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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 10, 2014

Defendants.

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

APPEARANCES:

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11
12
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14
15
16
17
18
19
20
21
22
23
24
25

TABLE OF CONTENTS

Page

Opening Statement by Mr. Harris 31

Opening Statement by Mr. Soto 45

Vivian Katsantonis 57

 Direct Examination by Mr. Harris 57

 Cross-Examination by Mr. Soto 87

Joanne Katsantonis 116

 Direct Examination by Mr. Harris 116

 Cross-Examination by Mr. Soto 120

Sean Joseph 136

 Direct Examination by Mr. Harris 136

 Cross-Examination by Mr. Soto 194

 Redirect Examination by Mr. Harris 205

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

EXHIBITS

Exhibits	Marked for Identification		Received in Evidence	
Description	Page	Line	Page	Line
Plaintiffs' Exhibit Number 10	63		63	3
Plaintiffs' Exhibit Number 12	63		63	8
Plaintiffs' Exhibit Number 16	63		63	13
Plaintiffs' Exhibit Number 22	63		63	19
Plaintiffs' Exhibit Numbers 24A and 24B	65		65	20
Plaintiffs' Exhibit Number 1	66		66	21
Plaintiffs' Exhibit Number 2	99		99	14
Plaintiffs' Exhibit Number 4	146		146	15
Plaintiffs' Exhibit Number 3	148		148	14
Plaintiffs' Exhibit Number 8	192		192	21
Plaintiffs' Exhibit Number 13	193		193	2
Plaintiffs' Exhibit Number 28	193		193	22
Defendants' Exhibit Number 6	201		201	19

1 (The following proceedings were held at 10:44 a.m.)

2 THE COURT: Vivian Katsantonis and Joanne Katsantonis
3 versus Shechtman and Honey Sherman, Case Number 13-21482-Civil.
4 On behalf of the plaintiffs, who do we have?

5 Use the microphone right over here, the one that the
6 prosecutor had.

7 MR. HARRIS: Good morning, Your Honor. Christopher
8 Harris on behalf of the plaintiffs, and I have with me Mariela
9 Malfeld.

10 THE COURT: On behalf of the defendant.

11 MR. SOTO: Alexander Soto and I have Dale Evans here as
12 well.

13 THE COURT: My goodness gracious. Three emergency
14 motions were filed.

15 MR. HARRIS: Yes, Your Honor, based --

16 THE COURT: On Friday after the calendar call, right
17 before trial, right?

18 MR. HARRIS: Yes, Your Honor, because they had
19 pertained to matters that were ordered at the calendar call.

20 THE COURT: Do we have that rule -- were they filed
21 conventionally or electronically? You may want to have local
22 counsel next to you because -- did you state your name, too, or
23 not? I'm sorry.

24 MS. MALFELD: Mariela Malfeld.

25 THE COURT: Were they filed conventionally or

1 electronically?

2 MS. MALFELD: One was filed conventionally. The second
3 one was filed electronically.

4 THE COURT: Why was the second one filed in
5 contravention to the local -- it's not really the local rules,
6 but our electronic filing system that says emergency motions
7 should not be filed electronically. They have to be
8 hand-delivered, and the reason for that is you all are so quick
9 on the trigger. For a lawyer, everything is an emergency. And
10 now, electronically, you just go, "beep beep," electronically.
11 Everything is an emergency.

12 What happens when everything is an emergency, judges
13 start believing that nothing is an emergency and we kind of get
14 jaded.

15 But the first one was done correctly because it was
16 sealed and ex parte, though the local rules on motions to seal
17 was not followed. You filed a motion to seal without seeking
18 permission to seal and all on the Friday before trial.

19 MS. MALFELD: Yes, Your Honor.

20 THE COURT: Did I misstate anything? Correct me if I
21 misstated anything.

22 MS. MALFELD: I believe that's accurate.

23 THE COURT: Okay. Why?

24 MS. MALFELD: It was due --

25 THE COURT: Not why is it accurate, why did you do it.

1 MS. MALFELD: Due to the time frame that we were
2 working with and we had --

3 THE COURT: So when you have shortness of time, we
4 throw out the rules.

5 MS. MALFELD: No, Your Honor. There would have been no
6 way to physically actually get the second motion filed
7 conventionally because I was in Fort Lauderdale, and I would
8 have never made it to the courthouse on time to file it in time
9 for consideration.

10 THE COURT: And if you file it electronically -- at
11 what time did you do that?

12 MS. MALFELD: I don't recall off the top of my head.

13 THE COURT: So if I had been in Fort Lauderdale, I
14 would have to rush back in here or I could have done it in the
15 computer.

16 I think in the future if you want to violate the rules,
17 you should seek permission. But, you know, teenagers always
18 say, hey, we'd rather seek pardon than permission. That way
19 they get to do the things that they want to do anyway. But I
20 don't like the way it's been done.

21 Now, let's put context to this case. We all had a
22 calendar call. I granted the plaintiffs' motion to add an
23 exhibit to this breach of contract involving the sale of a
24 condominium, late, right, right around the calendar call time?
25 Didn't I do that?

1 MS. MALFELD: Your Honor, I want to --

2 THE COURT: Did I do that or not?

3 MS. MALFELD: Yes.

4 THE COURT: I did that. But then I said, well, out of
5 fairness to the defendants because the plaintiffs waited so
6 long, take the deposition. And I said, when do you all want it?
7 And you all picked a time, date and place.

8 MS. MALFELD: The circumstances that gave rise to
9 needing to postpone it was --

10 THE COURT: Was that one of the plaintiffs is a lawyer
11 and had an emergency dealing with a law firm in Virginia.

12 MS. MALFELD: Generally, yes.

13 THE COURT: Right?

14 MR. HARRIS: Your Honor, the nature of the emergency
15 was set forth in the confidential affidavit.

16 THE COURT: I understand. Which was filed without
17 permission.

18 MR. HARRIS: Understood, Your Honor. There was a
19 misinterpretation of the rules that was made under the extreme
20 circumstances we were working under. So we apologize to the
21 Court.

22 I would note that the third emergency motion that we
23 filed, we did seek permission from the Court.

24 THE COURT: And I granted it.

25 MR. HARRIS: Yes. Well, through your clerk, he asked

1 us to --

2 THE COURT: My clerk granted it. He knows the
3 president of the United States, got confirmed by the senate and
4 he said, I hereby grant it. I mean, I know clerks are always
5 smarter than the judges, but I don't know if they are as
6 connected. And that's what happened.

7 MR. HARRIS: We made a call to chambers to ask how we
8 should --

9 THE COURT: You had an oral motion through the phone
10 with the Clerk of Court, and he said -- my guess is that he
11 probably said, more elegantly, put it in writing. Didn't he say
12 that? Because that's automatically what all my law clerks, who
13 don't want to get fired say, put it in writing.

14 MR. HARRIS: I certainly don't want to get your clerk
15 fired, Your Honor.

16 THE COURT: He just started. So I wouldn't fire him
17 immediately.

18 MR. HARRIS: I just asked for some guidance on how we
19 could get a motion to you as promptly as possible.

20 THE COURT: And he said, whatever you want, put it in
21 writing. Did he say something like that, nicer than what I
22 said?

23 MR. HARRIS: He did say that, Your Honor. He also
24 instructed me to file it on the ECF system.

25 THE COURT: How else would you do it?

1 MR. HARRIS: Conventionally, I guess.

2 THE COURT: Okay.

3 MR. HARRIS: Although we would not have had time to do
4 that.

5 THE COURT: Because you all waited until the end.

6 MR. HARRIS: Well, because it was in response to an
7 order that was issued at 2:00 or that we received at noon.

8 THE COURT: The order was issued to the last emergency
9 motion.

10 MR. HARRIS: Yes, Your Honor.

11 THE COURT: I mean, yeah. I'm quick, too. All right.

12 MR. HARRIS: And, Your Honor --

13 THE COURT: The deposition was taken, I take it.

14 MR. SOTO: One was.

15 THE COURT: One was, of one of the sisters.

16 MR. SOTO: Correct.

17 THE COURT: The nonlawyer sister, or are they both
18 lawyers?

19 MR. HARRIS: They're both lawyers at different firms.

20 THE COURT: They're both lawyers. So both plaintiffs
21 are lawyers. So you have added -- oh, my goodness. And all of
22 this with a condominium, unbelievable.

23 So one was taken, the other one was not. So what
24 should I do?

25 My order said we'll go to trial with one plaintiff

1 sister lawyer with the new exhibit, and with the other one with
2 the old exhibit. So we'll have kind of bifurcated -- and then
3 we don't even know if it's a jury trial or not. The last time
4 we were together you said, we'll waive. Now you say you're not
5 even entitled to one. What's the situation with jury or
6 non-jury?

7 MR. HARRIS: Your Honor, when I got involved in this
8 case, it was about midway through the proceeding. My first
9 conversation with Mr. Soto, I called him up to say, what's this
10 case about? Where are we going? He gave me his thoughts and
11 began his conversation with, I think the jury --

12 THE COURT: It's going nowhere.

13 MR. HARRIS: -- the jury is going to do this, the jury
14 is going to do that.

15 THE COURT: Okay.

16 MR. HARRIS: Okay. As an officer of the Court, I came
17 in here -- and my associate can say that Mr. Soto had similar
18 conversations with her.

19 THE COURT: Okay.

20 MR. HARRIS: They had advised us that they had
21 requested a jury.

22 When I came in here --

23 THE COURT: You waived it.

24 MR. HARRIS: -- I accepted his representation, and I
25 advised Your Honor that I believed that the defendants had

1 requested a jury. Mr. Soto did not contest that at the time,
2 but we both agreed to proceed without a jury. Your Honor said,
3 I think you're going to go --

4 THE COURT: I'd rather have a jury decide this
5 condominium dispute, but now you're telling me no one demanded.
6 So no one is entitled to it.

7 MR. HARRIS: Right. Mr. Soto went back and checked and
8 confirmed that he had not requested.

9 THE COURT: And all of this we find out after calendar
10 call.

11 MR. HARRIS: Yes, Your Honor.

12 THE COURT: Because people wait until the last minute
13 to really do things, because you don't think you're going to go
14 to trial. Unbelievable.

15 So you didn't ask for a jury trial as plaintiffs --

16 MR. HARRIS: Correct, Your Honor.

17 THE COURT: -- and you don't want a jury trial.

18 What say the defendant?

19 MR. SOTO: We didn't ask for one, Your Honor.

20 THE COURT: And you don't want one.

21 MR. SOTO: No, Your Honor. We don't think it's
22 appropriate in this matter.

23 THE COURT: Okay. Well, then I'll agree with you. So
24 what do we do with the deposition? Did she finally arrive after
25 5:00?

1 MR. HARRIS: Yes, Your Honor.

2 THE COURT: What time?

3 MR. HARRIS: The flight was delayed. And after
4 receiving your order --

5 THE COURT: I'm shocked that a flight was delayed.
6 From where, Washington?

7 MR. HARRIS: Washington, D.C., by about a half an hour.
8 But we advised Mr. Soto's office that she would try to be there
9 by 4:45. She ended up getting there a few minutes after 5:00.

10 THE COURT: And you were gone already?

11 MR. SOTO: Your Honor --

12 THE COURT: Are we going to fight about when she got
13 there?

14 MR. SOTO: Yeah.

15 THE COURT: We are?

16 MR. SOTO: We are.

17 THE COURT: About when she got there?

18 MR. SOTO: She got there at --

19 THE COURT: You want me to conduct an evidentiary
20 hearing on when someone got there.

21 MR. SOTO: Judge --

22 THE COURT: That may take longer than the 15-minute
23 deposition I'm entitling you to.

24 MR. SOTO: Judge, you can look at it any way you'd like
25 to, but the statements that they put into the emergency motion

1 are false. My associate was there --

2 THE COURT: False? That's such a big word. Usually
3 lawyers say "disingenuous," which means the same thing. But,
4 you know, it's more elegant.

5 Go ahead.

6 MR. SOTO: So --

7 THE COURT: Your clients are not lawyers, I take it?

8 MR. SOTO: They are not.

9 THE COURT: Okay.

10 MR. SOTO: I stayed at the office because they said
11 they would be there at 4:45. I received an email, I believe --
12 I didn't see it till the next day.

13 THE COURT: When did you leave your office?

14 MR. SOTO: I left at 5:06 right after I filed my
15 opposition.

16 THE COURT: I long for those private --

17 MR. SOTO: I'm sorry, Judge?

18 THE COURT: -- private law days.

19 So you left Friday at 5:00. Okay.

20 MR. SOTO: I did, Your Honor.

21 THE COURT: Well, good for you.

22 MR. SOTO: And my associate was present.

23 THE COURT: And he stayed till 7:00.

24 MR. SOTO: I believe that he stayed till at least 6:00.

25 THE COURT: Okay. Yeah.

1 MR. SOTO: And he can testify as to --

2 THE COURT: And no one showed up.

3 MR. SOTO: No, they showed up.

4 THE COURT: Oh, they showed up, but there was no court
5 reporter or did the associate take the depo?

6 MR. SOTO: Correct, Your Honor.

7 THE COURT: He took the depo?

8 MR. SOTO: He did not. There was no court reporter
9 present.

10 THE COURT: Yeah.

11 MR. SOTO: The court reporter told us at 2:00; it's
12 Friday at 5:00, I'm not going to be here.

13 THE COURT: Okay. Well, I'm glad everybody leaves
14 before 5:00 on Fridays. So much for the Protestant work ethic
15 that America had. All right.

16 Okay. We're going to have this dispute. What do you
17 have there?

18 MR. HARRIS: I have the email that Ms. Vivian
19 Katsantonis sent that her flight was delayed at 4:57 p.m.

20 THE COURT: She sent it to whom, to Mr. Soto?

21 MR. HARRIS: Mr. Soto.

22 THE COURT: Look at that. So the plaintiff
23 communicates directly to the defense lawyer. Wow.

24 MR. HARRIS: Under the emergency circumstances.

25 THE COURT: That's what happens when the plaintiff is a

1 lawyer. All right.

2 MR. HARRIS: Your Honor, I'd also -- I'm sorry.

3 THE COURT: It's tough representing one lawyer, let
4 alone two, isn't it?

5 MR. HARRIS: Yes, it is, Your Honor.

6 I would also like to say that Mr. Soto made very clear
7 when we advised him that Vivian had got on a plane at about
8 1:45, 1:30 --

9 THE COURT: Well, they had to come here anyway, right?

10 MR. HARRIS: -- that he would not take the deposition
11 under any circumstances.

12 THE COURT: Under any circumstances?

13 MR. HARRIS: Well, unless she magically -- I believe he
14 said unless she magically appears at 2:00, which is impossible
15 because she's in Washington, D.C. on a plane.

16 THE COURT: Okay. And, of course, you don't know what
17 the affidavit says because it was filed under seal without
18 permission and returned to --

19 MR. HARRIS: Your Honor --

20 THE COURT: In fact, I'm going to return it right now.

21 MR. HARRIS: I have disclosed the substance of the
22 affidavit.

23 THE COURT: I'll return it to you. I have not
24 disclosed it.

25 MR. HARRIS: No, we disclosed it to Mr. Soto, in fact,

Bench Trial

1 at the time that Ms. Katsantonis boarded the plane.

2 THE COURT: Okay.

3 MR. HARRIS: We described the nature of the emergency,
4 which I submit I would not like to publicly disclose because
5 many people's livelihoods depend on it.

6 THE COURT: Okay. I'm not. Even though the rules
7 weren't followed, I'm not doing it.

8 Okay. So the motion for correction of the jury trial
9 to a bench trial without objection will be granted, and we'll
10 have a bench trial.

11 Now, is it Vivian Katsantonis, the one who was not
12 present for the depo?

13 MR. HARRIS: At the time appointed, correct.

14 THE COURT: Okay. Do you want to take her deposition
15 or not?

16 MR. SOTO: At this point, Your Honor?

17 THE COURT: Well, what other point -- I can't go back.

18 MR. SOTO: I understand. At this point, Your Honor, I
19 assume --

20 THE COURT: Federal judges have a lot of power, but
21 that isn't one of them.

22 MR. SOTO: Next year it'll be in the budget.

23 THE COURT: Maybe. I'm not complaining. We got our
24 cost of living adjustment, so -- finally.

25 MR. SOTO: Your Honor, I don't want to delay this any

1 more, and I assume that we are going to trial as soon as you are
2 done.

3 THE COURT: All these people came over just to watch
4 the trial.

5 MR. HARRIS: As soon as you are done with your other
6 hearings this morning. So if we can do it for 15 minutes -- I
7 don't have a court reporter with me. I can probably get it done
8 in five minutes. If we can do it right before we begin the
9 trial, it's your discretion, Judge.

10 THE COURT: What say the plaintiff?

11 You're ready to go, right?

12 MR. HARRIS: We are ready to go, Your Honor. I would
13 like to advise the Court that the exhibit that's in question was
14 an exhibit that was signed and initialed by Joanne Katsantonis.

15 THE COURT: This is Exhibit C?

16 MR. HARRIS: Yes, the replacement Exhibit C. It was
17 signed and initialed by Joanne Katsantonis, which she testified
18 to. Mr. Soto took approximately three minutes of questions from
19 her on the exhibit.

20 THE COURT: Oh, when I said 15 minutes, it's just to be
21 safe.

22 MR. HARRIS: And Ms. Katsantonis' testimony would
23 essentially be that her sister had the authority to sign the
24 contract on her behalf. There's really no issue. But, you
25 know, we're ready to go to trial now.

1 If the defendant requires a deposition to ask those
2 questions, that's fine. But since we're in a bench trial, he
3 could certainly ask the same questions during trial, and he'll
4 get the same responses.

5 THE COURT: Well, I don't know. A lot of people don't
6 get the same responses at trial that they do at the deposition.

7 MR. SOTO: Judge, if they're --

8 THE COURT: In 27 years as a judge, I see that all the
9 time.

10 MR. SOTO: Judge, if they're stipulating on the record
11 that Vivian never signed it and it was signed by her sister, I
12 have no problem with that. I don't need to take her deposition.

13 THE COURT: All right.

14 MR. HARRIS: We're stipulating that --

15 THE COURT: No, no. Just what he said.

16 MR. HARRIS: Well, with her sister's authority. Joanne
17 signed with Vivian's expressed authority to sign her name to the
18 contract -- I'm sorry -- initialed the contract.

19 THE COURT: Is that sufficient?

20 MR. SOTO: That is very sufficient.

21 THE COURT: Okay. All right. So we will see you at
22 2:00, and we'll begin trial then.

23 I'm making you wait, right? I can't believe it, right?
24 Look at that. See what happens? When you're late, I have to
25 even things out. So we'll see you at 2:00.

1 You don't want to come back at 2:00? It's
2 inconvenient. There must be another emergency.

3 MR. HARRIS: Your Honor --

4 THE COURT: I can't believe that, right?

5 MR. HARRIS: -- one of our witnesses --

6 THE COURT: Should I assess the cost of the jury for
7 today -- what should I do with that? -- based on the
8 representations from last week or not? Should I do that?

9 MR. HARRIS: No, Your Honor.

10 THE COURT: Because?

11 MR. HARRIS: Well, I was relying on representations --

12 THE COURT: I wonder what the Fourth Circuit, what the
13 Eastern District of Virginia would do, huh? They would have
14 finished this case a long time ago.

15 Should I assess the fact that jurors would have to be
16 brought in based on the representations from you all last week?
17 Should I do that or not?

18 MR. HARRIS: I don't believe you should, Your Honor.

19 THE COURT: Because?

20 MR. HARRIS: Well, for one, we had asked the Court to
21 -- well, we had stipulated that we didn't want a jury and we
22 specifically cited the reason that we didn't want to tax the
23 Court's resources or the jurors themselves.

24 THE COURT: Yeah, you did that. Should I assess them
25 and let you split them?

1 MR. SOTO: No, I don't believe so, Your Honor.

2 THE COURT: Because?

3 MR. SOTO: Because immediately when we did learn and we
4 did the research when I was obviously --

5 THE COURT: When was that, Friday afternoon?

6 MR. SOTO: You realized that Tuesday when we met for
7 calendar call.

8 THE COURT: That's when I had my calendar call, so that
9 we had three days to resolve it and the weekend. It didn't work
10 out.

11 MR. SOTO: It didn't work that way. I notified the
12 Court, obviously, of the two mediations that I was present in on
13 Wednesday and Thursday. As soon as I got back to the office and
14 had a chance to review the pleadings and correct the --

15 THE COURT: You filed something.

16 MR. SOTO: I filed something immediately.

17 THE COURT: When did you do that?

18 MR. SOTO: Friday morning first thing.

19 THE COURT: Friday morning as opposed to the afternoon.

20 MR. SOTO: Correct.

21 THE COURT: All right. Well, I canceled the jury
22 anyway, see? So that's why I won't assess the cost.

23 MR. HARRIS: Thank you, Your Honor.

24 THE COURT: But then I didn't know what was going to
25 happen this morning, and I have other people here who are

1 waiting.

2 MR. SOTO: Thank you, Your Honor.

3 THE COURT: So I want to hear from them.

4 MR. HARRIS: Your Honor, may I --

5 THE COURT: I'll see you at 2:00.

6 You don't want to come back at 2:00.

7 MR. HARRIS: I do, Your Honor. May I raise one
8 procedural issue or one substantive issue?

9 THE COURT: You may.

10 MR. HARRIS: We have a third-party witness who is under
11 subpoena. His wife is newly pregnant and they asked us if they
12 could testify in the morning because he needs to take her to a
13 doctor's appointment.

14 THE COURT: What time? Who is this third-party
15 witness?

16 MS. MALFELD: The appointment is actually --

17 THE COURT: I'm sorry, you've got to use the
18 microphone, otherwise, the court reporter can't hear it.

19 MS. MALFELD: The appointment is at 2:30.

20 THE COURT: Who is it? Who's the witness?

21 MS. MALFELD: Oh, Raul Santidrian.

22 THE COURT: What's he going to say?

23 MS. MALFELD: He's going to testify to the negotiations
24 with Sean Joseph who's the agent for the defendants.

25 THE COURT: The negotiations in a breach of contract

1 case. I can hear that? The parol evidence rule does not bar
2 that.

3 MR. HARRIS: Your Honor, the issue is that --

4 THE COURT: Are you saying there was a contract?

5 MR. HARRIS: Yes, Your Honor.

6 THE COURT: A written contract.

7 MR. HARRIS: But the issue is they're saying that there
8 was no authority and there was no acceptance and there was no
9 offer. So it's really about contract formation.

10 THE COURT: Okay. So you want this witness as a
11 rebuttal witness after the defendants testify.

12 MR. HARRIS: No, absolutely not, Your Honor.

13 THE COURT: Because you don't have a written contract.

14 MR. HARRIS: We do have a written contract, but he's
15 the one who sent it and he's the one who received
16 representations from the other side.

17 THE COURT: So can I allow oral representations on a
18 written contract?

19 MR. HARRIS: About the authority. The issue of whether
20 it's --

21 THE COURT: He's going to say what about the authority?
22 I missed that.

23 MR. HARRIS: The law on --

24 THE COURT: No, no. What's he going to say, the
25 witness who has to go to the hospital or the doctor with his

1 wife?

2 MR. HARRIS: Essentially he's going to say --

3 THE COURT: Tell me exactly what he's going to say.

4 MR. HARRIS: He's going to say in terms of authority
5 that he --

6 THE COURT: About anything. That's all he's going to
7 testify to.

8 MR. HARRIS: That all of the communications between the
9 two parties were conducted through the real estate agents, that
10 the real estate agent for the seller --

11 THE COURT: Okay. Hold on. Give me names.

12 MR. HARRIS: Sorry. Okay. Raul Santidrian is the
13 buyers' agent. He is the one who has the medical issue.

14 THE COURT: He's the buyers' agent?

15 MR. HARRIS: Correct.

16 THE COURT: And the buyers are?

17 MR. HARRIS: Vivian --

18 THE COURT: Your clients.

19 MR. HARRIS: Yes, Your Honor.

20 THE COURT: Okay. And they're not going to testify.

21 MR. HARRIS: They are going to testify.

22 THE COURT: Of course. So what's he going to add?

23 MR. HARRIS: Well, we anticipate objections about who
24 actually sent the email and when. The issue of --

25 THE COURT: So you want him as rebuttal. So tell him

1 to take his wife to the doctor this afternoon, and he can come
2 in on Tuesday or Wednesday. We'll figure out a time.

3 How's that? He doesn't want to do that?

4 MR. HARRIS: I don't know. We didn't anticipate a
5 later schedule, but I believe he can be ready Tuesday.

6 THE COURT: Okay. I mean, the doctor's appointment
7 can't be more than an hour, right? Is everything okay?

8 MS. MALFELD: I'm just going to let him know so that he
9 doesn't come up here.

10 THE COURT: Well, I don't -- it's up to him if he wants
11 to come, but it's up to you. I don't really think you need him,
12 but it's up to you. They're your witnesses. But he should take
13 his wife to the doctor.

14 Okay. What else?

15 MR. HARRIS: That's the only issue, Your Honor.

16 THE COURT: From the defendants.

17 MR. SOTO: We have nothing pending in front of you,
18 Your Honor.

19 THE COURT: I'll see you all --

20 MR. HARRIS: Oh, I'm sorry, Your Honor. We'll have one
21 preliminary motion before trial starts.

22 THE COURT: Really?

23 MR. HARRIS: Yes, Your Honor.

24 THE COURT: Before the bench trial starts. Okay. What
25 would be the preliminary motion before the bench trial?

1 MR. HARRIS: Well, we can address it at the beginning
2 of the bench trial.

3 THE COURT: Well, what is it? No, I don't like --

4 MR. HARRIS: The issue is also at calendar call we
5 raised the outstanding issue of our motion to compel documents
6 from the defendants.

7 THE COURT: You want to resolve a discovery dispute
8 right before opening statement.

9 MR. HARRIS: We want to resolve a failure to obey your
10 discovery order dispute. You ordered at that time that
11 defendants were required --

12 THE COURT: You see, I'm very lenient with failure to
13 obey orders. So should I be strict on this one?

14 MR. HARRIS: Your Honor, it's prejudicial. We have not
15 ever gotten the emails that they promised to provide for this
16 case.

17 THE COURT: Oh, we're back to that. You didn't give
18 him the emails?

19 MR. SOTO: Your Honor, I provided all the emails having
20 to do with the unit to them prior to 5:00 on Thursday pursuant
21 to your order.

22 THE COURT: How many were there?

23 MR. SOTO: There was one.

24 THE COURT: You don't believe that there was only one.

25 MR. HARRIS: If you recall, Your Honor, Mr. Soto asked

1 for three days to go through thousands of emails, and you said
2 anything related to the property, anything. I have extensive
3 testimony from the defendants themselves and the real estate
4 agent saying they communicated by email relating to the
5 transaction that we're here to discuss today. Thirty, 40, 50
6 emails alone --

7 THE COURT: You have those.

8 MR. HARRIS: I have the testimony right here.

9 THE COURT: No, but you have emails.

10 MR. HARRIS: No, I do not.

11 THE COURT: You don't?

12 MR. HARRIS: No.

13 THE COURT: And there were the emails between whom?

14 MR. HARRIS: Presumably there were emails between the
15 two sisters about the property.

16 THE COURT: With each other.

17 MR. HARRIS: They emailed frequently, yes. They email
18 all the time.

19 THE COURT: Which two sisters?

20 MR. HARRIS: The defendants, Mary Shechtman and Honey
21 Sherman.

22 THE COURT: We have sisters versus sisters. Okay. I
23 want to make sure. The nonlawyer sisters who are being sued by
24 the sister lawyers. Okay.

25 MR. HARRIS: And they also emailed frequently, 30, 40,

1 50 times. One defendant testified 30, 40, 50 emails about --

2 THE COURT: Between each other.

3 MR. HARRIS: -- about the property.

4 No, with their real estate agent.

5 THE COURT: Who's the real estate agent?

6 MR. HARRIS: Sean Joseph.

7 THE COURT: And he doesn't have emails, either. He
8 didn't bring them over.

9 MR. HARRIS: He provided some emails, but not
10 everything.

11 THE COURT: Okay.

12 MR. HARRIS: And we had a motion to compel documents
13 from him as well.

14 THE COURT: Okay. So you want me to grant the motion
15 to compel.

16 MR. HARRIS: Your Honor, I would like to have sanctions
17 imposed.

18 THE COURT: What do you want me to do?

19 MR. HARRIS: I would like the Court to make a finding
20 that Honey Sherman, defendants Honey Sherman and Mary Shechtman
21 gave full authority in issuing a counteroffer that is --

22 THE COURT: That's what the case is all about.

23 MR. HARRIS: Correct. And we don't have the emails.

24 THE COURT: So you want me to grant judgment as a
25 matter of law because of failure to supposedly disclose emails.

1 That would make the trial real quick, wouldn't it?

2 MR. HARRIS: Well, Your Honor, the defense is that they
3 did not give instructions to their agent to transmit a
4 counteroffer. They testified in deposition that they
5 communicated those instructions via email.

6 THE COURT: So you're going to bring that up, right,
7 and you're going to say --

8 MR. HARRIS: I will bring that up.

9 THE COURT: -- where are the emails? I mean, that's
10 what lawyers always say in front of the jury. You can say it in
11 front of the judge. Where are the emails? Are you going to say
12 that they're not being truthful?

13 MR. HARRIS: I think that --

14 THE COURT: Are you going to say they're not truthful?

15 MR. HARRIS: Yeah.

16 THE COURT: I'm shocked that the plaintiffs' lawyer is
17 going to say that the defendants aren't truthful.

18 What is the defendant going to say, that they're
19 telling the truth, right?

20 MR. SOTO: Of course, Your Honor.

21 THE COURT: And I guess I'll make a decision then.

22 MR. HARRIS: Okay, Your Honor.

23 THE COURT: What do you think? I mean, what am I
24 missing?

25 MR. HARRIS: We can proceed under that framework.

1 THE COURT: That I can make a decision? That's what
2 you all wanted, right?

3 MR. HARRIS: We will address the issue at trial.

4 THE COURT: If you wanted a jury trial, then I would do
5 more about it because the jurors would have to all decide. You
6 want a bench trial? You're stuck with me.

7 MR. HARRIS: Understood. We will proceed --

8 THE COURT: Yeah, unless I -- you know, I can recuse.
9 I can't think of a reason. Where was the condominium? Maybe
10 I'll buy a condo there or something.

11 Okay. 2:00.

12 MR. SOTO: See you then, Judge.

13 THE COURT: See you then.

14 MR. HARRIS: Thank you, Your Honor.

15 THE COURT: And you all never discussed settlement
16 here, right?

17 MR. HARRIS: We've attempted many times, Your Honor.

18 THE COURT: And failed miserably. Okay. See you at
19 2:00. Wonderful.

20 Philadelphia is the city of brotherly love. I want to
21 know what the city of sisterly love is. Does anybody know?

22 MR. SOTO: Miami.

23 THE COURT: Miami? Yeah.

24 There is an attorney conference room with Internet on
25 the 14th floor across from the library, too --

Opening Statements

1 MR. SOTO: Thank you, Judge.

2 THE COURT: -- that is not used a lot. It has copies
3 of our local rules and everything else, too, in case anybody
4 wanted them.

5 The cafe is on the 7th floor, too.

6 MR. SOTO: Found that earlier, Judge. Thank you,
7 Judge.

8 THE COURT: People can reach deals. Okay.

9 (There was a recess taken at 11:10 a.m.)

10

11

AFTERNOON SESSION

12 (After the luncheon recess, the following proceedings were
13 held at 2:30 p.m.):

14

15

THE COURT: We're back in the case involving the
Katsantonis sisters and the Shechtman and Sherman sisters.

16

17

Okay? The plaintiffs are present, defendants are present,
counsel for both sides.

18

Does the plaintiff wish to make an opening statement?

19

MR. HARRIS: If it pleases the Court, Your Honor.

20

21

THE COURT: Okay. Everyone else sit down and make an
opening.

22

OPENING STATEMENTS

23

24

25

MR. HARRIS: Good morning. My name is Christopher
Harris. I represent the plaintiffs in this case, Vivian and
Joanne Katsantonis, who are sisters. This case is about my

1 clients' frustrated attempt to purchase a condominium unit from
2 the defendants. The evidence in this case will show that my
3 clients, the plaintiffs, began looking for a place in South
4 Florida for their parents to spend the winter months and
5 ultimately they decided to purchase a condominium that they
6 could also have as an investment.

7 The evidence will show that the defendants, Mary
8 Shechtman and Honey Sherman, who are also sisters, as
9 co-trustees of the trust, are the legal and beneficial owners of
10 a condominium unit in Sunny Isles, specifically Unit 3807 at TDR
11 Tower III, and that in their capacity as co-trustees and on
12 behalf of the trust, the defendants listed the property for sale
13 in December 2012 for 1.35 million.

14 The evidence will show that the plaintiffs through
15 their real estate agent, Raul Santidrian, issued an initial
16 offer to purchase the property on February 4th, 2013 for a
17 purchase price of \$1.2 million. The evidence will show that the
18 defendants through their real estate agent, Sean Joseph,
19 responded the next day with a signed counteroffer for \$1.33
20 million. That counteroffer was executed on behalf of the
21 defendants as the seller by one of the two defendants, Mary
22 Shechtman.

23 The evidence will then show that on the same day,
24 February 5th, 2013, the plaintiffs issued a new second offer to
25 purchase the defendants' condo for 1.23 million.

Opening Statements

33

1 The evidence will show that the defendants rejected
2 that second counteroffer and through their real estate agent,
3 Sean Joseph, advised plaintiffs that their minimum price was
4 \$1.3 million.

5 THE COURT: Okay. Let me interrupt you for a second.
6 You said there was a counteroffer for 1.33 million?

7 MR. HARRIS: Yes, Your Honor.

8 THE COURT: And that was not accepted.

9 MR. HARRIS: Correct. Rather than working with that
10 document, they issued a new offer.

11 THE COURT: The new offer was?

12 MR. HARRIS: The new offer was for 1.23.

13 THE COURT: Okay. Go ahead. I'm sorry.

14 MR. HARRIS: So I had said I believe the evidence will
15 show the defendants rejected that second counteroffer and
16 through their real estate agent, Sean Joseph, advised the
17 plaintiffs that their minimum price was \$1.3 million.

18 So then the evidence will show that the plaintiffs on
19 February 6, 2013 then gave a third written and signed
20 counteroffer for \$1.27 million. The evidence will show the
21 plaintiffs' real estate agent, Mr. Santidrian, after being
22 advised once again that the sellers would not agree to a price
23 below \$1.3 million, told the sellers' agent, Mr. Joseph, that if
24 he could provide a written counteroffer for that price, he could
25 probably -- that Mr. Santidrian could probably get the

1 plaintiffs to accept it.

2 The evidence will show that in response, on February
3 7th, 2013, the defendants returned the counteroffer, again,
4 signed and initialed by defendant Mary Shechtman, on behalf of
5 the seller, for \$1.3 million. The evidence will show that the
6 plaintiffs decided to accept that signed counteroffer, and on
7 that same day, February 7, 2013, initialed the changes that the
8 defendants had made and returned the fully executed contract to
9 the defendants. They then wired the \$50,000 initial deposit
10 required by the contract into escrow, and that, again, was on
11 February 7, 2013.

12 So why are we here? The evidence will show that about
13 the same time the plaintiffs accepted the defendants'
14 counteroffer, two other units in the same tower and in the same
15 line were listed for sale, one for \$1.7 million and the other
16 for \$1.65 million. The evidence will show then that on February
17 8, 2013, the day after defendants had already returned the fully
18 executed counteroffer and wired into escrow the initial deposit,
19 the defendants began to disavow the contract. Specifically, the
20 sellers' agent claimed for the first time ever that as a
21 requirement of the trust -- and mind you, they have never
22 provided a copy of the Trust Agreement until after the lawsuit
23 was filed -- both of the defendants were physically required to
24 execute the contract in order to have a binding agreement.

25 The evidence will show that although the plaintiffs

1 thereafter continued to attempt to perform and complete the
2 contract, the defendants made clear that they had no intention
3 of honoring the sellers' obligations under the contract and
4 ultimately repudiated the contract entirely.

5 The defendants have asserted in this case that the
6 contract is invalid because only defendant Mary Shechtman signed
7 it and not Honey Sherman. This claim is based in part on the
8 terms of the Trust Agreement. We will look at the Trust
9 Agreement, and you will hear testimony confirming that the Trust
10 Agreement nowhere requires that both co-trustees are required to
11 physically sign a legal document or real estate contract for it
12 to be binding on the co-trustees.

13 The defense is also based on defendants' claim that
14 Honey Sherman never authorized Mary Shechtman to make the \$1.3
15 million counteroffer and deliver it to the plaintiffs, but the
16 evidence will show that Honey Sherman did, in fact, authorize
17 Mary Shechtman alone to sell the condo for \$1.3 million and
18 authorized her to instruct their real estate agent, Sean Joseph,
19 to make the counteroffer to the plaintiffs. I'm talking about
20 the February 7, 2013 counteroffer for \$1.3 million.

21 The evidence will also show that Honey Sherman
22 authorized her sister, Mary Shechtman, alone to sign other legal
23 documents related to the condo, including at least one of the
24 two Lease Agreements that the defendants entered on this very
25 same property.

1 The evidence will show that as a matter of course,
2 Honey Sherman in her role as trustee, basically left her sister,
3 Mary Shechtman, by herself, to manage the trust property and
4 only got involved when a major decision regarding renovation,
5 lease or sale of the condo property was required. In those
6 instances the evidence will show that Honey and Mary would have
7 a discussion and then come to an agreement between themselves,
8 sometimes involving their agent, Mr. Joseph, but never recorded
9 in writing. And then Honey would leave Mary to set about
10 implementing that decision, giving instructions to Mr. Joseph or
11 signing documents by herself as necessary to effectuate the
12 decisions previously reached by the co-trustees.

13 In addition to all that, the evidence in the form of
14 testimony from the two defendants themselves will show two sides
15 of the very same critical fact. Honey Sherman has authorized
16 and approved everything that Mary Shechtman has done in
17 connection with the trust property, and Mary Shechtman had Honey
18 Sherman's approval for everything she did in connection with the
19 trust property.

20 We're asking this Court for specific performance of the
21 contract, and in the alternative, damages.

22 Ms. Katsantonis or the Katsantonis sisters will testify
23 that they agreed to the essential terms of the contract, that
24 they relied on the representations delivered through the
25 parties' real estate agents in the form of offers and

1 counteroffers. They will testify that they were continually
2 willing to perform the buyers' obligations under the contract
3 and that the defendants repudiated and breached the contract and
4 that the plaintiffs suffered injuries and damages as a result
5 thereof.

6 They will also testify to the fact that they manifested
7 their acceptance to the contract by initialing the changes and
8 directing the real estate agent to return it on February 7,
9 2013, completing the contract. They will testify that they took
10 further acts to accept the contract by wiring the escrow funds;
11 and they will testify to the fact that they continue to, even
12 after the defendants disavowed the contract, attempt to perform
13 the buyers' obligations under the contract by, among other
14 things, arranging for an appraisal which was blocked by the
15 defendants who claimed that there was no contract.

16 We'll also present the testimony of the buyers' real
17 estate agent, Mr. Raul Santidrian. He will testify regarding
18 the communications and negotiations that he had with Mr. Joseph,
19 the defendants' real estate agent, specifically reflecting that
20 Mr. Joseph had authority to make the counteroffer and that he
21 operated on the instructions of the plaintiffs in issuing the
22 accepted fully executed contract on February 7, 2013.

23 He will also corroborate the testimony that the
24 defendants disavowed and repudiated the contract, and he can
25 speak to the emails, correspondence and discussions that the

1 agents had between themselves.

2 We'll also present the testimony of Mr. Joseph, the
3 defendants/sellers' agent. He will testify that he had
4 authority from both defendants to make and issue the
5 counteroffers, including that he had authority to sign the names
6 of one of the defendants to the various contract documents
7 including the February 7, 2013 counteroffer. And then we will
8 ask for the testimony of the defendants who will testify that
9 Mary Shechtman always had the authority to do everything she did
10 under the trust, including providing instructions to Mr. Joseph
11 to include the making of the counteroffer.

12 We'll also present the testimony of Honey Sherman who
13 will testify that she allowed Mary to handle the day-to-day
14 operations regarding the trust property and that she spoke with
15 Mary Shechtman every day and gave her authority to do everything
16 that she did in connection with the trust property.

17 Thank you, Your Honor.

18 THE COURT: Well, let me ask you this: The Complaint
19 has how many counts?

20 MR. HARRIS: It has three counts, Your Honor.

21 THE COURT: Count 1 is what?

22 MR. HARRIS: Specific performance.

23 THE COURT: Okay. So in Count 1 as a matter of equity,
24 you want for the specific performance, that is, to turn over the
25 condominium in exchange for the remainder of the money. I

Opening Statements

1 assume the \$50,000 is still in trust.

2 MR. HARRIS: I believe that's correct, Your Honor.

3 THE COURT: That's what you want, right?

4 MR. HARRIS: Yes, we would like to complete the
5 transaction for the remainder of the price.

6 THE COURT: And I remember from prior discussions,
7 since it is a count in equity, there is a lease, right?

8 MR. HARRIS: There is a lease and the contract
9 documents specifically provided that the sellers would assign
10 the lease to the purchasers and that the purchasers would assume
11 the lease.

