 Q. Isn't it true that Mary had your authority to provide
3 Mr. Joseph with instructions regarding the sale of the property
4 based on the conversations that you and Mary had previously had?

5 A. I thought I answered that. I think that Mary and I had
6 conversations regarding speaking with Mr. Joseph to see if we
7 would come -- be able to investigate whether or not we would be
8 able to come to fruition or come to some understanding based on
9 all of our requirements for the sale of the condominium.

10 Q. And my question is Mary had that authority to give those
11 discussions to Mr. Joseph, correct, regarding the sale of the
12 property?

13 A. And keep me apprised; that is correct.

14 Q. In fact, Mary had your authority for everything she did in
15 connection with the trust property, including any action she
16 took in connection with the attempted sale that's the subject of
17 this lawsuit that we're here for today, correct?

18 A. She had my agreement.

19 Q. She had your authority, correct?

20 A. To sign? To do what? To sell it, and then all of a sudden,
21 one day she would come to me and say the property is sold? That
22 is not correct.

23 Q. Mary had your authority for everything she did in connection
24 with the trust property, including any action she took in
25 connection with the attempted sale that's the subject of this

1 lawsuit that we're here to discuss today, correct?

2 MR. SOTO: Objection, Your Honor, asked and answered.

3 THE COURT: It has been asked and answered, so wrap it
4 up.

5 BY MR. HARRIS:

6 Q. Let's look at Page 56 of your deposition testimony, please.

7 Are you there, Page 56?

8 A. May I have a moment?

9 Q. Sure.

10 Line 22: "Okay. Did Mary ever act under the Trust
11 Agreement without your authority?

12 "Answer: To my knowledge, no.

13 "Question: And that would include --

14 A. What line are you on?

15 Q. Line 22, Page 56.

16 A. Thank you.

17 Q. "Question: Okay. Did Mary ever act under the trust
18 agreement without your authority?

19 "Answer: To my knowledge, no.

20 "Question: And that would include any actions she took
21 in connection with the attempted sale that's the subject of
22 this lawsuit that we're here for today?

23 "Answer: Correct."

24 Is that truthful testimony?

25 A. That's correct.

1 MR. HARRIS: No further questions, Your Honor.

2 THE COURT: Redirect.

3 REDIRECT EXAMINATION

4 BY MR. SOTO:

5 Q. Ms. Sherman, did you ever give your authority to anyone to
6 enter into the agreement that is set forth in Exhibit Number 1?

7 A. I did not.

8 MR. SOTO: Thank you. No further questions.

9 THE COURT: Thank you, ma'am.

10 THE WITNESS: Thank you.

11 THE COURT: Anything else on behalf of the defendant
12 trust and the trustees as representatives of the trust?

13 MR. SOTO: No, Your Honor. The defense rests.

14 THE COURT: Anything in rebuttal?

15 MR. HARRIS: No, Your Honor.

16 THE COURT: Okay. How much time do you want for
17 closing argument as a plaintiff?

18 MR. SOTO: Your Honor, defendant would --

19 THE COURT: The plaintiff, I'm sorry. My voice trailed
20 off. I apologize.

21 You can sit -- she can sit down. Go ahead. Then make
22 room for her.

23 MS. SHERMAN: Thank you.

24 THE COURT: You're welcome.

25 MR. HARRIS: If I say 30 minutes, I'm sure I won't take

1 that much, but certainly, it would be no more than 30 minutes.

2 THE COURT: What say the defense?

3 MR. SOTO: I agree with that.

4 THE COURT: Then it won't be more than 30 minutes.

5 Okay. And then I've got to give my court reporter a
6 midmorning break, right, at 12:10. So why don't you all come
7 back at 1:45. All right?

8 MR. SOTO: Yes, Your Honor.

9 MR. HARRIS: Yes, Your Honor.

10 THE COURT: Okay. See you then.

11 THE COURT SECURITY OFFICER: All rise.

12 (There was a luncheon recess.)

13

14 AFTERNOON SESSION

15 (The following proceedings were held at 2:15 p.m.):

16 THE COURT: Plaintiff, you want to split your closing
17 any particular way?

18 MR. HARRIS: You are saying for 30 minutes, split it
19 up?

20 THE COURT: Oh, yeah, not in addition to 30 minutes.
21 Yes, just split it, I said; not add.

22 MR. HARRIS: How about 25 minutes?

23 THE COURT: Whatever you want. Okay. 25 and 5.

24 MR. HARRIS: Reserve five. Okay.

25 THE COURT: Okay. All righty. Let's go. I'm ready.

1 She's ready.

2 CLOSING ARGUMENTS

3 MR. HARRIS: Your Honor, the testimony presented in
4 this case makes clear that there was a binding contract. On
5 February 7, 2013, plaintiffs received from the defendants' real
6 estate agent, Mr. Sean Joseph, a counteroffer, executed by
7 co-trustee defendant, Mary Shechtman, on behalf of the
8 co-trustees to the plaintiffs. And we had testimony from the
9 plaintiffs on that and the Exhibit 1 and 22. We also had the
10 pretrial stipulation and the answer and affirmative defenses.

11 That counteroffer, which is embodied in Plaintiffs'
12 Exhibit 1, is complete and sets forth the essential terms of a
13 real estate sales contract. In particular, it identifies the
14 property to be sold and the purchase price of \$1.3 million and
15 obligates the plaintiffs to pay that price and the seller to
16 convey the property to the plaintiffs, among other things. I
17 submit that the exhibit speaks for itself as to all the terms.

18 On February 7, 2013, the plaintiffs accepted that
19 counteroffer by initialling the changes to the purchase price,
20 by making -- I'm sorry. On February 7, 2013, the plaintiffs
21 accepted that counteroffer by initialing the changes to the
22 purchase price and returning it to the defendants. That same
23 day, the plaintiffs wired the \$50,000 initial deposit, required
24 by the contract, into escrow. We heard testimony from
25 Mr. Santidrian and Joanne Katsantonis on that.

1 As we notified the Court, under Florida law, a contract
2 is complete upon mailing the acceptance. So the acceptance was
3 mailed on February 7, 2013 to the defendants by email.

4 The defendants breached the contract. It is undisputed
5 that the defendants repudiated and refused to honor the contract
6 and to perform the sellers' obligations thereunder. Plaintiffs
7 nonetheless continued to attempt to complete the contract,
8 including by arranging for an appraisal, which defendants
9 refused to allow in violation of Paragraph 18L of the contract,
10 which requires the seller to provide access to the property in
11 advance of the closing for appraisals, walk-throughs and the
12 like.

13 In addition, there was testimony and emails showing
14 that the defendants completely disavowed the contract and
15 contested that there was no contract.

16 Defendants' defense in this case is that they never
17 authorized the February 7, 2013 counteroffer to be made.
18 Disregard actual authority to enter into any agreement for the
19 sale of land may be conferred by a principal upon an agent by
20 parol evidence. It may also be implied from the facts, conduct
21 and circumstances, and we have cited cases in our summary
22 judgment opposition brief, Pages 10 through 15, regarding that
23 issue.

24 Implied authority may be conferred by a course of
25 dealing between the principal and the agent. Implied authority

1 may also be conferred upon an agent by the principal's
2 acquiescence.

3 In this regard, the Court has respectfully referred to
4 the case of FDIC versus Barrasso, an Eleventh Circuit opinion.
5 And in that case, a principal conferred authority upon his
6 otherwise unauthorized agent to encumber real property by
7 signing a mortgage on behalf of the principal because the
8 principal had allowed the agent to handle all of the business'
9 financial affairs for years without protest, which is similar to
10 the testimony you heard today about defendant Sherman allowing
11 Ms. Shechtman to manage the finances, the trust property, the
12 trust assets, specifically the trust income and the bank account
13 and to dispose of it unilaterally.

14 So the defendants argue that the defendants did not
15 authorize the February 7th, 2013 counteroffer. In this regard,
16 the Court has heard testimony from the two defendants and their
17 real estate agent, Mr. Joseph. Mr. Joseph's testimony was not
18 credible. It was belied by his sworn deposition testimony in
19 this case.

20 THE COURT: What did he say about the signatures and
21 the initials?

22 MR. HARRIS: In deposition, he said --

23 THE COURT: No, at trial, what did he say? Because
24 that's the substantive evidence. Remember, the deposition
25 testimony is just to attack his credibility. It's a prior

1 inconsistent statement, perhaps, or a prior consistent
2 statement, but it is not substantive evidence. What did he say
3 here at trial?

4 MR. HARRIS: He said that he signed Mary Shechtman's
5 name and initials to the document without having her authority.

6 THE COURT: And that was consistent with what
7 Ms. Shechtman said.

8 MR. HARRIS: Today, yes. And both of the two of them,
9 in making those claims, recanted their sworn deposition
10 testimony entirely to the point where Mr. Joseph conceded that
11 he had given false testimony in his deposition under oath.

12 So Ms. Shechtman's testimony was similarly not
13 credible, in that, by and large, it contradicted her prior sworn
14 testimony regarding, among other things, whether she had
15 authorized Mr. Joseph to issue counteroffers on behalf of the
16 co-trustees. She tried to recant her deposition testimony on
17 the claim that she had been confused at deposition. Shechtman
18 did admit, though, that she had Sherman's approval for
19 everything she did with respect to the trust property.

20 Ms. Sherman, likewise, testified that Shechtman had
21 Sherman's authority for everything that she did in connection
22 with the trust property, including any actions she took in
23 connection with the attempted sale that's the subject of this
24 lawsuit.

25 More specifically, she testified that Shechtman had

1 Sherman's authority to provide Sean Joseph with instructions
2 regarding the sale of the property based on conversations that
3 she and Shechtman had previously had. She also testified that
4 she allowed Shechtman to handle the financial affairs of the
5 trust and conceded that the decision to sell the property was
6 ultimately Shechtman's to make, provided it fell within the
7 parameters they had previously discussed and that she had agreed
8 with the \$1.3 million price.

9 The Court was also shown defendants' pleadings and
10 pretrial stipulations in which defendants asserted and agreed,
11 contrary to the testimony you just asked me about from
12 Mr. Joseph, that Shechtman signed the February 7th, 2013
13 counteroffer. These admissions should be considered binding
14 upon the defendants or at a minimum, at least, persuasive as to
15 whether Shechtman actually authorized the February 7th, 2013
16 counteroffer.

17 We submit that the foregoing evidence clearly
18 establishes that the counteroffer was made with actual
19 authority, both expressed and implied.

20 In terms of implied authority, the evidence further
21 shows that the defendants through acquiescence -- well, I
22 already covered the fact that there was acquiescence in the
23 handling of the trust affairs. The evidence also showed implied
24 authority by a course of conduct.

25 In this regard, the testimony showed that Shechtman

1 signed a number of legal documents on behalf of both
2 co-trustees, including what the defendants considered to be a
3 binding Lease Agreement that, just like the counteroffer at
4 issue in this case, lists the same owner entity as Mary Reich
5 Shechtman TRS; Honey Sherman TRS, as the property owner and just
6 like the counteroffer at issue in this case was only signed with
7 Mary Shechtman's name on behalf of both co-trustees.

8 Now, even if the counteroffer was made by an
9 unauthorized agent, that is, without actual authority expressed
10 or implied, the contract is still binding upon the defendants
11 under the doctrines of apparent authority and ratification.

12 Apparent authority requires a representation by words,
13 actions or appearances created by the principal, a reasonable
14 reliance on that representation by the plaintiffs and a change
15 in the plaintiffs' position detrimentally based on that
16 representation.

17 In that regard, the Court heard -- we had discussed
18 yesterday the Benson v. Seestrom case which found that where
19 parties deal exclusively through their real estate agents, the
20 real estate agents are cloaked with apparent authority to bind
21 their principals to a real estate contract.

22 So the representation was the transmission of a
23 counteroffer from Sean Joseph to the plaintiffs on February 7,
24 2013.

25 THE COURT: But you would still have to prove, would

1 you not, that Ms. Shechtman asked her Realtor to do what he did?
2 No?

3 MR. HARRIS: No, Your Honor.

4 THE COURT: So in other words, if a Realtor, on his
5 own, fakes everything without the principal knowing anything
6 about it, they're still responsible?

7 MR. HARRIS: There's probably an extreme case where you
8 could make that argument, but here, we have the defendants who
9 were engaging and discussing with Sean Joseph every day and
10 where they sit back idly and don't protest, they've allowed him
11 to do a number of transactions on their behalf. They've allowed
12 him to sign their names or at least Mary Shechtman's name to
13 other legal documents. They never disavowed Mr. Joseph's
14 authority until this litigation. In fact, their pleadings,
15 again, state and their joint pretrial stipulation state that
16 Shechtman signed the agreement.

17 So there's every --

18 THE COURT: What do I do with that conflict, between
19 the pretrial stipulation and Ms. Shechtman's testimony and
20 Ms. Sherman's testimony, for that matter?

21 MR. HARRIS: Well, the pretrial stipulation, as I read
22 to you, was an agreement between the parties that no proof would
23 be required on those elements at trial.

24 THE COURT: So what do I do with this?

25 MR. HARRIS: You accept the pretrial stipulation and

1 you --

2 THE COURT: Though it's inconsistent with the actual
3 trial testimony?

4 MR. HARRIS: Well, it's inconsistent with the trial
5 testimony from the defendants' agent who recanted his prior
6 deposition testimony and admitted it was false, and it's
7 inconsistent with trial testimony from Mary Shechtman, whose
8 testimony, I submit, was also unreliable as she recounted
9 numerous instances in which she had previously said in
10 deposition that she had authorized counteroffers to be made. So
11 I submit that that evidence is unreliable.

12 So despite the fact that the pretrial stipulation
13 should be binding, any evidence submitted in this case to
14 contradict that evidence was completely unreliable.

15 THE COURT: What do I do with the absence of Honey
16 Sherman's signature or initials? What do I do with that?

17 MR. HARRIS: Well, I was explaining to Your Honor that
18 there was a course of conduct, for one, where Mr. Joseph would
19 sign like the Lease Agreement that we looked at, the one of two
20 they provided. And, of course, they didn't provide both Lease
21 Agreements. They both agreed that's a binding agreement even
22 though Honey Sherman didn't sign it.

23 THE COURT: Another agreement?

24 MR. HARRIS: A Lease Agreement, yes, Your Honor,
25 Exhibit 3.

1 THE COURT: If you do it for one, a temporary lease,
2 you're stuck for a permanent sale?

3 MR. HARRIS: That's evidence of a course of conduct,
4 but more than that, we have Honey Sherman's testimony, fully
5 apprised of the issues in this case at deposition in December of
6 last year, that she agreed with absolutely everything Mary
7 Shechtman did in connection with the trust property in this
8 case, including with respect to the sales transaction with the
9 plaintiffs.

10 In addition to apparent authority, we also have
11 ratification and I submit that ratification -- wait one second,
12 Your Honor. Forgive me, Your Honor.

13 The Eleventh Circuit has held in the doctrine of
14 ratification, "A principal can ratify the authorized act of
15 an agent purportedly done on behalf of the principal, either
16 expressly or by implication, through conduct that is
17 inconsistent with an intention to repudiate an unauthorized
18 act."

19 Your Honor, we have a pleading, an affirmative defense
20 in which the defendants assert the position that one of the two
21 co-trustees signed the document. We also have the pretrial
22 stipulation where --

23 THE COURT: What do I do with the second one not being
24 there? You are not suggesting that Ms. Sherman signed it, are
25 you?

1 MR. HARRIS: Well, I'm suggesting that -- so they've
2 already ratified Ms. Shechtman's signature. Ms. Sherman
3 testified, fully apprised of the facts, that she authorized and
4 agreed with everything that Mary had done, that they spoke on a
5 daily basis, and both defendants, Mary Shechtman and Honey
6 Sherman, the two sides are the same thing, that Mary Shechtman
7 got Honey's approval for everything she did in connection with
8 the trust property and that Honey Sherman gave her approval to
9 everything that Mary Shechtman did.

10 THE COURT: So she's kind of like a distant trustee.

11 MR. HARRIS: That was her testimony, Your Honor.

12 THE COURT: Do I believe that testimony?

13 MR. HARRIS: You should believe that testimony. It's
14 what she said.

15 THE COURT: Is there any part of Ms. Sherman's
16 testimony that you think is not credible?

17 MR. HARRIS: Well, she eventually admitted, by and
18 large, what she had said previously in deposition, but some of
19 her explanations were --

20 THE COURT: She didn't remember.

21 MR. HARRIS: She didn't remember or she might have been
22 confused when she gave the testimony, although she still adopted
23 the testimony, by and large, that she gave at deposition.

24 THE COURT: So there are no credibility issues when it
25 comes to her?

1 MR. HARRIS: I wouldn't say there were no credibility
2 issues.

3 THE COURT: Well, what credibility issues are there?

4 MR. HARRIS: Well, just the statement, protestation
5 that she had been confused about whether she had actually had
6 any discussions with Sean Joseph regarding the parameters that
7 they had agreed to in authorizing him and agreeing to sell the
8 property for the 1.3 million.

9 She had testified originally that she didn't recall
10 having ever spoken with Sean Joseph. That was trial testimony
11 today, but after showing her deposition, I think she conceded
12 that she actually did.

13 So even if no actual authority to issue a counteroffer
14 was had, the defendants gave apparent authority for the
15 counteroffer and ratified it since.

16 Accordingly, the evidence is clear that the February 7,
17 2013 counteroffer was made with authority to bind the
18 defendants.

19 THE COURT: So what do you want me to do?

20 MR. HARRIS: That's where I'm at next, Your Honor.

21 THE COURT: Okay.

22 MR. HARRIS: Having established the elements, requisite
23 elements of the contract and having demonstrated through trial
24 that there's no issue with the authority to make the offer,
25 plaintiffs are seeking specific performance in this case, that

1 the contract is binding and the sale goes through.

2 In this regard, we would like you to enforce the
3 specific terms of the contract, and we would request that you
4 provide for closing to occur by March 31, 2014.

5 THE COURT: No one has brought this up, but I'm just
6 wondering, if you win and I do that, do we have any title
7 problems? You know think about this: What would a title
8 company do?

9 MR. HARRIS: About what?

10 THE COURT: About the title to this property.

11 MR. HARRIS: Well, we currently have a lis pendens on
12 it. I believe we've done a title search, and I don't believe
13 there are any clouds on the title.

14 THE COURT: Well, how about this cloud? I guess it
15 won't be there if I order it.

16 MR. HARRIS: Correct.

17 THE COURT: That would be better than a title
18 insurance.

19 MR. HARRIS: Yes, Your Honor.

20 THE COURT: Okay.

21 MR. HARRIS: And I just wanted to point out, based on
22 our earlier discussions in this case, Florida Fifth --

23 THE COURT: Your clients, if you win, your clients
24 could not back out either, could they?

25 MR. HARRIS: No, they could not, Your Honor.

1 THE COURT: If they backed out, they would lose the
2 \$50,000, right?

3 MR. HARRIS: Well, yes. There are remedies
4 specifically provided for the contract in the event of the
5 default by either party.

6 THE COURT: Which is an elegant way of saying they
7 would lose 50 grand.

8 MR. HARRIS: I believe that's the default remedy, yes.
9 And I would point out that the contract provides --

10 THE COURT: I'm a simple guy. I like to speak in plain
11 English.

12 MR. HARRIS: I would point out that the contract
13 provides that in the event of a default by the sellers, specific
14 performance is a remedy available to the plaintiffs under the
15 contract.

16 THE COURT: Okay. So this could happen, right? Let's
17 say I rule in your favor -- excuse me -- and I order specific
18 performance by March. You know, it's a year later from the
19 original March. Let's say I stay it, require a supersedeas
20 bond. Mr. Soto says, I'm appealing. Judge, you're wrong on
21 both factual and certainly on the legal issues. And it takes a
22 year. There's a cloud on the title until I'm affirmed.
23 Wouldn't you agree?