12 THE COURT: Just as it is.

13 MR. HARRIS: And collect the rents, the remaining
14 rents. That's correct, Your Honor.

15 THE COURT: For whatever the period of time of the
16 lease.

17 MR. HARRIS: I believe there are six months remaining,
18 Your Honor, yes.

19 THE COURT: All right. Count 2 is what?

20 MR. HARRIS: Count 2 is an alternative count for
21 damages --

22 THE COURT: For what?

23 MR. HARRIS: -- based on the breach.

24 THE COURT: Breach of contract.

25 MR. HARRIS: Correct, Your Honor.

Opening Statements

40

1 THE COURT: Okay. And in the breach of contract claim,
2 the damages are what?

3 MR. HARRIS: The damages are the fair market value --

4 THE COURT: How much is that?

5 MR. HARRIS: That is --

6 THE COURT: Well, what do your clients think is the
7 fair market value? I assume they think the fair market value is
8 \$1.3 million, since that was their offer.

9 MR. HARRIS: Well, that would be a fair value, but they
10 cannot get a comparable unit for that price. They have tried
11 and their offers have been rejected. So they are --

12 THE COURT: Offers of what?

13 MR. HARRIS: Offers to purchase other condo units.

14 THE COURT: But I don't know how those condominiums
15 are, but how do you establish what -- the contract was for \$1.3
16 million. So your damages are more than \$1.3 million.

17 MR. HARRIS: It would be the difference in the fair
18 market value. The market has gone up since, as I indicated that
19 very same -- at that same window of time when these offers were
20 going back and forth. Comparable units were coming on the
21 market for anywhere from 400 to \$600,000 more than the agreed
22 price.

23 THE COURT: And who's going to testify as to that?

24 MR. HARRIS: The plaintiffs. And also we can have the
25 testimony of the real estate agent as well.

Opening Statements

1 THE COURT: And the damages are what then?

2 MR. HARRIS: The difference in the fair market value.

3 THE COURT: Which is what?

4 MR. HARRIS: It's a range of 400 to 600,000.

5 Obviously, we would claim the high end.

6 THE COURT: So that's what you would get in the breach
7 of contract if you win.

8 MR. HARRIS: Correct, Your Honor.

9 THE COURT: Okay. And what's Count 3?

10 MR. HARRIS: Count 3 is for promissory estoppel.

11 THE COURT: That's in equity.

12 MR. HARRIS: Correct, Your Honor.

13 THE COURT: Where do you want me to estop?

14 MR. HARRIS: I'm sorry, Your Honor. Can I go back? I
15 had forgotten. For our damages, we're also claiming the lease
16 payments that we lost. We were supposed to take over a lease,
17 and at the time of closing there were six months left on the
18 lease.

19 THE COURT: This is the same lease we're talking about?

20 MR. HARRIS: No, it's a renewal. So a new term started
21 on September 15th, I believe, 2013.

22 THE COURT: This was a cash sale of the condominium, I
23 take it.

24 MR. HARRIS: Yes. And it provided for an assignment of
25 the lease. So we would have been entitled to all the lease

Opening Statements

1 payments.

2 THE COURT: How much was that?

3 MR. HARRIS: It was \$5,900 per month with six months
4 remaining on the lease and now they have renewed.

5 THE COURT: And how much are the taxes?

6 MR. HARRIS: The taxes?

7 THE COURT: Yeah, remember? And I assume this is not
8 an unusual condominium where there's no assessment.

9 MR. HARRIS: The assessments and fees are provided in
10 the Lease Agreement.

11 THE COURT: No, what I'm saying is -- oh, the tenant
12 pays the assessment and the taxes or the owner? The owner pays
13 that, right?

14 MR. HARRIS: Well, property ownership taxes, I'm not
15 super familiar with Florida property tax law.

16 THE COURT: Okay. But wait a second. If your clients
17 owned it, they would have to pay it.

18 MR. HARRIS: Yes, we would --

19 THE COURT: But you're asking for the lease payments.
20 Well, you've got to subtract the taxes that they would have to
21 pay, right, because the defendants have been paying the taxes
22 and the defendants have been paying the typical maintenance fee
23 that condominium owners pay, right?

24 MR. HARRIS: Yes, Your Honor, the lease provides for an
25 assessment, a specific assessment that I believe covers fees and

Opening Statements

1 covers taxes.

2 THE COURT: Well, I don't know. If you want damages,
3 we're in a trial, you've got to give me real numbers. What real
4 numbers are we talking about? Because you want me to give you
5 an award of money, but that would have to be reduced by whatever
6 the taxes are, no? Or they would pay for the taxes and you
7 would get the rent payments. Obviously, that's not equitable,
8 agreed?

9 MR. HARRIS: Agreed.

10 THE COURT: Okay.

11 MR. HARRIS: But I believe it would be the defendants'
12 burden to show that they paid taxes on the property.

13 THE COURT: Well, they obviously paid taxes. If they
14 didn't pay taxes, then it would already be taken over by the
15 county. The county was here while you guys were gone arguing a
16 lot about the water quality and all this stuff on a consent
17 decree. So, obviously, it would have to be deducted from that,
18 right?

19 MR. HARRIS: Yes, Your Honor.

20 THE COURT: I'm asking to see whether it's about the
21 same.

22 MR. HARRIS: I mean, I have the Lease Agreements.
23 We've asked for all of their documents related to the property,
24 and we've been provided no financial data whatsoever.

25 THE COURT: But the taxes on a condominium is easy

1 enough. You can get right now on the computer on the Internet
2 and figure out what the taxes are, right? You don't need
3 discovery or subpoenas for that. In today's world, you just get
4 on the Internet. Nobody has privacy anymore and certainly
5 public records are public records. Everybody knows what it is.
6 Now, the assessment also. So taxes and assessments. So if the
7 taxes and assessments are more or less what the rent is,
8 sometimes that's true, sometimes it's not, then that takes care
9 of that, doesn't it?

10 MR. HARRIS: If that assumption is correct and we could
11 certainly explore with the defendant what they pay on taxes.

12 THE COURT: Well, it's time to -- this is it. As Judge
13 Kehoe -- may he rest in peace -- used to say, it's time to fish
14 or cut bait. Can't keep on. This is it. Okay. So that's what
15 you want.

16 The promissory estoppel means you want me to estop
17 what? You want me to estop them receiving the rent that they
18 got already.

19 MR. HARRIS: We want them to --

20 THE COURT: But they pay the taxes. Your client didn't
21 own the condominium. Let's say you couldn't rent it. You do
22 know what the rental is. The rental was what, how much?

23 MR. HARRIS: \$5,900, Your Honor.

24 THE COURT: How much is it now?

25 MR. HARRIS: \$6,000. And I do have the tax figures.

Opening Statements

1 THE COURT: Okay. What are the taxes?

2 MR. HARRIS: 18,509 a year. That was for 2013.

3 THE COURT: And what's the maintenance fee?

4 MR. HARRIS: The maintenance fee is \$1,008.

5 THE COURT: A month.

6 MR. HARRIS: Per month, correct, Your Honor.

7 THE COURT: So that's \$12,000 a year.

8 MR. HARRIS: Roughly, yes.

9 THE COURT: So that's \$30,000 of money they put out and
10 the rental is like \$72,000. So it's \$42,000 that you want.

11 Okay. Anything else?

12 MR. HARRIS: No, Your Honor.

13 THE COURT: All right. From the defense.

14 Thank you, Mr. Harris.

15 MR. HARRIS: Thank you.

16 MR. SOTO: Thank you, Your Honor. Alex Soto for the
17 defendants, Mary Reich Shechtman and Honey Sherman.

18 Your Honor, this dispute rises out of a contract for
19 the purchase and sale of Unit 3807 in Sunny Isles. The contract
20 which has now been amended as Exhibit C has been stipulated by
21 the plaintiffs that Vivian Katsantonis actually did not sign it,
22 that she had full authority -- that Joanne received full
23 authority from Vivian to execute that contract. And this whole
24 case revolves around who had authority to do what, when and
25 where.

1 In this particular contract, at no time did Honey
2 Sherman give her authority to enter into this contract; so much
3 so that Sean Joseph sent it over to the plaintiffs to let them
4 know that they're seeking 1.3 million and that he had no
5 authority to accept an offer for 1.3.

6 Sean Joseph will testify that he sent over a
7 counteroffer for 1.3. He also had a conversation with Raul
8 Santidrian, too, that the signature of Honey was not on the
9 contract and that needed to be put on the contract; so much so
10 that it was followed up with a text message the next morning,
11 which Mr. Santidrian also excluded text messages which he's
12 never produced under subpoena to give you the other conversation
13 in between, that he disagreed with Sean and that Sean told him
14 there was no executed contract.

15 Under the statute of frauds in the state of Florida, a
16 transaction involving real property must be executed by the
17 individual to be charged. That authority cannot be given but in
18 limited circumstances.

19 As for their claim of promissory estoppel, the Supreme
20 Court has stated because it deals with a contract that is
21 governed under the statute of frauds, you cannot have promissory
22 estoppel. There's a 2013 case that just came out from the
23 Florida Supreme Court that stated that.

24 Going back to the contract where the plaintiffs allege
25 that Mary signed the Notice of Commencement, that she did it on

1 her own and under penalties of perjury, she wrote down that she
2 was the owner. She didn't write down that she was the owner.
3 The contractor filled out the Notice of Commencement for her and
4 asked her to sign at the same meeting that her and Honey were
5 present at to go ahead and authorize the construction for that.
6 Honey followed up by issuing a check to the condo association
7 for this property.

8 These two sisters are heavily involved in everything
9 the family trust does. They communicate on a daily basis about
10 what they're going to do, when they're going out to lunch, when
11 they're going to go shopping or when they're going to meet with
12 their family at certain places. They do everything together.
13 They're sisters.

14 In this particular contract, the testimony will be from
15 the defendants that Honey never authorized the contract. The
16 only thing that the ladies did was allow Sean Joseph to list the
17 property and set parameters for a contract that they may
18 execute, not that they would; so much so that Mr. Joseph felt it
19 prudent to put it in email to Mr. Santidrian, which was then
20 forwarded to Joanne and Vivian Katsantonis.

21 The plaintiffs in this matter are over 20-year lawyers.
22 One does construction litigation, the other does mergers and
23 acquisitions. These are two individuals that are very adept at
24 reading contracts. The contract is very simple. It lists both
25 Honey Sherman or Honey Shechtman -- Honey Sherman and Mary

1 Shechtman as the sellers with the initials TRS. It was apparent
2 to anyone in first year law school that it had to be executed by
3 both. One did not give authorization and stated such in her
4 testimony consistently.

5 The damages that are being sought here are speculative
6 at best. We have no disclosure of experts. We are allowing --
7 you are allowing the owners' prospective buyers to testify as to
8 the value. The value that they're going to put on this unit is
9 two listings for 1.7 and 1.9 million, not closed sales in the
10 building. You will see from the testimony of Sean Joseph of the
11 closed sales in the building are nowhere near 1.6 or 1.9 million
12 of the last five sales of identical units.

13 You will also see that the prospective purchase of the
14 unit was to be financed and they were using the rents that were
15 to be assigned to them under the contract to help pay and offset
16 the finance. They never got financed, so they have no finance
17 damages. The rent was only for six months because that's when
18 the lease terminated, which was on September 14th. So the
19 damages under the breach of contract are way too speculative.
20 They cannot ask for damages from 400 to 900 with no evidence
21 whatsoever of those prices if those units sold. It's too
22 speculative; can't be given.

23 But firstly, there is no contract. The statute of
24 frauds is very specific. There is case law out there after case
25 law that anybody that's listed on the sales contract must sign

Opening Statements

1 the sales contract. Honey did not assent to the contract.

2 Therefore --

3 THE COURT: Why did her sister sign it?

4 MR. SOTO: Excuse me?

5 THE COURT: Why did her sister agree?

6 Mr. SOTO: Her sister did not sign.

7 THE COURT: Nobody agreed.

8 MR. SOTO: It was signed by Sean Joseph.

9 THE COURT: And who does he represent?

10 MR. SOTO: He is the real estate agent for the
11 defendants.

12 THE COURT: And who is the defendant; your client.

13 MR. SOTO: Correct.

14 THE COURT: He has no authority to do that.

15 MR. SOTO: He was not given authority to do that.

16 THE COURT: Okay. But do you disagree with the history
17 of the offers and counteroffers mentioned by plaintiffs' counsel
18 now in opening statement? Did that happen where it was going
19 back and forth, or is that all made up?

20 MR. SOTO: The counteroffers did happen.

21 THE COURT: Okay.

22 MR. SOTO: They went back and forth.

23 THE COURT: So obviously your clients wanted to sell
24 the condominium; right or wrong?

25 MR. SOTO: They were looking to sell the unit; hence,

Opening Statements

1 why they listed it.

2 THE COURT: They put a price of what? How much was the
3 price?

4 MR. SOTO: It was listed at 1.35.

5 THE COURT: And eventually, you would concede, there
6 was a counteroffer for 1.3, eventually?

7 MR. SOTO: There was a counteroffer sent to Raul
8 Santidrian.

9 THE COURT: For \$1.3 million.

10 MR. SOTO: Correct.

11 THE COURT: The counteroffer was by whom?

12 MR. SOTO: The counteroffer was sent by Sean Joseph
13 putting down Mary Shechtman's initials.

14 THE COURT: Okay. So someone did that --

15 MR. SOTO: Yes.

16 THE COURT: -- saying we're willing to sell it for 1.3
17 million, right?

18 MR. SOTO: Sean Joseph did that and he will testify to
19 that.

20 THE COURT: Okay. He didn't have the authority to do
21 that.

22 MR. SOTO: Correct.

23 THE COURT: So all the other offers have been rejected.

24 MR. SOTO: Correct.

25 THE COURT: So your clients didn't want to sell the

1 condominium.

2 MR. SOTO: They did originally under certain parameters
3 that were --

4 THE COURT: When did they change their minds and why?

5 MR. SOTO: They changed their minds because they didn't
6 want to sell it because the circumstances for Mary and Honey
7 changed --

8 THE COURT: Like what? What circumstances changed?

9 MR. SOTO: -- and that's when they pulled it off.

10 The original reason to put the condo up for sale and to
11 lease the condo originally was because Honey and Mary were not
12 going to spend a lot of time down here and she wanted to spend
13 more time with her children and her family.

14 THE COURT: I don't who "she" is.

15 MR. SOTO: Mary is the --

16 THE COURT: No, no. You said she. So when you say
17 she, I don't know who "she" is.

18 MR. SOTO: I apologize, Your Honor.

19 Mary wanted to spend more time with her children in
20 Toronto because one of them was ill. When that situation
21 changed, they decided to pull the house off of the market.

22 THE COURT: How did they do that?

23 MR. SOTO: They deactivated the listing.

24 THE COURT: When did they do that?

25 MR. SOTO: February 8th or 9th.

Opening Statements

1 THE COURT: Okay. After the February 7th counteroffer
2 of \$1.3 million.

3 MR. SOTO: Correct, Your Honor.

4 THE COURT: And at that point did they know about the
5 prices going up?

6 MR. SOTO: They did not.

7 THE COURT: But right now nobody is using the condo.

8 MR. SOTO: It is leased out.

9 THE COURT: But it could have been leased out before.
10 So what is the changed circumstance?

11 MR. SOTO: It was leased out.

12 THE COURT: Okay. So they changed their minds even
13 though there were all these offers and counteroffers going back
14 and forth.

15 MR. SOTO: Correct, Your Honor.

16 THE COURT: And what happened magically after February
17 7th to make them change their minds?

18 MR. SOTO: They did not change their minds on February
19 8th.

20 THE COURT: When did they change their minds?

21 MR. SOTO: The circumstances changed for Mary and Honey
22 still had not agreed.

23 THE COURT: On February 8th.

24 MR. SOTO: No, Honey never agreed to sell the unit.

25 THE COURT: Okay.

Opening Statements

1 MR. SOTO: They were seeking offers.

2 THE COURT: They were seeking offers.

3 MR. SOTO: Correct. And that's what Sean Joseph was
4 doing, was negotiating. It is at the middle --

5 THE COURT: But the offer that eventually came was
6 minimally below the original purchase price, right?

7 MR. SOTO: I'm sorry?

8 THE COURT: The offer that they got at the last moment
9 was close to what they were asking for in the first place, true?

10 MR. SOTO: Well, it was \$500,000 less or \$50,000 less.

11 THE COURT: 50,000 is a big difference.

12 MR. SOTO: It was 1.35.

13 THE COURT: 1.35 was what they were asking.

14 MR. SOTO: That was --

15 THE COURT: Eventually they got an offer for 1.3,
16 right?

17 MR. SOTO: Correct.

18 THE COURT: So it's \$50,000.

19 MR. SOTO: Less.

20 THE COURT: Traditionally, \$50,000 from a 1.3 million
21 in the real estate business, that's a pretty good deal for the
22 seller, no?

23 MR. SOTO: Well, other than the tax implications
24 because they are foreign citizens.

25 THE COURT: And the tax implications were present when

Opening Statements

1 they put it up for sale.

2 MR. SOTO: Correct.

3 THE COURT: What's the difference of the \$50,000?

4 MR. SOTO: Well, that it wouldn't be the only thing.

5 The other things that were taken into account would have been
6 the taxes which Honey had to discuss with her accountant, which
7 is another email that was sent.

8 THE COURT: But that they would have to do with 1.35
9 million. In other words, if they had accepted the \$1.35 million
10 offer in the first place --

11 MR. SOTO: They still would have had to pay, yes.

12 THE COURT: Pardon?

13 MR. SOTO: They still would have had to pay it,
14 correct.

15 THE COURT: It's over. 1.35 million -- if someone
16 would have said, done, we're buying the condo for \$1.35 million,
17 it doesn't matter whether one or the other had changed their
18 minds because that was the offer, right?

19 MR. SOTO: Well, that's not true, Your Honor.

20 THE COURT: Then why put it up for sale?

21 MR. SOTO: You can list a building for 1.3 million and
22 if you get an offer for that, if you don't sign it, it's not an
23 effective contract.

24 THE COURT: So why would you do that?

25 MR. SOTO: Because you're either testing the market --

Opening Statements

1 THE COURT: And that's what they were doing.

2 MR. SOTO: I didn't say that.

3 THE COURT: Well, I want to know about this case.

4 MR. SOTO: In this particular case because of the
5 circumstances Mary had --

6 THE COURT: But those circumstances existed when it was
7 put up for sale.

8 MR. SOTO: Correct.

9 THE COURT: Did they both agree to put it up for sale?

10 MR. SOTO: They agreed to both put it up for sale as
11 long as it met certain parameters.

12 THE COURT: The parameters were what, 1.35 million?

13 MR. SOTO: At least 1.3 million and that --

14 THE COURT: Which was the eventual offer anyway.

15 MR. SOTO: Correct, and that Mary had another unit to
16 purchase under the trust.

17 THE COURT: And that was an agreement that was done in
18 writing between the two of them?

19 MR. SOTO: No.

20 THE COURT: Just an oral agreement.

21 MR. SOTO: That is an email that was sent to
22 Mr. Joseph.

23 THE COURT: Okay. All right. Which he ignored, in
24 your view.

25 MR. SOTO: Who?

Opening Statements

1 THE COURT: Joseph.

2 MR. SOTO: Apparently.

3 THE COURT: All right. Okay.

4 MR. SOTO: Thank you, Your Honor.

5 THE COURT: All right. Call your first witness,
6 please.

7 MR. HARRIS: Plaintiffs call Vivian Katsantonis.

8 THE COURT: Okay. Raise your right hand.

9 VIVIAN KATSANTONIS, PLAINTIFF HEREIN, SWORN.

10 THE COURT: Have a seat. State your name when you sit
11 down and spell it for the court reporter, please.

12 THE WITNESS: It's Vivian Katsantonis,
13 K-a-t-s-a-n-t-o-n-i-s.

14 THE COURT: Go ahead.

15 MR. HARRIS: Your Honor, we have some courtesy copies
16 of the exhibits for the Court.

17 THE COURT: Sure. Go ahead.

18 MR. HARRIS: At least one.

19 THE COURT: That's okay. Just give it to him and he'll
20 give it to me. It saves you the trip. He's young and he still
21 works out.

22 MR. HARRIS: And Your Honor, I have a copy for the
23 witness to refer to as they're introduced.

24 THE COURT: It's up to you.

25 THE WITNESS: Thank you.

1 DIRECT EXAMINATION

2 BY MR. HARRIS:

3 Q. Ms. Katsantonis, do you understand we're here regarding the
4 attempted purchase and sale of the condominium unit located at
5 TDR Tower III condominium, address 15811 Collins Avenue, Sunny
6 Isles, Miami-Dade County, Florida, Zip 33160?

7 A. Yes.

8 Q. Okay. Is there a unit number associated with that property?

9 A. It's Unit 3807.

10 Q. Okay. And when did you first learn about that unit?

11 A. I believe it was some time in January 2013.

12 Q. Okay. Any reason you were looking at the -- or I'm sorry.
13 And how did you specifically hear about the property?

14 A. We had been looking for a long time for a place for my
15 parents. My parents are getting older and we were looking for a
16 place for them to spend winter months and we were also looking
17 for an investment. We started looking at least a year
18 beforehand. We started off in Aventura and eventually moved to
19 Sunny Isles.

20 We had been renting beforehand, and our agent, Raul
21 Santidrian, he's the one who first introduced us to the Trump
22 buildings. And so I believe this specific unit was a unit that
23 he introduced us to.

24 Q. Okay. And did you visit any online sites to check prices or
25 anything like that?

1 A. My sister and I were online daily, especially when we were
2 in serious mode for finding a place and actually putting offers
3 down. So yes, we were constantly on the sites. We were looking
4 at different MLS listings and different other Realtor sites that
5 listed the properties available for sale.

6 Q. Okay. And when, if ever, did you visit the condo 3807 unit?

7 A. I believe it was some time in late January.

8 Q. Okay. And when, if ever, did you consider or decide to make
9 an offer to purchase the property?

10 MR. SOTO: Objection, leading.

11 THE COURT: If you have an objection, you must stand
12 up. If you don't stand up, I'll overrule the objection, under
13 my local rule.

14 MR. SOTO: Objection, leading, Your Honor.

15 THE COURT: Overruled. I have already ruled.

16 THE WITNESS: Our first offer was made on February 4,
17 2013.

18 BY MR. HARRIS:

19 Q. Okay. And why did you decide to make an offer on this
20 particular unit?

21 A. We had been looking, as I said, for a long time.

22 THE COURT: Let me ask you this: Does it matter?

23 MR. HARRIS: Well, Your Honor, because of the equitable
24 nature of specific performance, one thing that the courts
25 generally look at is whether it's a unique piece of property and

1 so --

2 THE COURT: And your argument is that this condominium
3 in Sunny Isles is a unique piece of property. If I disagree
4 with you, you lose.

5 MR. HARRIS: I don't believe that you have to make that
6 finding as a requirement of specific performance. However, that
7 is how the case law has evolved, that specific performance
8 treats real estate as unique property and, therefore, that's why
9 it's an appropriate remedy for a --

10 THE COURT: For a condominium. There's no condominium
11 like it.

12 MR. HARRIS: That's what I was trying to elicit from
13 the witness, Your Honor.

14 THE COURT: And that's your argument.

15 MR. HARRIS: Correct. Well --

16 THE COURT: In all of Sunny Isle and Aventura, there's
17 no condominium like this one.

18 MR. HARRIS: It's a very personal decision.

19 THE COURT: And if you don't convince me of that, you
20 lose.

21 MR. HARRIS: I don't believe that I need to convince
22 you of that. I just --

23 THE COURT: So why bring it up if you don't need it?
24 I'm on a need-to-know basis.

25 MR. HARRIS: Okay.

1 THE COURT: I don't want to know anything unless it's
2 necessary.

3 In other words, if the condominium were for the
4 parents, for the uncles, for the children, for the cousin,
5 because we're from this state or that country, if it doesn't
6 make any difference, why am I hearing it, especially since
7 there's no jury? And they wouldn't hear it either because the
8 specific performance is equitable.

9 Why do I need to know that?

10 MR. HARRIS: I guess I was attempting -- I don't think
11 you need to know it. I mean, you said need-to-know, but because
12 equity requires consideration of all facts and circumstances,
13 that would just be one tick on the side of the particular --

14 THE COURT: So if it was for a disabled parent, you
15 would win. But if it's just for them to use and rent out, you
16 would lose.

17 MR. HARRIS: I don't agree with that, Your Honor.

18 THE COURT: Then it doesn't make any difference. I
19 took two kind of extremes. So if it doesn't make any
20 difference, I don't want to hear it.

21 MR. HARRIS: If you don't --

22 THE COURT: Right? The "why" they purchased it, it
23 doesn't matter. It's irrelevant, isn't it?

24 MR. HARRIS: Okay.

25 THE COURT: Isn't it?

1 MR. HARRIS: If the Court believes it's irrelevant --

2 THE COURT: Well, you think it's relevant.

3 MR. HARRIS: I think it's one tick in the column in
4 favor of specific performance, but it's not dispositive.

5 THE COURT: Because if it was for five disabled
6 children, I would grant it. But if it's for a selfish single
7 person, I would deny it. It doesn't matter why.

8 MR. HARRIS: Okay.

9 THE COURT: Does it? Or you still think it matters?

10 MR. HARRIS: I do not think it matters based on --

11 THE COURT: Then if it doesn't matter, I don't want to
12 hear it.

13 THE WITNESS: Your Honor, if I may --

14 THE COURT: I'm sorry. You're a witness. If you want
15 to represent yourself and be a lawyer, I'll hear from you. But
16 you're a witness, which means you answer the questions posed by
17 the lawyers or the Court.

18 Is there a question pending?

19 THE WITNESS: No, Your Honor.

20 THE COURT: Then don't talk.

21 THE WITNESS: Thank you, Your Honor.

22 THE COURT: Okay. You don't have to thank me. Just
23 follow my orders for a change.

24 Okay. Go ahead.

25 MR. HARRIS: Thank you, Your Honor.

1 BY MR. HARRIS:

2 Q. So about how much was the property listed for when you made
3 your initial offer?

4 A. 1.35 million.

5 Q. Okay. So how much did you offer to purchase the property
6 for on February 4, 2013?

7 A. We offered \$1,200,000.

8 Q. Okay.

9 A. And at the time that was in line with being one of the
10 highest offers for a condominium unit in the 07 lines.

11 Q. Okay. I'd like you to look at Exhibit 10. You should have
12 a binder in front of you, Plaintiffs' Exhibit 10.

13 THE COURT: Are you introducing all of these exhibits?

14 MR. HARRIS: We can do it that way, Your Honor.

15 THE COURT: Which exhibits are you introducing with
16 this witness? Give me numbers.

17 MR. HARRIS: Your Honor, I'm not prepared to tell you
18 which specific exhibits I would get with this witness like that.

19 THE COURT: Why not? How else do you do it?

20 MR. HARRIS: Well, I just don't have a list with me. I
21 can go through my testimony --

22 THE COURT: Oh, here, I'll give you my list then. But
23 I need one, too. You don't have an extra list?

24 MR. HARRIS: Exhibits 10 --

25 THE COURT: 10. Any objection to 10?

1 MR. SOTO: None, Your Honor.

2 THE COURT: Admitted.

3 (Plaintiffs' Exhibit Number 10 was received in evidence.)

4 THE COURT: Next. What else?

5 MR. HARRIS: 12.

6 THE COURT: Any objection to 12?

7 Admitted.

8 (Plaintiffs' Exhibit Number 12 was received in evidence.)

9 THE COURT: Next.

10 MR. HARRIS: 16.

11 THE COURT: Any objection to 16?

12 Admitted.

13 (Plaintiffs' Exhibit Number 16 was received in evidence.)

14 MR. HARRIS: 22.

15 THE COURT: Any objection to 22?

16 MR. SOTO: Hang on, Your Honor.

17 THE COURT: Admitted.

18 MR. SOTO: No objection.

19 (Plaintiffs' Exhibit Number 22 was received in evidence.)

20 THE COURT: Any other one?

21 MR. HARRIS: Exhibit 24, Your Honor.

22 MR. SOTO: Objection.

23 THE COURT: Okay. These are the comparables?

24 MR. HARRIS: Yes, Your Honor.

25 THE COURT: Where is this from?

1 MR. HARRIS: The Internet.

2 THE COURT: What's the objection?

3 MR. SOTO: Your Honor, these comparables are listing
4 agreements. They are not for sold units. Both 24 and 25 are
5 the same.

6 THE COURT: Is that true, Mr. Harris? These are sold
7 units or up-for-sale units?

8 MR. HARRIS: Some of them are up for sale, Your Honor.
9 Some of them --

10 THE COURT: Separate the ones that are up for sale and
11 only include sales. How many do we have, actual sales?

12 MR. HARRIS: The second unit, 4207, was a sale.

13 THE COURT: 4207. What else?

14 MR. SOTO: Which exhibit is that?

15 THE COURT: 24.

16 MR. HARRIS: It's the second one. It's a compilation
17 of comps.

18 THE COURT: Exhibit 24, 4207. What else? We'll call
19 that 24A.

20 What else? Next. Let's go.

21 MR. HARRIS: And 4307, which is the last.

22 THE COURT: 4307, we'll call that B. What else?

23 MR. HARRIS: The other speak to the motive of the
24 sellers because of the proximity of the time when they came --

25 THE COURT: I'm going to sustain the objection.

1 MR. HARRIS: Okay.

2 THE COURT: You can use it to impeach if you want.

3 Okay. 4207 is a sale and purchase price of how much?

4 How much?

5 In the same building, I take it, right?

6 MR. HARRIS: Yes, Your Honor.

7 THE COURT: How much, 4207?

8 MR. HARRIS: 1.48 million.

9 THE COURT: Okay. And 4307 is what?

10 MR. HARRIS: 1.45 million.

11 THE COURT: Same square footage?

12 MR. HARRIS: Yes, Your Honor.

13 THE COURT: Same view?

14 MR. SOTO: Yeah, all of the 07s, to my understanding,
15 are in a straight line with the same view, but you have to go to
16 a certain level --

17 THE COURT: Okay. I'll admit those exhibits. Any
18 other exhibits?

19 And we'll mark them as 24A and B.

20 (Plaintiffs' Exhibit Numbers 24A and 24B were received in
21 evidence.)

22 THE COURT: Any other exhibits through this witness?

23 MR. HARRIS: The Court's indulgence.

24 I believe that's it, Your Honor.

25 THE COURT: Okay. Is there a contract signed on

1 February 7th?

2 MR. HARRIS: Yes, Your Honor. We can introduce the
3 contract.

4 THE COURT: Which one is that? That's kind of like the
5 big one.

6 MR. HARRIS: Exhibit 1.

7 THE COURT: Exhibit 1. Okay. Who signed that
8 contract?

9 MR. HARRIS: Joanne Katsantonis signed with express
10 authority from Vivian.

11 If you look at it --

12 THE COURT: And who signed it for the seller?

13 MR. HARRIS: Who signed it for the seller? Mary
14 Shechtman has ratified that as her own signature.

15 THE COURT: Any objection to 1?

16 MR. SOTO: No objection to the contract, Your Honor,
17 just the soliloquy that Mary Shechtman signed it.

18 MR. HARRIS: Your Honor, we have a pretrial
19 stipulation.

20 THE COURT: Okay. I'll admit it.

21 (Plaintiffs' Exhibit Number 1 was received in evidence.)

22 THE COURT: All right. Go ahead. Ask her questions if
23 you need to.

24 BY MR. HARRIS:

25 Q. So we were looking at Exhibit 10.

1 A. Yes.

2 Q. Can you identify this document for me, please?

3 A. This is the offer we made to the trust on February 4, 2013
4 and it's for 1.2 million, and it also includes on paragraph 20
5 that the existing lease with the tenant who's paying 5,900 per
6 month, that those payments would be part of the transaction that
7 would go to the purchaser.

8 Q. And who prepared this offer?

9 A. My understanding is the contract is a Florida Bar form and
10 then --

11 THE COURT: Well, let me ask you this: What difference
12 does it make?

13 MR. HARRIS: I'm just trying to get to the
14 relationships between the parties.

15 THE COURT: The relationship between what parties?

16 MR. HARRIS: The defendants -- well, the plaintiffs,
17 their agent, the sellers' agent and the defendants.

18 THE COURT: Because none of those people are going to
19 testify.

20 MR. HARRIS: They will --

21 THE COURT: So you want her to tell you who the real
22 estate agent was who signed it, who represented who?

23 MR. HARRIS: Your Honor, I'm just trying to --

24 THE COURT: And she would know because someone told
25 her.

1 MR. HARRIS: I'm just trying to get a foundation for
2 the --

3 THE COURT: Oh, we don't need foundation. For what?
4 The exhibit is in. You don't need a foundation. It's in.

5 MR. HARRIS: Understood, Your Honor. I will move on.
6 Okay?

7 THE COURT: It's up to you. I'm a move-on guy. Think
8 you're in the Eastern District of Virginia.

9 MR. HARRIS: I feel that, Your Honor.

10 THE COURT: We're almost as good.

11 BY MR. HARRIS:

12 Q. Who is Raul Santidrian?

13 A. That's our agent.

14 Q. Okay. And what did you hire him to do?

15 A. Mr. Santidrian represented us with regard to this
16 transaction. When we would sign and initial the contract, we
17 would deliver it to him for him to convey to the sellers' agent.

18 Q. Okay. So with this initial offer that you're looking at,
19 Exhibit 10, how was that communicated to the defendants?

20 A. Our agent, Raul, communicated it and conveyed it to their
21 agent, Sean Joseph.

22 Q. Okay. How did you come to find out that Mr. Joseph was the
23 sellers' agent?

24 A. Mr. Joseph initially showed us the property on behalf of the
25 seller, and Raul would send us the emails back and forth with

1 him and Sean. Some of them.

2 Q. Okay. And did you ever communicate directly with

3 Mr. Joseph?

4 A. Not during the transaction. He showed us the property

5 initially.

6 Q. Right. Okay. So in the course of early February 2013 when

7 the offers and counteroffers were going back and forth, did you

8 ever communicate with Mr. Joseph directly?

9 A. No. No, I did not.

10 Q. Okay. And to the best of your knowledge, did your sister

11 ever communicate directly with Mr. Santidrian -- I mean, with

12 Mr. Joseph? I'm sorry.

13 A. No.

14 Q. Okay. What about the actual owner of the property; do you

15 have an understand as to who that is?

16 A. It's a trust.

17 Q. Okay. And the trust is -- do you understand who the

18 defendants are in this case?

19 A. They are trustees on behalf of the trust. It's Mary Reich

20 Shechtman, trustee; Honey Sherman, trustee.

21 Q. Okay. And did you ever communicate directly with either of

22 the two defendants?

23 A. No, I did not.

24 Q. Okay. To the best of your knowledge, did your sister ever

25 communicate directly with either of the two defendants?

1 A. No, she did not.

2 Q. Okay. So who, if anyone, instructed Raul Santidrian to send
3 your February 4, 2013 offer to Mr. Joseph?

4 A. I did, along with the authority from my sister.

5 Q. Okay. And looking back at Exhibit 10, does it identify the
6 property that we're here to discuss today?

7 A. Yes, it does.

8 Q. Okay. And it is, in fact, a contract between the plaintiffs
9 and the defendants?

10 A. That's correct. We sent this offer and if they had signed
11 it, it would have been a binding contract.

12 Q. And what does it provide for the purchase price?

13 A. 1,200,000.

14 Q. Okay. And it requires an initial deposit. What is that?

15 A. \$50,000.

16 Q. Okay. And what does it provide for a closing date?

17 A. I believe it was March 15, 2013.

18 Q. And did the seller respond to your \$1.2 million offer?

19 A. They did. They gave us a counteroffer.

20 Q. Okay. And when did you receive that counteroffer?

21 A. I believe it was the same day.

22 Q. Okay. And how much was that counteroffer for?

23 A. They provided us a counteroffer of 1,330,000.

24 Q. So if you would look at Exhibit 12, please.

25 A. Yes, that's the counteroffer. And it was initialed by MS,

1 Mary Shechtman, and it's signed by Mary Shechtman.

2 Q. Okay. And it's also signed by -- do you recognize the
3 signatures on the second page?

4 A. Those are my sister and I -- our signatures. I signed with
5 express authorization of my sister. And then Mary Shechtman's
6 signature.

7 Q. Okay. Now, you referenced some initials and changes.

8 A. Right. The changes were the purchase price they had lined
9 out or crossed through our 1,200,000 offer, added the
10 counteroffer of 1,330,000, initialed it, and then crossed out
11 the balance which originally was 1 million 50 and struck through
12 it and wrote balance. And then they initialed just the changes.

13 Q. Okay. Were there any other changes to the February 4, 2013
14 offer that they were sending back?

15 A. No, there were no other changes to the terms of the
16 contract.

17 Q. Do you have an understanding of how this counteroffer came
18 to the plaintiffs?

19 A. My understanding is that Sean Joseph, on behalf of the
20 seller, transmitted it to our agent, Raul Santidrian.

21 Q. And did you have a belief at the time as to whether this
22 formed a complete contract or a complete offer?

23 A. I understood that if we had signed it, it would be a binding
24 contract and that the offer was complete as presented.

25 Q. So did you accept this counteroffer?

1 A. No, we did not. We provided another offer.

2 Q. Okay. And how much was that offer for?

3 A. 1,230,000.

4 Q. And that was for the same unit, correct?

5 A. That's correct.

6 Q. Did that offer alter any of the contract terms such as the
7 initial deposit requirement, closing date, the other terms we've
8 looked at?

9 A. No, it did not.

10 Q. How did the defendants respond to that offer?

11 A. They rejected it.

12 Q. Okay. How did you come to that understanding?

13 A. We were advised by our agent, Raul Santidrian, and he also
14 forwarded us an email that Mary Shechtman had written to Sean
15 Joseph in which she advised she needed 1.3 million.

16 Q. Okay. So did you receive a counteroffer?

17 A. Not to the 1.23. Our agent had discussions with Sean
18 Joseph. I think they had discussions about maybe going --

19 MR. SOTO: Objection, Your Honor, hearsay.

20 THE COURT: Sustained. Sustained means you can't
21 answer the question. Next question.

22 BY MR. HARRIS:

23 Q. So what did you do next?

24 A. We made another offer.

25 Q. A third offer, right?

1 A. That's correct.

2 Q. Okay. And when was that?

3 A. That was on February -- I think we signed it on February
4 6th, but it was transmitted the morning of February 7, 2013.

5 Q. Okay. And how much was that offer for?

6 A. 1,270,000.

7 Q. Okay. Can you look at Exhibit 16, please?

8 A. Okay. Exhibit 16 is a copy of the offer we conveyed for
9 1,270,000. It has all of the exact same terms, the initial
10 deposit of 50,000 with the balance showing the same. It has the
11 same terms with regard to the rental property and that we would
12 get the lease. All the terms stayed exactly the same. The only
13 thing that was changing was the price and that was for
14 \$1,270,000.

15 Q. And did the defendants accept this offer?

16 A. No, they did not.

17 Q. Were there any more offers or counteroffers after this?

18 A. We received the counteroffer from the defendants for the 1.3
19 million. We felt that we were going as high as any unit on a
20 dollars per square foot for the Trump Building III. We were
21 offering the highest amount on a dollar per square foot. So for
22 us it was really -- it was a lot to keep going up in price, and
23 we were already getting pulled way beyond where we wanted to be.

24 So, again, they advised -- my agent advised us or
25 advised me that they wanted 1.3 and we didn't want to make

1 another offer of 1.3 and have that rejected. So we felt like we
2 kept getting pulled up higher and higher in prices. So we
3 advised our agent that if they were willing to sell for 1.3, we
4 needed them to put a binding counteroffer to us of the 1.3 so
5 that we would accept it if we had a binding counteroffer.

6 Q. Okay. So what instructions did you give to Mr. Santidrian,
7 if any, in that regard?

8 A. I advised Mr. Santidrian --

9 Q. Raul, we'll call him.

10 A. -- Raul to procure a signed and complete counteroffer of 1.3
11 million, and if that was obtained, then we would accept it and
12 have a sale of the property and purchase it.

13 Q. Do you know if Mr. Santidrian followed your instructions?

14 A. He did. I know he advised Sean Joseph, and we received a
15 counteroffer fully executed for \$1.3 million.

16 Q. Okay. And did you review that counteroffer at the time?

17 A. I did.

18 Q. When was that counteroffer, did you say?

19 A. We received it on February 7th. I think we received it
20 around noon.

21 Q. Okay. I'll ask you to look at Exhibit 1.

22 A. Exhibit 1 is -- it's their counteroffer for the 1.3 million
23 and then we initialed the changes. So this was the final
24 binding contract.

25 Q. Okay. And what changes were made?

1 A. The seller had crossed out --

2 Q. I'm sorry. Can I stop you there?

3 A. Sure.

4 Q. This document has some edits to it, and initials, correct?

5 A. That's correct.

6 Q. So what was it based off of, if you know? What was the
7 original document before it was changed?

8 A. The original document was our offer of 1,270,000.

9 Q. Okay. When did you make that offer?

10 A. We made it February -- we wrote it and signed it February
11 6th, but it was conveyed February 7th at 7:30 in the morning.

12 Q. Okay. And so you received that offer back; is that right?

13 A. We received a counteroffer of \$1,300,000 from the seller.

14 Q. Okay. And what changes were made to the offer that you had
15 sent on February 6th or 7th that you received now on February 7,
16 2013 back from the seller?

17 A. The seller crossed out the purchase price of 1.27 million
18 and wrote 1,300,000 and initialed it. They crossed out the
19 bottom and wrote balance and initialed it and then they
20 initialed every single page of the contract and signed.

21 Q. So how did you respond to this counteroffer?

22 A. We responded by initialing the changes and sending the
23 entire contract back to the seller.

24 Q. And how was that transmitted back to the seller?

25 A. Our agent, Raul Santidrian, transmitted the executed

1 contract back to the sellers' agent, Sean Joseph.

2 Q. When did that occur?

3 A. That occurred February 7th in the evening.

4 Q. And did you authorize or instruct him to do that?

5 A. We instructed Raul Santidrian to send the executed contract
6 back. I believe we executed the contract early afternoon, like
7 by 2:00, and then we wire transferred the \$50,000 deposit early
8 afternoon as well.