24 MR. HARRIS: We would certainly have --

25 THE COURT: I mean, I have a big ego. I seldom get

1 reversed, but it could happen, it could happen, and I don't take
2 offense at it.

3 MR. HARRIS: We, certainly, would not remove our lis
4 pendens.

5 THE COURT: Okay. So then nothing happens, right,
6 okay, for a year or whatever time it takes. So a year from now,
7 like I mentioned yesterday, with all the condos being built, at
8 least here in the south side -- I haven't been to the north side
9 of the county, have you?

10 MR. HARRIS: No, Your Honor.

11 THE COURT: You haven't even seen the condo?

12 MR. HARRIS: I have not seen the condo.

13 THE COURT: Yeah, look at that. Well, it's pretty
14 built up, so I don't know if there's any room. But let's say
15 they replace some of the older condos and have all these other
16 insurance disputes that I deal with, with Hurricane Wilma and
17 others, okay, to build a new one and they overbuild. In a year,
18 we have another market crash, which by the way, I am
19 unofficially predicting here, just by looking around where the
20 crane is again. It's a different crane.

21 So let's say that happens. I get affirmed after I rule
22 in your favor, but the condo instead of being worth more than
23 \$1.3 million, which is what your clients say it is, it's worth a
24 million dollars. And then the co-trustees sisters say, the
25 justice system is wonderful. We lost, but we won, right? Isn't

1 that -- I mean, this could actually happen. We lost, but we are
2 winning. And something happens, they want to move, you know.
3 They want to go back to Canada. They want to go California,
4 whatever they want to do.

5 And then your clients say, oh, no, no. This is too low
6 or this is underwater if we had a mortgage. Then what would
7 happen? They couldn't back out, could they, unless they lost
8 the 50 grand? So they could back out if it went low enough,
9 where there's a \$200,000 differential and they would just lose
10 \$50,000, right? That could actually happen. Would you agree?

11 MR. HARRIS: I think that's within the realm of
12 possibilities.

13 THE COURT: Okay. All right. I don't know whether
14 when you guys go to mediation, people talk about things like
15 that because I don't know how close you were. Everybody said
16 you're far apart and you are still far apart. You don't even
17 talk during trial, right?

18 MR. HARRIS: No, that's not true, Your Honor.

19 THE COURT: You do talk during trial?

20 MR. HARRIS: Yes.

21 THE COURT: Do you listen? That's my hard part. Okay.

22 MR. HARRIS: I can't really comment on it, Your Honor.

23 THE COURT: You may get a pyrrhic victory, right? You
24 remember pyrrhic victory? You know, a pyrrhic victory doesn't
25 mean anything, that's actually worse.

1 MR. HARRIS: I don't know that it's a pyrrhic victory
2 enforcing the benefit of our bargain.

3 THE COURT: Even if a year from now, the economy tanks.

4 MR. HARRIS: Oh, a pyrrhic victory. I've got it.
5 That's where we win and it's really a bad loss?

6 THE COURT: Yeah. Okay.

7 MR. HARRIS: But nonetheless, we're asking for specific
8 performance.

9 THE COURT: It's a gamble. And if I grant specific
10 performance, I should dismiss the other two counts as
11 duplicative?

12 MR. HARRIS: Yes.

13 THE COURT: Okay.

14 MR. HARRIS: And if I could raise two authorities to
15 Your Honor on specific performance because the issue came up
16 yesterday and we pulled them.

17 THE COURT: Okay.

18 MR. HARRIS: The Fifth Circuit or the Fifth District
19 Court of Appeals of Florida has said, "Since all land is
20 considered unique" -- all land, that would include condos, I
21 submit -- "since all land is considered unique, money
22 damages to a contract purchaser of lands is an inadequate
23 remedy at law."

24 THE COURT: You don't want any money?

25 MR. HARRIS: It's an inadequate remedy.

1 THE COURT: So you don't want any money?

2 MR. HARRIS: We want specific performance.

3 THE COURT: And no money?

4 MR. HARRIS: Everyone wants money, Your Honor.

5 THE COURT: But you're not entitled to it?

6 MR. HARRIS: There may be some claim for special
7 damages, but --

8 THE COURT: Like what?

9 MR. HARRIS: I don't know.

10 THE COURT: You didn't prove any, right?

11 MR. HARRIS: I am not going to. I'm not asking.

12 THE COURT: So you're not winning that.

13 MR. HARRIS: Correct.

14 THE COURT: Okay.

15 MR. HARRIS: The Eleventh Circuit similarly has said,
16 In addition, given the unique nature of land, it is well
17 established that money damages to a purchaser of land is
18 inadequate."

19 So we submit that specific performance is the
20 appropriate remedy in this case, and that is our election. But
21 nonetheless, we believe we also presented evidence on the issue
22 of actual damages suffered. In that regard, plaintiffs would
23 seek, in the alternative, damages.

24 Plaintiffs testified to their attempts and inability to
25 purchase another 07 line unit. There were only eight units in

1 the 07 line, above the 35th floor with unobstructed southeast
2 views. And plaintiffs centered evidence is that currently
3 there's only one on the market, 4007, listed at \$1.95 million.

4 With regard to the closed sales of the 07 line, the
5 evidence showed two units: Unit 4207, which sold for 1.48
6 million and Unit 4307, which sold for 1.45 million.

7 THE COURT: Was that furnished or unfurnished? Is that
8 a penthouse or non-penthouse? Do you remember? One is a
9 penthouse.

10 MR. HARRIS: I thought one was a penthouse.

11 THE COURT: One is a penthouse.

12 MR. HARRIS: I think 4307.

13 THE COURT: The penthouse didn't have any flooring.

14 MR. HARRIS: Correct. It was incomplete and it needed
15 flooring and --

16 THE COURT: See, you guys think I'm not listening.
17 That's what I get paid for.

18 MR. HARRIS: You remember better than I do.

19 THE COURT: I've got to make the decision. You just
20 have to advocate one way. See, that's the difference. Okay.

21 MR. HARRIS: So plaintiffs estimate the additional cost
22 to finish that would add \$100,000 to that price to compare
23 apples to apples. Accordingly, the comparable sales price of
24 the 4307 unit, we submit, would be 1.55 million.

25 Based on the closed sales comparables, same units, same

1 line, same square footage, the damages, we submit, would be as
2 follows:

3 Because the sold units are as high as 1.55 million,
4 less the sales price for the Unit 3807, agreed sale price of 1.3
5 million, would result in a variance of 250,000. Plus lease
6 payments, which are in round numbers, an estimated 6,000 per
7 month for 12 months, that would get you to \$72,000; less monthly
8 assessment of \$12,000, less taxes for 12 months, \$18,000; would
9 get 42,000 in lease damages. Adding the lease damages to the
10 variance damage, we have a total of \$292,000.

11 THE COURT: How would you know you would lease it?

12 MR. HARRIS: Well, it's been leased. We have been
13 deprived of the benefit of the property.

14 THE COURT: And all the apartments are leased.

15 MR. HARRIS: I don't know. There could be owners. I
16 mean, I don't know if there's availability or not, Your Honor.

17 THE COURT: So these \$40,000 is something you want in
18 addition to specific performance, or instead?

19 MR. HARRIS: Instead, Your Honor. We want -- no.

20 THE COURT: You want 42,000 instead of specific
21 performance? It's hard coming here, huh?

22 MR. HARRIS: We want specific performance, to be clear,
23 as our remedy.

24 THE COURT: So what's this \$40,000 about, \$42,000?

25 MR. HARRIS: This is the lease --

1 THE COURT: No, I know how you got to it. I remember
2 mentioning 40 grand the other day.

3 MR. HARRIS: If in some exercise of the Court's
4 discretion, you decide not to grant specific performance, then
5 we would want damages in the alternative, which would encompass
6 the 42,000 in rents, the 250,000 in the variance price, for a
7 total of \$292,000.

8 THE COURT: That's assuming the two other condos, the
9 penthouse one is comparable. And you would concede that a
10 penthouse is not comparable.

11 MR. HARRIS: I would follow the instructions given in
12 the two opinions that I read you, but all land is unique and
13 therefore, money damages --

14 THE COURT: A penthouse is maybe a more unique than a
15 non-penthouse.

16 MR. HARRIS: It said all land is unique. I'm not sure
17 there are actually -- the appellate courts have not
18 distinguished between or to try to measure how unique a property
19 is. They say all land is unique.

20 THE COURT: Maybe this will be a chance for them to do
21 that. Look at that.

22 MR. HARRIS: Well, I hope you would take into
23 consideration the value involved and not make that this case.

24 THE COURT: Okay.

25 MR. HARRIS: Thank you, Your Honor.

1 THE COURT: Thank you.

2 For the defense, Mr. Soto for the defense.

3 MR. SOTO: Your Honor, we've heard testimony today,
4 undisputed testimony from Joanne Katsantonis, Vivian
5 Katsantonis; they did not have any communications with the
6 defendants in this matter.

7 THE COURT: Can you do it? In a real estate matter,
8 you've got to talk with the owner; you cannot talk with the
9 agents?

10 MR. SOTO: No. If it's a properly executed contract.

11 THE COURT: You need a Power of Attorney?

12 MR. SOTO: No.

13 THE COURT: Okay.

14 MR. SOTO: But the person actually has to sign.

15 THE COURT: You cannot do it without signature?

16 MR. SOTO: Correct. That's what the statute of
17 frauds --

18 THE COURT: We have initials and signatures here, don't
19 we?

20 MR. SOTO: Correct. On the final page, if you initial
21 it, you ratify it. That's why everybody always does it after
22 the fact.

23 THE COURT: Someone cannot sign for you?

24 MR. SOTO: Unless they have a Power of Attorney.

25 THE COURT: If I tell you, go ahead, husband and wife,

1 husband cannot sign for the wife; the wife says, sure, honey,
2 sign or me.

3 MR. SOTO: Can't.

4 THE COURT: Sister can say, sure, honey, sign for me?

5 MR. SOTO: They can if they sign on the line that they
6 are signing for that individual.

7 THE COURT: They have to say I'm signing for that
8 individual.

9 MR. SOTO: The Supreme Court in 1926 said -- a mother
10 tried to sign a contract on behalf of her daughter and they said
11 the contract is not effective even though the mother signed it
12 and she had Power of Attorney because she didn't sign the
13 contract with her name and the little initials as Power of
14 Attorney for her daughter. So they found it ineffective.

15 THE COURT: What do I do with all the Florida cases
16 that say parol authority will authorize an agent to contract for
17 his principal for the sale of realty? What do I do with all
18 those cases that date back to World War I?

19 MR. SOTO: Judge, those cases are not the ones that are
20 on trial in front of you.

21 THE COURT: I know, but I've got to follow them. I got
22 to follow Florida law.

23 MR. SOTO: You do. And it has to be under the apparent
24 authority, that there was some act done by the principal that
25 led the buyers in this case to rely upon that. There's no

1 evidence in front of you that they did anything.

2 THE COURT: What about the first offer for sale? What
3 about the conversations that they'll take nothing less than \$1.3
4 million? What do I do with all of that?

5 MR. SOTO: You are to disregard it, Judge.

6 THE COURT: Really? Even though they said it, at least
7 at the deposition.

8 MR. SOTO: They said it in email.

9 THE COURT: Well, and I disregard all of that?

10 MR. SOTO: Judge, you have to look at the email. The
11 email was sent to Sean Joseph.

12 THE COURT: The agent.

13 MR. SOTO: It was not sent to the buyers in this
14 matter.

15 THE COURT: But let's say what would happen here is one
16 of the trustees says, Joseph, Mr. Joseph, go for it; try to get
17 as much as you can. Don't tell them immediately, but my floor
18 is \$1.3 million, which, by the way, probably happens, I would
19 guess, on a daily basis, right? They said, I don't want to get
20 involved in all the messing around, the tinkering with the
21 numbers. I will not accept anything less than \$1.3 million even
22 though you're telling me this is only worth 1.2. I personally,
23 as the owner, will not accept less than 1.3 million. Go for it.
24 Try to get me more. Okay. Try to get me more. Don't tell
25 them, but do whatever you want and he goes back and forth and

1 says 1.4, 1.5, 1.3 and eventually 1.3. Would that bind your
2 clients?

3 MR. SOTO: No.

4 THE COURT: It would not?

5 MR. SOTO: No.

6 THE COURT: Even if they said we agree?

7 MR. SOTO: If they said we agree and they signed the
8 contract.

9 THE COURT: Which case talks about a real estate
10 transaction with an agent where someone said, under my
11 hypothetical facts, go for it; and yet, the Florida State Court
12 said, that's not enough, you've got to still put your John
13 Hancock on it, no matter what you said, no matter what authority
14 was represented, no matter where you were, if you don't put your
15 magical signature, it's not good enough?

16 MR. SOTO: Well, as I just stated, the Siler v. All Pro
17 Realty Service, Inc. --

18 THE COURT: Let me see it.

19 MR. SOTO: 491 -- May I approach, Your Honor?

20 THE COURT: Of course. Thank you.

21 MR. SOTO: This is a Siler v. All Pro Realty Service,
22 Judge. I don't presume to read for you, but if you take a look
23 directly at the outcome, I think that tells you exactly what the
24 case was about.

25 The Court reversed judgment in favor of appellant

1 tenant and persons with a remainder interest in certain real
2 property because there was no valid sales contract entered
3 between the appellees, buyer and real estate company, and
4 appellants, to order specific performance.

5 The Court held that all parties having an interest in
6 the subject property did not execute the contract, and the Power
7 of Attorney for one appellant was invalid, even though she did
8 not even sign it. That's July 17, 1986.

9 And if you'd like, Your Honor, I can also give you the
10 Smith v. Shackelford case.

11 THE COURT: Well, in that case, the daughters had given
12 their mother Power of Attorney, but the powers were canceled
13 prior to execution.

14 MR. SOTO: Yes, Your Honor.

15 THE COURT: So there seems to be something where you
16 give the right to do something, but then it's withdrawn.
17 Doesn't that make a big difference?

18 MR. SOTO: It does in that particular case. They
19 talked about it. But the Court went on to hold in that case, if
20 you'll take a look at it, that they specifically state the
21 mother did not even sign with the Power of Attorney moniker on
22 the contract.

23 THE COURT: Well, there was no indication that she was
24 signing as attorney-in-fact, but then look at this other
25 sentence. "There was no testimony that the mother was holding

1 herself out as having the authority to sign on behalf of," in
2 that case is Mrs. Lanier. In fact, there was considerable
3 testimony that it had been necessary to mail the contract to
4 another lady who lived in California, other daughters.

5 MR. SOTO: And if you go on --

6 THE COURT: Doesn't that make it different?

7 Here, the argument, at least from the plaintiffs, is,
8 this is all done in cahoots between Joseph and Shechtman with
9 the approval of Sherman because she always approves what her
10 sister says. She's taking care of her, and she's the one who
11 does it as long as it's within the parameters of what they
12 discussed.

13 MR. SOTO: I understand what you're saying, Judge, and
14 I will direct you to Page 3.

15 THE COURT: I got it.

16 MR. SOTO: Left side, starting with finally, about the
17 middle of the first paragraph.

18 THE COURT: "Finally, All Pro conceded that it did not
19 know about the powers of attorney until after the sellers
20 allegedly reneged on the deal. Hence, Coomes and All Pro
21 could not have relied on the mother's signature as binding,
22 Mrs. Lanier, at the signing of the contract since they did
23 not know about it at the time."

24 Well, here --

25 MR. SOTO: It goes to the apparent authority.

1 THE COURT: But here, surely, the plaintiffs always
2 believed, you will concede, that there was a deal? You'll
3 concede that?

4 MR. SOTO: Yes.

5 THE COURT: Maybe there wasn't a deal, but they
6 believed there was a deal. Why else would they put in 50 grand?
7 That's a lot of money.

8 MR. SOTO: I concede that they thought there was a deal
9 up until --

10 THE COURT: That's different from this case, though,
11 see? Here, they couldn't rely on it because they didn't even
12 know about it.

13 MR. SOTO: Yes.

14 THE COURT: That what makes it different, doesn't it?
15 Give me another case.

16 MR. SOTO: But in our case, Your Honor, they're also
17 saying that they relied upon something. The prior acts, the
18 Notice of Commencement, the leases, they knew nothing about.
19 They were never given representation from the principals.

20 THE COURT: No, that I agree. I think that that may be
21 more relevant, but you correct me if I'm wrong, to show what the
22 relationship was between Mr. Joseph and the alleged sellers.
23 Not to show that because they consented to a lease, obviously,
24 they would consent to a sale. It's very different to lease
25 something for six months or a year than to just give it up for

1 good.

2 I mean, you could actually say, go ahead and lease it.
3 What do I care as long as there's enough to pay the taxes, the
4 maintenance fee and a little extra? I don't really care. We've
5 got enough money. We're holding on to the condo for personal
6 reasons or for an investment or both.

7 That's how I see those as the course of conduct between
8 the two defendant sisters, the co-trustees, how one did more
9 than the other and the other one just said, go ahead. That's
10 how I understood it.

11 Am I wrong?

12 MR. SOTO: And looking at that, Your Honor, if you will
13 notice, they talk about it all the time. They talk about these
14 decisions, and Honey testified that she gives her approval to do
15 something or doesn't. She either pays some money to help --

16 THE COURT: Did she ever say that she never gave
17 approval for something?

18 MR. SOTO: Yes, this contract.

19 THE COURT: Well, other than this contract for the
20 trial. I know that.

21 MR. SOTO: The prior counteroffers that they say that
22 we sent over that they gave approval for.

23 THE COURT: The thing is Ms. Shechtman said she didn't
24 even know about the counteroffers, correct?

25 MR. SOTO: Correct.

1 THE COURT: She had no idea.

2 MR. SOTO: Correct. The written counteroffers.

3 THE COURT: She had no idea. What do I do with that
4 testimony?

5 MR. SOTO: No. She testified --

6 THE COURT: She was shocked, she said, right?

7 MR. SOTO: Correct.

8 But she knew negotiations were going on. She did not
9 know written counteroffers and offers were going back and forth.

10 THE COURT: So it's just talk for like going out for
11 tea. You talk about the weather or go to a bar and talk about
12 sports, or the way we talk about politics: Let's fix the Middle
13 East thing. You know, we can talk about it. We have absolutely
14 no influence. Was this what this was?

15 MR. SOTO: Well, Judge, that's interesting. Because
16 sometimes when two people come together and they start talking
17 about something and say, hey, look, you know what? I've got a
18 boat. You like boats? You want to buy a boat? Sure. What
19 kind of a boat is it? It's a Sea Ray. Wow, sounds like a nice
20 boat. Yeah, I want to buy it, but can I look at it? Can I go
21 touch it?

22 THE COURT: But how about if someone said, I will not
23 go below \$1.3 million for that boat. Go ahead and do something
24 about it. Your argument is that Mr. Joseph is a super rogue
25 Realtor.

1 MR. SOTO: But, Your Honor, if you look at the email
2 that was written, she says, the lowest I'm willing to go is 1.3
3 and I need to have another place to live. She didn't say, Sean,
4 the lowest I am willing to accept is 1.3 million. You know --

5 THE COURT: What's the difference between the lowest
6 I'm willing to go and the lowest I'm willing to accept?

7 MR. SOTO: Because she's not saying that if you get me
8 1.3 million, I'm selling, definitely. That was never said.
9 There is the difference. Because when people talk --

10 THE COURT: So why would Joseph do that?

11 MR. SOTO: Because in his testimony, he said, I'm
12 trying to keep the deal going.

13 THE COURT: Of course, but the deal is over once he
14 puts the initials and the signature. I mean, if they really are
15 not in favor of it, he's going to get caught, you know.