9 Q. All on February 7, 2013?

10 A. That's correct.

11 Q. Okay. So then did the parties proceed to closing on March
12 15, 2013?

13 A. No, we did not. The next day on February 8th, the sellers
14 began to disavow the contract.

15 Q. Okay. What do you mean by that, that they disavowed the
16 contract?

17 A. For the first time after we had gone back and forth and had
18 these counteroffers with Ms. Shechtman's signatures, we were
19 told for the first time that the seller was taking the position
20 that they needed also the signature of Ms. Sherman as trustee.

21 Q. Okay.

22 A. And we advised that we did not think that was correct, that
23 we thought we had a binding contract, we understood we did, and
24 we anticipated and planned to go forward.

25 We subsequently sent our appraiser to the property, and

1 the appraiser was denied admission to the property, even though
2 the agreement provides that we would have access to the
3 property. And we continued to receive emails saying there was
4 -- at first they were trying to drag us along. At first they
5 said, well, Ms. Sherman hasn't signed it, but she's coming into
6 town. So if you want to wait another week, we can see if she'll
7 sign it, and we basically responded that we had a binding
8 contract. Certainly, if she was going to sign it, we didn't
9 want to create an issue if there wasn't one, but that we
10 expected them to fully comply with the binding contract.

11 About days later when we started sending in the
12 appraiser for the property, they expressly wouldn't allow him in
13 and said, we don't have a contract, why are you sending the
14 appraiser, and continued to disavow the contract.

15 Finally, about a week after that, they told us to just
16 move on.

17 Q. Okay. So when was it that you first learned that the
18 sellers were taking the position that both signatures of the
19 defendants, both of the two defendants, were required on the
20 contract?

21 A. I believe I learned about it around some time in the
22 afternoon of February 8th.

23 Q. February 8th you said?

24 A. Yes.

25 Q. Okay. So that's after you sent the counteroffer initialed

1 back to the seller, the February 7, 2013 initial counteroffer?

2 A. That's correct. February 7th we all thought we had a
3 binding contract. We were sending congratulations all around
4 and had, you know, by my understanding of all legal terms, a
5 binding contract.

6 Q. Okay. And how many times prior to February 8, 2013 had you
7 ever heard anything to indicate that the seller was requiring
8 the signatures of both co-trustees on the document?

9 A. We were never apprised of that, never told that and never
10 had any indication.

11 Q. Okay. And prior to February 8, 2013, what reason, if any,
12 did you have to think that both co-trustees were required to
13 sign the contract?

14 A. We never had any reason to believe that. I dealt with
15 trusts before also. It's common to have one person sign on
16 behalf of the trust. There's no basis to believe anything more
17 than one signature would be required.

18 Q. Anything connected with the prior counteroffer that they had
19 sent, that the defendants had sent earlier on or about February
20 5th? Was there anything on that that indicated that you didn't
21 think that both signatures were required?

22 A. All of our transactions showed that it was only Mary
23 Shechtman and that one person needed to sign it. We had offers
24 and counteroffers back and forth with Mary Shechtman.

25 Simultaneously, we were being provided with emails from Sean

1 Joseph that said she -- you know, my buyer, she wants 1.3. She
2 will not go higher. He sent, he forwarded the email from Mary
3 herself who said, I need 1.3 million.

4 So all of the back and forth, all the transactions and
5 the emails indicated that Mary Shechtman singularly had the
6 authority.

7 Q. Do you know whether the contract provides the buyer with a
8 remedy in the event that the seller fails to perform its
9 obligations under the contract?

10 MR. SOTO: Objection. It call for a legal conclusion,
11 Your Honor.

12 THE COURT: Does the contract say something about it?

13 MR. HARRIS: Yes, Your Honor.

14 THE COURT: Do you think I'm literate and I can read
15 it? Do you think you're literate and you can read it? That's
16 the easier question.

17 MR. HARRIS: Yes, Your Honor, I think we're both fully
18 capable of reading it.

19 THE COURT: Then you can read it to me. It doesn't
20 matter whether the witness can read it or not.

21 MR. HARRIS: Okay.

22 THE COURT: It says what it says. Whatever it says, it
23 is.

24 BY MR. HARRIS:

25 Q. Now, in connection with your negotiation of the contract for

1 the sale of the subject condominium, how did you determine what
2 is an acceptable price?

3 THE COURT: Does that matter? What difference does it
4 make whether she believes it's an acceptable price? If the
5 contract were for \$900,000 and the same parties would have
6 signed it, whoever signed it, and putting aside the issue of
7 authority, would that make any difference or would you still
8 win?

9 MR. HARRIS: I'm not sure I understand the purpose of
10 the hypothetical.

11 THE COURT: Okay. Let's put it this way: You're
12 asking the witness what, how she came up with the \$1.3 million
13 offer?

14 MR. HARRIS: Yes, Your Honor.

15 THE COURT: And my question to you is, what difference
16 does it make? She thought that's what she should pay, that's as
17 high as they would go, let's get this thing done. What
18 difference does it make?

19 MR. HARRIS: Your Honor, I was simply leading into the
20 fact that the plaintiffs were trying to buy a condo at the price
21 that they contracted for and that after that in terms of --

22 THE COURT: Doesn't the contract speak for itself? Is
23 this a binding contract, in your view?

24 MR. HARRIS: Yes, absolutely, Your Honor.

25 THE COURT: What does it say?

1 MR. HARRIS: \$1.3 million.

2 THE COURT: Why does it matter how they got to 1.3
3 million?

4 MR. HARRIS: It doesn't matter how they got there. I
5 was merely leading into the fact that she, as she has testified,
6 was watching the market daily and then --

7 THE COURT: But what difference does that make if
8 you're watching the market daily or you're a fool and you offer
9 too much or too little? Isn't a contract a contract no matter
10 what?

11 MR. HARRIS: Yes, Your Honor.

12 THE COURT: And then if it's a contract, it's a
13 contract no matter what. That's really the dispute in this
14 case, isn't it?

15 MR. HARRIS: Yes, it is, Your Honor.

16 THE COURT: So it doesn't matter whether the defendant
17 sisters made a mistake in offering a condo for too little or the
18 plaintiff sisters offered too much. It doesn't really matter.
19 It's whether it's a binding contract. And what's going to
20 dictate if it's a binding contract or not in this case?

21 MR. HARRIS: Whether there was an offer and acceptance
22 by duly authorized agents.

23 THE COURT: That's it, and that's what the case is
24 about, not whether someone got a good deal or a bad deal, right?
25 Do I determine whether someone got a good deal or a bad deal?

1 Do I go around checking on the Internet whether this was a good
2 deal or not?

3 MR. HARRIS: I was merely getting into the damages
4 aspect of our alternative count for damages.

5 THE COURT: Okay. And the way you would get to the
6 damages is by the comparables, I take it.

7 MR. HARRIS: Yes, Your Honor.

8 THE COURT: Okay. She obviously thought she was
9 getting a good enough deal for 1.3 million, right?

10 MR. HARRIS: Correct, Your Honor.

11 THE COURT: And the comparables I already -- in
12 response to my questions, you said how much they were and
13 they're a little bit more, for 1.4, right?

14 MR. HARRIS: Those comparables, yes.

15 THE COURT: So you want to get to other comparables
16 that are not purchase prices, but just listing prices, right?

17 MR. HARRIS: Correct, Your Honor, because --

18 THE COURT: So if there was a listing price for \$10
19 million, I'm supposed to consider that? Someone was crazy
20 enough to say, or you know, a spouse says to the other spouse,
21 okay, Honey, I'll put it up for sale.

22 MR. HARRIS: Right, Your Honor.

23 THE COURT: I'll put it up for \$10 million. No one
24 will buy it. Does that mean anything? No. Not even to the
25 spouse, right?

1 MR. HARRIS: Well, the issue was that the plaintiffs
2 were damaged because they could not buy a comparable unit at the
3 \$1.3 million price. So they went looking --

4 THE COURT: So if they bought another unit in another
5 building for \$1.4 million -- let's say that -- or in the same
6 building, do you still have a breach of contract claim?

7 MR. HARRIS: Yes, Your Honor.

8 THE COURT: So it doesn't matter if they bought five
9 condos in the same building. If they're good business women and
10 they said, this is a steal, we're buying them, or if they're bad
11 business women and they buy five and they overpaid for it, it
12 doesn't matter, does it? Right?

13 MR. HARRIS: It does not matter. It only speaks to the
14 value of the property.

15 THE COURT: But the value of the property is the
16 contract price, right?

17 MR. HARRIS: Well, the damages are what they could get
18 in the alternative.

19 THE COURT: Now. Now, right?

20 MR. HARRIS: Correct.

21 THE COURT: Okay. But it would have to be the same
22 unit.

23 MR. HARRIS: Well, I believe that it's measured from
24 the time that they went to contract.

25 THE COURT: Okay. To now. And you have two

1 comparables. Isn't that the best evidence? Not under the best
2 evidence rule, but I'm talking about good evidence.

3 MR. HARRIS: I don't think it is, Your Honor, because
4 the --

5 THE COURT: Oh, the two comparables is not good
6 evidence.

7 MR. HARRIS: It's good evidence. It is good evidence,
8 absolutely.

9 THE COURT: Okay.

10 MR. HARRIS: Is it the best evidence?

11 THE COURT: What is the best evidence, what I think I
12 could get for my house or what someone actually paid for a house
13 that is similar? What do you think is the best evidence between
14 the two, the better evidence? What would you think; what I
15 think I could get for my house or what a comparable sold for?
16 What is the better evidence?

17 MR. HARRIS: Well, what a comparable sold for, but
18 there are --

19 THE COURT: I agree with you. See, I'm agreeing with
20 you. That's why I let those exhibits in.

21 MR. HARRIS: And I agree with you, Your Honor.

22 THE COURT: You probably would have liked to try this
23 in front of a jury. I wouldn't be bothering you so much.

24 MR. HARRIS: No, Your Honor. We're happy in front of
25 you.

1 THE COURT: Okay.

2 MR. HARRIS: I think that Ms. Katsantonis, because of
3 watching the market, had some knowledge about circumstances as
4 to why some units may have sold and some others did not.

5 THE COURT: I won't accept that.

6 MR. HARRIS: For instance, some units are furnished,
7 some are not, and there's a difference in price.

8 THE COURT: Are these two that were sold, are they
9 furnished or unfurnished?

10 MR. HARRIS: Can we have testimony from
11 Ms. Katsantonis?

12 THE COURT: You don't know.

13 MR. HARRIS: I couldn't tell you right now.

14 THE COURT: Okay. Go ahead and ask her. The two
15 units, are they furnished or unfurnished?

16 THE WITNESS: Your Honor, the 4307, which is --

17 THE COURT: I just want to know if they're furnished or
18 unfurnished. That's all I want to know.

19 THE WITNESS: Okay. This is --

20 THE COURT: I just want to know if those two units --

21 THE WITNESS: I understand.

22 THE COURT: -- are furnished or unfurnished. One or
23 the other.

24 THE WITNESS: 4307 is unfurnished and --

25 THE COURT: 4207, is it finished or unfurnished?

1 THE WITNESS: 4207 I believe was unfurnished.

2 THE COURT: Okay. So they're both unfurnished.

3 THE WITNESS: Your Honor --

4 THE COURT: Was this a sale of an unfurnished condo?

5 MR. HARRIS: Can we ask the witness?

6 THE COURT: You don't know that.

7 MR. HARRIS: I don't know, Your Honor. I believe it
8 was.

9 THE COURT: Okay. I think so. All right. Next
10 question.

11 BY MR. HARRIS:

12 Q. Do you have any understanding of what --

13 THE COURT: Whenever you ask a witness, "do you have
14 any understanding," the chances are 90 percent that it's
15 objectionable, because our understanding of things 90 percent of
16 the time -- this might be the 10 percent -- but 90 percent of
17 the time because the understanding comes from what, looking at
18 things or hearing things.

19 MR. HARRIS: Correct.

20 THE COURT: If you hear things, it would generally be
21 hearsay. Not always, but almost always. If you're seeing
22 things, I don't know what she's looking at. But the only two
23 things that I'm going to allow are these two condominiums.
24 That's why we talked about them.

25 MR. HARRIS: Okay.

1 THE COURT: So it doesn't matter what she did on the
2 Internet to justify the 1.3 and to say we got a good deal at
3 this stage. Now, you can ask in cross-examination of the
4 defendants why you think they are so-called reneging on their
5 offer, if that's what they're doing.

6 MR. HARRIS: Okay.

7 THE COURT: But not her. All right?

8 MR. HARRIS: Yes, Your Honor.

9 I have no further questions.

10 THE COURT: Cross-examination.

11 MR. SOTO: Thank you, Your Honor.

12 CROSS-EXAMINATION

13 BY MR. SOTO:

14 Q. Ms. Katsantonis, which were the two units that you said were
15 comparable?

16 A. Well, there are a number of units that were comparable. The
17 ones the judge is referencing --

18 THE COURT: Those are the only two I want to hear
19 about.

20 THE WITNESS: 4207 and 4307, I believe.

21 BY MR. SOTO:

22 Q. Now, do you know what the difference was between 4207 and
23 the subject unit here, 3807?

24 A. I know it's on a slightly higher floor.

25 Q. It's actually the penthouse, isn't it?

1 A. No, I don't know if 4207 is. 4307 is the penthouse and we
2 actually put an offer on it at the time. The difference with
3 Unit 4307 is it's incomplete. It had no flooring and it had no
4 closets.

5 Q. 4207?

6 A. 4307.

7 Q. Okay. I'm just talking about --

8 A. That was the penthouse.

9 Q. Yeah.

10 A. I don't know what 42 -- I don't know why you're calling it
11 the penthouse, 4207. 4307 was.

12 Q. Take a look at Exhibit 24. I believe it's the first page,
13 which is 4207.

14 A. The first page of 4207?

15 Q. Of Exhibit 24.

16 A. Oh. That's 4007. That's not 4207.

17 Q. Okay. I think I pulled that one out of my book because the
18 judge wouldn't allow it.

19 Take a look at the listing for 4207. It's under --

20 A. Yeah, I have it.

21 Q. You got that?

22 A. Yes.

23 Q. Can you go down to the line that says REM on the left side?

24 A. Where?

25 Q. Middle of the page.

- 1 A. On the front page?
- 2 Q. Yeah. It's about three quarters of the page down.
- 3 A. Three quarters?
- 4 Q. A quarter of the page down. It says REM --
- 5 A. Remarks.
- 6 Q. It says REM, doesn't it?
- 7 A. I believe that's remarks.
- 8 Q. Okay. Now, would you read that for me?
- 9 A. It says, "Luxurious oceanfront penthouse with amazing direct
10 views of ocean, intercoastal and downtown. Three full
11 bedrooms, three full bathrooms, professionally decorated,
12 featuring marble floors, Artefacto furniture, 12-foot
13 ceilings, electronic window treatments and custom closets."
- 14 Q. And that was listed for 1.65, correct?
- 15 A. That was listed for 1.65.
- 16 Q. Actually sold for 1.480?
- 17 A. It did. It actually keep going up and down in price. If
18 you look at the price history, it started at --
- 19 Q. I'm sorry, Ms. Katsantonis, I actually --
- 20 A. 1.8.
- 21 Q. I think I asked you if it sold for 1.48 million.
- 22 A. Ultimately, it did.
- 23 Q. Okay. And that sold January 7th of 2014, correct?
- 24 A. Right. I don't know what the seller's motivation was.
- 25 Q. Obviously not. You didn't put an offer in on this one, did

1 A. you?

2 A. We did not. We tried to. We had Raul call and attempt to
3 put an offer. He offered 1.4 and at the time we offered to put
4 in -- at the time we put in an offer, they told us it had
5 already sold.

6 Q. Let's take a look at Exhibit Number 1.

7 Does that include furniture in the price in that
8 contract?

9 A. No, it does not.

10 Q. Okay. Now, you stated earlier that we signed the contract.
11 Isn't it true that you never signed or initialed this contract?

12 THE COURT: Which contract are we talking about?

13 MR. SOTO: Exhibit Number 1, Your Honor.

14 THE WITNESS: Exhibit Number 1, I was on the phone with
15 my sister and authorized her to sign my initials and signature.

16 BY MR. SOTO:

17 Q. Now, you believe, and I think you testified earlier, that
18 it's your --

19 A. So I would say, yes, I did sign it through my authorized
20 representative.

21 Q. Okay. And if you hadn't given that authorization and Joanne
22 would have initialed, would you say that that was an
23 unauthorized contract?

24 A. I'm sorry?

25 Q. If Joanne put down your initials without your authorization,

1 would that be an acceptable contract?

2 MR. HARRIS: Objection, Your Honor.

3 THE WITNESS: It could be if I ratified it.

4 THE COURT: Grounds.

5 MR. HARRIS: I'm sorry.

6 THE COURT: Grounds.

7 MR. HARRIS: It's a hypothetical.

8 THE COURT: It is. I'll sustain the objection.

9 MR. SOTO: Okay.

10 BY MR. SOTO:

11 Q. Now, you say you were on the phone and you gave Joanne the
12 explicit authority to sign that and initial it for you, correct?

13 A. That's correct.

14 Q. Okay. Now, did you ever have any conversations with Mary
15 Reich Shechtman or Honey Sherman?

16 A. Not personal phone conversations.

17 Q. During the time of the transaction from, I think you said,
18 the beginning of January until February, did you have any
19 conversations, emails or anything that was sent to you directly
20 from Mary Reich Shechtman or Honey Sherman?

21 A. I'd say the transaction started on February 4th and went
22 through February 7th. But yes, I had transactions directly
23 through -- from Mary Shechtman when she delivered the
24 counteroffers through her agent to us and I had emails including
25 one that was a cut and paste of Mary Shechtman's direct email to

1 Sean Joseph.

2 Q. Okay. Did she communicate it to you?

3 A. She personally did not communicate it to me. She did
4 through her agent.

5 Q. Okay. So you never received any direct communications from
6 either of the defendants in this case, correct?

7 A. Not personally from them directly to me, but through their
8 agent, I did.

9 Q. Okay. And it was your -- let's take a look at Exhibit
10 Number 10.

11 A. Okay.

12 Q. Did you execute that contract?

13 A. I did.

14 Q. Okay. And are those your initials at the bottom left?

15 A. They are.

16 Q. And it's your signature on the signature line on February
17 4th, correct?

18 A. That is correct.

19 Q. Now, take a look at Exhibit Number 12.

20 A. Okay.

21 Q. You stated that that was a counteroffer that was sent to
22 you, correct?

23 A. That's correct.

24 Q. Who was it sent to you by?

25 A. I believe Raul Santidrian forwarded it to me.

1 Q. Okay. And Raul sent it to you. That has the initials, your
2 initials, the same ones that appear on Exhibit 11, correct?

3 A. We weren't talking about Exhibit 11.

4 Q. Yeah, Exhibit 11 is Exhibit 12 except for some handwriting,
5 correct?

6 A. Not in my exhibit book.

7 Q. I'm sorry. I'm actually looking at your exhibit book and
8 it's Exhibit 10. I'm sorry. 10 and 12.

9 A. Okay.

10 Q. 10 and 12 are the exact same contract, correct, except for
11 the price?

12 A. They appear to be that she struck through the price and
13 initialed it.

14 Q. Okay. Do you know who actually put that MS down?

15 A. Only by attending Mr. Joseph's deposition.

16 Q. Up until the time that you received this on February 8th,
17 did you know how that got on that paper?

18 A. I understood that Ms. Shechtman or her authorized
19 representative signed and transferred it.

20 Q. Well, I'm asking a simple question. How do you know that?

21 A. Well, I guess I believed in the truth of the representation
22 made by her agent.

23 Q. Well, what representation did Mr. Joseph make to you?

24 A. My understanding is that Realtors can't transmit offers or
25 counteroffers without express authorization.

1 Q. Okay. Let me ask you this question again: What
2 representations did Mr. Joseph make to you?

3 A. He sent me the signed counteroffer by Ms. Shechtman.

4 Q. Did he send it to you or did he send it to Raul?

5 A. Well, I guess if it's going to my agent, I believe it's
6 going to me.

7 Q. So Mr. Joseph sent something to your agent which was then --

8 A. On behalf of --

9 Q. -- which was then forwarded to you, correct?

10 A. That's correct.

11 Q. Does your agent have authority to enter into a contract for
12 you?

13 A. I authorized my agent to transmit my agreement.

14 Q. Okay. That wasn't the question I asked. Can you read back
15 the --

16 A. He could, if I asked Raul to sign my name or initial my
17 name, he could have my authority.

18 Q. He could --

19 A. Yes.

20 Q. -- if you asked them to do that, correct?

21 A. That's one scenario.

22 Q. Okay. But you never transmitted anything to Raul giving him
23 any authority, correct?

24 A. Well, no, that's not correct. I transmitted lots of things
25 to him with authority to convey my offers.

1 Q. But did you give him authority to sign on your behalf?

2 A. On these particular contracts, that instance didn't come up
3 with me.

4 Q. Okay. The only person that you authorized to execute these
5 contracts on your behalf was your sister, correct?

6 A. For these contracts, correct.

7 Q. Correct. Well, these are the only ones -- you didn't sign
8 it?

9 A. I'm just saying in general. I mean, these are --

10 Q. Okay. But on all of these, Joanne signed for you, correct?

11 A. Not on all of them.

12 Q. Okay. Which ones didn't she; which exhibits?

13 A. We just talked about Exhibit 10. I signed that. That's my
14 signature and those are my initials.

15 Q. What about 12?

16 A. On Exhibit 12, those are my initials also and my signature.

17 Q. But you didn't re-sign them, correct?

18 A. I'm sure I ratified them. I'm not sure if I -- I don't
19 recall specifically.

20 Q. You ratified them on Exhibit 12?

21 A. Well, I think we did a counter of 1.23. That's on the same
22 document. You know, we crossed through the 1.33 and then we
23 added 1.23.

24 Q. That's Exhibit Number 14, not 12, correct?

25 A. That's Exhibit 14, correct.

1 Q. Okay. So on Exhibit 14, those are your new initials,
2 correct?

3 A. I don't know if they're my new initials, old -- they're my
4 initials. This one has my initials and my signature.

5 Q. Well, those aren't the same --

6 A. In fact, the date and the signature line is blocked out and
7 signed or initialed.

8 Q. Well, if you take a look at the first page and compare it
9 with Exhibit Number 12, your initials on the right side don't
10 appear anywhere, correct?

11 A. Pardon?

12 Q. Your initials don't appear on the right side of Exhibit 12,
13 correct?

14 A. Right, I initialed the changes.

15 Q. Correct. On Exhibit 14 they do exist, correct?

16 A. Right, because it was a counteroffer.

17 Q. The initials on the bottom of the page are the same,
18 correct?

19 A. I can't tell exactly, but they're initialed.

20 Q. And your testimony today is that you actually made those
21 initials at the bottom, correct?

22 A. I think that's correct.

23 Q. Okay. And the initials on the right side of Exhibit 14,
24 those are your initials, too, correct? You put them there?

25 A. No, I did not.

1 Q. Okay. Was that Joanne again?

2 A. That was Joanne who initialed those.

3 Q. Okay. And you gave her your authority over the phone?

4 A. I gave her my authority over the phone.

5 Q. Okay. Now, take a look at what you have as Exhibit 1 --

6 A. Okay.

7 Q. -- in your book. Now, that's the contract that you allege
8 is in effect at the present time, correct?

9 A. That's the binding contract.

10 Q. Take a look at the parties. Can you tell me who is listed
11 on parties on Line Number 1?

12 A. The trust is listed as the seller, the trustees.

13 Q. Is that what it says?

14 A. That's what it says, Mary Reich Shechtman, trustee; Honey
15 Sherman, trustee.

16 Q. And when you reviewed this agreement the first time -- which
17 would have been when you made the offer of 1.27, correct?

18 A. That's correct.

19 Q. And I believe that is Exhibit Number 16 -- what was your
20 understanding of who those people were?

21 A. I understood there was one trust that owned the property.

22 Q. Okay. And you understood that the trust was called the Mary
23 Reich Shechtman TRS, Honey Sherman TRS?

24 A. I don't know if I specifically knew the name of the trust,
25 but I understood that the sellers were listed as trustees for

1 the trust.

2 Q. So you just said that in the plural, "trustees." That means
3 that the two individuals that were listed you understood were
4 the owners of the property?

5 A. No, I never thought there were two individuals. I deal with
6 -- I've dealt with trusts before. It's very common to list TRS,
7 TRS. There's no "and," there's no "or" separating the names and
8 it's very common that you list the TRS, TRS and only one
9 signature is required.

10 Q. So it was your understanding that there was only one person
11 or one entity that owned --

12 A. I only knew it was a trust. I didn't have any specific -- I
13 didn't have the Trust Agreement. I didn't have that specific
14 information.

15 Q. Then how did you know that the MS stood for Mary Shechtman?

16 A. You could just tell by looking at it.

17 Q. How could you tell just by looking at it at the time?

18 A. MS, and then we got emails that said Mary Shechtman. I
19 think Mr. Joseph referred to Ms. Shechtman. I think it was part
20 of the regular conversations back and forth.

21 Q. How many emails did you see from Mr. Joseph?

22 A. I don't recall exactly. I would have to look through the
23 documents and see which ones I got.

24 Q. And you believe that Mr. Joseph had authority from his
25 client, correct?

1 A. Absolutely.

2 Q. Okay. Let's take a look at Exhibit Number 2, please, in
3 your book.

4 A. Okay.

5 Q. Can you tell me what that is?

6 THE COURT: Now, are you introducing that into
7 evidence?

8 MR. SOTO: We believe we are going to introduce it,
9 Your Honor.

10 THE COURT: Any objection to Plaintiffs' Exhibit Number
11 2?

12 MR. HARRIS: No, Your Honor.

13 THE COURT: It will be admitted.

14 (Plaintiffs' Exhibit Number 2 was received in evidence.)

15 THE COURT: Go ahead.

16 MR. SOTO: Thank you, Your Honor.

17 BY MR. SOTO:

18 Q. Do you recognize that document?

19 A. Yes. It's an email chain between Mr. Santidrian and
20 Mr. Joseph who is the sellers' agent.

21 Q. Take a look at the email dated Thursday, the 7th of February
22 2013 at 11:21:35, middle of the page.

23 A. Yes.

24 Q. Can you tell me what that email says?

25 A. "Sean, as per our phone conversations, please have your

1 seller sign the counter for 1.3 and send it to me tonight.
2 I'm meeting with my clients tomorrow and I'll bring the
3 signed counteroffer by your seller in person and twist their
4 arms, at least I will give it my best shot. I'm very
5 confident that I may be able to make it happen once I see
6 them in person."

7 Q. And that's in response to an email that Mr. Joseph sent to
8 Mr. Santidrian, correct?

9 A. No. No. First of all, I think the email was written in
10 response to a phone conversation, but the email below that is
11 Sean forwarding Ms. Shechtman's email.

12 Q. And it says, "here is the response," correct?

13 A. Um-hum.

14 Q. Can you read that response, please?

15 A. "Hi. As discussed in the past, the minimum I would be
16 willing to sell for at this time is 1.3. I would also need
17 to know there was some place else I had to move into down
18 the road."

19 Q. And that's what you believe is an email from Mary Shechtman
20 to Sean Joseph, correct?

21 A. I know that it was.

22 Q. Okay. And you believe that's the authorization that
23 Mr. Joseph --

24 A. No, I --

25 Q. I'm sorry?

1 A. I don't believe that this email was the authorization.

2 Q. You believe the authorization came some time before that?

3 A. That's something you -- I don't have direct -- I know what I
4 believe the authorization came from by sitting through
5 depositions and everything else. I don't have personal
6 knowledge.

7 Q. Up until February 8, 2013, did you have any knowledge about
8 any authorization that Mr. Joseph had or didn't have?

9 A. Sure.

10 Q. Okay. What was that?

11 A. I understood Mr. Joseph had authorization on behalf of the
12 seller every time he submitted the counteroffer and every time
13 he responded to our offers.

14 Q. Go to Page 2 of that email thread.

15 A. Okay.

16 Q. Take a look at February 6, 2013 at 4:42 p.m.

17 A. Okay.

18 Q. Can you read me what Raul --

19 A. It's Sean Joseph's email. He says, "Raul, I'm at a family
20 function this evening. I really don't have anything further
21 to add. If you have another offer, send it over. However,
22 keep in mind that my seller will not sell for less than 1.3
23 million. In fact, she has not been agreed to that,
24 obviously. She is tough. If your buyer is not willing to
25 come up at least that number, then it will not work."

1 Again, all these emails refer to the seller in the
2 singular.

3 Q. Let me ask you this question: Doesn't it appear right there
4 that Sean Joseph is telling Raul that, I think 1.3 will get it
5 done, but I don't have authority from my seller?

6 A. No, I don't read that at all.

7 Q. You don't read that on the second line?

8 A. No, I think both Mr. Joseph and Raul were writing to each
9 other trying to coax each other up or down in price.

10 Q. You think they were trying to keep the deal going and
11 negotiate it between themselves?

12 A. No, I think -- some of my knowledge is blended from sitting
13 in the depositions, but I think Mr. Joseph had authority at 1.3
14 million and was trying to get Mr. Santidrian to go up, to get us
15 to go up to 1.3 million.

16 Q. Now, you didn't have any direct communication with
17 Mr. Joseph, correct?

18 A. I did. I met him. He showed us the property.

19 Q. When did he show you the property?

20 A. I believe it was some time in January 2013.

21 Q. Are you sure it wasn't his mother, Ellen Joseph?

22 A. No, I personally met him before.

23 I think we viewed the property several times.

24 Q. Can you tell me who's address is 8218 Berlin Way, Richmond,
25 Virginia?

1 A. Bevlynn Way.

2 Q. I'm sorry?

3 A. Sorry, it's Bevlynn. It's a V. Bevlynn Way.

4 Q. Whose address is that?

5 A. Joanne Katsantonis.

6 Q. And again, I think it's your testimony that you initialed
7 and signed the contract for 1.27, correct, Exhibit Number 16, or
8 was this the one --

9 A. On the 1.27, my sister, Joanne Katsantonis, signed and
10 initialed with my expressed authorization.

11 Q. And on Exhibit 1, again, none of those signatures are
12 actually yours. They are those of your sister with your
13 authorization?

14 A. On Exhibit 1 my sister expressly signed my name and my
15 initials with my authorization.

16 Q. And nowhere on this entire contract is there a signature for
17 Honey Sherman?

18 A. I don't think one is required, but no, there's not. Her HS
19 isn't here.

20 Q. It's not there, and it doesn't say Honey Sherman on the
21 signature line on the sellers' line either at the back of the
22 contract, correct?

23 A. No, obviously it wasn't needed.

24 Q. Okay. And it does say Honey Sherman TRS, as one of the
25 sellers?

1 A. I don't agree with the way you're reading that. It's the
2 name of a trust and then you list the trustees. I don't think
3 that means how you're trying to interpret it.

4 Q. Well, let me ask you this question: You sued somebody,
5 correct?

6 A. We did.

7 Q. Who did you sue?

8 A. We sued Mary Reich Shechtman and Honey Sherman as
9 co-trustees of the Shechtman Family Trust.

10 Q. So --

11 A. We sued the trust.

12 Q. You sued the trust?

13 A. You have to sue the trustees.

14 Q. What's the name of the trust?

15 A. The Shechtman Family Trust.

16 Q. Is that the name that appears on that contract?

17 A. Mary Shechtman signed it. What do you mean?

18 The trustees are listed. That's what's required.

19 Q. So the two trustees are listed?

20 A. I think they got the name --

21 THE COURT: I can't have two people speaking at once.

22 So I'll interrupt because the court reporter cannot take that

23 down. So you all have to give each other a little bit of space.

24 Otherwise, we won't make it.

25 Go ahead.

1 BY MR. SOTO:

2 Q. So there are two names listed as the seller, correct?

3 A. It's TRS, TRS. The trustees are listed from the deed, I
4 believe.

5 Q. Okay. Who are the trustees of the trust?

6 A. Mary Reich Shechtman and Honey Sherman.

7 Q. And those are the same names that are printed on Line 1,
8 correct?

9 A. Line 1 says Mary Reich Shechtman TRS; Honey Sherman TRS.
10 There's no "and/or" or whatever separating them. I think that's
11 taken straight from a deed or something. I didn't prepare the
12 names in that line.

13 Q. You didn't do it. Do you know who did?

14 A. I believe Raul Santidrian did.

15 Q. He prepared this contract, correct?

16 A. Again, I believe the contract is a form from the Florida
17 Bar.

18 Q. But he filled in the blanks, correct?

19 A. I believe so. You'll ask him when he's here.

20 Q. And he would have taken that information from where, do you
21 know?

22 A. I don't know.

23 Q. Were you ever provided with a copy of the Notice of
24 Commencement prior to executing -- actually, prior to filing
25 suit in this matter?

1 A. I think prior to filing suit.

2 Q. Prior to February 10th?

3 A. I don't believe prior to February 10th. I'm not sure of the
4 exact date that I saw that.

5 Q. Did you ever see a copy of the lease or any documents having
6 to do with Unit 3807 prior to February 10th?

7 A. You mean not including the contracts back and forth?

8 Q. Correct.

9 A. Prior to February 10th? I don't know why you're picking the
10 10th day. I think the 7th, 8th, I don't believe so.

11 Q. Okay. Do you know if you saw anything by February 10th?

12 A. I don't know.

13 Q. Okay. But you obviously didn't see anything before you had
14 your sister initial the contract for you?

15 A. When you say I didn't see anything, you mean the Notice of
16 Commencement?

17 Q. You didn't see that, did you?

18 A. Not before signing this document.

19 Q. Okay. Before --

20 A. Or having Joanne, my sister, authorized or --

21 Q. You didn't see the leases prior to having Joanne initial the
22 contract?

23 A. No, I did not see the leases.

24 Q. I think you testified earlier you said that it was 4307?

25 A. We put offers on both 4207 and 4307.

1 Q. Did you ever produce a copy of those offers here in court to
2 the defendants?

3 A. Some of them were verbal. I don't know if you asked for
4 that, but 4207 was -- Raul called. 4307 is by the developer.
5 It was being released by the developer and we had discussions
6 about putting offers down at 1.35 and 1.4. My understanding was
7 the seller wanted 1.45 or 1.5, but as I said earlier, it's an
8 unfinished unit. There's no flooring at all in the entire unit
9 as well as on the balcony and there were no closets and we
10 estimated it would be another \$100,000 for that unit. So that
11 if we paid 1.45 or more for that unit plus 100,000, we were
12 looking at paying 1.55 million when we had already purchased the
13 unit we wanted at 1.3.

14 Q. And that was sold on May 17, 2013?

15 A. I think that's right.

16 Q. The 4307?

17 A. Let me look at it. Was that tab 24?

18 4307 appears to have been sold, yeah, May 17th. So we
19 had made offers before that.

20 Q. And do you have any photographs to back up that there was no
21 floor in that unit?

22 A. We could bring in the agent. I mean, it was completely --
23 and Mr. Santidrian took us to it. He can corroborate that.

24 Q. And it's your understanding that was a penthouse unit as
25 well?

1 A. I don't know as well, but I understood that 4307 was a
2 penthouse.

3 Q. Okay. And that would have been on a higher floor, correct,
4 from the unit that we have?

5 A. Yes. What's important here to know is that they were
6 building the floor --

7 Q. I'm sorry. Please answer the question that I asked.

8 A. Yes. What was that?

9 Q. Was that on a higher floor than 3807?

10 A. Yes. We had to have a floor higher than 37 because they
11 were building next door, and everybody knew that the building
12 next door may go as high as at least 35 floors. So in reality
13 there's only a few units in the 07 line that you could get;
14 3707, 38, 39, 40, 1, 2 and 3. There's only 8 units I think.

15 Q. You're telling me there's no other unit that sold for 1.3
16 million on that same line?

17 A. No, that's not what I'm saying at all. I think -- what I'm
18 saying is there's only eight units that you could get on the
19 exact same line that was above the 35th floor because they're
20 building a building next door. So it was very important to get
21 very high up because the whole view could be obstructed by the
22 building that was going on next door. So that's why we
23 specifically were looking at that line, but at a high floor.

24 And no, that's not true. There was one unit that sold
25 right before any of us knew, prior to all of our offers in the

1 07 line that did go for 1.3.

2 Q. Do you know what the date of that unit was?

3 A. I think it closed -- now the closing shows some time in
4 January or February of '13, but that was not public information
5 until some months later.

6 But on the date of February 7th, the reason we went up
7 to the 1.3 is because two units in the 07 line were listed at
8 1.7 million and then an 02, which is similar, came out on
9 February 8th for 1.72. So we knew the prices were going up
10 right away. That was why we thought they disavowed the
11 contract.

12 Q. Let me ask you a question. Do you have any evidence that
13 that is why they disavowed the contract?

14 A. No, I don't.

15 Q. You never talked to them other than at their deposition,
16 correct?

17 A. I didn't even attend their depositions.

18 Q. Okay. So you've never talked to them, ever?

19 A. I said hello when I saw them.

20 Q. Okay. And they never told you, we reneged on this contract
21 or we did this or anything else about the contract with respect
22 to any listing prices, correct?

23 A. They did not advise me of their reason.

24 Q. You assumed this, correct?

25 A. I did assume that.

1 Q. Okay. Because in actuality, neither of those units that you
2 talk about sold, true?

3 A. That's not true. 4207 sold and then 4307 sold. But the two
4 that came on the market -- one was 4007. That one has not sold.
5 It's now listed at 1.95 million. So that one has not sold yet.
6 We called and tried to put an offer on that one at the same time
7 as well, and we were told that unless we had 1.6 million or
8 higher, they wouldn't even talk to us.

9 Q. So the only ones that have been listed and sold are the two
10 that you've talked about and included as exhibits and the
11 highest price was 1.48 that it sold for, correct?

12 A. Well, no, because the one that sold for 1.45, which is 4307,
13 needed \$100,000 more of work to finish the flooring and closets.
14 So that comparable would be 1 million 5.5, not 1.45. And I
15 think another -- I thought another one had sold, but I have not
16 located that.

17 Q. Okay. But the 4207, which is 1.48, sold and it included all
18 of the furniture, correct, as you've read on the remarks
19 already?

20 A. You know, it did. I don't know the circumstances of that
21 sale. I have some understanding that they're doing deals where
22 they do the property or the furniture separately, and so when
23 they sell it, they have a price that goes in the MLS of how much
24 it sold for and then they have separate contracts for the
25 furniture. I don't know how this went down.

1 Q. Ms. Katsantonis, you graduated from college, correct?

2 A. Yes.

3 Q. You went to law school?

4 A. That's correct.

5 Q. You've been a practicing lawyer for over 20 years?

6 A. That's correct.

7 Q. And you're telling me that that listing that you just read,
8 which is your Exhibit 24, doesn't include furniture?

9 A. I don't know whether it does or doesn't. I don't think you
10 can tell from this document. This document just says it sold
11 for 1 million 480. It doesn't say --

12 Q. No, ma'am.

13 In your document it says, "Remarks: Luxurious
14 oceanfront penthouse with amazing direct views of ocean,
15 intercoastal and downtown. Three full bedrooms, three full
16 bathrooms, professionally decorated, featuring marble
17 floors, Artefacto furniture, 12-foot ceilings, electronic
18 window treatments and custom closet."

19 A. Just so I can correct you --

20 Q. Is that true what it says?

21 A. That's only what the listing says. The document that says
22 Lazaro Solis, Miami-Dade property appraiser, that's what shows
23 the sale, and it doesn't show whether furnishing was included or
24 not.

25 Q. Ms. Katsantonis --

1 A. It says 1,480,000, but you can't tell from this document
2 whether or not furniture was included.

3 Q. Ms. Katsantonis, you entered this exhibit. I did not.

4 Is this the exhibit that you put into the record as
5 Exhibit 24?

6 A. Yeah, there are several documents.

7 Q. Okay.

8 A. It's the listing and the price. The first document is the
9 listing. That's what the agent wrote. The remarks are made by
10 the agent. The next page is the Property History View that
11 shows that the price was listed in early -- or July 2013 at 1.8
12 million and then went back and forth down to 1.7, 1.6/5, 1
13 million 650 and then sold --

14 Q. Ms. Katsantonis, under remarks it does say what I just said,
15 correct?

16 A. Under remarks of the listing from the listing agent, that's
17 what it writes.

18 Q. And on the bottom right it says, SP 1.480, correct?

19 A. Where is that?

20 Q. The bottom right. SP stands for sale price.

21 A. Right. That's just what they enter when it's sold.

22 Q. Okay. So that's put in sometime after the sale?

23 A. Again, I don't think this document -- well, the only
24 document that says the sales price is the Miami-Dade County
25 document.

1 Q. Well, I'm --

2 A. And that doesn't show whether or not it included the
3 furnishings or not.

4 In fact, for the listing that we bought, 3807, if you
5 went and looked, and we have it as an exhibit, if you looked at
6 their listings, I believe they said furnishing --

7 Q. Is that in the contract that you allege is the binding
8 contract?

9 A. No, no, no. I'm talking about the listing, comparing apples
10 to apples.

11 Q. That's not in the evidence here, Ms. Katsantonis.

12 So let's take a look at the exhibit that we were just
13 talking about --

14 A. I think it's a furnishing option.

15 MR. SOTO: Your Honor, will you direct the witness to
16 answer the questions that are posed?

17 THE COURT: Well, we all have to give each other a
18 little bit of time. Ask the question, give the answer.

19 Remember, you've got a jury of one.

20 BY MR. SOTO:

21 Q. Looking at Exhibit Number 24, that was a document that you
22 had Raul, I assume, print out for you on February 8, 2014,
23 correct?

24 A. No, that's not correct.

25 Q. Who printed this out?

1 A. On Exhibit 24?

2 Q. Yes, ma'am.

3 A. I believe Mariela did, our counsel.

4 Q. Does she have access to the MLS?

5 A. She does.

6 Q. Okay. So she printed this out.

7 And I'll show you the document so we know we're talking
8 about the same one.

9 A. That's the listing document. Tab 25 is the listing document
10 for our condo, 3807.

11 Q. Okay. The one I'm talking about is 24.

12 A. I know, but I'm comparing apples to apples. 38 says, "turn
13 key, move in right away," meaning it included the furniture, but
14 it didn't.

15 Q. That's because the contract that you have doesn't include
16 furniture, right?

17 A. Right. My point is, you don't know whether furniture is
18 included in the final contract or not by just looking at this
19 listing. If you look at the listing for 4207 that you're trying
20 to -- 4207 that you're looking at, yes, the agent wrote
21 "luxurious oceanfront penthouse." But if you compare it to
22 Exhibit 25, which is our unit that we put the contract on, 3807,
23 it similarly says that it's to be furnished. It says, "turn
24 key, move in."

25 Q. Ms. Katsantonis, you put in Exhibit 24, correct?

1 A. Our counsel did, correct.

2 Q. Your counsel did for you?

3 A. That's correct.

4 Q. So Exhibit 24 was put into evidence as a listing and a sale
5 price for Unit 4207, correct?

6 A. It shows the listing and then it shows -- it shows the
7 Property History View and then it shows the sale.

8 Q. You don't know whether it included furniture or not,
9 correct?

10 A. I do not know.

11 Q. All you know is that it says Artefacto furniture,
12 professionally decorated in the remarks, correct?

13 A. I know that the listing agent wrote that, correct, but I
14 don't know if the sale included the furniture or not.

15 Q. But it appears in the document you put into evidence.

16 A. What appears?

17 Q. Professionally decorated Artefacto furniture.

18 A. The listing agreement says that, that's correct.

19 MR. SOTO: Thank you. No further questions.

20 THE COURT: Redirect.

21 MR. HARRIS: No redirect, Your Honor.

22 THE COURT: Thank you, ma'am. You're excused.

23 Call your next witness, please.

24 MR. HARRIS: Plaintiffs call Joanne Katsantonis to the
25 stand, please.

1 THE COURT: Okay. You know where the witness stand is.
2 Raise your right hand.

3 JOANNE KATSANTONIS, PLAINTIFF HEREIN, SWORN.

4 THE COURT: Okay. Have a seat and tell us your name,
5 please.

6 THE WITNESS: My name is Joanne Katsantonis.

7 THE COURT: Go ahead.

8 DIRECT EXAMINATION

9 BY MR. HARRIS:

10 Q. Now, Ms. Katsantonis, you've sat here for this. I'm going
11 to show you some of the exhibits that the prior witness looked
12 at, and I just have a couple of questions on each one.

13 A. Sure.

14 Q. If you have a witness notebook in front of you, could you
15 turn to Exhibit 10, please?

16 A. Okay.

17 Q. Okay. And do you recognize this document?

18 A. Yes. This is the offer that we made for 1.2 million.

19 Q. Okay. And did you sign this document?

20 A. I believe my sister signed this one with my expressed
21 authorization.

22 Q. Okay. I'd like you to look at Exhibit 12, please.

23 A. This is the counteroffer from seller for 1.330.

24 Q. Okay. And then if you turn to Exhibit 14.

25 A. Yes, this is the counter we then made of 1.230 initialed by

1 myself and my sister's initials that I did with her expressed
2 authorization.

3 Q. Okay. So -- I'm sorry, I heard a vibration.

4 A. I don't know where that came from. I don't know if I hit
5 something.

6 Q. Did you authorize the issuance of this counteroffer?

7 A. Yes, I did.

8 Q. Okay. And who's initialing and signing on behalf of the
9 plaintiffs on this document or who did?

10 A. The initialing by plaintiffs, that would be by myself, my
11 initial and my twin sister's initial on the changes with her
12 expressed authorization.

13 Q. Okay. If you could, look at Exhibit 16, please.

14 A. Right. That's the offer for 1.27 million that we put in.

15 Q. Okay. And so this is an offer that you sent to the
16 defendants?

17 A. Yes. And I signed it and initialed it for myself and my
18 sister with her expressed authorization.

19 Q. Okay. And if you could turn to Exhibit 1, please.

20 A. This is the final binding contract that was sent by seller,
21 Mary Shechtman, for 1.3 million that I then initialed, myself,
22 and my sister's initials on the changes, on two change lines,
23 accepting the offer and sending it to Raul to convey to the
24 seller.

25 Q. Okay. And did you have authority to sign on behalf of

1 Vivian in this instance?

2 A. Yes, I did, expressed authorization.

3 Q. How did she communicate that authority to you?

4 A. We were always on the phone together. We're always on the
5 phone together.

6 Q. Okay. Now, you said that this was the counteroffer that you
7 sent. How did that actually get transmitted?

8 A. I PDF'ed it to Raul to convey to the seller.

9 Q. Okay. And you instructed him to do that?

10 A. I instructed him to do that and that was an accepted offer
11 and then I wired actually that day the money into the Sotheby
12 Trust.

13 Q. Okay. And how much money was that?

14 A. \$50,000.

15 Q. Okay. And what was the purpose of that wiring?

16 A. That was the initial deposit required to be placed into
17 escrow on our acceptance.

18 Q. Okay. And I'm sorry, you did that on what date?

19 A. I did that on the 7th, and the escrow is required upon
20 acceptance.

21 Q. Now, after this time you're aware that the defendants are
22 contending this is not a contract, correct?

23 A. Yes, I found that out afterwards, of course.

24 Q. Okay. And what steps did you take, if any, to continue to
25 perform the contract?

1 A. Well, we, first of all, of course, advised that we have a
2 binding contract and asked Raul to please, you know, make sure
3 that the seller was aware of that, that we had accepted the
4 offer and we had conveyed that.

5 I then had a discussion with my bank about moving
6 forward. We were on an extremely tight deadline to close this
7 by March 15th. In fact, my bank wanted a little more time, but
8 we were on a tight deadline. So we moved forward with that.
9 The bank sent over an appraiser, and the appraiser was denied
10 access to the property.

11 Q. Okay. And how did you come to understand that the appraiser
12 had been denied?

13 A. My bank called me. Actually, I think it was the first time
14 my bank called me and said, what's going on? The appraiser
15 couldn't get in, and then we called Raul to find out what was
16 going on.

17 Q. Okay. And where is the \$50,000 that you deposited at this
18 point?

19 A. It's still in that trust.

20 Q. In the escrow?

21 A. In the escrow, um-hum.

22 Q. Was there ever a time that you wanted to get out of this
23 contract or --

24 A. Never.

25 Q. Okay.

1 A. I mean, we had, you know, like my sister said, looked for a
2 long time for a property and so really, you know, wanted this
3 property, went back and forth, went as high as the seller wanted
4 and stood ready to perform the contract.

5 Q. Okay. And do you want to purchase that property today?

6 A. Yes, I do.

7 Q. Okay. And are you capable of doing that?

8 A. Absolutely. I've actually even talked to my bank again just
9 to make sure that I had their approval and they stand ready and
10 I have the cash that's required. So I'm ready to perform.

11 Q. Okay.

12 MR. HARRIS: No further questions.

13 THE COURT: Cross-examination.

14 CROSS-EXAMINATION

15 BY MR. SOTO:

16 Q. Good afternoon, Joanne.

17 A. Good afternoon.

18 Q. I think you testified in your direct that on Exhibit Number
19 10, you didn't actually sign that?

20 A. No, my sister, Vivian, signed on my behalf.

21 Q. Okay. And you gave her expressed authority over the
22 telephone, correct?

23 A. Yes.

24 Q. While she was signing it?

25 A. Yes.

1 Q. And --

2 A. It wasn't in her office, but I believe she was signing it
3 right then.

4 Q. And then on Exhibit Number 12, who signed that? Was that
5 you signing for your sister or your sister signing for you?

6 A. Exhibit 12 is -- wait, this is just their counteroffer.

7 Q. Okay.

8 A. So that's not us.

9 Q. Let's take a look at Exhibit Number 14.

10 A. Exhibit 14 is me initialing the changes on behalf of myself
11 and my sister.

12 Q. So those are your initials on the right?

13 A. Right.

14 Q. Let me ask you this question -- and your sister made the
15 initials on the bottom left of 14?

16 A. Yeah. We, you know, quite often ratify it just by sending
17 it. We didn't trace back over it.

18 Q. Let me ask you this question, because I'm looking at these
19 initials on Exhibit 14 and they appear to be different. Why
20 would your sister write them differently, do you know?

21 A. What do you mean, why would she write them differently?
22 This was our original offer, and we ratified it and initialed
23 the changes.

24 Q. Well, let's take a look. Let's take a look at Exhibit
25 Number 12.

1 A. Right.

2 Q. It's a clear copy, I think.

3 A. Right.

4 Q. Would you agree, because it was the first iteration?

5 A. Yeah, we're, of course, fully committed to this executed
6 contract.

7 Q. Okay. Let's go back even farther. Let's go back to Exhibit
8 Number 10.

9 A. Okay.

10 Q. You testified that Vivian signed this contract on your
11 behalf, correct?

12 A. Correct.

13 Q. Why are the initials different?

14 A. On this one?

15 Q. Yes, bottom left.

16 A. I don't know.

17 Q. Okay, because it says JK, the first one, correct?

18 A. Oh, you mean why -- yes, because she was -- there's two
19 individuals. So I guess she's putting my initials and her
20 initials.

21 Q. But why did she try to make them look different?

22 A. I don't think she was trying to make them look different.

23 MR. HARRIS: Objection, Your Honor. It's assuming
24 facts.

25 THE WITNESS: In fact, we can't tell the difference

1 between our own handwriting half the time.

2 MR. SOTO: You've got to let the Judge talk when he's
3 ruling on an objection.

4 BY MR. SOTO:

5 Q. So you're telling me that the JK, which is vertical, is
6 similar to the VK, which is more left, bottom left to top right?

7 A. I think so.

8 Q. Okay. That's fine.

9 And then we go to Exhibit Number 12, and that's the
10 same one. I think you testified to that earlier, correct?

11 A. Correct. It looks that way.

12 Q. And then we take a look at Exhibit Number 14.

13 A. The semi-offer is going on. Go ahead.

14 Q. Now, this is your handwriting on the right side, the
15 initials, correct?

16 A. Correct.

17 Q. And those initials, do they appear to be the same style of
18 handwriting?

19 A. You know, yes and no. I mean, yes, they are the same, but,
20 you know, I can see little differences if I was trying to
21 nitpick.

22 Q. They don't look identical to each other, do they, in the
23 same style of handwriting?

24 A. Wait. Are you talking about the two changes? I mean, I
25 made those.

1 Q. Yes, correct, on the right.

2 A. Yeah, I made those.

3 Q. We know you made those. You've already testified to that,
4 correct?

5 A. Correct.

6 Q. And let's take a look at Exhibit Number 16. Now, I believe
7 this is your handwriting on this document, correct?

8 A. I think so, yes.

9 Q. Okay. And you signed JK on the first one?

10 A. Right.

11 Q. And then you've got VK on the right, correct?

12 A. Correct.

13 Q. And both those signatures slant the exact same way, don't
14 they?

15 A. Yeah, but --

16 Q. So that we're pretty sure that you did both of those from
17 the slant?

18 A. I did, but I also did the ones that you were talking about
19 in Exhibit 14. If you look at the first one on the changed
20 price, mine looks vertical, and I did that one. So I don't
21 know, maybe sometimes I do it vertically and sometimes I do it
22 slanted, but those are my initials.

23 Q. Well, I think you testified earlier that you didn't do 10,
24 right?

25 A. I'm not talking about 10. I was talking about 14, but 10 I

1 didn't do.

2 Q. Did you do the initials on Exhibit 1?

3 A. Yes.

4 Q. Now, what's your profession?

5 A. Business transactional lawyer. I'm not a litigator.

6 Q. Okay. You do business transactions, purchases and sales of
7 businesses, correct?

8 A. Yes.

9 Q. Does that also involve land?

10 A. Sometimes. We have real estate experts who deal with that.

11 Q. Okay. You don't deal with that?

12 A. No. I mean, I get involved in certain issues that come up,
13 but I don't get involved in the details of that.

14 Q. Okay. Take a look at paragraph 1 of Exhibit 1. Line 1, I'm
15 sorry.

16 A. Right.

17 Q. Can you tell me what line 1 says for parties?

18 A. It says, Mary Reich Shechtman TRS, Honey Sherman TRS without
19 an "and" --

20 Q. Do you know --

21 A. -- and --

22 Q. Go ahead.

23 A. It's without an "and" and these are trustees. Well, I deal
24 with trusts sometimes as parties to contracts. Sometimes we'll
25 have 15 trustees and it has got to be approved by a majority,

1 which is eight, and we don't have eight signatures. And you can
2 list them all and just have one signature. This was not odd at
3 all to me.

4 Q. Let me ask you a question. Does it list two trustees?

5 A. It just says -- I frankly -- it says, Mary Reich Shechtman
6 TRS, Honey Sherman TRS. Again, like I just said, we sometimes
7 have 15 trustees and we have one signature.

8 Q. Does it list two people, to your knowledge?

9 MR. HARRIS: Objection, Your Honor, asked and answered.

10 THE COURT: It has been, but go ahead and answer. Does
11 it?

12 MR. SOTO: Thank you, Your Honor.

13 THE COURT: I didn't hear the answer. I'm sorry.

14 Does it?

15 THE WITNESS: It doesn't list two individuals. I can't
16 tell if this is one trust and this is how it's styled or if
17 these are two individual trustees. I mean, from the facts now,
18 you know, maybe they're co-trustees, but it says, Mary Reich
19 Shechtman TRS and Honey Sherman TRS. But there's no "and."
20 It's a run-on, one thing. I wouldn't have assumed anything
21 different other than it was the trust.

22 BY MR. SOTO:

23 Q. Do you know who filled that out?

24 A. I assume Raul from the MLS listing, but I have no idea. You
25 can ask him.

1 Q. Okay. But it's your signature on it?

2 A. Yes.

3 Q. Did you ever have any conversations with either of the
4 defendants in this case?

5 A. Absolutely not.

6 Q. Did you ever see the Notice of Commencement prior to --

7 A. I actually wish we had, but --

8 Q. Have you ever seen the Notice of Commencement prior to you
9 putting down the signature for both you and your sister?

10 A. No.

11 Q. Did you ever see a copy of the lease prior to signing your
12 name on Exhibit 1?

13 A. No.

14 Q. You never saw any of those documents --

15 A. No.

16 Q. -- prior to entering your sale?

17 A. No.

18 Q. Okay. Did you ever have any conversations or negotiations
19 with Sean Joseph?

20 A. No. I mean, I met him. Like Vivian said, I believe I met
21 him at some point, but no.

22 Q. Did you ever have any direct communications with Mr. Joseph
23 regarding the contract?

24 A. No. I mean, through my agent, Raul, but not me directly.

25 Q. Never directly. Your sister didn't have any communications

1 with him directly, either?

2 A. As far as I know, other than through Raul.

3 Q. Okay. Now, you've attached what is Exhibit Number 2 and
4 what's been entered into evidence. Can you flip through Exhibit
5 Number 2, Page 2?

6 A. Sure. Page 2.

7 Q. If you're looking at Page 2, you're looking at an email from
8 Sean Joseph to Raul on Wednesday, February 6, 2013.

9 Did you ever see that from Raul prior to February 7th
10 at 7:24 a.m.?

11 A. No, not that I recall. I mean, I don't remember seeing this
12 beforehand.

13 Q. Okay. Can you read that?

14 A. Are you talking about the one at 8:56 a.m.?

15 Q. No, on Wednesday, February 6, 2013 at 4:42 p.m.

16 A. Oh, I'm sorry. I think I'm looking at the wrong one.

17 Q. I think it's the second page of Exhibit Number 2.

18 A. At four -- there's a 7:24 a.m.

19 Q. Right in the middle.

20 A. That's 8:56 a.m. Oh, 4:42. I'm sorry.

21 Q. It's okay.

22 A. I don't remember seeing this before then.

23 Q. Okay. Do you know if you've seen it --

24 A. I don't remember seeing this email.

25 Q. Up until February 10th, do you remember seeing it anytime

1 before then?

2 A. I really don't remember seeing this email.

3 Q. It does say in there, "however, keep in mind that my seller
4 will not sell for less than 1.3 --"

5 THE COURT: Oh, don't read so fast when you want it on
6 the record.

7 MR. SOTO: I apologize, Your Honor.

8 THE COURT: The court reporter can't get it that fast.

9 BY MR. SOTO:

10 Q. "However, keep in mind that my seller will not sell for less
11 than 1.3 million. In fact, she has not been agreed to that,
12 obviously."

13 It says that in there, correct?

14 A. That's what it says.

15 Q. Now, when was the first time that you found out that Sean
16 Joseph communicated to Raul that he didn't believe there was a
17 binding contract?

18 A. I think Raul informed us -- I mean, I think it's me
19 personally. It must have been the night, evening or night of
20 the 8th. I can't remember if it was later than the 8th.

21 Q. Isn't it true that he was notified some time the morning of
22 the 8th --

23 A. I don't know.

24 Q. -- via a text message?

25 A. I don't know. I don't know what time he was notified.

1 He'll be here. You can ask him.

2 MR. SOTO: Your Honor, may I approach?

3 THE COURT: Sure, with what?

4 MR. SOTO: Thank you.

5 THE COURT: With what?

6 MR. SOTO: With an exhibit, Your Honor.

7 THE COURT: Which exhibit?

8 MR. SOTO: They are test messages --

9 THE COURT: No, no. What number does it have?

10 MR. SOTO: Oh, in my binder I believe it's Number 6.

11 MR. HARRIS: Your Honor, I don't have a copy of the
12 binder.

13 THE COURT: Hold on.

14 MR. HARRIS: I'm sorry.

15 THE COURT: One person at a time. We'll make it.
16 Do I have that binder?

17 MR. SOTO: You will have that binder in one second,
18 Judge.

19 THE COURT: Okay. What's the number?

20 MR. SOTO: 6, Your Honor.

21 THE COURT: Any objection to 6?

22 MR. HARRIS: I have an objection to introducing it
23 through this witness, Your Honor.

24 THE COURT: Okay. This is a text message between the
25 two Realtors; is that right, Mr. Soto?

1 MR. SOTO: Yes, Your Honor.

2 THE COURT: Are these two Realtors going to testify?

3 MR. SOTO: Yes, they are, Your Honor.

4 THE COURT: Then I'll sustain the objection and you can
5 use it when they testify.

6 MR. SOTO: Okay.

7 THE COURT: Next.

8 BY MR. SOTO:

9 Q. Did you know of any communications between Raul and Sean --

10 THE COURT: How would she know unless someone told her?
11 What difference does it make what she knows between the two
12 Realtors?

13 MR. SOTO: It doesn't. I'll move on.

14 THE COURT: Okay.

15 BY MR. SOTO:

16 Q. You believe that when you found out, it was from Raul on the
17 evening of February 8th?

18 A. I don't remember exactly when it was.

19 Q. Okay. And do you remember what Raul told you?

20 A. He said that --

21 THE COURT: Raul is whose agent?

22 MR. SOTO: Their agent.

23 THE COURT: And you're trying to convince the plaintiff
24 that her agent said what to her? What difference does it make
25 to you?

1 MR. SOTO: None, Your Honor.

2 THE COURT: Then next question.

3 MR. SOTO: Judge, I have no further questions.

4 THE COURT: Redirect.

5 MR. HARRIS: None, Your Honor.

6 THE COURT: Thank you. You may step down.

7 Who's your next witness?

8 MR. HARRIS: Mr. Joseph.

9 THE COURT: Okay. Raise your right hand, please, sir.

10 SEAN JOSEPH, PLAINTIFFS' WITNESS, SWORN.

11 THE COURT: Have a seat. Tell us your name. Spell
12 your first and your last name, please.

13 THE WITNESS: Sean Joseph. S-e-a-n, J-o-s-e-p-h.

14 THE COURT: Thank you. Go ahead.

15 MR. SOTO: Judge, before we start, can we take a
16 three-minute restroom break?

17 THE COURT: Not yet. We've only been at it for what, a
18 couple of hours, right? A little bit more, but we'll be here.

19 How long do you think this witness is going to be?

20 MR. HARRIS: About 45 minutes in direct.

21 THE COURT: 45 minutes?

22 MR. HARRIS: Maybe 30.

23 THE COURT: Oh, my goodness gracious.

24 MR. HARRIS: It may go very quickly.

25 THE COURT: Give me the four things that you want to

1 prove; four, starting with the most important.

2 MR. HARRIS: That Mr. Joseph received express authority
3 from the two defendants --

4 THE COURT: Okay.

5 MR. HARRIS: -- to issue the counteroffer that formed
6 the contract in this case.

7 THE COURT: All right. That's number one.

8 MR. HARRIS: Okay. It establishes a pattern and a
9 course of conduct through which actual authority can be derived.

10 THE COURT: From past experiences.

11 MR. HARRIS: Yes, other transactions.

12 THE COURT: How many transactions?

13 MR. HARRIS: We have a lease transaction.

14 THE COURT: How many; the number?

15 MR. HARRIS: I think -- well, two.

16 THE COURT: Two transactions.

17 MR. HARRIS: Yes.

18 THE COURT: And whatever they told him for this unit
19 sale, right?

20 MR. HARRIS: That's the third.

21 THE COURT: That's three.

22 MR. HARRIS: Right.

23 THE COURT: What else?

24 MR. HARRIS: Well, they have a long-standing
25 relationship. He testified generally about the whole --

1 THE COURT: No, no, no. What's he going to testify is
2 the important thing, not what he has testified at the deposition
3 without a judge. That's the reason they go on forever.

4 Okay. So it's three transactions, and you want to talk
5 about three transactions for 45 minutes. Wow.

6 MR. HARRIS: Your Honor, it could go very quickly.

7 THE COURT: Well, three transactions. What else?
8 That's the second thing and that's it, right?

9 MR. HARRIS: That he participated in the exchange of
10 counteroffers, that he received and issued them.

11 THE COURT: Is that in dispute, what he did?

12 MR. HARRIS: Well, through that --

13 THE COURT: Is it in dispute?

14 MR. HARRIS: The authority aspect is in dispute.

15 THE COURT: The authority aspect. You want him to make
16 the decision whether he had the authority or not, or you want me
17 to make the decision?

18 MR. HARRIS: I want you to make the decision based on
19 his actions.

20 THE COURT: Okay. So, and what would you say -- his
21 conduct took how many minutes?

22 MR. HARRIS: His conduct? I don't understand.

23 THE COURT: What he did in this case. How long did he
24 do whatever he did?

25 MR. HARRIS: Back to the sales transaction?

1 THE COURT: Yes.

2 MR. HARRIS: He had any number of conversations with
3 the defendants.

4 THE COURT: Conversations. What else?

5 MR. HARRIS: He exchanged emails with our agent.

6 THE COURT: Okay.

7 MR. HARRIS: He transferred --

8 THE COURT: How long do you think that took for him to
9 do all of that, more or less?

10 MR. HARRIS: I mean, I know what you're asking.

11 THE COURT: Then give me the answer. The answer is a
12 few minutes, right?

13 MR. HARRIS: I don't know how he does his work, but --

14 THE COURT: Well, how long are the texts?

15 MR. HARRIS: -- his conversations could have been
16 hours.

17 THE COURT: Let me interrupt you. Remember, that means
18 you have to shut up when I interrupt you.

19 MR. HARRIS: Sorry.

20 THE COURT: How many emails are we talking about, text
21 messages, conversations; 10?

22 MR. HARRIS: Under 10.

23 THE COURT: Under 10.

24 MR. HARRIS: Yes, Your Honor.

25 THE COURT: Under 10, three transactions, and you want

1 to talk with him for 45 minutes. Wow.

2 MR. HARRIS: It may go less than that, Your Honor.

3 THE COURT: How much time do you think he spent with
4 the parties in question here, both your clients and the
5 defendants?

6 MR. HARRIS: Well --

7 THE COURT: How much time do you think he spent with
8 them?

9 MR. HARRIS: Hours.

10 THE COURT: Hours, because he showed them units or
11 something?

12 MR. HARRIS: He had lengthy calls with the defendants
13 where they gave him instructions.

14 THE COURT: Lengthy calls. Okay.

15 MR. HARRIS: Lengthy emails, phone, text messages.

16 THE COURT: Lengthy. Okay. Go through it. Let's go.

17 MR. HARRIS: Okay.

18 DIRECT EXAMINATION

19 BY MR. HARRIS:

20 Q. Mr. Joseph, can you state your profession, please?

21 THE COURT: He's a Realtor. I know that already.

22 Next question.

23 BY MR. HARRIS:

24 Q. How long have you maintained the real estate license?

25 THE COURT: What difference does it make? If he was a

1 Realtor for six months, would you lose the case or win the case?

2 MR. HARRIS: It goes to the authority issue that he --

3 THE COURT: You mean, you cannot give authority to a
4 new Realtor. You can only give authority to a Realtor who's
5 been around for a long time. If the guy has been around for a
6 long time, you win. If that's his first client, you lose.

7 MR. HARRIS: Your Honor, there's been an argument in
8 this case --

9 THE COURT: Does it matter?

10 MR. HARRIS: There's been an argument in this case by
11 the defendants that Mr. Joseph was mistaken.

12 THE COURT: Was mistaken.

13 MR. HARRIS: That he made a mistake.

14 THE COURT: That he made a mistake in hearing.

15 MR. HARRIS: In what he did in connection with the
16 sales transaction.

17 THE COURT: Okay. And if he is an expert Realtor, he
18 didn't make a mistake. But if he's a new Realtor and the
19 defendants said, do this for us, does it make any difference?

20 MR. HARRIS: I believe if he was brand-new, that he
21 would be more prone to making mistakes.

22 THE COURT: Oh, this is a mistake.

23 MR. HARRIS: This is not a mistake.

24 THE COURT: Because you say that the defendants did
25 what?

1 MR. HARRIS: Expressly authorized him to issue a
2 counteroffer.

3 THE COURT: Either they did or they didn't, right?

4 MR. HARRIS: Yes, Your Honor.

5 THE COURT: So whose mistake is it?

6 MR. HARRIS: I don't believe there is a mistake, Your
7 Honor.

8 THE COURT: So it doesn't matter whether he's new or
9 old.

10 MR. HARRIS: Well, it would establish --

11 THE COURT: Who is not telling the truth, in your view?

12 MR. HARRIS: Who is not telling the truth? The
13 defendants, Your Honor.

14 THE COURT: Okay. Is he a defendant?

15 MR. HARRIS: He is the defendants' agent.

16 THE COURT: Is he telling the truth?

17 MR. HARRIS: Yes, Your Honor.

18 THE COURT: Then it seems like your questioning should
19 be very short and maybe the cross-examiner has a chance, which
20 is why I interrupt a cross-examiner a lot less than I do the
21 direct.

22 MR. HARRIS: Right, Your Honor. As the defendants'
23 agent, he is a hostile witness.

24 THE COURT: He's a hostile witness who's telling the
25 truth. Why is a hostile witness who's telling the truth --

1 MR. HARRIS: Well, I took his deposition. If he --

2 THE COURT: If he told the truth.

3 MR. HARRIS: If he sticks with his deposition
4 testimony, it will go very smoothly.

5 THE COURT: Okay. Then ask him the most important
6 things first, and if you like what you hear and he hasn't
7 changed it, that should take five minutes.

8 MR. HARRIS: Okay.

9 BY MR. HARRIS:

10 Q. Mr. Joseph, with regard to purchase and sale of real
11 property, do you always require a written offer from the buyer
12 to provide more certainty?

13 A. I do.

14 Q. Okay. And once you receive an offer, you review it to make
15 sure everything is exactly what you asked for, to make sure
16 that --

17 THE COURT: You're asking leading questions. Is that
18 for any particular reason?

19 MR. HARRIS: Because he is an adverse witness, Your
20 Honor.

21 THE COURT: And every time you have an adverse witness,
22 you ask leading questions even though he's telling the truth.

23 Why is someone an adverse witness?

24 MR. HARRIS: Your Honor --

25 THE COURT: Which rule is that that says you can do

1 that? What rule, do you know?

2 I probably shouldn't get involved in this because it's
3 easier and faster to ask leading questions, but --

4 MR. HARRIS: It would, Your Honor, and it would just --

5 THE COURT: That's why you were doing it, to be fast?

6 MR. HARRIS: Yes.

7 THE COURT: Really?

8 MR. HARRIS: I'm trying. I'm getting a message from
9 the Court that you want to move quickly, and I'm doing
10 everything I can.

11 THE COURT: Oh, you got that message last week. You
12 don't need to wait for today. But we still have to follow the
13 rules of evidence.

14 Which rule says that you can do that?

15 MR. HARRIS: I believe it's Rule 611.

16 THE COURT: Pardon?

17 MR. HARRIS: I believe it's Rule 611.

18 THE COURT: 611. Oh, I like that rule. Look what it
19 says:

20 It starts out with; "The Court should exercise
21 reasonable control over the mode and order of examining
22 witnesses and presented evidence so as to make those
23 procedures effective for determining the truth, avoid
24 wasting time and protect witnesses from harassment or undue
25 embarrassment."

1 So I like that subsection A.

2 And subsection C, which is the one you wanted me to
3 read, not A, but I wanted to read A; "Leading questions
4 should not be used on direct examination except as necessary
5 to develop the witness' testimony. Ordinarily, the Court
6 should allow leading questions on cross-examination when a
7 party calls a hostile witness, an adverse party or a witness
8 identified with an adverse party."

9 Now, how do I determine that he's a hostile witness?
10 What you've told me so far is, I like what he said on the depo.
11 That's why I'm calling him. He's going to help my case, and he
12 told the truth.

13 That's not hostile, agree?

14 MR. HARRIS: Agree.

15 THE COURT: Okay. An adverse party, he's not that
16 because he's not the co-trustee of the Shechtman trust. So
17 that's out. So he is a witness identified with an adverse
18 party.

19 MR. HARRIS: Correct, Your Honor. He is their agent.

20 THE COURT: He's their agent for all purposes.

21 MR. HARRIS: For purposes of everything we're here for
22 today.

23 THE COURT: For today. If he now said, I'm settling
24 this case, he would have the authority to do that.

25 MR. HARRIS: I don't think his authority goes beyond

1 that, no, but I don't know.

2 THE COURT: No, it doesn't. He's a Realtor.

3 MR. HARRIS: Well, it depends what the scope of
4 authority was that was conferred on him by the defendants. I
5 think it's highly unlikely.

6 THE COURT: How about if we ask him.

7 You were the Realtor for the defendants?

8 THE WITNESS: I am, Your Honor.

9 THE COURT: What authority did you have from them about
10 this particular unit that's in question?

11 THE WITNESS: I did not have authority from both of
12 these sellers. I had authority only by email of which she would
13 like to get for price of her unit.

14 THE COURT: Who?

15 THE WITNESS: One of the defendants.

16 THE COURT: Which one?

17 THE WITNESS: Ms. Shechtman.

18 THE COURT: Okay. She gave you authority to do what?

19 THE WITNESS: She just told me what she would like to
20 get for her price, which was 1.3 million.

21 THE COURT: Okay. Go ahead.

22 MR. HARRIS: Okay.

23 THE COURT: We kind of skipped a lot, didn't we?
24 You can fill in the rest.

25 MR. HARRIS: Okay.

1 BY MR. HARRIS:

2 Q. When you represent sellers in an instance where the seller
3 is presenting a counteroffer --

4 THE COURT: Oh, you want him to tell you what he does
5 with other clients that he has.

6 MR. HARRIS: His general practices, Your Honor.

7 THE COURT: Why? Why, is this a negligence case? Do I
8 look at general practice, or is that what he does with these
9 people, these defendants?

10 MR. HARRIS: Your Honor, we have arguments for actual
11 and apparent authority.

12 THE COURT: Okay. And that has to do with what he's
13 done with other people, not what he's done with these
14 defendants? It's not what he does with other people, right?
15 It's what he's done with these individuals, what they said to
16 him, what they did with him in this case and other cases.

17 You can go with other cases as long as it involves
18 these defendants.

19 MR. HARRIS: Okay.

20 THE COURT: Right?

21 MR. HARRIS: Yes.

22 THE COURT: So you can ask him what his relationship
23 has been with these defendants, who he talked to, who spoke for
24 whom, what he knew regarding that, but not what he's done with
25 -- how many clients do you think you have, Mr. Joseph?

1 THE WITNESS: Yes, sir.

2 THE COURT: How many clients do you think you have or
3 have you ever had?

4 THE WITNESS: Hundreds.

5 THE COURT: Hundreds. You want me to go through
6 hundreds of other people who live throughout Dade County?

7 MR. HARRIS: Absolutely not.

8 THE COURT: Okay. So let's talk about the Shechtman
9 trust and these two trustees.

10 Go ahead.

11 BY MR. HARRIS:

12 Q. When did you first meet the defendants?

13 A. The year -- I don't remember the exact year, but probably
14 2006, maybe.

15 THE COURT: Okay. Speak real loudly.

16 THE WITNESS: 2006, maybe. 2007.

17 BY MR. HARRIS:

18 Q. And you were retained by the defendants Shechtman and
19 Sherman as a real estate agent for the property that is the
20 subject of this dispute, correct?

21 A. Correct.

22 Q. And you understand that property to be generally described
23 as TDR Tower III?

24 THE COURT: Oh, we know which one it is. The unit, the
25 unit in question.

1 MR. HARRIS: Okay.

2 BY MR. HARRIS:

3 Q. And you entered into an oral agreement with defendants
4 Shechtman and Sherman for the sale or lease of the unit,
5 correct?

6 MR. SOTO: Objection, leading.

7 THE COURT: I'm going to overrule it.

8 Go ahead.

9 THE WITNESS: Initially it was to lease the unit and
10 then, you know, basically put it up for a high price. If we can
11 get, you know, the prices at the time, then they would consider
12 selling it if they chose to.

13 BY MR. HARRIS:

14 Q. Okay. But your agreement was oral, correct?

15 A. Correct.

16 Q. You never had a written agreement with them?

17 A. Not for listing.

18 Q. Okay. And with regard to your agreement, the defendants
19 purchased and leased many properties through you, correct?

20 A. Two properties --

21 Q. Okay.

22 A. -- for sale, yeah.

23 Q. I want you to look at Exhibit 4, please.

24 THE COURT: Plaintiffs' 4?

25 MR. HARRIS: Plaintiffs' 4, Your Honor, yes.

1 THE WITNESS: Yes.

2 BY MR. HARRIS:

3 Q. Do you recognize this document?

4 A. This is a Property History View, and I would assume it's on
5 this property that's in question.

6 Q. Okay. And this reflects two different types of
7 transactions, doesn't it?

8 A. Just like I said, sale and lease, correct.

9 Q. Okay. And --

10 THE COURT: Are you introducing this?

11 MR. HARRIS: Yes, Your Honor.

12 THE COURT: Any objection?

13 MR. SOTO: No.

14 THE COURT: It will be admitted.

15 (Plaintiffs' Exhibit Number 4 was received in evidence.)

16 BY MR. HARRIS:

17 Q. And these are all transactions that you handled; is that
18 right?

19 A. Our office, correct. As you can see, it's with the same
20 office.

21 Q. Are you saying that you didn't personally handle these
22 transactions?

23 A. Most of the time, correct, and I also have my partner.

24 Q. Okay. Which of these transactions were you not involved
25 with?

1 A. This is a Property History View of the listings of when it's
2 listed on the MLS. It's not really a transaction list.

3 Q. Okay. But this references two lease transactions, correct?

4 A. There's rental listings and there's sale listings and it
5 gives you property history of what dates they came on the
6 market, if they had been active, inactive, if they were rented,
7 if they were pending sales. It's just a history of the MLS.

8 Q. How many leases did you represent the defendants for that
9 actually resulted in consumated transactions on the subject
10 property?

11 A. Four.

12 Q. For Unit 3807?

13 A. Four.

14 Q. Oh, four. And you understand that the leases from this
15 property were requested from you?

16 A. What do you mean by that?

17 Q. You received a subpoena to bring your documents to the
18 deposition, correct?

19 A. Yes. We could not find those documents. Some of them were
20 just one-month rentals. We did not do paperwork on them. It
21 was a summer thing when people are just coming, and you couldn't
22 have a transaction. The billing didn't allow it. So we just
23 did like a one-month for 10,000 for the month for the first --
24 when it first got sold and we did another one like that. And
25 then the last lease I did provide, which was the long-term

1 lease.

2 Q. Okay. But the lease term on that was September 2013.

3 You're referring to that?

4 A. Correct.

5 Q. Okay. I'd like you to look at Exhibit Number 3, please.

6 THE COURT: Plaintiffs' 3?

7 MR. HARRIS: Plaintiffs' 3, Your Honor, yes.

8 THE COURT: Are you introducing it?

9 MR. HARRIS: Yes, Your Honor.

10 THE COURT: Any objection?

11 MR. SOTO: No objection, Your Honor.

12 THE COURT: It will be admitted. This is the leasehold
13 agreement for Unit 3807.

14 (Plaintiffs' Exhibit Number 3 was received in evidence.)

15 BY MR. HARRIS:

16 Q. Is this the lease transaction that you were just
17 referencing?

18 A. Correct.

19 Q. Okay. Now, there was a prior Lease Agreement in this case,
20 correct?

21 A. Correct.

22 Q. Okay. And it was for the year immediately preceding this
23 lease term?

24 A. Same tenant, correct.

25 Q. Okay. So essentially from September 2012 to August 2013 was

1 the lease term?

2 A. Correct. In the state of Florida you can do a year at a
3 time.

4 Q. Right. And that Lease Agreement was specifically requested
5 from you at your deposition, correct? Do you recall?

6 A. Correct.

7 Q. Okay. And you haven't produced that, correct?

8 A. Unable to find it. It's not that I wouldn't produce it.
9 I've searched for it.

10 Q. Right. And, actually, you're under an obligation to retain
11 that lease for a certain number of years, correct?

12 A. The broker is, correct.

13 Q. The broker is. Okay. And who's the broker?

14 A. Ellen Joseph is her name.

15 Q. Is that your mother?

16 A. It is.

17 Q. Okay. And you work for the same company?

18 A. Correct.

19 Q. Okay. And did you make any effort to get your mother to
20 give you a copy of that lease?

21 A. Absolutely. We tried to find it.

22 Q. So Ms. Joseph has made a full attempt to find that lease?

23 MR. SOTO: Objection, hearsay, Your Honor.

24 THE WITNESS: Yeah, I can't speak on behalf of how --

25 THE COURT: Well, whenever you hear objection, you have

1 to wait. Otherwise, there's no point in me ruling.

2 So what was the question?

3 MR. HARRIS: The question was, as far as he knows, did
4 Ms. Joseph, who works with him, make a full investigation to
5 determine whether she had a copy of the prior lease?

6 THE COURT: And this is someone else.

7 MR. HARRIS: This is his mother who works at the same
8 company.

9 THE COURT: And the mother who works for the same
10 company meets what hearsay exception? Is there a mother who
11 works in the same company exception to the hearsay rule?

12 MR. HARRIS: Your Honor, I'm not asking for a --
13 there's no hearsay here. I'm not asking for the truth of the
14 matter asserted.

15 THE COURT: What was the question about the mother
16 then?

17 MR. HARRIS: Do you believe that your office, through
18 your mother, made a full exhaustive search for the lease?

19 THE COURT: And that would prove what?

20 MR. HARRIS: Your Honor, we've had this dispute and
21 we've raised --

22 THE COURT: We're trying a discovery dispute. I
23 thought we were trying a breach of contract case. We're still
24 talking about discovery.

25 MR. HARRIS: Your Honor, we believe that the Lease

1 Agreement -- you recall we asked for an adverse inference to be
2 drawn from the fact that we don't have the Lease Agreement.

3 THE COURT: Why don't you have the Lease Agreement?

4 THE WITNESS: Our office had closed down. My mother --
5 we moved everything into storage units. My mother had breast
6 cancer, has been dealing with it for the last two years. A lot
7 of things have been misplaced and difficult to find.

8 THE COURT: You think that's true or not true?

9 MR. HARRIS: I don't have an opinion or I have no
10 reason to doubt that.

11 THE COURT: So then I shouldn't draw an adverse
12 inference from that, right?

13 MR. HARRIS: Your Honor, I think --

14 THE COURT: Right?

15 MR. HARRIS: Not from that specific statement, but the
16 fact that we have no lease.

17 THE COURT: Next question.

18 MR. HARRIS: Okay.

19 BY MR. HARRIS:

20 Q. Did you ever provide copies of the lease --

21 THE COURT: Now, hold on a second. Didn't he just say
22 why he didn't?

23 MR. HARRIS: Yes. I'm going --

24 THE COURT: Is he telling the truth or not?

25 MR. HARRIS: I don't know, Your Honor.

1 THE COURT: Well, when do I draw an adverse inference
2 from someone?

3 MR. HARRIS: I'm trying to go about it another way,
4 Your Honor.

5 THE COURT: No, but when do I draw an adverse
6 inference, when someone destroys documents, doesn't produce it?
7 It has to be intentional, right?

8 MR. HARRIS: Yes.

9 THE COURT: Right. If it's not intentional, then we
10 don't draw an adverse inference, right?

11 MR. HARRIS: Correct, Your Honor.

12 THE COURT: Do you think this is intentional or not?

13 MR. HARRIS: Your Honor, we asked him about the lease
14 on --

15 THE COURT: No, no. What do you think? What do you
16 want to prove, that it was intentional or not?

17 MR. HARRIS: I believe that --

18 THE COURT: Was it intentional or not?

19 MR. HARRIS: Intentional by the defendants, Your Honor.

20 THE COURT: No, no. He's the witness.

21 MR. HARRIS: Yes, Your Honor. He's their agent and I
22 wanted to ask him if he ever provided a copy of the lease to the
23 defendants.