16 If now I go home and someone says, hey, they are moving
17 into your house because of that contract. I would be shocked.
18 And I would say, what's going on here, because there was
19 absolutely no relationship whatsoever with the person who's
20 selling my house.

21 Here there's a relationship, isn't there?

22 MR. SOTO: Judge, here's the very interesting part:
23 There is 40,000 to be made on the commission for both real
24 estate agents.

25 THE COURT: Of course, they want a sale no matter what.

1 MR. SOTO: And they're going to do a lot to try to keep
2 those deals alive, a lot.

3 THE COURT: But including finalizing the deal without
4 consent? Like someone is going to say, I don't want to sell,
5 but you got me. You know, you put my initials. So, you know
6 what? Go ahead. Let me call my family. No, you guys can't use
7 the condo. I'm giving my Realtor \$40,000 because I feel sorry
8 for him; he needs money; and I'll go find some other place to
9 live. Is that credible?

10 MR. SOTO: But, Judge, don't you find it interesting --

11 THE COURT: Oh, I find this case very interesting.

12 MR. SOTO: But don't you find it interesting that
13 Mr. Joseph came in here, told you, I made a mistake, basically
14 throwing his 40,000 out the window.

15 THE COURT: Oh, I don't think he expects that after
16 what has happened here, but you can never tell. Query as to
17 whether if --

18 MR. SOTO: If you find the contract enforceable --

19 THE COURT: He's entitled to that and he could sue
20 them.

21 MR. SOTO: He could.

22 THE COURT: And you could sue on behalf of your
23 client --

24 MR. SOTO: I could.

25 THE COURT: -- for some fraud, too.

1 MR. SOTO: They could sue him, too.

2 THE COURT: Everybody could sue each other, yeah,
3 you're right.

4 MR. SOTO: We could be here for another couple of
5 years.

6 THE COURT: It won't be before me.

7 MR. SOTO: Well, we may ask that inconsistent judgments
8 and verdicts all be thrown together and we have fun. Maybe
9 we'll go to a jury.

10 THE COURT: Wonderful, but you're right.

11 MR. SOTO: Here is the interesting part. This man came
12 in here, said he did something wrong.

13 THE COURT: Well, he didn't start out by saying that.

14 MR. SOTO: No, he didn't.

15 THE COURT: He ended up by saying that.

16 MR. SOTO: But he did --

17 THE COURT: By questioning from me and I was fairly
18 aggressive.

19 MR. SOTO: Apparently, you're a very effective
20 prosecutor.

21 THE COURT: Well, when you wear a robe, it's a lot
22 easier.

23 MR. SOTO: It's much easier. And he did that, which
24 now you would have the power to say, I find the contract
25 enforceable; however, I strike the provision giving anything to

1 Mr. Joseph.

2 THE COURT: I don't know if I have the power to do
3 that.

4 MR. SOTO: I don't know.

5 THE COURT: But certainly, there may be some grounds
6 for that in the future if he ever sought it. He seemed to be
7 somewhat remorseful.

8 MR. SOTO: He did.

9 THE COURT: About the whole mess because, as he said,
10 you know, and so did the other Realtor -- they are not
11 litigators. What they want is a quick sale, no matter what the
12 value is, the highest possible, but they would rather be quick.
13 But he has a relationship with the defendants.

14 MR. SOTO: Judge --

15 THE COURT: So that means that he's a little bit
16 biased. He likes your clients more than the Virginia sisters,
17 right?

18 MR. SOTO: Well --

19 THE COURT: Right? Because he's here; they're here. I
20 don't think the Katsantonises are going to hire him as a
21 Realtor. So he's through with them.

22 MR. SOTO: I don't know, Judge.

23 THE COURT: Oh, I think I can infer that.

24 MR. SOTO: I would bet that it wouldn't happen.

25 THE COURT: I could infer from that.

1 MR. SOTO: I would bet that my clients probably aren't
2 going to use him ever again.

3 THE COURT: I don't know. One of your clients said
4 that she's very soft.

5 MR. SOTO: Yes, she did.

6 THE COURT: I mean, I don't know, but that she's very
7 soft and she didn't want to say anything because he's making a
8 living, but he can't make a living if he doesn't collect the
9 fee.

10 MR. SOTO: That's right.

11 THE COURT: Okay. So, see, that's inconsistent, too.

12 MR. SOTO: But the thing you have to look at is why
13 would he have come in here and changed it? Wouldn't he have
14 been better off --

15 THE COURT: To help his former clients, if not, how
16 about that?

17 MR. SOTO: But for \$40,000, he comes in and says, they
18 gave them authorization. Judge, you give them the property. He
19 gets \$40,000. That's \$40,000. Do you think he's doing this
20 every day?

21 THE COURT: I don't know because that didn't come out,
22 how much he makes, how many condos he sells.

23 MR. SOTO: Raul knows he's getting \$40,000 if this goes
24 through. And all of a sudden, he didn't provide us with all of
25 his text messages. He got a telephone call --

1 THE COURT: We're still fighting discovery, right?

2 MR. SOTO: No. I'm pointing out that he didn't provide
3 any, and I'm also saying that a lawyer called him a month
4 afterwards, a lawyer.

5 THE COURT: To tell him that you need two signatures.

6 MR. SOTO: And told him just print out the text
7 messages or take pictures of the text messages that you think
8 are relevant. Didn't say, hey, why don't you preserve
9 everything. It's their agent. We only get four.

10 THE COURT: How many did you -- there wasn't a flurry
11 of emails here or text messages.

12 MR. SOTO: I don't know.

13 THE COURT: That means everybody always has, perhaps,
14 something to hide. I don't know.

15 MR. SOTO: I don't know, Judge, but from the text
16 messages that we saw, we know there were text messages before
17 that period of time. We know it.

18 THE COURT: But we don't know what they say.

19 MR. SOTO: We don't.

20 So in this particular case, Judge, Mary and Honey had
21 to sign. It's a real estate contract under the statute of
22 frauds, one to be charged by.

23 THE COURT: Did she sign the lease?

24 MR. SOTO: Honey Shechtman? No.

25 THE COURT: So that's an invalid lease?

1 MR. SOTO: I agree.

2 THE COURT: So we could actually, if I order -- this is
3 the same tenant who is living there now?

4 MR. SOTO: Yes.

5 THE COURT: He could be evicted?

6 MR. SOTO: You could. I don't think you can do it in
7 this process because he would have to have notice. That's our
8 justice system.

9 THE COURT: But that's an invalid lease?

10 MR. SOTO: Wouldn't you agree?

11 THE COURT: That's the defendants' position?

12 MR. SOTO: It's not executed properly.

13 THE COURT: But it's going to rise and fall on the
14 lease. If the lease is improper, the contract for sale is
15 improper. However, if the lease is valid, and then so is the
16 purchase agreement.

17 MR. SOTO: Well, I think you heard Mr. Joseph in his
18 testimony say, I don't think it's legally valid, but I'm not a
19 lawyer. So those are the issues. Under the statute of frauds,
20 you must have all the signatures. That is what the law says.

21 I wanted to hand you --

22 THE COURT: You were going to give me another case?

23 MR. SOTO: I was, Your Honor.

24 THE COURT: Do you have a copy for your opponent or
25 not?

1 MR. SOTO: Absolutely. I already provided it to him,
2 Judge.

3 MR. SOTO: This is the Smith, Shackelford, Mellon case;
4 Supreme Court of Florida 1926; "In support of claim that
5 there was a contract between the parties, a purchaser
6 presented a written memorandum that was not signed by the
7 owner, but that allegedly was signed by the owner's agent
8 who allegedly was given authority to execute the document."

9 Obviously, the owner denied that the agent had
10 authority to sell the property, and the Supreme Court, in
11 its argument, citing to other cases, said, I believe if you
12 turn to Page 4, relevant parts are, "A real estate agent or
13 broker in whose hands an owner places land for sale or who
14 is employed to sell land, does not thereby acquire authority
15 to bind his principal by signing an agreement of sale of
16 such land. The inference that such real estate agent or
17 broker has been endowed by his principal with authority to
18 bind him in a written agreement of the sale cannot be drawn
19 from circumstances entirely consistent with his employment
20 as a mere agent or broker, nor without other circumstances
21 clearly indicating the grant of such greater authority."

22 In this particular case, there was no grant of greater
23 authority. There was nothing else other than, Sean, can you
24 execute the lease? We are in Toronto.

25 He executed the lease which is for less than a year, of

1 which the individual paid all upfront in the first lease. On
2 the second lease, they are receiving payments, but they don't
3 have an issue because it's the same individual, a renewal.

4 But in this particular case, Your Honor, Joanne
5 Katsantonis and Vivian Katsantonis did not see or know about the
6 leases, the Notice of Commencement. They didn't have any
7 representation from the principal to give the appearance of any
8 authority. That is undisputed. They testified to that.

9 Raul Santidrian didn't give us any texts, said there
10 were other texts, didn't believe they were important or
11 relevant. Obviously, Raul wants the sale to go through. His
12 bias has shown because he stands to make a \$39,000 commission.

13 Sean Joseph, obviously, testified that he executed the
14 contract without authority from Mary Shechtman or Honey Sherman.
15 Mary Shechtman and Honey Sherman testified that they never
16 signed the agreement, that they did not give authority to Sean
17 Joseph to bind them in an agreement. He was just a real estate
18 agent out and hired to procure offers, not effect them.

19 Raul Santidrian authored the contract that is issued
20 here. He put the information for the two individuals. They
21 were clearly listed as trustees, Mary Reich Shechtman and Honey
22 Sherman, the trustees of the Shechtman Family Trust. Two
23 signatures needed to effectuate the transfer of that real
24 property.