24 THE COURT: Did you ever give a copy of the lease to
25 the defendants?

1 THE WITNESS: A copy of this lease, I know for a fact
2 it was emailed at the time. I don't recall on the first one,
3 and we went back and tried to look for it.

4 THE COURT: Next question.

5 BY MR. HARRIS:

6 Q. Is that your standard practice to email copies of the fully
7 executed lease to your clients?

8 A. In most instances.

9 Q. Okay. So it's very likely that you emailed the prior lease
10 to the defendants, correct?

11 A. It's likely.

12 MR. HARRIS: Okay. And, Your Honor --

13 THE COURT: No, keep asking questions. Don't ask me
14 questions. I'm not a witness. I don't even own a condo.

15 BY MR. HARRIS:

16 Q. Looking back at Plaintiffs' Exhibit 3, when were you asked
17 to provide this lease?

18 THE COURT: Asked by whom? By you?

19 MR. HARRIS: We asked --

20 THE COURT: We're still fighting discovery. What
21 difference does it make? He just told you about his mother.

22 MR. HARRIS: I will move on, Your Honor.

23 THE COURT: Okay.

24 MR. HARRIS: Okay.

25 THE COURT: I would have moved on before.

1 BY MR. HARRIS:

2 Q. Who prepared this lease?

3 A. I prepared this lease.

4 Q. Okay. And it says, owner of the property. Do you see that?

5 THE COURT: Okay. This lease, what is this lease going
6 to accomplish?

7 MR. HARRIS: This is the conduct I was talking about.
8 This shows a course of conduct. It shows that --

9 THE COURT: Who gave you authority on this lease?

10 THE WITNESS: Well, it was a renewal lease. It's a
11 renewal.

12 THE COURT: Okay. And who gave you the authority?

13 THE WITNESS: The tenant asked me to renew the lease.

14 THE COURT: Who asked you?

15 THE WITNESS: The tenant.

16 THE COURT: Who's the tenant?

17 THE WITNESS: Jonathan Kamhazi.

18 THE COURT: Who do you represent, the tenant or the
19 landlord?

20 THE WITNESS: Both.

21 THE COURT: You represent both?

22 THE WITNESS: Correct.

23 THE COURT: Okay. And who is the landlord?

24 THE WITNESS: Honey and Mary Shechtman.

25 THE COURT: Did you talk to both of them or just one?

1 THE WITNESS: I don't recall who I spoke to on this.

2 Actually --

3 THE COURT: Would you normally speak --

4 THE WITNESS: Actually, when they came down -- we
5 normally speak to both or one or the other.

6 THE COURT: Sometimes one, sometimes two?

7 THE WITNESS: Correct.

8 THE COURT: Anyone in particular over the other or
9 whoever was around?

10 THE WITNESS: Well, I mean, I spoke to Mary more often
11 than I spoke to Honey only because Honey travels all over the
12 world and she's not available as much.

13 THE COURT: Next question.

14 BY MR. HARRIS:

15 Q. All right. And who is listed as the owner of the property
16 on this lease?

17 A. Mary Reich Shechtman TRS and Honey Sherman TRS.

18 Q. Okay. And how many of the defendants signed and initialed
19 this lease?

20 A. Neither.

21 Q. Okay. Who signed and initialed this lease on behalf of that
22 entity you just read?

23 A. I signed the lease.

24 Q. Okay. And you had authority to do that?

25 A. On this lease, yes.

1 Q. Okay. And how is that authority communicated to you?

2 A. Just through an email.

3 Q. Okay. And where is that email?

4 A. It was given to you all, the attorneys.

5 MR. SOTO: Judge, is it possible to take a two-minute
6 bathroom break while we're waiting for --

7 THE COURT: Well, what are we waiting for?

8 MR. HARRIS: Your Honor, we don't believe we were ever
9 provided with that email. So I've asked my associate --

10 THE COURT: Okay. Keep asking questions. Let's go.

11 BY MR. HARRIS:

12 Q. Okay. And you believe that you had authority to sign this
13 lease on behalf of both defendants, correct?

14 A. Correct.

15 Q. Okay. And that was because you got an email, correct?

16 A. Correct.

17 Q. And who gave you that email?

18 A. That was from Ms. Shechtman.

19 Q. Ms. Shechtman. Okay. Did Honey send you an email giving
20 you authority?

21 A. No.

22 Q. Okay. And you didn't sign Honey's name to the Lease
23 Agreement, correct?

24 A. That's correct.

25 Q. Even though it provides -- it lists Mary Reich Shechtman TRS

1 and Honey Sherman TRS, correct?

2 A. That's correct.

3 Q. And you believe this is a binding Lease Agreement, correct?

4 A. Not in the eyes of the law.

5 Q. I'm sorry?

6 A. Not in the eyes of the law.

7 Q. So is it in your practice of 20 years to execute Lease
8 Agreements that are not binding?

9 A. It's not in my practice to execute things without Power of
10 Attorney, no. This was a lease renewal. They both agreed that
11 they were staying. It was just paperwork.

12 Q. You think the Lease Agreement is just paperwork?

13 A. In this instance, correct.

14 Q. So this is not a binding contract in your eyes?

15 A. It is not.

16 Q. Okay. And why isn't it a binding contract?

17 A. Because I don't have Power of Attorney.

18 Q. So in your view -- do you normally attach the Power of
19 Attorney to the Lease Agreement?

20 A. Absolutely, if I had Power of Attorney. I have other
21 contracts where I've had Power of Attorney where we have to
22 attach it to all documents signed.

23 Q. Okay. So what is this document if it's not a binding
24 contract?

25 A. Paperwork.

1 THE COURT: Let me ask you this. The witnesses decide
2 whether something is a binding contract or not?

3 MR. HARRIS: It goes to the credibility of the witness,
4 Your Honor.

5 THE COURT: You think he's lying by saying it's not a
6 binding contract.

7 MR. HARRIS: That it's his view as a Realtor for 20
8 years that this is not a binding contract.

9 THE COURT: What difference does it make whether it's a
10 binding contract or not? Am I going to try that lease or just
11 this contract?

12 MR. HARRIS: No, you're right, Your Honor.

13 THE COURT: Next. Next. Let's go.

14 BY MR. HARRIS:

15 Q. Now, when you signed this lease, you understood you had
16 authority on behalf of both trustees, correct?

17 A. No. I just stated earlier, I said Mary.

18 Q. So your testimony is that you only had authority from Mary
19 to sign this lease?

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

21 THE COURT: Didn't he say yes before? Why do we need
22 to repeat that? Sometimes he spoke with one. Sometimes he
23 spoke with another. One was more often here. Where are we
24 going?

25 MR. HARRIS: Your Honor, this lease looks exactly like

1 the contract.

2 THE COURT: Okay. You make that argument to me, but
3 not to him. You're not here to convince him. Remember, he's
4 their Realtor. You're here to convince me.

5 So let's go. Next question. Next area. Not this
6 lease. What's the next area?

7 BY MR. HARRIS:

8 Q. Is it a common practice with Shechtman and Sherman and you
9 to provide verbal authority to sign on their behalf on deals?

10 A. No.

11 Q. I'd like you to --

12 MR. SOTO: Judge, I really have to --

13 THE COURT: Pardon?

14 MR. SOTO: I really have to use the restroom.

15 THE COURT: Go ahead. We'll wait for you.

16 MR. SOTO: Thank you, Your Honor.

17 MS. SHECHTMAN: Can we all go at the same time?

18 THE COURT: Go ahead. We'll wait for you.

19 (There was a brief recess.)

20 THE COURT: Go ahead. The court reporter is back.

21 BY MR. HARRIS:

22 Q. Just to get back to where we were, you said it was not
23 common practice for you to sign with verbal authority on behalf
24 of both defendants with the Lease Agreements?

25 A. That's correct.

1 Q. Okay. And do you recall that your deposition was taken in
2 this case on November 4, 2013?

3 A. That's correct.

4 Q. Okay. And if you could turn to tab 30 in your exhibit
5 binder, you should find the transcript of that deposition
6 testimony. If you could please look at Page 51?

7 A. Okay.

8 Q. Okay. And if you look at line 14:

9 "And who ended up signing the rental agreement? Let me
10 refer specifically to the October 1st, 2011 listing.

11 "Answer: Actually, I have an email from the parties
12 asking me to sign on their behalf. So I signed it.

13 "Question: You signed on behalf of Shechtman and
14 Sherman?

15 "Answer: Correct.

16 "Question: So you had authority to sign?

17 "Answer: I did not have Power of Attorney. I just had
18 their verbal authority to sign on their behalf. It was a
19 one-and-a-half-month rental, and they asked me to sign it.
20 They were traveling. I don't know where they were. They
21 travel a lot. Actually, I do remember that one now.

22 "Question: And this was common practice for the
23 seasonal rentals?

24 "Answer: It's common practice with them with me on a
25 lot of deals. Correct.

1 "Question: Can you give me an example of what type of
2 deals?

3 "Answer: Purchasing units."

4 Does that refresh your recollection that you often, as
5 common practice, had verbal authority from both defendants to
6 sign transactions on their behalf?

7 A. Verbal authority to sign does not give me the legal right to
8 sign. But yes, verbal authority to maybe negotiate some things
9 or to have leeway.

10 Q. Okay. So it's fair to say that your common practice with
11 the defendants was to get verbal authority from both defendants
12 to sign contract documents on their behalf, correct?

13 A. Again, to have leeway to negotiate in good faith deals.
14 When I say sign, to negotiate deals. Signing an actual
15 agreement, as you know, is a legal document, which I would have
16 to have Power of Attorney.

17 Q. Okay. But in any event, you signed this Lease Agreement on
18 behalf of the defendants, correct?

19 A. Correct. It was a formality, this Lease Agreement. Just
20 paperwork for the building for the next year.

21 Q. And yet, you only signed one name to the instrument,
22 correct?

23 A. Correct, because I did not have authority.

24 Q. Sorry?

25 A. Correct, because I didn't have authority.

1 Q. You did not have authority to sign this lease? That's what
2 you're telling me now?

3 A. Not by both parties, correct.

4 Q. Okay. So when you testified that you had authority to sign
5 some leases, the one that you provided, you're saying you didn't
6 have authority from both defendants; is that right?

7 A. That's correct.

8 Q. Even though you testified that it was common practice on a
9 lot of deals to get authority from both defendants to sign on
10 their behalf?

11 A. On some instances, yes. On some instances, no.

12 THE COURT: What's the difference? Some instances yes,
13 some instances no. Tell me the difference.

14 THE WITNESS: Are you speaking to me, Your Honor?

15 THE COURT: Pardon? Yeah, I'm speaking to you.

16 THE WITNESS: On some instances it was negotiations.
17 It's all about leeway. They gave me leeway to negotiate certain
18 prices or terms. But as far as final signatures, like I told
19 the plaintiffs, if I needed to get an executed contract, we
20 would send copies to get hard copies signed by all parties in
21 the end.

22 THE COURT: And you didn't do that in this case.

23 THE WITNESS: In this particular -- on that particular
24 lease, no.

25 THE COURT: And did you do it in this case?

1 THE WITNESS: No.

2 THE COURT: Why not?

3 THE WITNESS: It never got to that point.

4 THE COURT: Why not?

5 THE WITNESS: Because we never had a complete meeting
6 of the minds by all four parties.

7 THE COURT: Who are the four parties?

8 THE WITNESS: The two sisters and the two sisters.

9 THE COURT: And isn't there just one trust?

10 THE WITNESS: As far as I know, it's the two sisters
11 that I deal with.

12 THE COURT: But sometimes you only got approval from
13 one sister and that was enough for you, and I want to know the
14 difference.

15 THE WITNESS: And that was, again, leeway in
16 negotiating terms.

17 THE COURT: Well, what do you mean by leeway in
18 negotiating terms? If you're negotiating with someone and
19 someone says, yeah, we'll go along with that, what's the
20 difference between that and this contract here?

21 THE WITNESS: Well, because, again -- if you want to
22 talk about this contract, you want me to elaborate on that, then
23 I certainly will.

24 THE COURT: No, I want to know the difference, why
25 sometimes one sister's word is enough and other times you need--

1 THE WITNESS: It's not enough. They both would have to
2 sign.

3 THE COURT: But why did you say you could negotiate
4 with only one?

5 THE WITNESS: Well, they would speak to each other and
6 let me know that we want \$7 million for the property. Try to
7 get me \$7 million.

8 THE COURT: Okay. So if you made an offer -- if they
9 said, we want 7 million, would you convey an offer of \$7 million
10 from one sister who said, look, make an offer of \$7 million?

11 THE WITNESS: Yes.

12 THE COURT: And if the person says, we accept the \$7
13 million?

14 THE WITNESS: Then I would say, we need to get this
15 signed by all parties.

16 THE COURT: So then you didn't make an offer of \$7
17 million. That was just talking about it.

18 THE WITNESS: That's part of negotiating. That's
19 correct, negotiating.

20 THE COURT: So you have no authority to even say \$7
21 million. They don't say yes.

22 THE WITNESS: I guess --

23 THE COURT: They could say, oh, we're just kidding.
24 Not 7. We really meant 5.

25 THE WITNESS: That's absolutely true. In the end, they

1 could change their minds. That's absolutely correct.

2 THE COURT: When is the end?

3 THE WITNESS: When all parties sign and initial a
4 document.

5 THE COURT: So one cannot speak for the other?

6 THE WITNESS: In essence, no.

7 THE COURT: Okay. And what did you say at the
8 deposition? How do you answer?

9 THE WITNESS: The same way I just did, saying that I --

10 THE COURT: You think it's identical to what you said.

11 THE WITNESS: Maybe not identical in words.

12 THE COURT: Okay. Go ahead. Next question. Go ahead.
13 Let's go. Any other questions?

14 MR. HARRIS: Yes. Yes, Your Honor.

15 THE COURT: Let's go.

16 MR. HARRIS: Okay. Let's look at Exhibit 12, please.

17 THE COURT: I'm sorry?

18 MR. HARRIS: Exhibit 12. Plaintiffs' 12, please.

19 THE COURT: What about Exhibit 12? Let's go.

20 MR. HARRIS: I'm asking the witness to take a look at
21 it.

22 THE COURT: Okay. Take a look at it. Next question.

23 BY MR. HARRIS:

24 Q. Do you recognize this document?

25 A. Yes.

1 Q. Okay. And did you transmit -- well, what is this document?

2 It's a counteroffer, isn't it?

3 A. Correct.

4 Q. Okay. Now, as a Realtor, you're under an ethical obligation
5 that precludes you from issuing an offer without authority,
6 correct?

7 MR. SOTO: Objection, leading, Your Honor.

8 THE COURT: Overruled.

9 Go ahead.

10 THE WITNESS: Many clients will give you parameters on
11 which to negotiate on their behalf.

12 BY MR. HARRIS:

13 Q. Okay. But my question is, you're a licensed real estate
14 agent?

15 A. Correct.

16 Q. And you have to subscribe to a code of ethics, correct?

17 A. Correct.

18 Q. Okay. And one of those terms of the code of ethics is that
19 you cannot deliver an offer without authority, correct?

20 A. Correct.

21 Q. Okay. So this is a counteroffer that you transmitted to the
22 plaintiffs, is it not?

23 A. Correct.

24 Q. Okay. And did you have the authority of the defendants to
25 make this counteroffer?

1 A. For negotiating terms, I made the counteroffer based on the
2 parameters that they gave me.

3 THE COURT: What were those parameters?

4 THE WITNESS: That she would like 1.3 million, but
5 again, that she was not going to sell unless she found some
6 place else to move, which was stated to the other party.

7 BY MR. HARRIS:

8 Q. When was that stated to the other party?

9 A. It's been read here several times. Sometimes on the phone
10 and I think once through an email.

11 Q. Is that something that you understood the defendants were
12 asking the plaintiffs to come up with as a term of this deal?

13 A. It has nothing to do with them.

14 Q. Correct. Right, it has nothing to do with them?

15 A. It has nothing to do with them selling.

16 Q. Okay. But when you present this to the plaintiffs, you're
17 not expecting a term of this deal -- this isn't an incomplete
18 deal, is it?

19 A. It is incomplete. It doesn't have all signatures. It was
20 negotiating terms and price.

21 Q. Okay. But aside from signatures, this contains all the
22 terms of a purchase contract, correct?

23 A. Correct.

24 Q. Okay. So you presented a counteroffer that was complete as
25 to all terms to the plaintiffs, correct?

1 A. Terms that they -- correct.

2 Q. Okay. And you are required as a real estate agent to have
3 authority before presenting a counteroffer to another party,
4 correct?

5 A. Correct. In many instances I can have authority. You could
6 tell me you want to sell your property for 300,000. I tell the
7 other party, they sign it, it comes back to you and all of a
8 sudden you speak to your wife or a friend and you say, you know
9 what, I think I don't want to sell it for 300,000 anymore, after
10 you've already agreed to me verbally.

11 Q. Well, I'm not talking about --

12 A. But none of this means anything until it's all signed.

13 Q. I'm not talking about --

14 THE COURT: I can't have interruptions of a witness.
15 You all have to yield to each other. You've got to do that.

16 MR. HARRIS: I'm sorry, Your Honor.

17 THE COURT: Please, please.

18 Go ahead.

19 BY MR. HARRIS:

20 Q. Okay. The situation you just described, you're not talking
21 about a written counteroffer. You're talking about some
22 suggestion, kind of a negotiation, right?

23 A. No, I'm absolutely talking about written counteroffers.

24 I've had many offers back and forth that were agreed to and then
25 before signatures come on, they fall apart or people decide they

Joseph - Direct

169

1 don't want to sell it for whatever reason.

2 THE COURT: So the written offer is meaningless, in
3 your view.

4 THE WITNESS: Until it's signed by all parties.

5 THE COURT: And that written offer wasn't signed by one
6 party?

7 THE WITNESS: Which, this one?

8 THE COURT: Yeah. The one --

9 THE WITNESS: It was signed by me.

10 THE COURT: Pardon?

11 THE WITNESS: It was signed by me. It wasn't signed
12 by --

13 THE COURT: And your signature is totally worthless.

14 THE WITNESS: That's correct.

15 THE COURT: So why do you do it?

16 THE WITNESS: Well, there was a lot of instances why I
17 did it; again, to negotiate the deal in good faith.

18 THE COURT: So it's totally meaningless, your
19 signature. You're not acting as an agent for them.

20 THE WITNESS: They had no means of electronic
21 communication at this time. They had power outages for days.
22 There was miscommunication. One of the parties was traveling
23 and unreachable. So --

24 THE COURT: So it's meaningless, what you did. Your
25 signature was totally worthless. It didn't mean anything --

1 THE WITNESS: That's correct.

2 THE COURT: -- whether you signed it or not.

3 Do you do that often?

4 THE WITNESS: I have done that before in the past.

5 THE COURT: And it's all meaningless. So why do you do
6 it if it's meaningless? What does it mean?

7 THE WITNESS: In good faith, in essence keeping the
8 deal going because my clients are unable to reach them to get --

9 THE COURT: But you tell the other person, my signature
10 is meaningless. This does not mean that it's an offer. Do you
11 tell them that?

12 THE WITNESS: What I told them --

13 THE COURT: Do you tell them that?

14 THE WITNESS: In some instances, yes.

15 THE COURT: You say, this is not an offer. This is
16 what they're thinking of.

17 THE WITNESS: No. I say that this is not an executed
18 contract.

19 THE COURT: So you're lying to the other person to try
20 to hook them into -- and then it's meaningless.

21 THE WITNESS: No, Your Honor, I tell them --

22 THE COURT: Isn't that unethical?

23 THE WITNESS: It could be unethical, but that's not
24 what --

25 THE COURT: It seems totally inappropriate.

1 THE WITNESS: That's not what happened here. They were
2 always told that they're --

3 THE COURT: So you're telling me you do that in other
4 occasions. You sign something when you really don't have the
5 authority to do so because your signature --

6 THE WITNESS: I have done so in the past, yes.

7 THE COURT: Without authority.

8 THE WITNESS: Yes.

9 THE COURT: So you tell someone you have authority, but
10 you really don't?

11 THE WITNESS: Well, if I'm told to do something or
12 given parameters and then a client changes their mind, because I
13 don't have anything in writing from them, that has happened
14 before.

15 THE COURT: So they say, we're willing to sell it for
16 1.3 million. And you said, yes, I'm going to make an offer, and
17 you put your signature and the other person says, yes, I accept.
18 You tell the purchaser, well, it's really not an offer. I'm
19 just kidding. I think I can work this out for you. That's what
20 you do?

21 THE WITNESS: No, that's not what I do.

22 THE COURT: Okay. So what happened here?

23 THE WITNESS: If somebody tells you that they want 1.3
24 million for a place, we still have to find another place before
25 we finally agree. We're negotiating terms of an agreement --

Joseph - Direct

172

1 THE COURT: If both of them had signed and they hadn't
2 found a place to live --

3 THE WITNESS: Then it would be a fully executed
4 contract.

5 THE COURT: So it doesn't matter whether they find a
6 place to live or not. The important thing is whether they
7 themselves are bound to the contract --

8 THE WITNESS: Right. If they were just --

9 THE COURT: Don't interrupt me.
10 Not the reason, right?

11 THE WITNESS: Correct.

12 THE COURT: So it doesn't matter what the reason is?

13 THE WITNESS: That's absolutely correct.

14 THE COURT: So why do you mention that as the reason?
15 It doesn't matter whether they find -- that would be so
16 ridiculous. Oh, we don't find a good apartment, so the contract
17 is no good. That would be ridiculous, wouldn't it?

18 THE WITNESS: That's why they didn't sign it.

19 THE COURT: Okay. Well, you don't know why they didn't
20 sign it, do you?

21 THE WITNESS: That's part of the reason why they didn't
22 sign it.

23 THE COURT: They told you?

24 THE WITNESS: Yes.

25 THE COURT: Who told you that --

Joseph - Direct

173

1 THE WITNESS: Both parties.

2 THE COURT: -- that that's the reason?

3 THE WITNESS: Both parties.

4 THE COURT: When did they tell you that?

5 THE WITNESS: We actually told the other parties that.

6 THE COURT: No, no. Tell me who told you what when.

7 THE WITNESS: February 7th, 6th or 7th I was told.

8 THE COURT: By whom? Tell me the name.

9 THE WITNESS: By Ms. Shechtman, that she would not sell
10 unless she was able to find another place.

11 THE COURT: Okay. And did she sign anything in this
12 case?

13 THE WITNESS: No.

14 THE COURT: She didn't sign anything?

15 THE WITNESS: No.

16 THE COURT: Okay. Go ahead.

17 BY MR. HARRIS:

18 Q. So we're talking about the counteroffer that was delivered
19 for 1.33 --

20 THE COURT: Why don't we talk about the final offer?

21 MR. HARRIS: We can get to that, Your Honor, but --

22 THE COURT: Well, isn't that what this case is about?

23 MR. HARRIS: Well, I just heard some testimony that is
24 inconsistent with his deposition testimony regarding this offer.

25 THE COURT: Okay. Let's talk about this case.

Joseph - Direct

174

1 Did Ms. Shechtman sign anything?

2 THE WITNESS: No.

3 THE COURT: Never?

4 THE WITNESS: Never.

5 THE COURT: At any time?

6 THE WITNESS: At any point.

7 THE COURT: About this unit at all?

8 THE WITNESS: No.

9 THE COURT: That's what you think, too.

10 MR. HARRIS: Your question was, did she sign anything?

11 THE COURT: Yeah. Did she?

12 MR. HARRIS: Your Honor, we have a pretrial stipulation
13 that says --

14 THE COURT: Did she sign anything?

15 MR. HARRIS: She's ratified it. No. What the
16 testimony from Mr. Joseph is, is that he signed her name to the
17 agreement with explicit authority.

18 THE COURT: Okay. From whom?

19 MR. HARRIS: Ms. Shechtman and Honey Sherman.

20 THE COURT: Okay. He says no now, right?

21 MR. HARRIS: Correct, yes.

22 THE COURT: Okay. So is he telling the truth or not in
23 your view?

24 MR. HARRIS: He is not telling the truth, Your Honor.

25 THE COURT: Okay. Are you going to be here until what

1 time to try to convince him?

2 MR. HARRIS: As long as it takes, I guess.

3 THE COURT: To convince him. We could be here till
4 midnight.

5 MR. HARRIS: Well, no, I want to convince Your Honor.

6 THE COURT: This is not Perry Mason. You're not going
7 to convince -- you're too young to remember that.

8 You're not going to convince him, right?

9 MR. HARRIS: I'm trying to convince the trier of fact.

10 THE COURT: Okay. So move on. Anything else?

11 Are you still the representative of the defendants?

12 THE WITNESS: There is no current -- no.

13 THE COURT: When was the last time you spoke with them,
14 either one?

15 THE WITNESS: When we renewed the lease.

16 THE COURT: When was that?

17 THE WITNESS: Back in September.

18 THE COURT: Okay. And they've been your clients for
19 how long, Honey Sherman and Mary Shechtman?

20 THE WITNESS: Well, Honey a little bit longer than
21 Mary. I'll say 2007, but it could be 2008.

22 THE COURT: Okay. It's been a good relationship?

23 THE WITNESS: Yes.

24 THE COURT: You want to continue to have them as
25 clients?

1 THE WITNESS: I would love to have them as clients.

2 THE COURT: Go ahead. Any other questions?

3 BY MR. HARRIS:

4 Q. Let's look at Exhibit 1.

5 Do you recognize this document?

6 A. Yes.

7 Q. Okay. And it bears the initials and signature of Mary
8 Shechtman, correct?

9 A. An MS, which is my signature, but yes.

10 Q. MS for Mary Shechtman, not for Sean Joseph, right?

11 A. Correct.

12 Q. Okay. And you conveyed this counteroffer to the plaintiffs,
13 correct?

14 A. No, to their agent.

15 Q. Okay. But to the plaintiffs' agent, Mr. Santidrian?

16 A. With the instruction that we also needed to have another
17 party sign in order to have an executed contract.

18 Q. Well, didn't you wait until after you had received the
19 return counteroffer before you advised them of that?

20 A. That's not -- no, because we had phone conversations and
21 then the next day when I sent it in writing was because -- and
22 even Mr. Santidrian says in emails that we were surprised to
23 hear from a bank that they wanted to get in to do an appraisal.
24 So I called him in a frantic saying, why is an appraiser calling
25 us when we don't have the fully executed contract? And then he

1 said to me, I don't know. Let me speak to my clients. I didn't
2 order the appraisal.

3 So that's why I put it in writing.

4 Q. Okay. So just to be clear, your testimony is you had
5 advised the buyers that two signatures were required before they
6 returned the counteroffer?

7 A. I did not speak to the buyers during any negotiations.

8 Q. Okay. Through their agent.

9 A. Correct. And also, we did not provide -- they had asked for
10 condominium documents. I did not provide those, either, at the
11 time of the contract because I said that we didn't have an
12 executed agreement yet. So I did not provide any condo docs,
13 either, at that time.

14 Q. Okay. I'd like you to look back at Exhibit 30, which is
15 your deposition transcript, Page 101, please.

16 THE COURT: You want him to read a whole deposition?

17 MR. HARRIS: I would like him to look at Page 101 of
18 his deposition testimony, Exhibit 30, Plaintiffs' 30.

19 THE WITNESS: Okay.

20 BY MR. HARRIS:

21 Q. And you see beginning of line 5;

22 "Question: After you received back the signatures of
23 the Katsantonises?

24 "Answer: Once they agreed to come up to 1.3, I had a
25 telephone conversation with him --"

1 THE COURT: Slow down when you read.

2 MR. HARRIS: Sorry.

3 BY MR. HARRIS:

4 Q. "-- with him, which I said --" and him is Raul, right?

5 A. Correct.

6 Q. Okay -- "which I said, him and I had several telephone
7 conversations before and even after this, regarding, yes,
8 that I needed now to get Honey's approval.

9 "Question: But that was after you received back the
10 signed -- the offer signed by --

11 "Answer: Correct. To let him know that we needed to
12 have an executed contract.

13 "Question: Did you -- and it had to be signed -- after
14 it had been signed by the Katsantonises?

15 "Answer: Yes."

16 Weren't you testifying at that time that you had not
17 advised Mr. Santidrian that a second signature was required
18 until after you had received the signed document from the
19 Katsantonises?

20 A. What I just said is I think it was on the 7th. So it was
21 the same day.

22 Q. After you --

23 A. Once they agreed to it, then I let him know because like the
24 Judge had just said, that what I was doing was signing myself.

25 Once they agreed to it, I told them that we did not have an

1 executed contract and that we needed to get one.

2 Q. Exactly. So it was after they had signed it and returned it
3 that you advised them --

4 A. At the time.

5 Q. Right, after. After they accepted, you advised them for the
6 first time that you needed Honey's signature as well?

7 A. Well, I also told them that she wasn't -- in the email
8 prior, that she is not fully agreeing to this until she finds
9 some place, you know --

10 Q. Well, that's not Honey, right, that's Mary?

11 A. That's both of them.

12 Q. Well, no. The email was that Mary needed a place to live.
13 Honey already had a place, right?

14 A. This is not a place to live.

15 Q. Okay. My question is, wasn't it Mary that advised you that
16 she singularly needed another place to live?

17 A. No, that they both needed -- they talked to each other. So
18 they needed to -- and as a matter of fact, in the email trail
19 you'll see where they were coming down together to look together
20 at residences.

21 Q. For a place for who to live?

22 A. It wasn't for either one of them to live. This is an
23 investment property.

24 Q. So they needed another property. That was the term, that
25 was the parameter that you're relying on, that they needed

1 another property to have as an investment property before they
2 would be willing to sell?

3 A. Eventually she would probably move into it, eventually;
4 maybe use it. But I don't know what's going to happen in the
5 future.

6 Q. It wasn't really a solid term of any deal, right? It was
7 just kind of an idea to get another investment property?

8 A. I'm sorry?

9 Q. It wasn't really a set deal then, was it? It wasn't a
10 requirement of the contract, right?

11 A. Well, of course we didn't put it in the contract, but it was
12 conveyed to them prior to.

13 Q. Okay.

14 A. No, it wasn't like, I need to sell my place in order to buy
15 this place or anything like that. It wasn't in the contract.
16 But someone's state of mind to selling a place would be, I would
17 sell it for 1.3 million. Unless I could find another place that
18 I like, I don't want to sell this place, regardless of price.
19 That was her mindset. It didn't matter if I got 1.5 million.
20 She needed to be able to put the money somewhere else that she
21 felt comfortable that she wanted to purchase.

22 THE COURT: How much did you think the condo was worth?

23 THE WITNESS: At that time, that would have been the
24 highest price.

25 THE COURT: The 1.3?

1 THE WITNESS: Correct.

2 THE COURT: You don't think it was worth more than
3 that?

4 THE WITNESS: What I think and what the market bears
5 are two different things.

6 THE COURT: Well, I meant what you thought as a
7 Realtor. Not what you think --

8 THE WITNESS: My personal opinion is I think it's
9 worth -- that it was worth probably more.

10 THE COURT: How much more?

11 THE WITNESS: I mean, it's hard to say because the
12 market was very volatile.

13 THE COURT: Well, in February, how much? If someone
14 were to ask you, hey, we want to put it up for sale. What do
15 you think we can get for it? What would you say?

16 THE WITNESS: Well, what you can get for it? I would
17 have told them what they can get for it, not what I think.

18 THE COURT: Okay. I'm not understanding what the
19 difference is, what you think versus what you get for it.
20 What's the difference?

21 THE WITNESS: The differences are on comparables. And
22 this is my opinion versus facts.

23 THE COURT: So your opinion is inconsistent with the
24 facts?

25 THE WITNESS: Yes.

1 THE COURT: You don't know what you're talking about
2 then.

3 THE WITNESS: No. My opinion would be -- if you asked
4 me my opinion of what I think it would be worth versus what the
5 actual sales prices are, we were just talking about this
6 earlier.

7 THE COURT: So your opinion is not based on comparables
8 even though you're a Realtor.

9 THE WITNESS: No. You're twisting my words, Your
10 Honor. You asked me what my opinion was at first and then I
11 said to you my opinion is different than what the actual comps
12 are.

13 THE COURT: Well, you told me your opinion is different
14 than what the actual value would be. How could that be
15 different? I'm asking you what you think.

16 THE WITNESS: Because the market didn't bear what the
17 property should be worth.

18 THE COURT: Pardon?

19 THE WITNESS: The market hadn't beared what the
20 property should be worth, in my opinion at that time yet.

21 THE COURT: But the market is what directs what the
22 value of something is?

23 THE WITNESS: Correct. We're saying the same thing,
24 correct.

25 THE COURT: Okay. But you're not saying it very well,

1 are you?

2 THE WITNESS: Then I'm not saying it well.

3 THE COURT: No. What do you think the market dictated
4 that the value of that condominium was --

5 THE WITNESS: One point --

6 THE COURT: Excuse me -- in February?

7 THE WITNESS: 1.2 million to 1.25 million.

8 THE COURT: Not more?

9 THE WITNESS: That's correct.

10 THE COURT: And you told them that?

11 THE WITNESS: Told who that, Your Honor?

12 THE COURT: Your clients. Who were your clients?

13 THE WITNESS: They knew what the comparables were.

14 THE COURT: Did you tell them what you thought it was
15 worth or you're the only Realtor who did not tell your clients,
16 this is what you can get for it?

17 THE WITNESS: No, not with -- I listened to what she
18 wanted to do.

19 THE COURT: You don't tell them as a Realtor what you
20 think it's worth?

21 THE WITNESS: What I told her really didn't matter
22 because she wanted what she wanted.

23 THE COURT: So your normal practice is not to tell
24 someone, this is what it's worth. If someone comes to you as a
25 client and says, I want \$5 million for that, you say, we're

1 going for it. You don't say --

2 THE WITNESS: No, I wouldn't waste my time.

3 THE COURT: Okay. So in this case with your
4 relationships since 2007, you didn't tell them what you thought
5 it was worth?

6 THE WITNESS: Again, I didn't tell them -- I'm getting
7 confused with the word "thought." I told them what the market
8 would bear. That's not my thought.

9 THE COURT: What did you tell them the market would
10 bear?

11 THE WITNESS: 1.2 to 1.25, but we've had this property
12 on and off the market at different various prices for a very
13 long time, just kind of fishing.

14 THE COURT: Okay. Go ahead.

15 BY MR. HARRIS:

16 Q. Now, Exhibit 1 is the -- it's accepted by the defendants
17 with their initials, but before that you had sent this
18 counteroffer to Mr. Santidrian, correct?

19 A. Yes.

20 Q. Okay. And you thought you had the authority to deliver that
21 from your client, correct?

22 A. Again, I had the authority to negotiate certain parameters
23 based on what she said that she wanted for the unit.

24 Q. Okay. But my question is, you thought you had authority to
25 issue the counteroffer that led to this document, the \$1.3

1 million counteroffer, correct?

2 A. I sent it.

3 Q. And you thought you had the authority from your clients
4 based on --

5 A. Based on the terms, yes.

6 Q. -- based on the discussion --

7 THE COURT: Don't interrupt, folks.

8 MR. HARRIS: I'm sorry. I'm sorry.

9 BY MR. HARRIS:

10 Q. -- based on the discussions that you had had with both Mary
11 and Honey, correct?

12 A. I didn't have discussions with Honey at that time because
13 she was traveling.

14 Q. Well, you had had previous discussions with Honey and Mary
15 where you understood that you were authorized to sell the
16 property for \$1.3 million, correct?

17 A. At this particular time I did not have authority from Honey
18 to do anything.

19 Q. Well, who was your client?

20 A. Both of them.

21 Q. Okay. So I would like you to look again at Exhibit 30, Page
22 96.

23 MR. SOTO: What page?

24 MR. HARRIS: 96.

25 BY MR. HARRIS:

1 Q. Are you there?

2 A. Um-hum.

3 Q. Okay. You see here starting on Line 5:

4 "Question: In response to the 1.27, afterwards there
5 was a counteroffer from Mary Shechtman for 1.3, correct?

6 "Answer: Correct.

7 "Question: And at the time that you conveyed that 1.3,
8 did you believe that you had the authority to make the offer
9 for 1.3?

10 "Answer: Again, I did what my client asked me to do."

11 Correct?

12 A. Correct.

13 Q. So weren't you acting on instructions from your client to
14 issue the \$1.3 million counteroffer to the plaintiffs?

15 A. Again, in negotiations, yes.

16 Q. Again, in negotiations --

17 A. For negotiation purposes, yes.

18 Q. Right, in negotiation, exchange of offers and counteroffers,
19 right?

20 A. Correct.

21 Q. Okay. So you had the authority to issue that counteroffer
22 from both defendants?

23 A. Correct.

24 Q. Okay.

25 A. No, I did not speak to Honey. I only spoke to Mary.

1 Q. Okay. So when you say that you had the authority from your
2 client, now you're mincing, and sometimes you have one client
3 and sometimes you have another client?

4 A. Correct. We said that earlier. Sometimes I speak to both,
5 sometimes I speak to one or the other.

6 Q. Okay. But you had Mary's authority, right, to sign her name
7 to this counteroffer, \$1.3 million counteroffer?

8 A. I did not have authority to sign her name. I had authority
9 to negotiate on her behalf.

10 I made a mistake to be honest with you. I made a
11 mistake. You know, I was trying to negotiate a contract. I
12 never thought they would even come close to 1.3 million. I kind
13 of got caught, as Your Honor has kind of pointed out, in doing
14 something that I shouldn't have been doing.

15 Q. Okay. Well, let's go back to the prior counteroffer that
16 you issued, the \$1.33 million counteroffer. That's Exhibit 12.
17 Can you look at that, please?

18 A. I'm sorry. Which exhibit, 12?

19 Q. Exhibit 12.

20 A. Yes.

21 Q. Now, when you sent this counteroffer, you did send this
22 counteroffer to the plaintiffs' agent, correct?

23 A. Correct.

24 Q. Okay. And when you sent this counteroffer, at the time you
25 signed MS and Mary Shechtman's signature, you did so with the

1 understanding that you had the authority to do so from Mary
2 Shechtman, correct?

3 A. Again, I don't have the authority to sign her name. I did.
4 What I did was I had the authority to negotiate within certain
5 parameters.

6 Q. Well, didn't she explicitly direct you to sign her name and
7 initial the document?

8 A. She did not explicitly direct me to sign her name.

9 Q. Okay. I'd like you to look again at your deposition
10 testimony, Exhibit 30.

11 A. Okay.

12 Q. Page 84, Line 4:

13 "Question: At this time, did you advise Raul that this
14 was -- at the time that you signed the "MS," you did so with
15 the understanding that you had the authority to do so from
16 Mary Shechtman, correct?

17 "Answer: She asked me to do so, yes.

18 "Question: She asked you to do this.

19 Okay. And this is your signature --

20 "Answer: Correct.

21 "Question: -- on the back as well?

22 "And you understood that you had her authority to sign
23 her name as well?

24 "Answer: Correct.

25 "Question: She told you explicitly?

1 "Answer: Correct."

2 So your testimony then was that you had explicit
3 authority from Mary Shechtman to sign her name and initials, but
4 your testimony today is that you had no authority. That's what
5 you're telling me?

6 A. I know I did something wrong. I was trying -- I never
7 thought that this without a fully executed contract would ever
8 get this far and I was trying not to get myself into a heap of
9 trouble knowing that I had signed her name without expressed
10 authorization or a Power of Attorney.

11 Q. Well, I'm more interested in the testimony you gave. You
12 remember you were under oath at that deposition, correct?

13 A. That's correct.

14 Q. You took an oath to swear to tell the whole truth and
15 nothing but the truth. Do you remember that?

16 A. I do.

17 Q. Okay. Is this testimony that we just read into the record
18 the truth?

19 A. Not 100 percent.

20 Q. Okay. So you gave false testimony in support of this -- or
21 in this case, correct?

22 A. Apparently.

23 Q. What do you mean, "apparently"?

24 A. Well, I'm saying yes.

25 Q. Are you saying it's open to debate?

1 A. I'm saying yes.

2 Q. And why did you give that false testimony back when we took
3 your deposition?

4 A. I just told you I knew that -- my client had asked me to
5 negotiate on her behalf. I signed her name on behalf of one of
6 my clients. Okay. If we had a meeting of the minds, it would
7 have been signed by all parties. It was not. So I did
8 something unethical.

9 Q. Okay. And so when you testified that she explicitly told
10 you to sign her name to a counteroffer in this case, that's
11 false. Is that what you're telling me?

12 A. Correct. Maybe I inferred wrong, you know. She asked me to
13 negotiate certain parameters. I signed her name. I was never
14 specifically told, you know, go ahead and sign my name. You
15 know, this would be binding if you signed my name.

16 Q. Okay. And the lease we looked at before that you said as
17 per email, did you sign that with authority?

18 A. That I had an email saying to just go ahead and sign it.

19 Q. Okay. One that we don't have in discovery?

20 A. Well, it wasn't -- again, that had nothing to do with this
21 contract. It was a totally separate transaction. I don't know
22 if you have it or not.

23 Q. But you gave it to -- your testimony is that you produced it
24 to --

25 A. I'm not 100 percent sure if I did or I didn't.

1 Q. Well, who did you give the document to?

2 A. Again, I'm not 100 percent sure.

3 Q. So it's possible that you never gave us that email?

4 A. It's possible.

5 Q. Okay. Do you think you have that email?

6 A. Yes.

7 Q. Okay. And did you hold it back?

8 A. I didn't hold it back. It has nothing to do with this
9 transaction, this contract. When I was asked to provide
10 documents, I was asked to provide documents pertaining to this
11 contract.

12 Q. Okay. So before when you said you produced it in discovery,
13 that's not true?

14 A. Again, I don't recall.

15 Q. Okay.

16 MR. HARRIS: Your Honor, I'm almost finished, if you
17 can just indulge me for a minute.

18 Your Honor, I wanted to move some documents into
19 evidence through this witness.

20 THE COURT: Give me the numbers.

21 MR. HARRIS: I can't remember if we moved in Number 3,
22 which is the lease.

23 MR. SOTO: We did, Your Honor.

24 THE COURT: Hold on.

25 MR. HARRIS: Number 8 would be the --

1 THE COURT: Hold on. Hold on.

2 MR. HARRIS: Oh, I'm sorry.

3 THE COURT: Hold on. Number 3 has been admitted.

4 Next.

5 MR. HARRIS: Number 13 -- sorry, Number 8.

6 THE COURT: Any objection?

7 MR. SOTO: Yes, Your Honor. There are several emails
8 in here that are also from Raul Santidrian. He's not here to
9 authenticate them and they are the last --

10 THE COURT: Is he going to be here tomorrow?

11 MR. HARRIS: Your Honor, it's an exchange of emails
12 between Mr. Santidrian and --

13 THE COURT: I'm sorry, my accent must be getting worse
14 as the hour gets late. Is he going to be a witness tomorrow?

15 MR. HARRIS: Yes, Your Honor.

16 THE COURT: You think this is a made-up email and it's
17 false, Mr. Soto? Is that what you think, it's a made-up email?

18 MR. SOTO: No, Your Honor.

19 THE COURT: Then I'll admit it.

20 MR. SOTO: Okay.

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

22 THE COURT: Next.

23 MR. HARRIS: Number 13.

24 THE COURT: Any objection to that email?

25 MR. SOTO: No, Your Honor.

1 THE COURT: Admitted.

2 (Plaintiffs' Exhibit Number 13 was received in evidence.)

3 THE COURT: Next.

4 MR. HARRIS: 22.

5 THE COURT: Any objection?

6 MR. SOTO: It's already been admitted, Your Honor.

7 MR. HARRIS: I believe that's been admitted, actually.

8 THE COURT: It has been admitted. Next.

9 MR. HARRIS: 28.

10 THE COURT: Any objection?

11 MR. SOTO: No.

12 THE COURT: It will be admitted.

13 MR. SOTO: Actually, Your Honor, it's being admitted
14 twice. It's already in Exhibit 3 --

15 THE COURT: It won't be the first time I get to see or
16 hear something twice.

17 MR. SOTO: -- or 8.

18 THE COURT: Unfortunately. Next.

19 MR. HARRIS: Is it admitted, Your Honor?

20 THE COURT: Yeah.

21 MR. HARRIS: Okay.

22 (Plaintiffs' Exhibit Number 28 was received in evidence.)

23 MR. HARRIS: I believe that's it.

24 THE COURT: All right. Cross-examination.

25 How long are you going to be?

1 MR. SOTO: 15, 20 minutes at most, Your Honor.

2 THE COURT: It's up to you. You want to do it now or
3 tomorrow?

4 MR. SOTO: I'd rather do it today just so we don't have
5 to call him back tomorrow.

6 THE COURT: Okay. It's up to you.

7 MR. SOTO: Thank you, Your Honor.

8 CROSS-EXAMINATION

9 BY MR. SOTO:

10 Q. Mr. Joseph, did you ever have authority, express authority
11 from Honey Shechtman or Honey Sherman?

12 THE COURT: I'm sorry, you have to use the mic because
13 the court reporter can't hear you.

14 MR. SOTO: I apologize.

15 THE COURT: No problem.

16 BY MR. SOTO:

17 Q. Mr. Joseph, did you ever have express authority to enter
18 into a contract from Honey Sherman?

19 A. No.

20 Q. In your opinion -- let me rephrase that. Why did you
21 execute the contract, the counteroffer for Mary Shechtman?

22 A. In good faith to negotiate the deal, to get it going, until
23 I was able to speak to both parties and both parties were able
24 to do whatever they needed to do.

25 Q. And didn't you convey that to Raul the first thing in the

1 morning on the 8th?

2 A. I did.

3 Q. Did you ever have a conversation with him that evening of
4 the 7th and also tell him that?

5 A. I did.

6 Q. Now, did you create what is Exhibit Number 1? I believe it
7 should be right there in front of you.

8 A. No.

9 Q. Do you know who did?

10 A. It was provided to me by Raul Santidrian. Whether he did it
11 or someone in his office, an assistant or something, I really
12 can't answer that, but it was provided to me from him.

13 Q. Okay. Did you know that the initials of Joanne Katsantonis
14 and Vivian Katsantonis were done by the same person?

15 A. No.

16 Q. Did you just find that out for the first time today?

17 A. I just found that out today.

18 Q. Did you ever receive a copy of this executed contract with
19 the initials on the right side?

20 A. No.

21 Q. Take a look at what's been marked as Exhibit Number 2, the
22 second page.

23 A. Yes.

24 Q. Wednesday, February 6, 2013 at 4:42 p.m. Do you see that
25 email --

1 A. Yes.

2 Q. -- in the middle of the page?

3 Did you send an email to Raul?

4 A. Yes.

5 Q. Is that the email that you sent to him?

6 A. Yes.

7 Q. And isn't it true in that email on February 6th --

8 THE COURT: Which exhibit are we talking about?

9 MR. SOTO: Exhibit Number 2, Your Honor.

10 THE COURT: Plaintiffs' 2?

11 MR. SOTO: Yes, Your Honor.

12 THE COURT: Okay.

13 MR. SOTO: Second page.

14 THE COURT: Go ahead.

15 BY MR. SOTO:

16 Q. Isn't it true that you told Raul at that time that you
17 hadn't gotten any authority?

18 MR. HARRIS: Objection, Your Honor.

19 THE WITNESS: Yes.

20 THE COURT: Overruled.

21 MR. HARRIS: He's leading.

22 THE COURT: Overruled. He's cross-examining.

23 MR. HARRIS: Your Honor --

24 THE COURT: He's cross-examining.

25 MR. HARRIS: He's a favorable witness called in or an

1 adverse witness called in our case in chief.

2 THE COURT: I didn't see that in the rule. Remember
3 when I read the three things? It didn't say, and then when you
4 cross-examine an adverse witness, you cannot lead. It didn't
5 say that. Get on a committee; maybe it should say that. But
6 see, that's the danger in calling a so-called adverse or hostile
7 witness. The other side can, indeed, lead.

8 MR. HARRIS: There are authorities that say the
9 opposite, Your Honor, that --

10 THE COURT: Okay. Tell me what Eleventh Circuit case
11 says that.

12 MR. HARRIS: I knew that was going to be your next
13 question. I will bring them tomorrow.

14 THE COURT: Oh, well, today is when I need it.
15 Tomorrow is too late.

16 You know, see, the problem with all of that is we're
17 missing the point. The reason people shouldn't lead is because
18 when you lead as a lawyer, the witness doesn't get the chance to
19 explain. So you generally lead a witness who is not with you
20 because you just want him to say yes, no; yes, yes, yes, yes,
21 yes, in front of the jury.

22 When you're in front of the judge who asks a lot of
23 questions, all of that is kind of almost meaningless. So if I
24 were to say, your name is Mr. Harris, that would be a leading
25 question, but no one would care if it's leading because

1 everybody agrees that that's the truth, right?

2 Now, your theory of the case here regarding this
3 witness is what? Is he changing his testimony?

4 MR. HARRIS: Yes, he is, Your Honor.

5 THE COURT: So you think by your opposing counsel
6 leading him, it make him seem more credible or less credible?

7 MR. HARRIS: Less credible, Your Honor.

8 THE COURT: Why would you object to that then? I'm not
9 understanding.

10 MR. HARRIS: I will sit down, Your Honor.

11 THE COURT: I'm not saying I'm making a finding as
12 such. I'm just trying to figure out why you all do what you do.

13 MR. HARRIS: I'll withdraw the objection, Your Honor.

14 THE COURT: Okay. Next question.

15 MR. SOTO: Judge, I think I learn more in this
16 courtroom than I ever did in law school.

17 THE COURT: I teach a class tomorrow at 7:00 in the
18 morning on that. You're welcome to go.

19 MR. SOTO: I think I'm going to be here.

20 THE COURT: Not at 7:00 in the morning, you're not,
21 because I won't.

22 Next question.

23 BY MR. SOTO:

24 Q. Mr. Joseph, isn't it true that at that time you told Raul
25 that you didn't have authority from anyone?

1 A. Yes.

2 Q. It says that?

3 A. Yes, that's what I'm reading.

4 Q. "However, keep in mind that my seller will not sell for less
5 than 1.3 million. In fact, she has not --"

6 THE COURT: When was that conversation through email?

7 MR. HARRIS: February 6th at 4:42 p.m.

8 THE COURT: Okay. Thank you.

9 BY MR. SOTO:

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

11 A. Correct, with a typo.

12 Q. And you told that to Raul?

13 A. Correct.

14 Q. Take a look -- and you should have a white binder -- you
15 know what, I actually didn't provide it to you.

16 MR. SOTO: Judge, may I approach the witness?

17 THE COURT: Sure. With what?

18 MR. SOTO: Exhibit Number 6, text messages.

19 THE COURT: Defense or plaintiffs?

20 MR. SOTO: Defense.

21 THE COURT: Okay. It's always good to say that, so we
22 know which book we're looking at.

23 MR. SOTO: It's in the white one, Judge.

24 THE COURT: Defendants' 6.

25 Do you want to introduce it?

1 MR. SOTO: Yes, I do, Your Honor.

2 THE COURT: Any objection?

3 MR. HARRIS: I only object to the document in the sense
4 that it's unclear whether this -- the third and fourth pages,
5 especially the third page, doesn't have a date or a time.

6 THE COURT: You think it's fake, made up?

7 MR. HARRIS: I don't know, Your Honor.

8 THE COURT: You don't know.

9 MR. SOTO: He gave it to me.

10 THE COURT: So who would know? Would Raul Santidrian
11 know whether it's fake or not?

12 This is email correspondence between the two Realtors,
13 Sean Joseph and Raul Santidrian.

14 MR. SOTO: No, sir. Text messages.

15 THE COURT: Text messages, I'm sorry. Correspondence,
16 we'll call it.

17 Is it true or not true? Would those two individuals
18 know whether this is what they text messaged or whether someone
19 is hacking?

20 So is this true or not true or someone is just making
21 this up?

22 MR. HARRIS: I believe that the emails were sent, that
23 the texts were sent. It's just that you can't really tell on
24 some of them when they were sent, and they're ordered a certain
25 way here.

1 THE COURT: Okay. Who would know when they were sent?

2 MR. HARRIS: Raul.

3 THE COURT: Raul would know. Are you going to call?

4 MR. HARRIS: Yes, Your Honor.

5 THE COURT: Okay. So do you want to ask him?

6 MR. SOTO: Mr. Santidrian?

7 THE COURT: I'm sorry. I'm talking to your opposing
8 counsel first.

9 You're going to ask him, when did you get these?

10 MR. HARRIS: I would like to ask him if they're in the
11 right order.

12 THE COURT: Well, ask him, look at Exhibit 6. Is this
13 in the right order? Now, if he says, no, they're trying to fool
14 me. This was really February 9th and not 6th. This is after
15 the fact, boy, we've got a real dispute. If he says, yeah, he
16 told me that. I made a mistake or I didn't do it or he's lying,
17 then we've got a trial, don't we? So we'll wait till then and
18 I'll admit 6.

19 (Defendants' Exhibit Number 6 was received in evidence.)

20 MR. HARRIS: Thank you, Your Honor.

21 THE COURT: Next.

22 BY MR. SOTO:

23 Q. Mr. Joseph, take a look at Exhibit Number 6. Is that a text
24 message that was sent to you by Raul Santidrian?

25 A. Yes.

1 Q. And his appear on the right and yours appear on the left,
2 correct?

3 A. Correct.

4 Q. And on the very first page, he says, "Sean. We have an
5 executed contract. I will send it to you tonight when I get
6 home. They are wiring the 50,000 to Sotheby's. I will send
7 you an escrow letter tomorrow. Can you send me seller's
8 disclosure and the condo docs tomorrow."

9 Correct?

10 A. Correct.

11 Q. And you responded to that, correct?

12 A. In text, yes.

13 Q. "I need to get all that and speak seller."

14 A. Correct.

15 Q. Now, if we take a look at that next page, it actually does
16 have a date on it, doesn't it, in middle of the page.

17 A. Yes.

18 Q. It says February 8, 2013, 8:55 a.m., correct?

19 A. Correct.

20 Q. Now, text messages, would everything that above it, appears
21 above that date, have occurred prior to that time and date?

22 A. Yes.

23 Q. Okay. So your conversation above February 8, 2013 all
24 occurred prior to that time?

25 A. Correct.

1 Q. Okay. And then you sent him, "I need to talk. I need to
2 get all that and speak seller."

3 That's the same text, just a different picture.

4 A. It looks that way.

5 Q. Okay. And then at the bottom, "I sent the agreement to
6 seller attorney Joel Piotrowski. Spoke to him yesterday and
7 asked me --" and it continues on the next page, but we don't
8 have any more, correct?

9 A. Correct.

10 Q. You didn't produce these, correct?

11 A. No.

12 Q. These came from Raul Santidrian, correct?

13 A. Correct.

14 Q. Did you attempt to get your text messages?

15 A. I did.

16 Q. Did you ever produce them to anybody in this case?

17 A. No, I was unable to obtain them.

18 Q. Okay. And this is all that Mr. Santidrian, to your
19 knowledge, has provided?

20 A. Correct.

21 Q. Now, it says, "Well, we have an executed contract, fully
22 effective. That is just a request by her attorney. But
23 that's fine, send it to him if he is requesting it."

24 Do you recall what you had said to him before that led
25 Raul to text that to you on February 8th in the morning?

1 A. Correct, that the day prior we had a conversation, a
2 telephone conversation where I explained to him that we did not
3 have an executed contract. I needed to get all parties to sign
4 the contract. I also told him that I was not going to provide
5 the condo docs to him because we did not have an executed
6 contract at that time and I also told him that I would be
7 speaking to my clients.

8 Q. And the reason that we know that occurred on February 8th
9 prior to 10:45 a.m. is because if you flip to the next page, it
10 actually is another snapshot of that previous screen with his
11 response to you, correct?

12 A. Correct.

13 Q. And at the bottom it says February 2013, 10:45 a.m.

14 A. Correct.

15 Q. So we know that everything before this for the preceding
16 three pages occurred prior to 10:45 a.m.?

17 A. Correct.

18 Q. On the 8th?

19 A. Correct.

20 Q. Okay. And again, you had no authority from Mary Shechtman
21 or Honey Sherman to enter into this final agreement that they
22 consider a counteroffer in this matter, correct?

23 A. Correct.

24 MR. SOTO: Thank you. No further questions.

25 THE COURT: Any redirect?

1 REDIRECT EXAMINATION

2 BY MR. HARRIS:

3 Q. I'd just like you to look quickly at Exhibit 2.

4 THE COURT: Plaintiffs' 2.

5 MR. HARRIS: Yes, Plaintiffs' Exhibit 2.

6 THE WITNESS: Which book would that be, the same book
7 that I was looking at?

8 BY MR. HARRIS:

9 Q. The black one.

10 A. Okay.

11 Q. Okay. And you said you received this email, correct?

12 A. That's correct.

13 Q. Okay. And the last email on the chain in time is the top
14 one.

15 "Sean, per as our phone conversation earlier, I'm
16 sending you the fully executed contract."

17 Do you see that?

18 THE COURT: Slow down.

19 MR. HARRIS: Oh, I'm sorry.

20 BY MR. HARRIS:

21 Q. Let me read that again.

22 It says, "Sean, as per our phone conversation earlier,
23 I'm sending you the fully executed contract at Trump Tower
24 III, Unit 3807." Right?

25 A. Correct.

1 Q. And if you flip to the last page of the exhibit, you see
2 there's an icon there for an attachment.

3 A. Okay.

4 Q. Okay. So there was an attachment to this email, right?

5 A. On my --

6 THE COURT: Where are we going now?

7 MR. HARRIS: The very last page, Your Honor.

8 THE COURT: Of Exhibit 2?

9 MR. HARRIS: It's Exhibit 2.

10 THE COURT: Okay.

11 BY MR. HARRIS:

12 Q. There's a PDF attachment. It says Trump Tower III, Unit
13 3807. Do you see that?

14 A. I do see that.

15 Q. Okay. And so he said he was sending you the fully executed
16 contract?

17 THE COURT: That's what he said, right?

18 MR. HARRIS: That's what the email says.

19 THE COURT: Okay.

20 BY MR. HARRIS:

21 Q. And on February 7, 2013, 8:26 p.m., right?

22 A. Correct.

23 Q. Okay. And so what was that document that he sent you? What
24 was that attachment?

25 A. That's a very interesting question because when we went

1 through my emails, there was no attachment on it. There was no
2 record on the chain that said attachments or anything of that
3 nature.

4 Q. Well, you testified he received this email.

5 A. You testified that I received what I'm reading here and then
6 on the back you're showing me on his that he provided -- it
7 shows an attachment. On mine it did not show an attachment.

8 Q. Okay. But even though we had all this testimony before
9 where you said that you had received the executed contract from
10 the plaintiffs, and we can go back to the deposition if need be,
11 but now you're saying that you didn't receive an executed
12 contract; is that right?

13 A. We just found out recently after discussing with the
14 attorneys, trying to get me to provide more emails and we were
15 going through everything you requested, the attorney noticed
16 that there was no attachment on mine.

17 Q. When did that conversation take place?

18 A. A couple of weeks ago.

19 Q. Okay. And how many emails did you produce a couple of weeks
20 ago or since a couple of weeks ago?

21 A. One email I think it was that we found, another one that
22 pertained.

23 Q. So you had a big meeting where you discussed one email?

24 A. We were going through everything to see if there was
25 anything that I missed, that's correct, because you were

1 requesting information.

2 Q. Okay.

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

4 THE COURT: Thank you, sir. You're excused. Have a
5 good day.

6 Who's your next witness?

7 MR. HARRIS: Raul Santidrian, Your Honor.

8 MR. SOTO: You can go, Mr. Joseph.

9 THE COURT: Thank you, sir. You're excused. Have a
10 good day.

11 Leave the exhibits there.

12 (The witness was excused.)

13 MR. HARRIS: Do you want a witness now or --

14 THE COURT: I just want to know who the next witness
15 is.

16 MR. HARRIS: Well, Mr. Santidrian is not here. He
17 would have been the next in my case.

18 THE COURT: He's not here? Why?

19 MR. HARRIS: We discussed this this morning, Your
20 Honor.

21 THE COURT: Oh, he's the one with the wife?

22 MR. HARRIS: Yes.

23 THE COURT: Oh, okay.

24 MR. HARRIS: And at the time you said he could go
25 tomorrow.

1 THE COURT: Did you find out what the story is with his
2 wife?

3 MR. HARRIS: I did not, personally.

4 THE COURT: Okay. Now, you're going to call him as a
5 witness to identify the emails that are not really in dispute,
6 right?

7 MR. HARRIS: To identify the emails. I would like him
8 to --

9 THE COURT: That are really not in dispute. They are
10 what they are, right?

11 MR. HARRIS: Well, no. Mr. Joseph just denied that he
12 received the executed contract. So I would like to get that
13 testimony.

14 THE COURT: Other than the attachment, does it really
15 matter? Let's think about this, okay? Help me out.

16 Raul Santidrian thought this was a contract, right?
17 That's what he wanted. Obviously, a Realtor always wants a
18 contract because they get a commission. I assume he wasn't
19 working for nothing, right? So he thinks it's a contract,
20 right?

21 MR. HARRIS: Yeah, that's not why I would be calling
22 him, but that's correct, Your Honor.

23 THE COURT: That's what he thinks. Now, that's
24 irrelevant, right, what he thinks?

25 MR. HARRIS: Yes, Your Honor.

1 THE COURT: Okay. So he's not going to testify about
2 that. He's going to identify emails that really say what they
3 say. They are what they are. We know what he said, what he
4 texted, what he wrote, and we know what Mr. Joseph texted,
5 right? So how does that help me decide this case?

6 He's the Realtor for the purchasers.

7 MR. HARRIS: Yes, Your Honor. He received all the
8 communications from the defendants.

9 THE COURT: From whom, from the defendants themselves?

10 MR. HARRIS: Through their agent.

11 THE COURT: Okay. See, that's really what the case is
12 about, though.

13 What do I do with this Defense Exhibit 6? That doesn't
14 help you.

15 Use the lectern to help me out. Use the lectern to
16 help the court reporter out. She's ready to go home, but she's
17 sorry that this was not a jury trial because I would send the
18 jurors home earlier.

19 But Joseph says, I made a mistake. I really didn't
20 have authority. I made a boo-boo. Now, you say he's covering
21 up because he wants what?

22 MR. HARRIS: More business from the defendants.

23 THE COURT: From the plaintiffs -- from the defendants.
24 From the defendants. Okay.

25 Now, what if he really did make a mistake? He also

1 wants this to go through, right? He testified that this was
2 worth 1.3 -- even less than 1.3 million.

3 MR. HARRIS: Yes, Your Honor.

4 THE COURT: And many Realtors always -- I probably
5 can't take judicial notice of this, but maybe I can. I don't
6 know. But a lot of Realtors would say to a client, oh, your
7 house is not worth a million bucks. Your house is worth
8 \$900,000. Why? Because it would sell quicker for \$900,000 and
9 they get 6, 7 percent. That's why Realtors are agents. But
10 look at that, they're agents sometimes of both purchasers and
11 sellers. So, I mean, we as lawyers think, wait, that might be
12 some kind of a conflict. But they travel under different rules.

13 So now he says, since he's not going to get a
14 commission -- though that would be an interesting thing. Query
15 if I grant specific performance, the Realtors are entitled to a
16 commission. I don't know. I don't know. And query as to
17 whether a Realtor who says he made a mistake, and if both of
18 them made a mistake individually, whether they can be sued for
19 what they did as Realtors.

20 See, look at all the stuff that could happen with this
21 case. Maybe if they lose, if either side loses, maybe you could
22 sue your own Realtor, I don't know, and spend even more time and
23 money. That's something that I don't know if mediators consider
24 when you guys do the numbers. Since I've never been to a
25 mediation, I don't know.

1 So he's going to come in and say, I sent all these
2 emails. That's not in dispute, is it, Mr. Soto?

3 MR. SOTO: No, Your Honor.

4 THE COURT: No. So what else is there?

5 MR. HARRIS: Well, it is in dispute that he sent the
6 executed contract.

7 THE COURT: Well, you call it an executed contract.
8 That begs the question.

9 MR. HARRIS: Exhibit 1.

10 THE COURT: See, I would sustain -- if this were in
11 front of a jury, I would sustain objections to that because
12 that's the issue. Is this a contract? Did the individuals who
13 signed it have the authority to sign it? That's what the case
14 is about.

15 The case is not about whether people are making up
16 these e-mails and text messages, right?

17 MR. HARRIS: Correct.

18 THE COURT: I mean, some cases are about that, but not
19 this case. The question is whether the ladies from the defense
20 actually gave the Realtor the authority to do that. He says now
21 no, but he said yes in the deposition. Right, that's really
22 what it is?

23 MR. HARRIS: That's one issue, Your Honor.

24 THE COURT: What if he was wrong? And even though they
25 said, go ahead, what does the law say about Realtors? Can a

1 Realtor do that?

2 MR. HARRIS: Your Honor, the law says that when the
3 parties conduct negotiations through their respective agents
4 exclusively, if they are not cloaked with actual authority,
5 which is what's being suggested, then they are certainly cloaked
6 with apparent authority.

7 THE COURT: Even if he acknowledges he made a mistake.

8 MR. HARRIS: Well, Your Honor, after the fact, you
9 know, in trial for the first time.

10 THE COURT: And cases on agency, you have cases on
11 agency involving purchases of property?

12 MR. HARRIS: Yes, Your Honor.

13 THE COURT: Realtors?

14 MR. HARRIS: Yes. I have a case -- I believe it's
15 Benson v. Seestrom cited in our summary judgment opposition in
16 which the principal created an offer, gave it to her agent and
17 said, it's only good for X number of days; and the real estate
18 agent, the seller's agent, took the offer and sat on it for a
19 couple of days. And then after the time --

20 THE COURT: Took the offer where? I didn't hear what
21 you said. I'm sorry.

22 MR. HARRIS: Okay.

23 THE COURT: Took the offer where?

24 MR. HARRIS: He had received the offer from his client,
25 the principal, and he sat on it for a couple of days.

1 THE COURT: Why did he do that? Are you kidding? He
2 would be quick on the trigger.

3 MR. HARRIS: Your Honor, my contact lens just popped
4 out. So forgive me if I'm a little --

5 THE COURT: Okay. Did you find it? Go ahead. Well,
6 find it.

7 MR. HARRIS: It may be in my eye somewhere.

8 THE COURT: You won't be the first lawyer who cries
9 here, nor the last.

10 MR. HARRIS: Can I get some help?

11 THE COURT: You okay?

12 Well, I don't know if it falls within the parameters of
13 her local counsel duties.

14 MR. HARRIS: It's in my eye, off the eyeball. I can
15 try to argue this, but I would like a bathroom break.

16 THE COURT: That's more than pro hac vice for 75 bucks.
17 Are you okay?

18 MS. MALFELD: It's way up there. It's way up there.

19 MR. HARRIS: I see it.

20 THE COURT: You got it?

21 MR. HARRIS: Yeah, it's in my eye. I can try to argue
22 this but I would like a bathroom break.

23 THE COURT: What did you do? What do you do with that
24 when it's in your eye?

25 MR. HARRIS: I can push it back down onto the --

1 THE COURT: Do you want to do that here or in the
2 restroom?

3 MR. HARRIS: I need to use a mirror in a restroom.

4 THE COURT: Okay. Then permission to go to the
5 restroom is granted.

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

7 (Christopher Harris, Esq., retired from the courtroom.)

8 THE COURT: We've got lawyers on both sides anyway
9 here.

10 I don't know where you all think you're going to end up
11 with this case because I don't know what I'm going to do. It
12 just seems like you're all like gerbils in a cage. You know,
13 have you ever seen those gerbils in cages? They go around and
14 around and around and they don't get anywhere. They lose a lot
15 of weight, I guess, but something some of us could --

16 MR. SOTO: People are forced to be the gerbil on the
17 merry-go-round.

18 THE COURT: Yeah. I wonder why that is, you know?

19 I wonder what would happen if you all ended up living
20 next to each other in a condominium, and you were, all four of
21 you, elected to be on that condominium board.

22 Maybe that's what we should do, if I had the power to
23 do that, and see what would happen, right?

24 MR. SOTO: Luckily there is only one condo in issue
25 here, not two.

1 THE COURT: Well, you know, I don't know. There are
2 all kinds of equitable powers, no? There seems to be money, you
3 know? At least we're not talking about super poor people.

4 MR. SOTO: How long have you been in this courtroom,
5 Judge?

6 THE COURT: Since the building was opened. What is
7 that, five years? Something like that.

8 MR. SOTO: And they put the lawyers on top of you. How
9 did that happen?

10 THE COURT: What do you mean they put the lawyers on
11 top of me? They put the things that count; the library, and
12 yeah, the lawyers. Yeah, they deserve to be in the penthouse.

13 MR. SOTO: There's a lawyer's --

14 THE COURT: Lounge.

15 MR. SOTO: -- lounge up there.

16 THE COURT: Yeah, I made it, the Judge Spellman Lounge.
17 He was a great judge. Oh, I could just imagine what he would do
18 with this case. May he rest in peace. He had a good Irish wit
19 to him.

20 (Christopher Harris, Esq. entered the courtroom.)

21 THE COURT: See, the problem with this case is by the
22 end of it, whatever I decide, one side or the other can appeal.
23 That takes a year. Of course, by then maybe we'll have a real
24 estate -- I personally think there's going to be another crash.
25 The reason I think there's going to be another crash is because

1 I go to lunch to Brickell sometimes and dinner and they're
2 building everywhere. Not as far north as where you all like to
3 live, you know, near Bal Harbour and Sunny Isles and all that,
4 but there are so many condominiums. So by then everything will
5 be worth less.

6 So if I order specific performance, how does that get
7 enforced? They have to do a closing, right?

8 MR. HARRIS: Yes, Your Honor.

9 THE COURT: Within 30 days. And if they don't do a
10 closing -- if you win on specific performance --

11 MR. HARRIS: Yes, Your Honor.

12 THE COURT: -- they have to close, and it's a cash
13 deal. So they get the money, \$1.3 million. The defendants
14 don't want \$1.3 million. Only in my courtroom do the defendants
15 not want money, but that happens.

16 Okay. You want 1.3? No, we don't. We don't want \$1.3
17 million. Okay. You're the defendants, not the plaintiffs. So
18 they don't want \$1.3 million.

19 Let's say the closing doesn't occur within 30 days of
20 the order. Then I guess I could enter final judgment in the
21 amount of \$1.3 million, right?

22 MR. HARRIS: No, Your Honor. I would hope that you
23 would enforce the --

24 THE COURT: Well, how do I enforce --

25 MR. HARRIS: You would hold them in contempt.

1 THE COURT: You want me to throw them in jail and then
2 they would have a place to live. That would kind of do it, and
3 it would be free. So there will be more money.

4 That's what you want me to do, throw them in jail?

5 MR. HARRIS: Your Honor --

6 THE COURT: No, but see, I think about what happens in
7 the future. Well, see, what lawyers do is, they look at the
8 immediate thing because you all do a good job, you fight for
9 your clients, but you're looking at what's right before you.

10 What I look at is what's going to happen at the end if
11 either side wins, and I don't know who's going to win. I really
12 don't. I really don't.

13 But even if I do rule in favor of someone, and I will,
14 the Court of Appeals could say -- they don't usually, but every
15 once in a while they send it back and they say, you blew it,
16 Moreno. You know what, that's not enough for apparent authority
17 and it's different and you really do need the signature. They
18 look at that trust and it says majority. It's not majority of
19 one. They might think it's the two of them.

20 I mean, you could have arguments. This is a triable
21 case. That's why I denied summary judgment. I make credibility
22 findings, but even if I make credibility findings, there's going
23 to be something missing in this case, right?

24 Something happened and I still don't know because I
25 haven't heard from everybody yet exactly what happened.

1 But if the plaintiffs win, I order specific
2 performance. They have to sell the condo, respecting the rights
3 of the tenant, of course, who's there. And if they don't do it,
4 what do I do, throw them in jail, fine them?

5 MR. HARRIS: I suppose you could have the marshal seize
6 the property.

7 THE COURT: Seize the property. Whenever the marshal
8 -- they're great, but they're a lot better at seizing prisoners
9 than property.

10 MR. HARRIS: Your Honor, I'm sure there are a number of
11 legal remedies.

12 THE COURT: Yeah.

13 MR. HARRIS: It's not the first time specific
14 performance has been ordered for the sale.

15 THE COURT: I know.

16 MR. HARRIS: In fact, the case that I was describing,
17 that was the remedy.

18 THE COURT: That's what they did in that case?

19 MR. HARRIS: Yes, Your Honor.

20 THE COURT: They ordered the sale and the sale didn't
21 go through?

22 MR. HARRIS: No, they ordered specific performance
23 because it was very similar.

24 THE COURT: And then what happened?

25 MR. HARRIS: Well, they don't report if they had to

1 enforce the ruling of the Court. They granted specific
2 performance.

3 THE COURT: In a district court case.

4 MR. HARRIS: It was a Florida district court -- for a
5 State court case.

6 THE COURT: A Court of Appeals case?

7 MR. HARRIS: Yes.

8 THE COURT: So they ordered that, and we don't know
9 what happened. But you care what happens because you just want
10 your clients to resolve the issue.

11 MR. HARRIS: Yes, Your Honor. If we were going to
12 respect the integrity of the judicial system, then we assume
13 people are going to follow orders or have consequences, and I
14 don't know what the full arsenal of the Court is to enforce
15 those decisions.

16 THE COURT: What am I going to do with Mr. Joseph's
17 testimony?

18 MR. HARRIS: Well, I think we had his admissions in
19 deposition. You have to make a finding between whether he's
20 telling the truth then or telling the truth today.

21 THE COURT: Okay.

22 MR. HARRIS: I don't know if you have to, but you can
23 weigh his testimony in the grand scheme of the entire testimony.
24 You're going to hear testimony from the defendants where they
25 will tell you that, or they did, unless they're changing their

1 testimony as well, that they gave Mr. -- well, that Mary had
2 authority to sell the property and they were all in agreement
3 and that everything that Mary did, Honey approved and vice
4 versa.

5 THE COURT: And how are they going to change their
6 testimony about that, Mr. Soto?

7 MR. SOTO: They didn't testify to that, Judge.

8 THE COURT: Pardon?

9 MR. SOTO: They didn't testify.

10 THE COURT: Okay. They did not say that?

11 MR. SOTO: No.

12 THE COURT: What did they say?

13 MR. SOTO: They specifically said that they did not
14 give Sean Joseph authority, specifically.

15 THE COURT: Okay. And you say they said they did give
16 him authority.

17 MR. HARRIS: Yes, Your Honor.

18 THE COURT: Wow.

19 MR. SOTO: Show us. We have their depositions here.

20 THE COURT: Well, the problem with depositions is, see,
21 depositions, once we go to trial, it's not substantive evidence.

22 MR. HARRIS: Correct, Your Honor.

23 THE COURT: It's whatever they say here.

24 Now, you can, of course, impeach them, attack their
25 credibility with a prior inconsistent statement, and then I can

1 accept or reject their testimony, right? I could do that.

2 MR. HARRIS: Yes.

3 THE COURT: But there's always a reason why people
4 change their testimony and perhaps don't tell the truth, right?

5 MR. HARRIS: Yes, Your Honor.

6 THE COURT: Usually, it's to avoid something negative
7 or to gain something positive, right?

8 MR. HARRIS: Yes, Your Honor.

9 THE COURT: The gain here is what, that the condominium
10 now is worth a lot more?

11 MR. HARRIS: Yes, Your Honor.

12 THE COURT: But in reality the condominium, if it's
13 worth more, it's only worth \$120,000 more.

14 MR. HARRIS: Your Honor, we would dispute that.

15 THE COURT: Well, you would dispute that, but you don't
16 really have proof of that because I can't consider --

17 MR. HARRIS: Well, if the plaintiffs tried to buy it,
18 they tried to make similar offers at the time for the same price
19 and more, and they were not able to get a unit.

20 THE COURT: But there are a lot of reasons why people
21 don't.

22 MR. HARRIS: There are a lot of reasons why people come
23 down. They might have been in a pinch and sold for anything --

24 THE COURT: Absolutely.

25 MR. HARRIS: -- and sell way below what the value was.

1 THE COURT: That, too, but a comparable that is an
2 actual purchase price is more valuable than a listing or an
3 offer, true?

4 It's tough coming here, but the answer is yes, even if
5 it hurts your clients. It's true, isn't it? And the
6 comparables --

7 MR. HARRIS: Assuming it's apple to apple, yes.

8 THE COURT: And the comparables are \$120,000 more.
9 Now, there may be some differences with them. One of the
10 differences with those two condominiums, I assume they're
11 higher.

12 MR. HARRIS: I believe in the 40s they would be higher.

13 THE COURT: They would be higher. The tradition is the
14 higher it is, the higher it is, right? The higher the
15 condominium, the higher the price, right? No one has vertigo
16 anymore, but most people love being in the penthouse. That's
17 why the 13th floor is considered better than the 12th, and
18 that's why I'm on the 13th floor, right?

19 So it's \$120,000 difference.

20 MR. HARRIS: I would dispute that, Your Honor. The
21 reason that there are so many variables with comps and different
22 locations and views and all those things, this is exactly why
23 the Court allows specific performance for land deals, real
24 estate deals. That's precisely the reason.

25 THE COURT: And I could see that if it was unique.

1 MR. HARRIS: Yes, Your Honor.

2 THE COURT: I can't see a Sunny Isles condominium being
3 that unique. I mean, I don't want to disrespect anybody who
4 loves the condominium that much, but it's not unique like the
5 house you've had for 40 years or the grandfather's house, the
6 homestead, right?

7 MR. HARRIS: It's a lot of money, Your Honor. It's
8 \$1.3 million.

9 THE COURT: Oh, it's a lot of money. No kidding.

10 MR. HARRIS: So it's not a decision made lightly.

11 THE COURT: So it's the money. It's not because it's
12 unique.

13 MR. HARRIS: Well, for that price you want to make sure
14 you're getting exactly what you want, and there are differences.

15 THE COURT: Do I have the authority, if you win, to
16 issue a final judgment if they don't sell for \$1.3 million?

17 MR. HARRIS: If we win --

18 THE COURT: If you win and they don't perform within 30
19 days --

20 MR. HARRIS: Yes.

21 THE COURT: We could say March, just a different year,
22 2014. Do I have the authority to issue a final judgment since
23 they're not doing what I'm telling them to do? Okay. Then pay
24 them \$1.3 million. That's the value of the condo. Do I have
25 the authority to do that?

1 MR. HARRIS: I believe --

2 THE COURT: I give you food for thought for the night.

3 MR. HARRIS: Okay.

4 THE COURT: Okay. Now, what happens to the other two
5 counts? The promissory --

6 MR. HARRIS: Right, the promissory --

7 THE COURT: But the damages are for -- what did we say
8 before, \$40,000, the difference between the maintenance and the
9 real estate taxes. You could make 40 grand, assuming you can
10 really rent it.

11 MR. HARRIS: Right. I think what I was saying was the
12 Count 2 is the alternative. Our first choice, if the actual
13 remedies were to present themsleves, would be the specific
14 performance.

15 THE COURT: So you can't get both.

16 MR. HARRIS: Correct.

17 THE COURT: Okay. And the third count is what?

18 MR. HARRIS: Promissory estoppel.

19 THE COURT: Which you can't get if you win the first
20 one.

21 MR. HARRIS: Correct.

22 THE COURT: So it doesn't really matter.

23 MR. HARRIS: Right.

24 THE COURT: Okay. But if you lose the first one, the
25 specific performance, you can't have a breach of contract -- but

1 it seems like they both merge, don't they? Either you got a
2 contract or you don't. If you have a contract --

3 MR. HARRIS: Right. It's the same theory, but a
4 different remedy, is essentially what it is.

5 THE COURT: So it really should be one count with two
6 different remedies.

7 MR. HARRIS: It could be styled that way, yes.

8 THE COURT: Okay. I just want to understand it to help
9 the Court of Appeals.

10 MR. HARRIS: Because you don't want to make damage
11 claims in your specific performance count and set it up for an
12 exclusive remedy type argument. So that's why we divide them
13 up.

14 THE COURT: And there are no attorneys' fees here.

15 MR. HARRIS: Your Honor, we had made a claim, but we're
16 withdrawing that.

17 THE COURT: Based on what? The contract says that?

18 MR. HARRIS: Yes. We're withdrawing that claim.

19 THE COURT: As a negotiating tool or because there's
20 no --

21 MR. HARRIS: We're not going to present evidence on
22 that.

23 THE COURT: Because the law doesn't allow you to.

24 MR. HARRIS: No, that's not true. Under the facts, I
25 think it would be a little difficult.

1 THE COURT: Well, now you've --

2 MR. HARRIS: To prove with, you know --

3 THE COURT: -- got my curiosity. You know, whenever a
4 lawyer doesn't ask for attorneys' fees -- you're related to the
5 plaintiffs.

6 MR. HARRIS: We work at the same law firm.

7 THE COURT: Oh, my goodness gracious. Okay.

8 MR. HARRIS: So while the firm has incurred -- and she
9 is an owner of the firm -- the firm has incurred a number of
10 legal expenses using our time to do this, she will sustain a
11 loss, but we didn't want to get into trying to prove all that
12 up.

13 THE COURT: I got it. I didn't catch it before. All
14 right.

15 And the defendants, what they want is, they want to
16 continue renting this apartment to someone else.

17 MR. SOTO: No.

18 THE COURT: Well, that's what they're doing now.
19 Get to the microphone. See what we can do here.

20 MR. SOTO: They are, Your Honor.

21 THE COURT: They are what? They're going to live
22 there? They live together there?

23 MR. SOTO: They live at Honey's unit currently.

24 THE COURT: Which is a nicer unit.

25 MR. SOTO: I believe so.

1 THE COURT: Honey thinks so anyway.

2 MR. SOTO: Of course.

3 THE COURT: Okay. Now, they live together.

4 MR. SOTO: They do.

5 THE COURT: Okay. And this one --

6 MR. SOTO: Is rented.

7 THE COURT: It's an investment property.

8 MR. SOTO: No.

9 THE COURT: They just rent it, but not as an
10 investment.

11 MR. SOTO: No.

12 THE COURT: Okay.

13 MR. SOTO: The unit originally was rented because Honey
14 was going to do more traveling. When her --

15 THE COURT: Okay. I hear she does a lot of traveling.

16 MR. SOTO: Well, I mean Mary. I'm sorry.

17 THE COURT: Oh, Mary does a lot of traveling.

18 MR. SOTO: Mary's -- no, she was going to. Mary's
19 daughter had an illness.

20 THE COURT: Was ill. You told me that before.

21 MR. SOTO: They got it resolved and she wanted to spend
22 more time with her because --

23 THE COURT: Okay. Here in Miami.

24 MR. SOTO: Correct. And that's when they planned --

25 THE COURT: He lives there, too.

1 MR. SOTO: When she comes down, now they stay at
2 Honey's, but they were going to stay at her unit until this
3 whole issue came around and she said, I'm just going to rent it.
4 I don't want to do anything else with it because I don't want to
5 mess anything up because of the litigation, but her plan is not
6 to release it after this term.