25 Under the statute of frauds, 725.01, "No action shall

1 be brought whereby to charge any person upon any agreement
2 made upon any contract for the sale of land unless the
3 agreement or promise upon which such action shall be
4 brought, or some note or memorandum thereof shall be in
5 writing and signed by the party to be charged therewith or
6 by some other person by her or him thereunto lawfully
7 authorized."

8 No one was lawfully authorized to sign that contract
9 other than Mary Shechtman and Honey Sherman, and the testimony
10 bears out that no one ever gave that authority.

11 In Skinner v. Haugseth, 426 So.2d 1127, Florida, in the
12 Second DCA, 1983, offered a proposed sales contract, expressed
13 conditions of effectiveness of the contract upon the signature
14 of the last seller.

15 In this particular contract, it's in Paragraph 3B of
16 the sales agreement, and they would have been one of the last
17 ones to have to sign. Judge, I can provide you with that case
18 if you would like me to.

19 THE COURT: Sure.

20 MR. SOTO: Actual authority: It says, "Essential to
21 the existence of an actual agency relationship" and the elements
22 are acknowledgment by the principal that the agent will act for
23 him, the agent's acceptance of the undertaking, and three,
24 control by the principal over the actions of the agent.

25 Obviously, there was no control by the principal over

1 the agent in this case. As we saw from the testimony that came
2 out, they were completely opposite.

3 We have cases that I think I already provided you with,
4 the Smith/Shackleford case where they clearly indicate that
5 there has to be some greater grant of authority than just a mere
6 real estate agent acting on their behalf.

7 As to apparent authority, apparent authority is a power
8 to effect the legal relations of another person by transactions
9 with third persons. We've already had undisputed testimony that
10 the parties in this case never spoke, never did anything. No
11 one relied on anything they had seen prior to entering into this
12 alleged agreement on both sides.

13 The apparent authority exists only to the extent that
14 it is reasonable for the third person dealing with the agent to
15 believe that the agent is authorized. The parties here never
16 dealt with the agent. Their agent dealt with them. They are
17 too far removed to believe that reasonably anybody else was
18 involved.

19 We have two lawyers with 20-plus years of experience in
20 construction litigation and mergers and acquisitions. They do
21 nothing but read contracts all the time, and they see a contract
22 for the purchase of real estate that says Mary Reich Shechtman
23 and Honey Sherman and they assume immediately that that's only
24 one person. But yet, when they sue them, they get it perfectly
25 correct in who they named as parties to this litigation.

1 In the instant case, Joseph cannot be found to possess
2 apparent agency to bind the trust because neither Shechtman, nor
3 Sherman ever made any representations to Santidrian or the
4 plaintiffs. Agencies cannot be created by representations of
5 the agent. For the same reason the argument that the Shechtman
6 acted as the agent of Sherman, Sherman never made any
7 representations to the Santidrian or the plaintiffs.

8 Finally, the argument that apparent agency can be
9 established by the Notice of Commencement or the previous leases
10 that were signed solely by Shechtman fails because the
11 plaintiffs have stated that they were unaware of those
12 documents.

13 We have the case of H.S.A., Inc. versus
14 Harris-in-Hollywood. If I may, Your Honor?

15 THE COURT: Okay.

16 MR. SOTO: In H.S.A. versus Harris-in-Hollywood, Your
17 Honor, the doctrine of apparent authority, Fourth DCA, 1973,
18 says:

19 "The doctrine of apparent authority rests on
20 appearances created by the principal and not agents, as the
21 Court states, who often ingenuously create an appearance of
22 authority by their own acts."

23 It cites to Owen Industries versus Taylor, which is a
24 Florida Second DCA 1978 case.

25 Judge, I'll provide that to you as well.

1 Judge, I think we fall to the final argument here,
2 which is the promissory estoppel. Florida Supreme Court has
3 recently held that there is no promissory estoppel exception to
4 the Florida Statute of Frauds, and I'll give you that case.
5 It's DK Arena, Inc. versus EB Acquisitions, citing to Tanebaum
6 versus Biscayne Osteopathic Hospital.

7 THE COURT: Would the plaintiffs concede that this is
8 an all-or-nothing type of case?

9 MR. HARRIS: I mean, I'm not sure I follow.

10 THE COURT: Well, he's saying that if there is no
11 contract, you don't have a right to anything, do you?

12 MR. HARRIS: Well, that was our promissory estoppel
13 count.

14 THE COURT: That you do have a right to something even
15 if there's no contract?

16 MR. HARRIS: Yes.

17 THE COURT: Based upon what?

18 MR. HARRIS: The representations made to us through the
19 counteroffers and our reliance thereon.

20 THE COURT: But what are the damages for that? That's
21 the \$240,000 damages?

22 MR. HARRIS: Correct, Your Honor. 292,000.

23 THE COURT: Okay. 292,000.

24 MR. SOTO: Can't get it, Judge. The Supreme Court of
25 Florida tells them they can't get it.

1 THE COURT: Because there's no contract?

2 MR. SOTO: Specifically because of the statute of
3 frauds. If there's no contract written, you can't get
4 promissory estoppel because of the statute of frauds. They
5 specifically said it, holding that the doctrine of promissory
6 estoppel was inapplicable.

7 THE COURT: So when does it apply?

8 MR. SOTO: It doesn't apply in cases for real property
9 under the statute of frauds.

10 THE COURT: Period?

11 MR. SOTO: It probably applies some other time.

12 THE COURT: But not for real property?

13 MR. SOTO: I can only tell you what the Supreme Court
14 tells me.

15 THE COURT: Anything else you want to say?

16 MR. SOTO: I want to speak to damages, Your Honor,
17 which I think are extremely speculative in this case.

18 Obviously, for specific performance to be granted, as a
19 condition precedent -- and this is the Equitable Nature of
20 Remedy; Matthew, Benner & Company Treatise:

21 "As a condition precedent to obtaining specific
22 performance, a purchaser of real property must be ready,
23 willing and able to perform by having paid or being able to
24 pay or having been excused from paying the sum due under the
25 contract."

1 The only proof that we have here is a \$50,000 payment
2 was made. That's it. We have no other proof of the available
3 funds of 1.25 million. You have no evidence in front of you.
4 That's the condition precedent.

5 THE COURT: Well, that would take care of the specific
6 performance.

7 MR. SOTO: Correct.

8 THE COURT: Which means if they can't perform, then you
9 can say, we keep the 50 grand.

10 MR. SOTO: Then we're back in another lawsuit.

11 THE COURT: Not by you. You would just keep it.

12 MR. SOTO: We don't have it.

13 THE COURT: And they would sue for it.

14 MR. SOTO: We don't have it, Judge.

15 THE COURT: Huh?

16 MR. SOTO: We don't have it.

17 THE COURT: Who has it? But it's in escrow. Whichever
18 agent has it --

19 MR. SOTO: Sotheby's.

20 THE COURT: -- keeps it for somebody else, not for
21 himself.

22 Which agent has it?

23 MR. SOTO: But without the agreement of both parties,
24 it doesn't get released.

25 THE COURT: Okay. So then they go to a judge and the

1 judge says one of two things and then you go up to the Court of
2 Appeals in State court because it's \$50,000.

3 MR. SOTO: It's not here anymore. But damages are too
4 speculative. Even if you look at the breach of contract, the
5 evidence that was presented to you was two closed units over the
6 last year, both of which are penthouses, one which came
7 furnished with decorator furniture. That's not even close.
8 This was not a furnished unit being sold. The contract never
9 mentions anything about furniture. Wholly different. You got
10 the honest answer of Sean Joseph, 1.25. There are no damages.
11 They're too speculative in nature to be determined. And if
12 they're too speculative, you can't award them. That's if you
13 get past the hurdle and you actually believe that there is a
14 contract that exists in contravention of 725, the statute of
15 frauds, and that Mr. Joseph acted with apparent authority or
16 actual authority. And in that case, the missing signature of
17 Honey Sherman doesn't matter. Why are we here?

18 THE COURT: I don't know. I asked myself that
19 question, too. It seems like the easiest thing would have
20 been --

21 MR. SOTO: Motion to dismiss.

22 THE COURT: -- to sell it and buy something else.

23 MR. SOTO: Is that the easiest thing? You now displace
24 one family --

25 THE COURT: Or from one side, and from the other side,

1 to buy something else. But I don't decide those things. I am
2 not a purchaser or a seller. Do I think it would have been
3 easier to either sell it or buy something else? Absolutely, I
4 think it would have been easier.

5 MR. SOTO: And it appears they could have gotten a nice
6 penthouse without furniture for less.

7 THE COURT: I guess these condos are very unique --

8 MR. SOTO: Apparently so unique --

9 THE COURT: -- for everybody.

10 MR. SOTO: -- that no where else can you get them.

11 Judge, I thank you for your patience and your time in
12 this matter.

13 THE COURT: I don't think I showed that much patience.

14 MR. SOTO: I think you did.

15 THE COURT: It's a bench trial, so you guys can take
16 it.

17 MR. SOTO: Thank you, Judge.

18 THE COURT: Rebuttal.

19 MR. HARRIS: Just to reiterate, Your Honor,
20 Ms. Shechtman, through the pleadings has admitted that she
21 signed the counteroffer. So there's a lot of argument still
22 being made about Mr. Joseph not having authority.

23 We also have the testimony of Honey Sherman. She
24 specifically said that she authorized the sale at \$1.3 million
25 and gave Shechtman the authority to do it on her behalf. Both

1 defendants also did testify that the lease was binding upon them
2 despite what Mr. Soto just told you. We had testimony from both
3 defendants saying that that lease, that was only signed by one,
4 was binding upon them both.

5 THE COURT: Is their opinion on the law binding?

6 MR. HARRIS: No, but --

7 THE COURT: Neither is a Realtor's opinion. So it
8 really doesn't matter what they think --

9 MR. HARRIS: It shows a course --

10 THE COURT: -- except for the intent or prior course of
11 conduct, right?

12 MR. HARRIS: It's the course of conduct. It's evidence
13 that they gave authority on occasion, on multiple occasions to
14 Mr. Joseph to sign one name and to be bound thereby.