7 THE COURT: To have it for her daughter.

8 MR. SOTO: For her and her daughter and her son.

9 THE COURT: Because there's no other condominium --

10 MR. SOTO: I'm sorry.

11 THE COURT: For what?

12 MR. SOTO: Her sons, two sons and one daughter.

13 THE COURT: For the children.

14 MR. SOTO: Well, that's who the beneficiary of this
15 trust is.

16 THE COURT: And they're not adults yet.

17 MR. SOTO: I believe one is 21.

18 MS. SHECHTMAN: One will be 22 next week and the other
19 two, they're twins, they are turning 20 in two months. And my
20 husband, but he's not a beneficiary.

21 THE COURT: No, I always like to find out why people do
22 what they do and that's all.

23 So if you lose in this case and I order specific
24 performance, what are your clients going to do?

25 MR. SOTO: That's a good question. One, probably fire

1 me, but I believe it would be appealed, Your Honor.

2 THE COURT: Okay. Well, there's nothing wrong with
3 appealing it. And firing you, that's up to them. But, you
4 know, you get the case as you find it. That's the way it is.

5 But then they still have to obey the order --

6 MR. SOTO: They do --

7 THE COURT: -- Or would I stay it pending appeal?

8 MR. SOTO: That would be your decision or they could
9 post a supersedeas bond.

10 THE COURT: Of \$1.3 million.

11 MR. SOTO: In excess of 1.3 million.

12 THE COURT: Okay. Which they have handily.

13 MR. SOTO: No, which they could bond off.

14 THE COURT: Okay. By paying 15 percent and wasting
15 more money.

16 MR. SOTO: More money.

17 THE COURT: Gosh, there's so much money here for
18 people. Now, and the mediator in this case was who?

19 MR. SOTO: Judge Richard Eade.

20 THE COURT: Yeah, we went through that.

21 And he didn't go through all these factors with you
22 all.

23 MR. SOTO: We did.

24 THE COURT: And it was totally useless.

25 MR. SOTO: We were separated, and I can't really tell

1 you any of it, Judge.

2 THE COURT: No, I don't want you to tell me the
3 substance.

4 MR. SOTO: We were very far apart.

5 THE COURT: But you can tell me how it worked. At
6 mediation do you get all four together?

7 MR. SOTO: We did at the beginning.

8 THE COURT: They weren't talking to each other.

9 MR. SOTO: No, actually, the clients --

10 THE COURT: Get along.

11 MR. SOTO: Towards each other, no. They've been civil.

12 THE COURT: Okay. Well, they look like reasonable
13 people.

14 MR. SOTO: There was no finger-pointing or anything
15 like that. We all sat in the same room. No real talking on my
16 clients' behalf. You know, their lawyer said they talk a lot
17 more. We get paid to talk. So that's the way that it came
18 about, and then we were separated and -- two extremes, Judge.
19 Two extremes.

20 THE COURT: Now, what about this case that your
21 opponent has; how are you going to distinguish that case?

22 MR. SOTO: It's completely been distinguishable.

23 THE COURT: How?

24 MR. SOTO: Well, let's start with -- will you pull that
25 case up for me?

1 Can we start with promissory estoppel?

2 THE COURT: Okay.

3 MR. SOTO: I have a Supreme Court case --

4 THE COURT: No, no, but his case. Where is the case
5 that you had? Do you have a copy of it?

6 That's the one, because a promissory estoppel is, is
7 there a contract, is there not a contract. But that, you know,
8 begs the whole question. But the case that says a real -- in
9 that case a Realtor acted on behalf of a seller. That's what
10 you're telling me. Okay?

11 MR. SOTO: Hang on, Judge. I'm going to pull it up
12 right now.

13 MR. EVANS: The case was Benson versus Seestrom,
14 correct?

15 MR. SOTO: Correct.

16 THE COURT: Okay. Let me have a copy of it.

17 MR. EVANS: May I approach?

18 THE COURT: Yes, of course. The only way to give me a
19 copy is that way, unless you make a paper airplane.

20 Boy, that was a judgment for \$1,546.

21 See, this is the issue here:

22 "A principal is responsible for the acts of his agent
23 even where an agent's act is unauthorized. The principal is
24 liable if the agent had the apparent authority to do the act
25 and that apparent authority was reasonably relied upon by

1 the third party dealing with the agent."

2 That's a correct statement of the law, right?

3 MR. SOTO: That's correct.

4 THE COURT: Okay. So here the principal are your
5 clients.

6 MR. SOTO: Correct.

7 THE COURT: The agent just testified, Mr. Joseph. So
8 let's assume that it's true that he acted -- that his testimony
9 is truthful here. He made a mistake. He didn't have the
10 authority. He was just very enthusiastic about this and it was
11 not authorized. If the purchasers believed he had the authority
12 and there was evidence that that was reasonable, then you lose,
13 too, right?

14 MR. SOTO: No, Your Honor.

15 THE COURT: You don't?

16 MR. SOTO: No.

17 THE COURT: Why not?

18 MR. SOTO: Because even though he had the authority, he
19 did not send it over to the principals or the party that relied
20 upon it.

21 THE COURT: Because of these text messages.

22 MR. SOTO: Correct.

23 THE COURT: Okay. How do the plaintiffs counter these
24 text messages, Defendants' Exhibit 6?

25 MR. HARRIS: They were exchanged after the fully

1 executed document was transferred.

2 THE COURT: All of them? I thought one of them was
3 before.

4 MR. SOTO: It was, Your Honor.

5 MR. HARRIS: All of them, Your Honor.

6 THE COURT: How do you know that?

7 See, the lawyer is saying that you need both
8 signatures, right?

9 MR. SOTO: Yes, Your Honor.

10 THE COURT: Is the lawyer right or wrong?

11 MR. SOTO: I believe I'm right.

12 THE COURT: I know, but were you the lawyer at the time
13 on February 8th?

14 MR. SOTO: No, sir.

15 THE COURT: Okay. Well, that's a different lawyer.
16 See, we got a problem there, don't we?

17 MR. HARRIS: What's that, Your Honor?

18 THE COURT: Well, on February 8th they're saying, hey,
19 you need both signatures. We don't really have a contract. So
20 by February 8th your clients knew there was a problem.

21 MR. HARRIS: The rule in Florida is if you drop an
22 acceptance in the mail, it's official. It was emailed. We saw
23 the email, Exhibit 2. At 8:26 on February 7th they sent the
24 fully executed contract.

25 THE COURT: Well, you don't know if it's a fully

1 executed contract. That's the problem.

2 MR. HARRIS: I'm sorry, Your Honor. Exhibit 1 was
3 forwarded at 8:26 on February 7th. The text messages at the end
4 of that day say, "Congrats to us both!" "Yes."

5 THE COURT: Well, that's by your agent.

6 MR. HARRIS: Everything after that is when they -- it's
7 the next day, February 8th. No, that's both. Raul says,
8 "Congrats to us both!"

9 THE COURT: But who says that? Your agent.

10 MR. HARRIS: Raul. The text message says, "Congrats to
11 us both!"

12 THE COURT: That's your agent. He's very enthusiastic
13 about this. He disagrees. Is there a disagreement between the
14 two agents?

15 MR. HARRIS: No. Sean Joseph says, "Yes."

16 THE COURT: But there seems to be disagreement.

17 MR. HARRIS: Well, we have changed testimony today,
18 so --

19 THE COURT: No, but on February 8th there was
20 disagreement within one day between the two.

21 MR. HARRIS: Yes, because they changed their position
22 on February 8th. But the contract was complete as of the
23 evening of February 7th, and the money was escrowed on February
24 7th.

25 THE COURT: Well, but the money is escrowed to the

1 agent who is on your side. You get the money back, if you want
2 to.

3 Is the money still there?

4 MR. HARRIS: Yes.

5 THE COURT: Earning interest, right? One percent or
6 whatever.

7 MR. HARRIS: I don't know. I mean, I assume escrow
8 usually pays out interest.

9 THE COURT: Okay.

10 MR. SOTO: They actually refused the money.

11 MR. HARRIS: They refused the money.

12 MR. SOTO: Their agent asked Sean Joseph to execute a
13 release, which he took to Mary who executed a release of the
14 funds so there wouldn't be an issue, and they refused it.

15 THE COURT: So Sean Joseph has it?

16 MR. HARRIS: No, it's Raul.

17 MR. SOTO: No, Raul.

18 Well, it's actually his old real estate company,
19 Sotheby's. He no longer works there.

20 MR. HARRIS: They didn't want to take it back because
21 they were insisting that it was a completed contract.

22 THE COURT: All right. Other than your Realtor, who
23 else are you going to call?

24 MR. HARRIS: The two defendants.

25 THE COURT: You're going to call the two defendants.

1 Now, are the defendants going to call themselves in
2 their case?

3 MR. HARRIS: Your Honor --

4 THE COURT: Let's find out.

5 MR. SOTO: No. It's pointless, Your Honor. I can do
6 it all on cross.

7 THE COURT: Well, I know. Why would you want him to do
8 it on cross?

9 MR. HARRIS: I will cede and let him call his own
10 defendants.

11 THE COURT: Okay. So you're going to rest after the
12 Realtor.

13 MR. HARRIS: Do I have to make that decision this
14 evening?

15 THE COURT: You can't tell me now?
16 Who else are you going to call?

17 MR. HARRIS: It's a decision between calling the
18 defendants or not.

19 THE COURT: Okay. If he doesn't call the defendants,
20 the defendants are going to call themselves, right?

21 MR. SOTO: Yes, Your Honor.

22 THE COURT: Oh, why don't we have them tell their
23 story, and you can cross-examine them.

24 MR. HARRIS: That's sounds perfect, Your Honor.

25 THE COURT: Isn't that better for you?

1 MR. HARRIS: Yes, Your Honor.

2 THE COURT: Okay. So that's how we'll do it, which
3 means any motion for judgment as a matter of law would wait
4 until the end of the whole case, in any event.

5 MR. SOTO: Do you want to do that, Judge, because --

6 THE COURT: Yeah, that's what I want to do.

7 MR. SOTO: -- we were going to raise it before their
8 testimony.

9 THE COURT: Pardon?

10 MR. SOTO: We were going to raise it before their
11 testimony.

12 THE COURT: You can raise it and I will deny it without
13 prejudice to reargue at the end of the case because, see, what
14 this case is about is who's telling the truth and what's behind
15 everybody's motivation. That's what this case is about.

16 MR. SOTO: I thought all cases were like that.

17 THE COURT: No, some cases I can throw out immediately
18 and early on, but not this one.

19 So that means that you'll rest. And I still don't
20 understand why you want the Realtor.

21 MR. HARRIS: Because there's a dispute now as to
22 whether --

23 THE COURT: The attachment.

24 MR. HARRIS: Yes, whether he sent it on February 7th.

25 THE COURT: Okay. And the attachment says what? What

1 is the attachment?

2 MR. HARRIS: Exhibit 1.

3 THE COURT: Okay. And Sean Joseph is --

4 MR. HARRIS: I'm sorry, Your Honor. And also he would
5 contradict and deny the testimony Sean Joseph gave that they had
6 had multiple conversations where he had told them that they
7 needed two signatures, which was inconsistent with Mr. Joseph's
8 own testimony.

9 THE COURT: And that's important because?

10 MR. HARRIS: Because we have apparent authority.

11 THE COURT: Apparent authority.

12 MR. HARRIS: We reasonably relied on everything we had
13 heard to the point when we dropped that in the mail.

14 THE COURT: Which is easier to prove than actual
15 authority.

16 MR. HARRIS: It may be, but we have a wealth of
17 evidence that I think we can prove.

18 THE COURT: All right. So you call the agent tomorrow
19 at 9:30. Is that okay?

20 MR. HARRIS: Yes, Your Honor.

21 THE COURT: Okay. And then the trustees can testify on
22 behalf of the defendant, and then do you have any rebuttal?

23 So we'll finish tomorrow, right?

24 MR. HARRIS: I believe that that's very likely.

25 THE COURT: Okay.

1 MR. SOTO: Are we going to be starting at 9:30 or is
2 there a calendar call?

3 THE COURT: No, no. I'll be teaching, remember?
4 You're welcome to go there at 7:00.

5 MR. SOTO: Where is it at, Judge?

6 THE COURT: The University of Miami. And I finish at
7 9:00. So hopefully with traffic, I can get here by 9:30. But
8 that's my goal.

9 You can leave your stuff here or you can take it with
10 you, whatever you want.

11 MR. SOTO: Can we leave it strewn around?

12 THE COURT: You can leave it just like that. Okay?
13 But you can take it, too. You can put it in the room outside if
14 you want to unlock it since you're working overtime here. Okay?
15 What else is new?

16 MR. SOTO: If no one else is coming in the courtroom
17 until us at 9:30 in the morning, I'd rather leave it.

18 THE COURT: Okay. Whatever you want. See you at 9:30
19 tomorrow. Thank you.

20 MR. SOTO: Thank you, Your Honor.

21 THE COURT: You can take your midafternoon break.

22 MR. HARRIS: Thank you.

23 (The trial adjourned at 6:51 p.m.)

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C E R T I F I C A T E

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I hereby certify that the foregoing is an accurate transcription of proceedings in the above-entitled matter.

DATE

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A			
able 100:5 173:10 180:20 194:23 194:23 222:19	201:18	166:9 168:18 173:16 176:2	APPEARANCES 1:14
about 11:8,10 13:7,12,17 16:7 23:9,19,21 24:6,23 27:15 28:1 28:3,22 30:5 31:25 34:12 35:19 36:9 41:19 43:4,16,20 47:9 52:4 55:3 57:10,13 62:2 69:14 72:18 77:11,15,21 78:19 79:12 81:24 84:2 85:3 86:24 87:19 88:7 89:2 90:12 93:3 95:13,15 101:7 107:6 109:21 110:2,10 113:9,13 114:8,11 119:5 123:24 124:18 124:25,25 128:14 132:20 133:25 134:5 135:20 142:6,9 144:8 150:15,24 152:3,13 153:21 154:7 162:17 163:22 164:17 165:19 168:11,13,21 168:21,23 173:18,20,22,25 174:7 182:1,5 196:8 209:15 210:1,12 212:14,15,18,25 216:3 218:6 221:6 231:18,20 233:10 235:13 238:14,15	admitted 63:2,7,12,17 99:13 146:14 148:12 192:3 193:1,6 193:7,8,12,13,19	184:14 190:14,18 196:14 212:25 214:5	appears 16:14 104:16 107:18 115:15,16 202:20
above 108:19 202:20,21,23	adults 229:16	airplane 232:19	apple 223:7,7
above-entitled 241:2	adverse 139:19,21,23 141:7,8,15 141:17 151:1,11 152:1,5,10 197:1,4,6	Alex 45:16	apples 113:9,10 114:12,12
absolutely 23:12 80:24 84:8 99:1 120:8 127:5 144:7 149:21 157:20 164:25 165:1 168:23 172:13 222:24	advise 18:13 109:23 188:13	Alexander 2:1 5:11	appointed 17:13
accent 192:13	advised 11:20,25 13:8 16:7 33:3 33:16,22 72:13,15 73:24,24 73:25 74:3,8,14 76:22 119:1 176:19 177:5 178:17 179:3,5 179:15	allege 46:24 97:7 113:7	appraisal 22:13,16,19 25:6
accept 34:1,6 37:10 46:5 71:25 73:15 74:5,11 85:5 164:12 171:17 222:1	affidavit 8:15 16:17,22	allow 23:17 47:16 77:12 86:23 88:18 141:6 147:22 226:23	appraiser 76:25 77:1,12,14 111:22 119:9,9,11,14 176:24
acceptable 80:2,4 91:1	after 5:16 12:9,24 13:3,9 14:14 23:11 31:12 33:21 34:17,22 37:12 48:24 52:1,16 73:17 76:17 77:15,25 80:21 112:22 118:21 168:9 176:18 177:22 178:7,9,13,18,22 179:2,5,5 201:14 207:13 213:8,19 229:6 233:25 235:6 237:11	allowed 38:13	apprised 78:9
acceptance 23:8 37:7 81:21 118:17,20 234:22	afterwards 118:23 186:4	allowing 48:6,7	approach 130:2 199:16 232:17
accepted 11:24 33:8 34:13 37:22 54:9 118:10 119:3 179:5 184:16	again 33:22 34:3,10 73:24 94:1 97:1 102:1 103:6,11 105:16 112:23 120:8 126:6 161:13 163:15,21 167:5 169:17 184:6 184:22 185:21 186:10,15,16 188:3,9 190:20 191:2,14 204:20 205:21	allows 223:23	appropriate 12:22 59:9
accepting 117:23	agency 213:10,11	almost 68:10 86:21 191:16 197:23	approval 36:18 120:9 163:12 178:8
access 77:2 114:4 119:10	agent 22:24 24:10,13,14 27:4 28:4,5 29:3 32:15,18 33:2,16 33:21,23 34:20 35:18 36:8 37:8,17,19 38:3 40:25 49:10 57:20 67:17,17,22 68:13,17 68:20,21,23 71:20 72:13,17 73:24 74:3 75:25 76:1 91:24 92:4,8 93:22 94:5,7,11,13 99:20 107:22 112:9,10,16 114:20 115:13 127:24 131:21 131:22,24 135:5 138:15,23 141:19,20 144:19 152:21 166:14 168:2 169:19 176:14 176:15 177:8 187:22 210:10 213:16,18,18 232:22,24 233:1 233:7 235:5,9,12 236:1,12 239:18	alone 16:4 27:6 35:17,22	approved 36:16 125:25 221:3
accomplish 154:6	agents 24:9 36:25 38:1 81:22 211:9,10 213:3 235:14	along 70:4 77:4 163:19 231:10	approved 36:16 125:25 221:3
account 54:5	agent's 232:23	already 13:10 34:17 43:14 44:18 58:15 73:23 82:11 90:5 107:12 110:19 124:3 136:21 168:10 179:13 193:6,14	approximately 18:18
accountant 54:6	ago 20:14 207:18,20,20	alter 72:6	area 159:5,6
accurate 6:22,25 241:1	agree 12:23 33:22 49:5 55:9 60:17 84:19,21 104:1 122:4 141:13,14 171:25	alternative 36:21 39:20 82:4 83:18 225:12	argue 214:15,21
acknowledges 213:7	agreed 12:2 36:23 40:21 43:8,9 49:7 52:22,24 55:10 101:23 129:11 157:10 168:10,24 177:24 178:23,25 199:10	although 10:3 34:25	arguing 43:15
acquisitions 47:23	agreeing 84:19 179:8	always 7:17 9:4 29:10 38:9 86:21,21 118:4,4 139:11 171:2 199:21 209:17 211:4 222:3 229:21	argument 59:2,14 137:7,10 159:2 226:12
across 30:25	agreement 34:22,24 35:8,9,10 36:7 42:10 55:17,20 77:2 94:13 97:16 98:13 115:18 145:3,14,16,18 148:13,19 149:4 151:1,2,3 156:23 157:3 157:12,19 160:9 161:15,17,19 171:25 174:17 177:12 203:5 204:21 221:2	amazing 89:9 111:14	arguments 143:10 218:20
act 232:23,24	ahead 14:5 33:13 47:5 56:14,17 61:24 66:22 85:14 99:15 104:25 116:7 123:13 125:22 126:10 132:14 142:21 144:10 145:8 159:15,18,20 165:12,12	amended 45:20	arms 100:4
acted 232:9 233:8		America 15:15	around 7:24 45:24 74:20 77:21 78:3 82:1 137:5,5 155:9 215:13,14,14 229:3 240:11
acting 169:19 186:13		among 37:13	arranging 37:14
actions 134:19		amount 73:21 217:21	arrive 12:24
active 147:6		and/or 105:10	arsenal 220:14
acts 37:10 232:22		another 20:2 54:7 55:15 72:1,24 74:1 77:6 83:4,4 101:21 107:10 110:15,15 147:24 152:3 158:23 168:3 171:24 173:10 176:16 179:16,24 180:1,7,17 187:3 204:10 207:21 216:24,25	Artefacto 89:12 111:17 115:11 115:17
actual 64:11 69:14 133:9 143:10 161:14 182:5,11,14 213:4 223:2 225:12 239:14		answer 61:16 72:21 108:7 113:16,18 126:10,13 135:11 135:11 160:11,15,17,24 161:3 165:8 177:24 178:11,15 186:6 186:10 188:17,20,24 189:1 195:12 223:4	asked 8:25 9:18 20:20 22:11 26:25 43:23 47:4 89:21 94:14 94:16,20 107:3 108:7 119:2 126:9 139:15 151:1 152:13 153:16,18,19 154:13,14 156:9 158:20 160:19 177:9 182:3,10 186:10 188:17,18 190:4,12 191:9,10 203:7 236:12
actuality 110:1		answered 126:9 158:20	asking 36:20 42:19 43:20 53:9 53:13 80:12 93:20 135:10 139:17 150:12,13 153:13 156:10 160:12 165:20 167:12 182:15
actually 7:6 22:16 24:24 45:21 58:2 84:12 87:25 88:2 89:16 89:17,19 93:7,14 96:20 103:12 105:24 118:7,11 119:13 120:8,19 127:7 147:9 149:10 155:2,4 160:11,21 173:5 193:7,13 199:15 202:15 204:10 212:20 231:9 236:10 236:18		anticipated 24:23 25:4	asks 197:22
add 7:22 24:22 101:21		anticipated 76:24	aspect 82:4 134:14,15
added 10:21 71:9 95:23		anybody 30:21 31:3 48:25 203:16 224:3	assent 49:1
addition 36:13		anyone 48:2 70:2 155:8 198:25	asserted 35:5 150:14
address 26:1 30:3 57:5 102:24 103:4		anything 6:20,21 24:6 27:2,2 45:11 57:25 60:1 78:7,16,18 78:20 82:24 91:19 94:22 101:20 106:11,13,15 109:21 126:20 168:12 169:25 171:13 173:11,14 174:1,10,14 175:10 180:15 185:18 207:2,25 222:23 229:4,5 231:14	assessment 20:6,15,24 21:22
adept 47:23		apart 168:25 231:4	assessments 42:9 44:6,7
adjourned 240:23		apartment 172:16 227:16	assign 39:9
adjustment 17:24		apologize 8:20 51:18 129:7 194:14	assigned 48:15
admission 77:1		apparent 48:1 143:11 213:6 218:16 232:24,25 239:10,11	assignment 41:24
admissions 220:18		apparently 56:2 189:22,23	assistant 195:11
admit 65:17 66:20 192:19		appeal 216:22 230:7	associate 11:17 14:1,22 15:5 156:9

attend 109:17
attending 93:15
attorney 30:24 157:10,17,19,20
 157:21 160:17 161:16 189:10
 203:6,22 207:15
attorneys 156:4 207:14 226:14
 227:4
August 148:25
authenticate 192:9
authorities 197:8
authority 18:23 19:16,17 23:8
 23:19,21 24:4 28:21 37:20
 38:4,5,9,15 45:22,23,24 46:2
 46:5,17 49:14,15 50:20 66:10
 70:4 79:6 80:7 91:12 94:11,17
 94:23,25 95:1 97:3,4 98:24
 102:5,13 117:25 118:3 120:21
 133:2,9 134:14,15,16 137:2,3
 137:4 141:24,25 142:4,9,11
 142:12,18 143:11 154:9,12
 155:24 156:1,12,20 158:16,18
 159:9,23 160:16,18 161:5,7,8
 161:11,23,25 162:1,4,6,9
 164:20 166:5,19,24 168:3,5
 171:5,7,9 174:17 184:20,22
 184:24 185:3,17 186:8,21
 187:1,6,8,8 188:1,3,4,15,22
 189:3,4 190:17 194:10,10,17
 196:17 198:25 204:20 210:20
 212:13,20 213:4,6 218:16
 221:2,14,16 224:15,22,25
 232:24,25 233:10,11,18
 239:10,11,15
authorization 48:3 71:5 90:21
 90:25 93:25 100:22 101:1,2,4
 101:8,11 103:10,13,15 116:21
 117:2,12,18 118:2 189:10
authorize 35:16 47:5 76:4 117:6
authorized 35:14,18,22 36:15
 47:15 81:22 90:15,19,93:18
 94:13 95:4 106:20 138:1
 185:15 233:11
automatically 9:12
available 58:5 155:12
Aventura 57:18 59:16
Avenue 1:20 2:7 57:5 241:6
avoid 140:23 222:6
award 43:5
aware 118:21 119:3
away 109:10 114:13
a.m 5:1 31:9 128:10,14,18,20
 202:18 204:9,13,16

B

B 64:22 65:19
back 7:14 12:7 17:17 20:1 21:13
 22:6 26:17 31:14 40:20 41:14
 46:24 49:19,22 52:13 68:25
 69:7 70:5 71:14 75:12,16,23
 75:24 76:1,6,17 78:1,24 79:4
 94:14 98:20 103:21 106:7
 107:20 112:12 120:3 121:17
 122:7,7 134:25 153:3,16
 159:20,22 168:7,24 175:17
 177:14,22 178:9 187:15
 188:21 190:2 191:7,8 194:5
 207:6,10 214:25 218:15 236:1
 236:20
bad 81:24,25 83:10
bait 44:14
Bal 217:3
balance 71:11,12 73:10 75:19
balcony 107:9
bank 119:5,7,9,13,14 120:8
 176:23
bar 23:1 67:9 105:17
based 5:15 20:7,16 35:7,13
 39:23 61:10 75:6 134:18
 167:1 182:7 184:23 185:4,5,6

185:10 226:17
basically 36:2 77:7 145:10
basis 47:9 59:24 78:16
bathroom 156:6 214:15,22
bathrooms 89:11 111:16
bear 182:16 184:8,10
beared 182:19
bears 176:7 181:4
bedrooms 89:11 111:15
beep 6:10,10
before 1:12 5:17 6:18 15:14 18:8
 25:21,24,25 26:8 52:9 75:7
 78:15 98:6 101:2 102:22
 106:13,18,19 107:19 108:25
 128:22 129:1 132:15 153:25
 158:21 168:3,25 170:4 171:14
 171:24 176:19 177:5 178:7
 180:1 184:17 190:16 191:12
 203:24 204:15 207:8 218:9
 225:8 227:13 228:20 234:3
 238:7,10
beforehand 57:18,20 128:12
began 11:11 32:3 34:19 76:14
begin 18:8 19:22
beginning 26:1 91:18 177:21
 231:7
begs 212:8 232:8
behalf 5:4,8,10 18:24 32:12,20
 34:4 68:24 69:19 71:19 78:16
 94:8 95:1,5 101:11 117:8,25
 120:20 121:10 122:11 149:24
 155:21 156:13 158:16 159:9
 159:23 160:12,13,18 161:6,12
 161:18 162:10 166:11 187:9
 190:5,5 231:16 232:9 239:22
behind 238:14
being 27:23 29:12 33:21 48:5
 62:9 78:25 107:5 193:13
 213:5 223:16 224:2
belief 71:21
believe 6:22 14:11,24 16:13
 19:23 20:4,18 21:1 25:5 26:24
 33:14 39:2,17 41:21 42:25
 43:11 57:11,22 58:7 59:5,21
 65:24 70:17,21 76:6 77:21
 78:14,16 83:23 86:1,7 87:20
 88:12 89:7 90:17 92:25 94:5
 97:19 98:24 99:8 100:19,22
 101:1,2,4 102:20 105:4,14,16
 105:19 106:3,10 113:6 114:3
 116:20 121:2 124:6 127:20
 129:16 130:10 131:16 137:20
 138:6 140:15,17 150:17,25
 152:17 156:8,12 157:3 186:8
 193:7,23 195:6 200:22 213:14
 223:12 225:1 227:25 229:17
 230:1 234:11 239:24
believed 11:25 93:21 233:11
believes 61:1 80:4
believing 6:13
below 33:23 53:6 100:10 222:25
bench 1:12 17:9,10 19:2 25:24
 25:25 26:2 30:6
beneficial 32:9
beneficiary 229:14,20
Benson 213:15 232:13
Berlin 102:24
best 48:6 69:10,24 84:1,1,10,11
 84:13 100:4
better 84:14,16 219:8 223:17
 237:25
between 24:8 27:13,14 28:2 36:7
 38:1 46:13 55:18 67:14,15
 70:8 84:13 87:22 99:19
 102:11 123:1 130:24 131:9,11
 163:20 192:12 200:12 220:19
 225:8 235:13,20 237:17
Bevlynn 103:1,3,3
beyond 73:23 141:25

bifurcated 11:2
big 14:2 53:11 66:5 207:23
billing 147:22
binder 62:12 130:10,12,16,17
 160:5 199:14
binding 34:24 35:12 70:11 71:23
 74:4,5,24 76:23 77:7,10 78:3
 78:5 80:23 81:19,20 97:9
 113:7 117:20 119:2 129:17
 157:3,8,14,16,2,3 158:2,6,8,10
 190:15
bit 82:13 104:23 113:18 132:18
 175:20
black 205:9
blanks 105:18
blended 102:12
blew 218:15
blocked 37:14 96:6
board 215:21
boarded 17:1
bond 230:9,13
book 88:17 93:6,7 97:7 99:3
 199:22 205:6,6
boo-boo 210:20
both 10:17,19,20,20 12:2 31:17
 34:23 35:10 38:4 47:24 48:3
 55:9,10 64:4 77:18,19 78:8,12
 78:21 79:17 86:2 102:8
 106:25 124:13,16 127:9 136:4
 142:11 154:20,21,25 155:5
 156:13 157:10 158:16 159:24
 161:5,11 162:3,6,9 164:1
 172:1 173:1,3 179:11,17
 185:10,20 186:22 187:4
 194:23,23 211:10,17 215:8
 225:15 226:1 234:7,19 235:4
 235:7,8,11
bothering 84:23
bottom 75:19 92:14 96:17,21
 112:18,20 121:15 122:15
 123:6 203:5 204:13
bought 83:4,8 113:4
Boulevard 2:2
bound 172:7
boy 201:15 232:20
brand-new 137:20
breach 7:23 22:25 39:23,24 40:1
 41:6 48:19 83:6 150:23
 225:25
breached 37:3
break 132:16 156:6 214:15,22
 240:21
breast 151:5
Brickell 1:20 217:1
brief 159:19
bring 28:8 29:6,8 59:23 100:2
 107:22 147:17 197:13
broker 149:12,13,13
brotherly 30:20
brought 20:16
bucks 211:7 214:16
budget 17:22
building 48:10,11 54:21 65:5
 73:20 83:5,6,9 108:6,11,11,20
 108:20,22 161:20 216:6 217:2
buildings 57:22
burden 43:12
business 53:21 83:9,11 125:5,6
 210:22
businesses 125:7
buy 30:10 80:20 82:24 83:2,11
 180:14 222:17
buyer 79:1,7 101:24 139:11
buyers 24:13,14,16 37:2,13,16
 48:7 177:5,7
buying 54:16 83:10

C

C 18:15,16 45:20 141:2 240:25

240:25
cafe 31:5
cake 215:12
pages 215:13
calendar 5:16,19 7:22,24 12:9
 21:7,8 26:4 240:2
call 5:16,19 7:22,24 9:7 12:10
 21:7,8 26:4 56:5,7 64:18,22
 74:9 79:10 90:2 115:23,24
 194:5 200:16 201:3 209:4
 212:7 236:23,25 237:1,9,16
 237:19,20 239:18 240:2
called 11:9 97:22 107:4 110:6
 119:13,14,15 176:24 196:25
 197:1
calling 88:10 141:11 176:24
 197:6 209:21 237:17
calls 136:12,14 141:7
came 11:16,22 18:3 46:22 53:5
 64:24 71:17 80:12 101:2,4
 109:8 110:4 117:4 147:5
 155:4 203:12 229:3 231:17
canceled 21:21
cancer 151:6
capable 79:18 120:7
capacity 32:11
care 44:8 197:25 220:9
case 1:3 5:3 7:21 11:8,10 20:14
 23:1 26:16 28:22 31:3,14,24
 31:25 32:2 35:5 45:24 46:22
 48:24,24 55:3,4 59:7 69:18
 81:14,20,23 92:6 127:4 133:6
 134:23 137:1,1,8,10 141:11
 141:24 143:7,16 148:19
 150:23 160:2 162:22,25
 173:12,22,25 184:3 189:21
 190:10 197:1,10 198:2 203:16
 208:17 210:5,11 211:21
 212:13,15,19 213:14 215:11
 216:18,21 218:21,23 219:16
 219:18 220:3,5,6 229:23
 230:4,18 231:20,21,25 232:3
 232:4,4,8,9,13 237:2 238:4,13
 238:14,15
cases 143:16,17 212:18 213:10
 213:10 238:16,17
cash 41:22 120:10 217:12
catch 227:13
caught 187:13
cede 237:9
ceilings 89:13 111:17
certain 47:12 51:2 55:11 65:16
 125:12 149:11 162:17 184:22
 188:4 190:13 200:24
certainly 9:14 19:3 44:4,11 77:8
 163:23 213:5
certainty 139:12
certify 241:1
chain 99:19 205:13 207:2
chambers 9:7
chance 21:14 138:19 197:18
chances 86:14
change 51:4 52:17,18,20 61:23
 117:22 165:1 221:5 222:4
changed 51:5,7,8,21 52:10,12,21
 54:17 75:7 124:19 139:7
 235:17,21
changes 34:7 37:7 71:7,8,12,13
 71:15 74:23,25 75:14,22
 96:14 117:11,22 121:10,23
 123:24 171:12
changing 73:13 198:3 220:25
charged 46:17
check 47:6 57:24
checked 12:7
checking 82:1
chief 1:13 197:1
children 51:13,19 60:4 61:6
 229:13

choice 225:12
chose 145:12
Christopher 1:15 5:7 31:23
 215:7 216:20
Circuit 20:12 197:10
circumstance 52:10
circumstances 8:8,20 15:24
 16:11,12 46:18 51:6,8 52:21
 55:5,6 60:12 85:3 110:20
cited 20:22 213:15
citizens 53:24
city 30:20,21
civil 231:11
claim 35:7,13 40:1 41:5 46:19
 83:6 226:15,18
claimed 34:20 37:15
claiming 41:15
claims 226:11
class 198:17
clear 16:6 35:2 122:2 177:4
clerk 8:25 9:2,10,14
clerks 9:4,12
client 44:20 49:12 98:25 137:6
 171:12 183:25 184:21 185:19
 186:10,13 187:2,3 190:4
 211:6 213:24
clients 14:7 24:18 32:1,3 40:6
 42:16 49:23 50:25 100:2
 136:4 143:5,25 144:2 153:7
 166:10 170:8 175:18,25 176:1
 177:1 183:12,12,15 185:3
 190:6 204:7 218:9 220:10
 223:5 229:24 231:9,16 233:5
 234:20
cloaked 213:4,5
close 53:9 119:6 187:12 217:12
closed 48:9,11 109:3 151:4
closet 111:18
closets 88:4 89:13 107:9 110:13
closing 41:17 70:16 72:7 76:11
 109:3 217:7,10,19
coax 102:9
code 166:16,18
collect 39:13
college 111:1
Collins 57:5
column 61:3
come 16:9 20:1 22:6 25:1,9,11
 36:7 68:22 72:12 95:2 101:25
 119:11 125:12 167:12 168:25
 177:24 187:12 212:1 222:22
comes 86:17 168:7 183:24 229:1
comfortable 180:21
coming 40:20 77:5 147:21
 179:19 223:4 240:16
Commencement 46:25 47:3
 105:24 106:16 127:6,8
Commercial 2:2
commission 209:18 211:14,16
committed 122:5
committee 197:5
common 78:15 98:6,8 159:8,23
 160:22,24 161:5,10 162:8
communicate 47:9 69:2,8,11,21
 69:25 92:2,3 118:3
communicated 27:4 29:5 68:19
 68:20 129:16 156:1
communicates 15:23
communication 102:16 169:21
communications 24:8 37:18
 92:5 127:22,25 131:9 210:8
company 149:17 150:8,10,11
 236:18
comparable 40:10,20 83:2 84:15
 84:17 87:15,16 110:14 223:1
comparables 63:23 64:3 82:6,11
 82:14,15 84:1,5 181:21 182:7
 183:13 223:6,8
compare 96:8 114:21
comparing 113:9 114:12
compel 26:5 28:12,15
compilation 64:16
complaining 17:23
Complaint 38:18
complete 35:1 39:4 71:22,22,24
 74:10 163:5 167:24 235:22
completed 236:21
completely 107:22 231:22
completing 37:9
comply 77:10
comps 64:17 182:11 223:21
computer 7:15 44:1
concede 50:5
conclusion 79:10
condo 30:10 32:25 35:17,23 36:5
 40:13 47:6 51:10,11 52:7
 54:16 58:6 80:20 81:17 86:4
 114:10 153:14 177:12 180:22
 202:8 204:5 215:24 219:2
 224:24
condominium 7:24 10:22 12:5
 30:9 32:1,5,10 38:25 41:22
 42:8,23 43:25 44:21 49:24
 51:1 57:4,5 59:2,10,10,17
 60:3 62:10 80:1 177:10 183:4
 215:20,21 222:9,12 223:15
 224:2,4 229:9
condominiums 40:14 86:23
 217:4 223:10
condos 83:9
conduct 13:19 133:9 134:21,22
 154:7,8 213:3
conducted 24:9
conference 30:24
conferred 142:4
confident 100:5
confidential 8:15
confirmed 9:3 12:8
confirming 35:9
conflict 211:12
confused 184:7
Congrats 235:4,8,10
congratulations 78:3
connected 9:6 78:18
connection 36:17,18 38:16 79:25
 137:15
consent 43:16
consequences 220:13
consider 58:8 82:19 145:11
 204:22 211:23 222:16
consideration 7:9 60:12
considered 223:17
consistently 48:4
constantly 58:3
construction 47:5,22
consumated 147:9
contact 45:19 214:3
contains 167:21
contempt 217:25
contending 118:22
CONTENTS 3:1
contest 12:1
context 7:21
continually 37:1
continue 37:11 118:24 175:24
 227:16
continued 35:1 77:3,14
continues 203:7
contract 7:23 18:24 19:18,18
 22:25 23:4,6,9,13,14,18 34:8
 34:10,19,24 35:2,3,4,6,11
 36:21,23 37:2,3,7,9,10,12,13
 37:15,22,24 38:6 39:8,24 40:1
 40:15 41:7 45:18,23 46:1,2,9
 46:9,14,20,24 47:14,15,17,24
 48:15,19,23,25 49:1,1 54:23
 65:25 66:3,8,16 67:9 68:16
 70:8,11 71:16,22,24 72:6
 74:24 75:20,23 76:1,5,6,14,16
 76:23 77:8,10,13,14,20 78:3,5
 78:13 79:7,9,12,25 80:5,22,23
 81:9,9,12,13,19,20 83:6,16,24
 90:8,10,11,12,23 91:1 92:12
 93:10 94:11 97:7,9 103:7,16
 103:22 104:16 105:15,16
 106:14,22 109:11,13,20,21
 113:7,8 114:15,18,22 117:20
 118:22,25 119:2,23 120:4
 122:6,10 127:23 129:17 133:6
 150:23 157:14,16,24 158:2,6
 158:8,10,11 159:1 161:12
 162:19 163:20,22 167:22
 170:18 172:4,7,16 176:17,25
 177:11 178:12 179:1 180:10
 180:11,15 187:11 189:7
 190:21 191:9,11 194:18,21
 195:18 202:5 203:21 204:3,4
 204:6 205:16,23 206:16 207:9
 207:12 209:12,16,18,19 212:6
 212:7,12 225:25 226:2,2,17
 232:7,7 234:19,24 235:1,22
 236:21
contracted 80:21
contractor 47:3
contracts 47:24 95:2,5,6 106:7
 110:24 125:24 157:21
contradict 239:5
contravention 6:5
control 140:21
conventionally 5:21,25 6:2 7:7
 10:1
conversation 11:9,11 46:7,12
 100:10 177:25 195:3 199:6
 202:23 204:1,2 205:15,22
 207:17
conversations 11:18 91:14,16,19
 98:20 99:25 127:3,18 135:2,4
 135:15,21 176:20 178:7 239:6
convey 68:17 94:25 117:23
 118:8 164:9 194:25
conveyed 68:20 73:8 75:11
 119:4 176:12 180:12 186:7
convince 59:19,21 131:23 159:3
 159:4 175:1,3,5,7,8,9
copies 31:2 56:15 151:20 153:6
 162:20,20
copy 34:22 56:22 73:8 105:23
 106:5 107:1 122:2 127:11
 130:11 149:20 150:5 152:22
 152:24 153:1 195:18 232:5,16
 232:19
correct 6:20 10:16 12:16 15:6
 17:13 21:14,20 24:15 28:23
 33:9 39:2,14,25 41:8,12 44:10
 45:6 49:13 50:10,22,24 52:3
 52:15 53:3,17 54:2,14 55:8,15
 59:15 70:10 72:4,5 73:1 75:4
 75:5 76:10,22 78:2 82:10,17
 83:20 86:19 89:14,23 91:12
 91:13 92:6,17,18,22,23 93:2,5
 93:10 94:9,10,20,23,24 95:5,6
 95:7,10,17,24,25 96:2,10,13
 96:15,15,18,21,22,2 4 97:8,17
 97:18 98:25 100:8,12,20
 102:17 103:7,22 104:5 105:2
 105:8,15,18 106:8 108:3
 109:16,22,24 110:11,18 111:1
 111:4,6,19 112:15,18 113:23
 113:24 114:25 115:1,3,5,9,12
 115:13,18 118:22 120:22
 122:11,12,17 123:10,11,15,16
 124:1,4,5,7,11,12 125:7
 129:13 141:19 144:20,21
 145:5,14,15,19 146:8,19,23
 147:3,18 148:4,18,20,21,24
 149:2,5,6,7,11,12,18 152:11
 153:10 154:22 155:7 156:13
 156:14,15,16,23,24 157:1,2,3
 157:13 158:16 159:25 160:3
 160:15,25 161:12,18,19,22,23
 161:25 162:3,7 164:19 165:1
 166:3,6,15,16,17,19,20,23
 167:14,22,23,25 168:1,4,5
 169:14 170:1 172:11,13
 174:21 176:8,11,13 177:9
 178:5,11 181:1 182:23,24
 183:9 184:18,21 185:1,11,16
 186:5,6,11,12,20,23 187:4,22
 187:23 188:2,16,20,24 189:1
 189:12,13,21 190:12 199:11
 199:13 202:2,3,9,10,11,14,18
 202:19,25 203:8,9,10,12,13,20
 204:1,11,12,14,17,19,22,23
 205:11,12,25 206:22 207:25
 209:22 212:17 221:22 225:16
 225:21 228:24 232:14,15
 233:2,3,6,22
correction 17:8
correctly 6:15
correspondence 37:25 200:12
 200:15
corroborate 37:23 107:23
cost 17:24 20:6 21:22
counsel 5:22 31:17 49:17 114:3
 115:1,2 198:5 201:8 214:13
count 38:21,23 39:7,19,20,20
 41:9,10 82:4 216:11 225:12
 225:17 226:5,11
counter 95:21 100:1 116:25
 233:23
counteroffer 28:21 29:4 32:19
 32:20 33:2,6,15,20,24 34:3,6
 34:14,18 35:15,19,20 37:20
 38:7,11 46:7 50:6,7,11,12
 52:1 70:19,20,22,23,25 71:10
 71:17,25 72:16 73:18 74:4,5
 74:10,15,16,18,22 75:13,21
 77:25 78:1,18 92:21 94:3
 96:16 100:3 101:12 116:23
 117:6 118:6 121:6 133:5
 138:2 143:3 166:2,21,25
 167:1,24 168:3,21 173:18
 176:12,19 177:6 184:18,25
 185:1 186:5,14,21 187:7,7,15
 187:16,21,22,24 190:10
 194:21 204:22
counteroffers 37:1 38:5 49:17
 49:20 52:13 69:7 73:17 76:18
 78:24 91:24 93:25 134:10
 168:23 186:18
country 60:5
counts 38:19,20 225:5
county 43:15,15 57:6 112:24
 144:6
couple 116:12 132:18 207:18,19
 207:20 213:19,25
course 16:16 24:22 29:20 36:1
 69:6 118:23 119:1 122:5
 133:9 154:8 180:11 216:23
 219:3 221:24 228:2 232:18
court 1:1 2:6 5:2,10,13,16,20,25
 6:4,20,23,25 7:3,10,13 8:2,4
 8:10,13,16,21,23,24 9:2,9,10
 9:16,20,25 10:2,5,8,11,13,15
 10:17,20 11:12,15,16,19,23
 12:4,9,12 17:20,23 13:25,15,10
 13:12,15,17,19,22 14:2,7,9,13
 14:16,18,21,23,25 15:2,4,4,7
 15:8,10,11,13,20,22,5 16:3,9
 16:12,16,20,23 17:2,6,14,17
 17:20,23 18:3,7,10,13,15,20
 19:5,8,13,15,19,21 20:4,6,10
 20:12,19,20,24 21:2,5,8,12,15
 21:17,19,21,24 22:3,5,9,14,17
 22:18,20,22,25 23:4,6,10,13
 23:17,21,24 24:3,6,11,14,16