15 What we have here, Your Honor, is a situation where the
16 defendants have created --

17 THE COURT: Why did they do it?

18 MR. HARRIS: They've built an escape hatch into these
19 contracts. You can see this, Your Honor.

20 THE COURT: But why? Why do that? I'm sure I don't
21 know what the relationship is with the lawyer and the
22 plaintiffs -- the defendants. I know there's a relationship
23 with the lawyer and the plaintiffs.

24 So why would you do that when it costs you time and
25 money and grief and trips and depositions? And I don't know how

1 much money, but I mean, you all deserve the money that --
2 whatever you are charging, you deserve it, I suspect. Why?
3 Why?

4 MR. HARRIS: I think most people are going to walk
5 away. Most people aren't going to hold them to the benefit of
6 the bargain. The law favors the enforcement of contracts, Your
7 Honor, and what they've done is they built an escape hatch in.
8 The negotiation is that you give me an offer and then I'll
9 accept it. There's some bluffing involved, but here's my offer.
10 I know when they give you an offer, if you accept it, I'm bound.
11 What they have created is a situation where they can get out of
12 any contract.

13 THE COURT: But why?

14 MR. HARRIS: Because maybe they don't like the deal.
15 Maybe they want to say, hey, would they accept this price?
16 Well, now, I'm going to get out. Maybe they were sleeping.
17 Maybe they were not paying attention. Who knows? Careless.
18 But the law does not relieve a careless contractor.

19 We made decisions based in reliance on that. We
20 forfeit other properties. We kept our 50 money -- \$50,000 in
21 the escrow and waited and tried to enforce it.

22 THE COURT: But it was offered to be sent back, right?

23 MR. HARRIS: Yes.

24 THE COURT: So that only proves that when it was
25 deposited -- there's no dispute, or if there is, I would find

1 contrary to it, that the plaintiffs wanted to buy the property.
2 I'm satisfied beyond all doubt about that, beyond and to the
3 exclusion of every reasonable and unreasonable doubt that they
4 wanted it. Why, I don't know, but that's not for me to figure
5 out, why they want it so much, and why the defendants want to
6 get out.

7 MR. HARRIS: I think the presumption is that the value
8 has gone up, and the law does not relieve somebody from a bad
9 bargain. That's Contracts 101.

10 THE COURT: See, the cases that we have dealing with
11 all of these things, and there are cases that go both ways,
12 which is probably why both of you have good arguments, they're
13 usually cases where the property has been sold to somebody else.
14 Okay? And there's where we have damages, right? They sell it
15 to someone else for 1.4 million. Okay? And then I understand.
16 Why did they do it? For a hundred grand. It's very simple,
17 right? Even though they made a deal for 1.3. Or someone is
18 trying to stiff the Realtor and the Realtor says, I want my
19 money. I got a deal. You're renegeing on it. The purchasers
20 don't want it because they don't want to deal with it. They'll
21 find somebody else. But I, as a Realtor, am entitled to it.
22 Those are the cases.

23 I don't think I have found a case like this where the
24 individual wants to keep the condominium where they don't really
25 live. They just rent it out; they're out of state, out of the

1 country, and where the plaintiffs, who are out of state, want
2 this desperately.

3 MR. HARRIS: They loved it, Your Honor.

4 THE COURT: Okay.

5 MR. HARRIS: They contracted for it. They got a
6 bargain. They felt like the market has gone up. They feel like
7 the market has gone up. They want the benefit of the bargain.
8 They did not go and take advantage of the lower prices. The
9 market has gone up since. They did not get a place at the time.
10 They held off in saying, we have a contract and they attempted
11 to enforce it.

12 THE COURT: Okay. Anything else?

13 MR. HARRIS: I mean, I think it's clear that the
14 defendants want to get the higher value out of the property, but
15 they can't sell it because there's a lis pendens on it right
16 now. They relet it, but obviously, they would be -- I am not
17 sure anybody would purchase it with the lis pendens we have on
18 it right now.

19 THE COURT: No. And with litigation, I would think
20 that there would be a little title problem on this. I would
21 think. I don't know. But certainly if I were a purchaser, I
22 would look for another condo. You don't want to buy something
23 that has litigation involved. So this may be worth a lot more
24 after I rule one way or another. And money did not resolve this
25 case, huh?

1 MR. HARRIS: Many efforts were made, Your Honor.
2 That's all I can say.

3 Your Honor, one more point --

4 THE COURT: What do I do with these cases?

5 MR. HARRIS: The case that Mr. Soto just brought up
6 that I had not seen ever before?

7 THE COURT: I know what you want me to do with yours,
8 but what do I do with his?

9 MR. HARRIS: Well, mine were set forth on a summary
10 judgment brief. I have been handed five or six cases here. I
11 haven't had time to read all of them. I thought Your Honor
12 aptly distinguished the first one. We are looking at a case
13 from 1926.

14 THE COURT: We shouldn't look at cases that old?

15 MR. HARRIS: Well, I think it in each case, you find
16 something that's distinguishable. In looking at --

17 THE COURT: We know the price of real estate has sure
18 gone up.

19 MR. HARRIS: That's true. The damages are probably the
20 first thing you notice, right?

21 THE COURT: That was the time to buy.

22 MR. HARRIS: In the 1926 Mason v. Shackelford case, the
23 Court found that the evidence was wholly lacking of the grant by
24 the principal to such agent of the requisite authority to bind
25 the principal by executing a contract or memorandum of sale

1 under the statute.

2 The statute of frauds provides very clearly that you
3 must -- the party being sought to be charged with the contract
4 must have signed it, not personally, but by an authorized agent.
5 It can be personal or it can be an authorized agent.

6 We presented extensive testimony, Your Honor, showing
7 that the requisite authority was given. Again, Honey Sherman
8 said she agreed to everything that Shechtman did in connection
9 with the trust property, including the negotiations with the
10 plaintiffs in this case and we have pleadings and pretrial
11 stipulations confirming that Shechtman signed the contract.

12 THE COURT: Okay. Let me tell what you I think. All
13 right.

14 MR. HARRIS: Do you want me to sit down?

15 THE COURT: I would, if I were you, because what I'm
16 going to do is go through my notes.

17 We know, of course, this is a diversity action for a
18 breach of contract for the purchase of a condominium by the
19 plaintiffs from the defendants' seller. The case was tried the
20 last couple of days without a jury with the agreement of both
21 sides, and pursuant to Federal Rule of Civil Procedure 52, the
22 Court, after hearing the evidence the last couple of days, makes
23 special findings of fact and separate conclusions of law:

24 There is no dispute at least as to one fact, and that
25 is that the defendant is the Shechtman Family Trust, the owner

1 of the unit in question, 3807 of TDR Tower III Condominium at
2 15811 Collins Avenue in Sunny Isles, Miami-Dade County, Florida.
3 Mary Shechtman and Honey Sherman are sisters and co-trustees of
4 the trust, and in that capacity offer the unit in question for
5 sale through the agent, Mr. Joseph.

6 The plaintiffs are also sisters, Vivian Katsantonis and
7 Joanne Katsantonis, and they expressed an interest in purchasing
8 the unit. The plaintiffs claim that after exchanging offers and
9 counteroffers between purchasers and the seller -- and I do use
10 the singular seller because it's a trust, though obviously the
11 trust acts through the trustees -- that a contract was entered
12 into for the purchase of the condominium for \$1,300,000, and
13 that's what Plaintiffs' Exhibit 1 is.

14 The defendant owner of the unit in the Pretrial
15 Stipulation countered that only one of the trustees, Mary
16 Shechtman, executed and initialed the counteroffer, the final
17 one, but not co-trustee, Honey Sherman.

18 The defendants' position is that the Trust Agreement,
19 which is Defendants' Exhibit 1, for the Shechtman Family Trust
20 requires a majority of the trustees to agree on particular
21 actions on the property and that the failure of the co-trustee,
22 Honey Sherman, to sign the counteroffer is fatal to a finding of
23 a valid contract of purchase of the property.

24 At the bench trial today, however, Mary Shechtman, a
25 co-trustee, testified that she did not initial, she did not sign

1 the alleged contract and that her Realtor, Sean Joseph, inserted
2 her initials, MS without MRS, and that he did that without her
3 authority. At trial Ms. Shechtman also disputed her prior
4 deposition testimony that the Realtor, Joseph, was communicating
5 the various offers and counteroffers.

6 Therefore, my first ruling has to be whether the
7 defendant trust acting through the trustees, Honey Sherman and
8 Mary Shechtman, are bound by the Pretrial Stipulation, and the
9 Answer, too, which is paragraph 33 and Page 4 of the Answer
10 where the third affirmative defense is that the trust did not
11 execute the contract because it was only signed by one of the
12 co-trustees.

13 In making the first legal decision that I have to make,
14 I always look for guidance from the Eleventh Circuit, and I can
15 find it always, almost always. And there's a case called
16 *Olmsted, O-l-m-s-t-e-d, versus Taco Bell Corporation, 141 F.3d*
17 *1457, Eleventh Circuit 1998.* So for purposes of this case, it's
18 a like a newborn baby case, as we've cited very old cases here.

19 In that case, it didn't involve real estate. It
20 involved claims pursuant to statutory Title 7, 1981 cases, but
21 the important part of that case is that the district court did
22 not abuse its discretion in holding the parties to the Pretrial
23 Stipulation. And I think I can be flexible with things and I
24 think I have to a certain extent when deadlines have expired and
25 when attachments to the Complaint haven't been filed, but I

1 think when it comes to the Pretrial Stipulation and the Answer
2 that hasn't been modified, I'm going to hold the defendant to
3 what they said in the pleadings.

4 But irrespective of that, even if this were determined
5 by the Court of Appeals to be an abuse of my discretion,
6 separate and apart from that, I have trouble with
7 Ms. Shechtman's testimony because of the way it came out and the
8 degree of the denial. In fact, when I heard Ms. Shechtman say
9 she was shocked about all the offers and the counteroffers, I
10 couldn't help but think of the character, Captain Louis Renault,
11 in Casablanca played by Claude Rains, you know, when there was
12 gambling, when he said, "I'm shocked that there's gambling in
13 this establishment," because obviously, she initiated, she had a
14 relationship, a professional relationship, of course, with Sean
15 Joseph. And it is inconceivable and unreasonable that she had
16 no idea about all of these things.

17 We have Plaintiffs' Exhibit Number 10, which is the
18 plaintiffs' offer for \$1.2 million dated February 4, 2013. We
19 have Plaintiffs' Exhibit 14, the plaintiffs' offer for \$1.23
20 million. We have Plaintiffs' Exhibit 16, the offer for \$1.27
21 million, Plaintiffs' Exhibit 12 which is the defendants' -- let
22 me emphasize -- the defendants' offer for \$1.33 million dated
23 February 4th, and then the final offer, which is what's in
24 dispute, with the dates of February 6th and 7th of last year,
25 the Plaintiffs' Exhibit 1.

1 Therefore, I am going to reject as not credible
2 Ms. Shechtman's testimony about not knowing about these offers
3 at all and the counteroffers. I'm also going to reject
4 Mr. Joseph's testimony as not being credible based upon his
5 demeanor and with both witnesses based upon the inconsistencies
6 with the prior deposition testimony.

7 Having made that factual finding, though, I still need
8 to examine whether the trust, Defendants' Exhibit 1, requires
9 the signature of both trustees, and this is always a little bit
10 more difficult, but you have to look at the testimony from both
11 trustees and the prior course of dealing between the seller real
12 estate agent, Sean Joseph, and trustee, Mary Shechtman. And the
13 Court is going to conclude that Sean Joseph did have actual
14 authority to do what he did based upon the testimony.

15 Now, a lot of cases have been cited for actual
16 authority, apparent authority, and originally Ms. Shechtman
17 admitted that, hey, he was entitled to negotiate the sale of the
18 condominium. And Florida law has held that a principal is
19 responsible for the acts of her agent, and the case that has
20 been cited before, which we discussed before, was the Benson
21 case at 409 So.2d 172 from the Second District Court of Appeals
22 1982, that even where an agent's act is unauthorized, the
23 principal is liable if the agent had the apparent authority to
24 do the act and that apparent authority was reasonably relied
25 upon by the third party dealing with the agent. But that's a

1 fallback position because I'm finding that there was actual
2 authority. But even if I'm wrong with that, I think there was
3 apparent authority.

4 Here, as in the Benson case, the negotiations between
5 the parties were conducted totally by their respective agents.
6 And that's why the Court here with the facts in this case find
7 that Ms. Shechtman is indeed bound, finding that she did know
8 what was going on and gave authority to Sean Joseph to make the
9 various offers and counteroffers with the different numbers. I
10 think to find otherwise would be contrary to the evidence as I
11 heard it.

12 But that still leaves the dispute that I mentioned
13 before whether Honey Sherman as co-trustee also agreed to the
14 selling of the condominium, and in many cases there are those
15 disputes. I have to look at the Trust Agreement.

16 And by the way, as an aside in this case, too, one of
17 the plaintiffs' sisters signed for the other sister. But you
18 can be an agent and give permission.

19 Here the trust, without question, requires that they
20 operate, the trustees, by a majority decision, and Section 3.5
21 does say that "Whenever two or more trustees are acting with
22 respect to any trust hereunder, the trustees must act by a
23 majority of the trustees qualified to participate in the
24 decision at issue. In the event of a tie, the decision of a
25 majority of independent trustees shall control."

1 But the way the trust was set up and the way it was
2 acted upon wasn't necessarily required that all the trustees
3 execute the contract as long as they agreed with the decision
4 made. And Ms. Sherman's testimony is much more credible. She
5 kind of backpedaled a little bit saying, I don't remember, but
6 she wasn't so certain during the deposition. And the Court
7 concludes that she takes a more distant participation in this
8 condominium.

9 But based upon that testimony as well, just because she
10 didn't have her initials or Joseph didn't put her initials, I
11 think there is actual authority and certainly, at least,
12 apparent authority to bind the defendants to the terms of the
13 contract.

14 I conclude as a matter of law that there was actual
15 authority, that there is apparent authority, that the Trust
16 Agreement requires that the trustees act consistently, but not
17 necessarily that they all have to sign and execute the contract.

18 It's not, you know, beyond all doubt. It wouldn't be
19 beyond a reasonable doubt, but the findings in civil court are
20 by the preponderance of the evidence.

21 I find that they jointly, Sherman and Shechtman,
22 decided to sell the property for \$1.3 million when the
23 counteroffer was issued and I conclude that once the trustees
24 have jointly made that decision, they must proceed to execute
25 the offer and that it would be inconsistent with Section 4.1 of

1 the trust that the power to sell the property is to be construed
2 in the broadest possible manner.

3 And a lot of the things that I have to do has to do
4 with the intent of the parties. There have been a lot of case
5 that have been handed to the Court and I've done a little bit of
6 search in chambers, too, about powers of attorneys and cases go
7 way back. You know, there's the Beekman case, B-e-e-k-m-a-n,
8 from 1914 that talks about parol authority, p-a-r-o-l authority,
9 will authorize an agent to contract for his principal for the
10 sale of realty.

11 All of that has to do with the intent of the parties.
12 That's why I'm making the factual findings. In the Treister
13 case, T-r-e-i-s-t-e-r, a little newer at 85 So.2d 605 from 1956,
14 where reference to the fact of agency appears in an instrument
15 but execution is accomplished by the agent signing his
16 principal's name alone without reference to his principal,
17 principal, nevertheless, is found.

18 Now, there are distinctions in all of those cases: Is
19 he a duly authorized agent? Is he acting within the scope of
20 his authority? And it is binding upon the principal.

21 But based upon what I heard and based upon the role
22 that Mr. Joseph plays at the request of Ms. Shechtman, I find
23 that he was the actual agent.

24 The Bellaire versus Brown case from the Supreme Court
25 of Florida 1936, says that the memorandum contemplated by

1 statute of frauds for sale of land may, indeed, be executed by
2 an agent whose authority is created by parol, but such agent may
3 not delegate his authority to another. Authority of agent to
4 bind principal to convey realty need not be in writing, 1926
5 case, Tatum Land Company.

6 The Triplett case from 1927: Parol authority is
7 sufficient to authorize agent to execute contract for sale of
8 principal's land.

9 Maybe the reason we don't have newer cases is because
10 people don't bring them to court for all the reasons that I have
11 already expressed that I just don't understand.

12 Now, there is enough for an actual authority, but even
13 if there isn't, I also conclude that it can be applied or
14 apparent and that the circumstances here do so.

15 There's a much newer case from my colleague, Judge
16 Huck. Now, it's not realty. It has to do with a yacht, the
17 Matienzo case, M-a-t-i-e-n-z-o. Judge Huck, from across the
18 hall, in denying the defendants' motion for summary judgment,
19 said that although the name is not on the second contract, the
20 principal can sue for its breach because someone signed as an
21 agent.

22 So there are just so many cases dealing with that.
23 There are cases that seem to hold to the contrary, which
24 Mr. Soto has very well presented, and there are distinctions
25 with it. I'm not saying the argument is frivolous. It isn't at

1 all. I mean, there are good arguments. But I already mentioned
2 the case Siler, the distinctions that I see. There's a reneging
3 of the deal afterwards and they relied on the signatures as
4 being binding, but it has to do with the testimony that's
5 involved.

6 The other cases that cited by Mr. Soto, the important
7 distinction is the intent. What evidence was presented about
8 the intent of the parties? See, it really is a fact-intensive
9 case. What did the parties intend in the first place? And it
10 really has to do with the question of credibility, and when it
11 comes to credibility, I've already made those findings.

12 Therefore, I'm concluding that there was a legal
13 contract between the Shechtman Family Trust and the plaintiffs
14 through the trustees regarding the sales and purchase of Unit
15 3807 located at TDR Tower III Condominium at the address of
16 15811 Collins Avenue in Sunny Isles, Miami, and I'm going to
17 order that it proceed to closing.

18 As far as the damages are concerned, I do think the
19 defendants are right there. It's too speculative, and since I'm
20 ordering specific performances, it's moot. But even if it
21 weren't, I would say I would only look at Unit 4207 and Unit
22 4307, as I said yesterday, the units that actually sold for
23 \$1.48 million and 1.45; and the difference, of course, would be
24 the attributed to the furnished condominium, I think one of them
25 the penthouse, and it's just too speculative to decide. But I

1 have to assume that if a unit is on a higher floor, the price is
2 going to be higher. I think that's a normal conclusion.

3 But in any event, since I'm finding on Count 1, what
4 I'm going to do on Counts 2 and 3 is they're dismissed as
5 duplicative. The closing shall occur by March 14, 2014, within
6 30 days.

7 In the event that the defendants' trust through its
8 trustees files a Notice of Appeal, I will set at that point a
9 supersedeas bond in the amount of \$200,000, and then you can
10 take it up as a Notice of Appeal. I will do the Notice of
11 Filing the exhibits that were admitted to help you, if you wish
12 to appeal, but I don't mind assisting people for the Court of
13 Appeals to know what's going on.

14 If they wish to reverse me, I never take offense, and
15 this is a type of case, other than the credibility findings, on
16 the legal issues, it might be a nice thing to have a 2013 case
17 in case there are other real estate disputes.

18 I express no opinion about any commissions that have to
19 be paid since I do not have the authority to express an opinion
20 on that.

21 So I will file these exhibits, and I wish you luck in
22 the future. Thank you.

23 THE COURT SECURITY OFFICER: All rise.

24 MR. SOTO: Thank you, Judge.

25 MR. HARRIS: Thank you, Your Honor.

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(The bench trial was concluded at 4:00 p.m.)

C E R T I F I C A T E

I hereby certify that the foregoing is an accurate transcription of proceedings in the above-entitled matter.

07-23-14

DATE



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