24:18,20,22,2 5 25:6,10,16,19
25:22,24 26:3,7,12,17,22,24
27:7,9,11,13,16,19,2 2 28:2,5
28:7,11,14,18,19,22,2 4 29:6,9
29:14,16,21,2 3 30:1,4,8,13,15
30:18,23 31:2,8,14,19,20 33:5
33:8,11,13 36:20 38:18,21,23
39:3,6,12,15,19,22,2 4 40:1,4
40:6,12,14,2 3 41:1,3,6,9,11
41:13,19,22 42:2,5,7,11,16,19
43:2,10,13,20,2 5 44:12,20,24
45:1,3,5,7,9,1 3 46:20,23 49:3
49:5,7,9,12,14,16,21,2 3 50:2
50:5,9,11,14,16,20,23,2 5 51:4
51:8,14,16,22,2 4 52:1,4,7,9
52:12,16,20,23,2 5 53:2,5,8,11
53:13,15,18,20,2 5 54:3,8,12
54:15,20,2 4 55:1,3,6,9,12,14
55:17,20,2 3 56:1,3,5,8,10,11
56:14,16,17,19,2 4 58:11,15,22
59:2,10,14,16,19,2 3 60:1,14
60:18,22,2 5 61:1,2,5,9,11,14
61:17,20,22 62:13,15,19,22,25
63:2,4,6,9,11,15,17,20,23,25
64:2,6,10,13,15,18,22,2 5 65:2
65:7,9,11,13,17,22,2 5 66:4,7
66:12,15,20,2 2 67:11,15,18,21
67:24 68:3,7,10 72:20 79:12
79:14,19,22 80:3,11,15,22,25
81:2,7,12,16,2 3 82:5,8,11,15
82:18,23 83:4,8,15,19,21,25
84:5,9,11,19,2 2 85:1,5,8,12
85:14,17,20,22,2 5 86:2,4,6,9
86:13,20 87:1,7,10,18 90:12
91:4,6,8 99:6,10,13,15 104:21
104:22 107:1 113:17 115:20
115:22 116:1,4,7 120:13
126:10,13 129:5,8,8 130:3,5,7
130:9,13,15,19,21,2 4 131:2,4
131:7,10,14,21,2 3 132:2,4,6,9
132:11,14,17,21,23,2 5 133:4,7
133:10,12,14,16,18,21,23
134:1,7,11,13,15,20,2 3 135:1
135:4,6,8,11,14,17,20,23,25
136:3,7,10,14,16,21,2 5 137:3
137:9,12,14,17,22,2 4 138:3,5
138:8,11,14,16,18,2 4 139:2,5
139:17,21,2 5 140:5,7,9,11,16
140:18,20 141:5,15,20,23
142:2,6,9, 14,16,18,21,23
143:4,7,12,20,2 2 144:2,5,8,15
144:24 145:7,24 146:10,12,14
148:6,8,10,12 149:25 150:6,9
150:15,19,2 2 151:3,8,11,14,17
151:21,24 152:1,5,9,12,15,18
152:20,24 153:4,13,18,20,23
153:25 154:5,9,12,14,16,18,21
154:23,2 5 155:3,6,8,13 156:7
156:10 158:1,5,9,13,21 159:2
159:13,15,18,20,2 0 162:12,15
162:22,2 5 163:2,4,7,9,12,17
163:24 164:3,8,12,16,20,23
165:2,5,7,10,12,15,17,19,22
166:8 167:3 168:14,17 169:2
169:5,8,10,13,15,18,2 4 170:2
170:5,9,13,15,19,22,2 5 171:3
171:7,9,15,2 2 172:1,5,9,12,14
172:19,23,2 5 173:2,4,6,8,11
173:14,16,20,22,2 5 174:3,5,7
174:9,11,14,18,20,22,2 5 175:3
175:6,10,13,16,18,22,2 4 176:2
177:16 178:1 180:22,2 5 181:2
181:6,10,13,18,2 3 182:1,7,13
182:18,21,2 5 183:3,6,8,10,12
183:14,19,2 3 184:3,9,14
185:7 191:20,24 192:1,3,6,10
192:13,16,19,22,2 4 193:1,3,5
193:8,10,12,15,18,20,2 4 194:2
194:6,12,13,1 5 196:8,10,12,14

196:20,22,2 4 197:2,10,14
198:5,8,11,14,17,2 0 199:6,8
199:17,19,21,2 4 200:2,6,8,10
200:15 201:1,3,5,7,12,21
204:25 205:4,18 206:6,8,10
206:17,19 208:4,9,14,18,21,23
209:1,4,9,14,2 3 210:1,9,11,16
210:23 211:4 212:4,7,10,18
212:24 213:7,10,13,20,23
214:1,5,8,11,16,20,2 3 215:1,4
215:8,18 216:1,6,10,14,16,21
217:9,12,2 4 218:1,6,14 219:7
219:12,15,18,20,2 4 220:1,3,3
220:4,5,6,6,8,14,16,2 1 221:5
221:8,10,12,15,18,20,2 3 222:3
222:6,9,12,15,20,2 4 223:1,8
223:13,23,2 5 224:2,9,11,15,18
224:21 225:2,4,7,15,17,19,22
225:24 226:5,8,9,14,17,19,23
227:1,3,7,13,18,21,2 4 228:1,3
228:5,7,9,12,15,17,20,23,25
229:7,9,11,13,16,2 1 230:2,7
230:10,12,14,17,20,2 4 231:2,5
231:8,10,12,20,2 3 232:2,3,4
232:16,18 233:4,7,15,17,21,23
234:2,6,10,12, 15,18,25 235:5
235:9,12,16,19,2 5 236:5,9,15
236:22,2 5 237:4,7,11,15,19,22
237:25 238:2,6,9,12,17,23,25
239:3,9,11,14,18,21,2 5 240:3
240:6,12,18,2 1 241:5
courtesy 56:15
courthouse 2:7 7:8 241:5
courtroom 1:6 198:16 215:7
216:4,20 217:14 240:16
courts 58:24
Court's 20:23 65:23
cousin 60:4
covering 210:20
covers 42:25 43:1
co-trustee 141:16
co-trustees 1:9 32:9,11 35:10,12
36:12 78:8,12 104:9 126:18
crash 216:24,25
crazy 82:19
create 77:9 195:6
created 213:16
credibility 158:3 218:21,22
221:25
credible 198:6,6,7
cries 214:8
critical 36:15
cross 237:6,8
crossed 71:9,10 75:1,17,18
95:22
cross-examination 3:8,11,14
87:3,10,12 120:13,14 141:6
193:24 194:8
cross-examine 197:4 237:23
cross-examiner 138:19,20
cross-examining 196:22,24
curiosity 227:3
current 175:12
currently 227:23
custom 89:13 111:18
cut 44:14 91:25

D
D 2:7 241:5
Dade 144:6
daily 47:9 58:1 81:6,8
Dale 2:1 5:11
damage 226:10
damaged 83:2
damages 36:21 37:4 39:21 40:2
40:3,16 41:1,15 43:2 48:5,17
48:19,20 82:3,4,6 83:17 225:7
danger 197:6
data 43:24

date 8:7 70:16 72:7 96:6 106:4
109:2,6 118:18 200:5 202:16
202:21,21 241:4
dated 99:21
dates 147:5
daughter 228:19 229:7,8,12
day 14:12 32:19,23 34:7,17
38:15 70:21 76:13 106:10
118:11 176:21 178:21 204:1
208:5,10 235:4,7,20
days 14:18 21:9 27:1 77:11
169:21 213:17,19,2 5 217:9,19
224:19
day-to-day 38:13
deactivated 51:23
deadline 119:6,8
deal 53:21 81:24,24,25,2 5 82:2,9
87:2 98:5 102:10 125:10,11
125:23 163:11 167:12,17,18
169:17 170:8 180:6,9 194:22
217:13
dealing 8:11 151:6 233:1
deals 31:8 46:20 110:21 159:9
160:25 161:2,13,14 162:9
223:23,24
dealt 78:14 98:6
debate 189:25
December 32:13
decide 12:4 30:5 58:8,19 158:1
168:25 210:5 216:22
decided 32:5 34:6 51:21
decision 29:21 30:1 36:4,10
59:18 134:16,17,1 8 224:10
230:8 237:13,17
decisions 36:12 220:15
decorated 89:11 111:16 115:12
115:17
decree 43:17
deducted 43:17
deed 105:3,11
defendant 2:1 5:10 12:18 19:1
28:1 29:18 34:4 35:6 44:11
49:12 81:16 138:14 239:22
defendants 1:10 4:17 8:5 11:25
22:24 23:11 25:16 26:6,11
27:3,20 28:20 29:17 31:16
32:2,7,12,18,21,21,2 5 33:1,15
34:3,8,9,13,17,19,2 3 35:2,5
35:13,24 36:14 37:3,12,15,19
37:24 38:4,6,8 42:21,22 43:11
45:17 47:15 49:11 67:16,17
68:19 69:18,22,2 5 70:9 72:10
73:15,18 77:19,19 78:19 87:4
92:6 107:2 117:16 118:21
127:4 133:3 135:3 136:5,12
137:11,19,2 4 138:13,15,22
142:4,7,15 143:9,14,18,23
144:12,18 145:3,18 147:8
152:19,23,2 5 153:10 155:18
156:13 159:24 161:5,11,11,18
162:6,9 166:24 167:11 175:11
184:16 186:22 199:24 201:19
210:8,9,22,23,2 4 217:13,14,17
220:24 227:1 5 233:24 236:24
236:25 237:1,10,18,19,20
defendants/sellers 38:3
defense 15:23 29:2 35:13 45:13
199:19,20 210:13 212:19
delay 17:25
delayed 13:3,5 15:19
deliver 35:15 68:17 166:19
184:20
delivered 36:24 91:23 173:18
demand 12:5
denied 77:1 119:9,12 209:11
218:21
deny 61:7 238:12 239:5
depend 17:5
depends 142:3

depo 15:5,7 17:12 141:10
deposit 34:9,18 70:14 72:7 73:10
76:7 118:16
deposited 119:17
deposition 8:6 10:13 12:24
13:23 16:10 17:14 19:1,6,12
29:4 93:15 109:15 134:2
139:1,3 147:18 149:5 160:1,5
165:8 173:24 177:15,16,18
188:9 189:12 190:3 207:10
212:21 220:19
depositions 101:5 102:13 109:17
224:19,20,21
derived 133:9
described 17:3 144:22 168:20
describing 219:16
Description 4:4
deserve 216:12
destroys 152:6
details 125:13
determine 80:1 81:25 141:9
150:5
determining 140:23
development 141:5
developer 107:4,5
dictate 81:20
dictated 183:3
difference 40:17 41:2 53:11 54:3
60:6,18,20 67:11 80:3,7,15,18
81:7 85:7 87:22 88:2 122:25
131:11,24 136:25 137:19
153:21 158:9 162:12,13
163:14,20,2 4 181:19,20
223:19 225:8
differences 123:20 181:21 223:9
223:10 224:14
different 10:19 58:4,4 121:19
122:13,21,2 2 126:21 146:6
181:5 182:11,13,1 5 184:12
203:3 211:12 218:17 223:21
224:21 226:4,6 234:15
differently 121:20,21
difficult 151:7 226:25
dinner 217:1
direct 3:7,10,13 57:1 89:9 91:25
92:5 101:3 102:16 111:14
113:15 116:8 120:18 127:22
132:20 136:18 138:21 141:4
188:6,8
directing 37:8
directly 15:23 69:2,8,11,21,25
91:19,22 92:7 127:24,25
128:1
directs 182:21
disabled 60:14 61:5
disagree 49:16 59:3
disagreed 46:13
disagreement 235:13,16,20
disagrees 235:13
disavow 34:19 76:14 77:14
disavowed 37:12,24 76:15
109:10,13
disclose 17:4 28:25
disclosed 16:21,24,25
disclosure 48:6 202:8
discovery 26:7,10 44:3 150:22
150:24 153:20 190:19 191:12
discretion 18:9
discuss 27:5 54:6 70:6
discussed 30:15 100:15 207:23
208:19
discussing 207:13
discussion 36:7 119:5 185:6
discussions 37:25 39:6 72:17,18
107:5 185:10,12,14
disingenuous 14:3
dispositive 61:4
dispute 12:5 15:16 26:7,10
45:18 81:13 134:11,13,14

144:20 150:20,22 201:15
 209:5,9 212:2,5 222:14,15
 223:20 238:21
disrespect 224:3
distinguish 231:21
distinguishable 231:22
district 1:1,1,13 20:13 68:8
 220:3,4
divide 226:12
DIVISION 1:2
docs 177:12 202:8 204:5
doctor 23:25 25:1,13
doctor's 22:13 25:6
document 33:10 35:11 67:2 75:4
 75:7,8 78:8 95:22 99:18
 106:18 111:10,10,13,21 112:1
 112:8,23,24,25 113:21 114:7
 114:9,9 115:15 116:17,19
 117:9 124:7 146:3 157:23
 161:15 165:4,24 166:1 176:5
 178:18 184:25 188:7 191:1
 200:3 206:23 234:1
documents 26:5 28:12 35:23
 36:11 38:6 39:9 43:23 98:23
 106:5 112:6 127:14 147:17,19
 152:6 157:22 161:12 177:10
 191:10,10,18
doing 17:7 53:4 55:1 87:5
 110:21 120:7 140:5,9 178:24
 187:13,14 224:23 227:18
dollar 73:21
dollars 73:20
done 6:15 7:14,20 18:2,5,7 36:16
 54:16 55:17 80:17 102:5
 143:13,13,15,24 170:4 171:6
 195:14
door 108:11,12,20,22
doubt 151:10
down 31:20 47:1,2 50:13 51:12
 56:11 58:3 88:23 89:2,4,17
 90:25 93:14 100:17 102:9
 104:23 107:6 110:25 112:12
 127:9 132:6 151:4 155:4
 178:1 179:19 198:10 205:18
 214:25 222:23 229:1
downtown 89:10 111:15
drag 77:4
draw 151:11 152:1,5,10
drawn 151:2
Drive 1:16
drop 234:21
dropped 239:13
due 6:24 7:1
duly 81:22
during 19:3 69:4 91:17 177:7
duties 214:13
D.C 13:7 16:15

E

E 240:25,25
each 27:16 28:2 102:8,9 104:23
 113:17 116:12 123:22 164:5
 168:15 179:17 215:20 231:8
 231:11
Eade 230:19
earlier 31:6 78:19 90:10,17
 106:24 107:7 123:10 124:23
 158:17 182:6 187:4 205:15,22
 210:18
early 69:6 76:6,7 112:11 238:18
Earning 236:5
easier 79:16 140:3 239:14
East 2:2
Eastern 20:13 68:8
easy 43:25
ECF 9:24
edits 75:4
effect 97:8
effective 54:23 140:23 203:22

effectuate 36:11
effort 149:19
eight 108:18 126:1,1
either 28:7 54:25 60:7 69:21,25
 92:6 103:21 127:3 128:1
 138:3 175:14 177:10,13
 179:22 211:21 218:11 226:1
elaborate 163:22
elect 215:21
electronic 6:6 89:13 111:17
 169:20
electronically 5:21 6:1,3,7,10,10
 7:10
elegant 14:4
elegantly 9:11
Eleventh 197:10
elicit 59:12
Ellen 102:21 149:14
email 14:11 15:18 24:24 27:4,17
 29:5 47:19 54:7 55:21 72:14
 79:2 91:25 99:19,21,24 100:7
 100:9,10,11,19 101:1,14,19
 128:7,24 129:2 142:12 153:6
 156:2,3,9,15,17,19 160:11
 167:10 179:7,12,18 190:17,18
 191:3,5 192:16,17,24 195:25
 196:3,5,7 199:6 200:12
 205:11,13 206:4,18 207:4,21
 207:23 234:23
emailed 27:17,25 153:2,9 234:22
emails 26:15,18,19 27:1,6,9,13
 27:14 28:1,7,9,23,25 29:9,11
 37:25 68:25 77:3 78:25 79:5
 91:19,24 98:18,21 102:1
 135:5,20 136:15 176:22 192:7
 192:11 200:22 207:1,14,19
 209:5,7 210:2 212:2
embarrassment 140:25
emergency 5:13 6:6,9,11,12,13
 8:11,14,22 10:8 13:25 15:24
 17:3 20:2
end 10:5 41:5 162:21 164:25
 165:2 215:10 216:22 218:10
 235:3 238:4,13
ended 13:9 160:9 215:19
enforce 217:23,24 220:1,14
enforced 217:7
enough 44:1 82:9,20 163:13,25
 164:1 218:16
enter 46:2 94:11 112:21 194:17
 204:21 217:20
entered 35:24 112:3 128:4 145:3
 216:20
entering 127:16
enthusiastic 233:10 235:12
entire 75:23 103:16 107:8
 220:23
entirely 35:4
entitled 11:5 12:6 41:25 211:15
entitling 13:23
entity 98:11 155:22
equitable 43:7 58:23 60:8 216:2
equity 38:23 39:7 41:11 60:12
escrow 34:10,18 37:10 118:17
 118:19 119:20,21 202:7 236:7
escrowed 235:23,25
especially 58:1 60:6 200:5
Esq 1:15,19 2:1,1 215:7 216:20
essence 165:6 170:7
essential 36:23
essentially 18:23 24:2 148:25
 226:4
establish 40:15 138:10
establishes 133:8
estate 24:9,10 27:3 28:4,5 32:15
 32:18 33:2,16,21 35:11,18
 36:25 37:8,17,19 40:25 49:10
 53:21 59:8 67:22 125:10
 136:24 144:19 166:13 168:2

213:17 216:24 223:24 225:9
 236:18
estimated 107:10
estop 41:13 44:16,17
estoppel 41:10 44:16 46:19,22
 225:18 232:1,6
ethic 15:14
ethical 166:4
ethics 166:16,18
Evans 2:1 5:11 232:13,17
even 11:3,5 17:6 19:25 37:11
 52:12 77:1 82:24 109:17
 110:8 120:8 122:7 139:22
 153:14 156:25 162:8 164:20
 176:22 178:7 182:8 187:12
 207:8 211:2,22 212:24 213:7
 218:13,22 223:4 232:23
 233:18
evening 76:3 101:20 129:19
 131:17 195:3 235:23 237:14
event 79:8 161:17 238:4
eventual 55:14
eventually 50:5,6 53:5,15 57:18
 180:3,3
ever 26:15 34:20 58:6,8 69:2,8
 69:11,21,24 78:7 91:14
 105:23 106:5 107:1 109:18
 119:22 127:3,6,8,11,18,22
 128:9 144:3 151:20 152:22,24
 156:8 189:7 194:10,17 195:3
 195:18 198:16 203:16 215:13
every 38:15 75:20 101:12,12
 139:21 218:14
everybody 15:13 44:5 108:11
 198:1 218:25
everybody's 238:15
Everyone 31:20
everything 6:9,11,12 25:7 28:10
 31:3 36:16,18 38:9,15 47:8,12
 101:5 139:15 140:10 141:21
 151:5 202:20 204:15 207:15
 207:24 217:4 221:3 235:6
 239:12
everywhere 217:2
evidence 4:3 23:1 32:2,7,14,17
 32:23 33:1,14,18,20 34:2,5,12
 34:16,25 35:16,21 36:1,6,13
 48:20 63:3,8,13,19 65:21
 66:21 84:1,2,2,6,7,7,10,11,13
 84:14,16 99:7,14 109:12
 113:11 115:4,15 128:4 140:13
 140:22 146:15 148:14 191:19
 192:21 193:2,22 201:19
 221:21 226:21 233:12 239:17
evidentiary 13:19
evolved 59:7
ex 6:16
exact 73:9 93:10 106:4 108:19
 124:13 144:13
exactly 24:3 73:12 96:19 98:22
 131:18 139:15 158:25 179:2
 218:25 223:22 224:14
examination 3:7,10,13,15 57:1
 116:8 136:18 141:4 205:1
examining 140:21
example 161:1
except 93:4,10 141:4
exception 150:10,11
excess 230:11
exchange 38:25 134:9 186:18
 192:11
exchanged 135:5 233:25
excluded 46:11
exclusive 226:12
exclusively 213:4
Excuse 49:4 183:6
excused 115:22 208:4,9,12
execute 34:24 45:23 47:18 92:12
 95:4 157:7,9 194:21 236:12

executed 32:20 34:8,18 37:22
 46:14,16 48:2 74:15 75:25
 76:5,6 122:5 153:3 162:19
 170:17 172:3 176:17,25
 177:12 178:12 179:1 189:7
 195:18 202:5 203:21 204:3,5
 205:16,23 206:15 207:9,11
 209:12 212:6,7 234:1,24
 235:1 236:13
executing 105:24
exercise 140:20
exhaustive 150:18
exhibit 4:5,6,7,8,9,10,11,12,13
 4:14,15,16,17 7:23 11:1,2
 18:13,14,15,16,19 45:20
 62:11,12 63:3,8,13,19,21
 64:14,18 65:20 66:6,7,21,25
 68:4,19 70:5,24 73:7,8 74:21
 74:22 88:12,15 90:6,13,14
 92:9,19 93:2,3,4,4,6,7,8 95:13
 95:16,20,24,25 96:1,9,12,15
 96:23 97:5,19 99:2,10,14
 103:7,11,14 111:8 112:3,4,5
 113:5,12,21 114:1,22,25
 115:4 116:15,22,24 117:13,19
 120:18 121:4,6,9,10,19,24
 122:7 123:9,12 124:6,19
 125:2,14 127:12 128:3,4,17
 130:6,7 145:23 146:15 148:5
 148:14 153:16 160:4 165:16
 165:18,19 176:4 177:14,18
 184:16 185:21 187:16,18,19
 188:10 192:21 193:2,14,22
 195:6,21 196:8,9 199:18
 201:12,19,23 205:3,5 206:1,8
 206:9 210:13 212:9 233:24
 234:23 235:2 239:2
exhibits 4:1,2 56:16 62:13,15,18
 62:24 65:17,18,22 84:20
 95:12 110:10 116:11 208:11
exist 96:15
existed 55:6
existing 67:5
expected 77:10
expecting 167:17
expenses 227:10
experiences 133:10
expert 137:17
experts 48:6 125:10
explain 197:19
explained 204:2
explicit 91:12 174:17 189:2
explicitly 188:6,8,25 190:9
explore 44:11
express 66:9 71:5 93:25 133:2
 194:10,17
expressed 19:17 103:10 116:20
 117:1,12,18 118:2 120:21
 189:9
expressly 77:12 103:14 138:1
extensive 27:2
extra 62:23
extreme 8:19
extremely 119:6
extremes 60:19 231:18,19
eye 214:7,14,21,24
eyeball 214:14
eyes 157:4,6,14
e-mails 212:16

F

F 240:25
fact 16:20,25 20:15 35:16 36:15
 37:6,11 70:8 80:20 81:5 96:6
 101:23 113:4 119:7 122:25
 129:11 151:2,16 153:1 175:9
 179:18 199:5,10 201:15 213:8
 219:16
factors 230:21

facts 60:12 122:24 126:17
181:22,24 226:24
failed 30:18
fails 79:8
failure 26:9,12 28:25
fair 40:3,7,7,9,17 41:2 161:10
fairness 8:5
faith 161:13 169:17 170:7
194:22
fake 200:6,11
fall 168:25
falls 214:12
false 14:1,2 189:20 190:2,11
192:17
familiar 42:15
family 1:9 47:9,12 51:13 101:19
104:9,15
far 128:2 141:10 150:3 162:18
163:10 189:8 217:2 231:4
farther 122:7
fast 129:5,8 140:5
faster 140:3
favor 61:4 218:13
favorable 196:25
Fax 1:18,22 2:4
featuring 89:12 111:16
February 1:8 32:16,24 33:19
34:2,7,11,16 35:20 37:8,22
38:7 51:25 52:1,16,18,23
58:16 62:6 66:1 67:3 69:6
70:3 71:13 73:3,4 74:19
75:10,10,11,15,1 5 76:3,9,13
77:22,23 78:1,2,6,11,19 91:18
91:21,22 92:16 93:16 99:21
101:7,16 106:2,3,6,9,11 109:4
109:6,9 113:22 128:8,9,15,25
131:17 173:7 181:13 183:6
195:24 196:7 199:7 201:14
202:18,23 203:25 204:8,13
206:21 234:13,18,20,23 235:3
235:7,19,22,23,2 3 238:24
Federal 17:20
FEDERICO 1:12
fee 42:22 45:3,4
feel 68:9
fees 42:9,25 226:14 227:4
felt 47:18 73:19 74:1 180:21
Ferguson 2:7 241:5
few 13:9 108:13 135:12
fight 13:12 218:8
fighting 153:20
figure 25:2 44:2 198:12
figures 44:25
file 7:8,10 9:24
filed 5:14,20,25 6:2,3,4,7,17 7:6
8:16,23 14:14 16:17 21:15,16
34:23
filing 6:6 105:24 106:1
fill 142:24
filled 47:3 105:18 126:23
final 74:23 114:18 117:20
162:18 173:20 204:21 217:20
224:16,22
finally 12:24 17:24 77:15 171:25
finance 48:16,16
financed 48:14,16
financial 43:24
find 12:9 68:22 119:15 147:19
149:8,21,22 151:7 160:5
171:24 172:5,15,16 173:10
180:17 195:16 209:1 214:5,6
229:21 230:4 237:4
finding 28:19 58:2 59:6 198:11
220:19
findings 218:22,22
finds 179:8
fine 19:2 123:8 203:23 219:4
finger-pointing 231:14
finish 110:13 239:23 240:6

finished 20:14 85:25 191:16
fire 9:16 229:25
fired 9:13,15
firing 230:3
firm 8:11 227:6,8,9,9
firms 10:19
first 6:15 11:8 21:18 34:20 48:2
53:9 54:10 56:5 57:10,21
58:16 76:17,19 77:4,4,17
88:12,14 96:8 97:16 100:9
112:8 119:1,13 122:4,17
124:9,19 129:15 132:12 137:6
139:6 144:12 147:23,24 153:2
179:6 182:10 193:15 194:25
195:16 201:8 202:4 213:9
214:8 219:13 225:12,19,24
firstly 48:23
fish 44:13
fishing 184:13
Fitzgerald 1:16,20
five 18:8 48:12 61:5 83:8,11
139:7 216:7
flight 13:3,5 15:19
flip 128:4 204:9 206:1
floor 30:25 31:5 87:24 107:21
108:3,6,9,10,19,2 3 223:17,18
flooring 88:3 107:8 110:13
floors 89:12 108:12 111:17
Florida 1:1,7,21 2:3,8 32:4
42:15 46:15,23 57:6 67:9
105:16 149:2 220:4 234:21
241:6
folks 185:7
follow 61:23 140:12 220:13
followed 6:17 17:7 46:10 47:6
74:13
following 5:1 31:12
food 225:2
fool 81:8 201:13
foot 73:20,21
footage 65:11
forced 215:16
foregoing 241:1
foreign 53:24
forever 134:3
forgive 214:4
forgotten 41:15
form 36:13,25 67:9 105:16
formality 161:19
formation 23:9
formed 71:22 133:5
Fort 2:3 7:7,13
forth 8:15 40:20 49:19,22 52:14
68:25 69:7 76:17 78:24 79:4
98:20 106:7 112:12 120:3
168:24
forward 76:24 119:6,8
forwarded 47:20 72:14 79:2
92:25 94:9 235:3
forwarding 100:11
found 31:6 118:23 129:15
131:16 167:5 172:2 195:17
207:13,21
foundation 68:1,3,4
four 128:18 132:25 133:1 147:11
147:13,14 163:6,7 215:20
231:6
fourth 20:12 200:4
FPR 2:6 241:4
frame 7:1
framework 29:25
frankly 126:5
frantic 176:24
frauds 46:15,21 48:24
free 218:3
frequently 27:17,25
Friday 5:16 6:18 14:19 15:12
21:5,18,19
Fridays 15:14

friend 168:8
from 8:23 13:6 18:18 20:8,16
22:3 23:16 25:16 26:6 27:3
28:13 30:25 32:1 36:14 38:4
39:6 40:21 43:17 45:13,23
46:22 47:14 48:10,20 53:20
59:12 60:5 61:15 63:25 66:10
70:4 73:18 75:13,16 78:25
79:2 83:23 85:10 86:17 91:17
91:20,23 92:5,7 98:21,24
100:19 101:4 102:5,12 105:3
105:11,16,20 108:4 111:1,10
112:1,16 116:23 117:4 124:16
126:17,24 128:7,9 131:16
133:3,10 139:11 140:8,24
142:9,11 147:14,15 148:25
149:5 151:2,12,15 152:2
156:18 158:18 160:11 161:5
161:11 162:6,9 163:12 164:10
166:5 167:21 171:13 174:16
174:18 176:23 178:18 184:21
185:3,17 186:5,13,22 187:1
188:1,15 189:3 192:8 194:11
194:18 195:12 198:25 203:12
204:20 207:9 210:8,9,22,23
210:23,24 212:19 213:24
215:7 218:25 220:24
front 25:17 29:10,11 62:12
84:23,24 89:1 116:14 195:7
197:21,22 212:11
frustrated 32:1
full 28:21 45:22,22 89:10,11
111:15,15 149:22 150:4,18
220:14
fully 34:8,17 37:22 74:15 77:10
79:17 122:5 153:6 172:3
76:25 179:8 189:7 203:21
205:16,23 206:15 233:25
234:24,25
function 101:20
funds 37:10 236:14
furnished 85:6,9,15,17,22
114:23
furnishing 111:23 113:6,14
furnishings 113:3
furniture 89:12 90:7 110:18,22
110:25 111:8,17 112:2 114:13
114:16,17 115:8,11,14,17
further 37:10 87:9 101:20
115:19 120:12 132:3 204:24
208:3
future 7:16 180:5 218:7

G

gain 222:7,9
gave 8:8 11:10 28:21 33:19
38:15 70:19 91:11 97:3,4
120:21 136:13 142:18 154:9
154:12 156:17 162:17 167:2
189:11,20 190:23 191:3 200:9
212:20 213:16 221:1 239:5
general 95:9 143:6,8
generally 8:12 58:25 86:20
133:25 144:22 197:19
gerbil 215:16
gerbils 215:12,13
gets 192:14
getting 13:9 57:15 73:23 74:2
82:3,9 140:8 184:6 192:13
224:14
GILDA 2:6 241:4
give 24:11 26:17 29:3 43:3,4
46:2,12 48:3 56:19,20 62:16
62:22 74:6 95:1 100:4 104:23
113:17,18 132:25 135:11
137:3,4 149:20 152:24 161:1
161:7 166:10 190:2 191:1,20
221:14,15 225:2 232:18
given 46:17 48:22 49:15 90:21
156:4 171:12
gives 147:5
giving 36:10 94:22 156:19
glad 15:13
go 6:10 10:25 12:3,13 14:5 17:17
18:11,12,25 23:25 27:1 33:13
41:14 47:5,11 56:14,17 61:24
62:21 64:20 65:15 66:22 67:7
76:24 79:2 80:17 82:1 85:14
88:23 99:15 101:14 102:14,15
104:25 108:12 109:1 116:7
122:7,7 123:9,13 125:22
126:10 132:14,24 134:3,6
136:2,16,16 139:4 142:21
143:17 144:5,10 145:8 152:3
156:10 158:13 159:5,15,17,18
159:20 163:19 165:12,13
165:15,19 166:9 168:18
173:16 176:2 184:14 187:15
190:14,18 196:14 198:18
207:10 208:8,24 210:16 211:1
212:25 214:5 215:4,13 217:1
219:21 221:21 230:21 240:4
goal 240:8
goes 110:23 137:2 141:25 158:3
going 11:10,12,13,14 12:3,13
13:12 15:12,16 16:20 18:1
21:24 22:22,23 23:21,24 24:2
24:3,4,6,20,21,2 25:8 29:6,7
29:11,14,17,18 40:20,23
46:24 47:10,10,11,11 48:8
49:18 51:12 52:5,13 64:25
67:18 69:7 72:18 73:19,22
77:8 81:19 86:23 89:17 94:5,6
99:8 102:10 108:22 109:9
116:10 119:14,16 123:13
131:2 132:19 134:1 141:11
145:7 151:23 154:5 158:10,24
167:5 170:8 171:16 174:25
175:6,8 180:4 184:1 192:10
192:14 193:25 194:22 197:12
198:19 201:3,9 204:4 206:6
207:15,24 209:4 210:1,2
211:13 212:1 215:10,11
216:24,25 218:10,11,22
220:11,13,16,24 221:5 226:21
227:21 228:14,18 229:2,3,24
231:21 232:11 236:23,25
237:1,11,16,20 238:7,10
240:1
gone 13:10 40:18 43:15 76:17
good 5:7 14:21 31:23 53:21
68:10 81:24,25 82:1,9 83:9
84:2,5,7,7 87:2 120:16,17
161:13 169:17 170:7 172:16
172:17 175:22 194:22 199:21
208:5,10 213:17 216:18 218:8
229:25
goodness 5:13 10:21 132:23
227:7
Gosh 230:17
gotten 26:15 196:17
governed 46:21
gphofficialreporter@gmail.com
2:8 241:7
gracious 5:13 132:23 227:7
graduated 111:1
grand 220:23 225:9
grandfather's 224:5
grant 9:4 28:14,24 61:6 211:15
granted 7:22 8:24 9:2 17:9
215:5 220:1
great 216:17 219:8
Greensboro 1:16
Grounds 91:4,6
Group 2:2
guess 9:10 10:1 29:21 60:10
93:21 94:5 122:19 164:22
175:2 215:15 217:20

guidance 9:18
guy 68:7 137:5
guys 43:15 211:24

H

hac 214:16
hacking 200:19
half 13:7 123:1
hand 56:8 116:2 132:9
handily 230:12
handle 38:13 146:21
handled 146:17
handwriting 93:4 123:1,14,18
123:23 124:7
hand-delivered 6:8
Hang 63:16 232:11
happen 21:25 49:18,20 100:5
180:4 211:20 215:19,23 216:9
218:10
happened 9:6 52:16 171:1,13,22
218:24,25 219:24 220:9
happens 6:12 15:25 19:24
217:15 218:6 220:9 225:4
happy 84:24
harassment 140:24
Harbour 217:3
hard 162:20 181:11
Harris 1:15 3:4,7,10,13,15 5:7,8
5:15,18 8:14,18,25 9:7,14,18
9:23 10:1,3,6,10,12,19 11:7
11:13,16,20,24 12:7,11,16
13:1,3,7 15:18,21,24 16:2,5
16:10,13,19,21,25 17:3,13
18:5,12,16,22 19:14,16 20:3,5
20:9,11,18,20 21:23 22:4,7,10
23:3,5,7,12,14,19,23 24:2,4,8
24:12,15,17,19,21,23 25:4,15
25:20,23 26:1,4,9,14,25 27:8
27:10,12,14,17,20,25 28:3,6,9
28:12,16,19,23 29:2,8,13,15
29:22,25 30:3,7,14,17 31:19
31:23,24 33:7,9,12,14 38:20
38:22 39:2,4,8,13,17,20,23,25
40:3,5,9,13,17,24 41:2,4,8,10
41:12,14,20,24 42:3,6,9,14,18
42:24 43:9,11,19,22 44:10,19
44:23,25 45:2,4,6,8,12,14,15
56:7,15,18,22 57:2 58:18,23
59:5,12,15,18,21,25 60:10,17
60:21,24 61:1,3,8,10,25 62:1
62:14,17,20,24 63:5,10,14,21
63:24 64:1,6,8,12,16,21,23
65:1,6,8,10,12,23 66:2,6,9,13
66:18,24 67:13,16,20,23 68:1
68:5,9,11 72:22 79:13,17,21
79:24 80:9,14,19,24 81:1,4,11
81:15,21 82:3,7,10,14,17,22
83:1,7,13,17,20,23 84:3,7,10
84:17,21,24 85:2,6,10,13 86:5
86:7,11,19,25 87:6,8 91:2,5,7
99:12 115:21,24 116:9 120:12
122:23 126:9 130:11,14,22
132:5,8,20,22,24 133:2,5,8,11
133:13,15,17,20,22,24 134:6,9
134:12,14,18,22,25 135:2,5,7
135:10,13,15,19,22,24 136:2,6
136:9,12,15,17,19,23 137:2,7
137:10,13,15,20,23 138:1,4,6
138:10,12,15,17,22 139:1,3,8
139:9,19,24 140:4,6,8,15,17
141:14,19,21,25 142:3,22,25
143:1,6,10,19,21 144:7,11,17
145:1,2,13,25 146:2,11,16
148:7,9,15 150:3,7,12,17,20
150:25 151:9,13,15,18,19,23
151:25 152:3,8,11,13,17,19,21
153:5,12,15,19,22,24 154:1,7
155:14 156:8,11 158:3,7,12
158:14,25 159:7,21 165:14,16

165:18,20,23 166:12 167:7
168:16,19 173:17,21,23
174:10,12,15,19,21,24 175:2,5
175:9 176:3 177:17,20 178:2
178:3 184:15 185:8,9,24,25
191:16,21,25 192:2,5,11,15,23
193:4,7,9,19,21,23 196:18,21
196:23,25 197:8,12,24 198:4
198:7,10,13 199:7 200:3,7,22
201:2,4,10,20 205:2,5,8,19,20
206:7,9,11,18,20 208:3,7,13
208:16,19,22,24 209:3,7,11,21
209:25 210:7,10,22 211:3
212:5,9,17,23 213:2,8,12,14
213:22,24 214:3,7,10,14,19,21
214:25 215:3,6,7 216:20
217:8,11,22,25 218:5 219:5
219:10,13,16,19,22,25 220:4,7
220:11,18,22 221:17,22 222:2
222:5,8,11,14,17,22,25 223:7
223:12,20 224:1,7,10,13,17,20
225:1,3,6,11,16,18,21,23
226:3,7,10,15,18,21,24 227:2
227:6,8 233:25 234:5,17,21
235:2,6,10,15,17,21 236:4,7
236:11,16,20,24 237:3,9,13,17
237:24 238:1,21,24 239:2,4
239:10,12,16,20,24 240:22
having 26:19 106:5,20,21
head 7:12
heap 189:8
hear 22:3,18 23:1 35:9 57:13
60:7,20 61:12,15 86:20 87:18
126:13 139:6 149:25 176:23
193:16 194:13 213:20 220:24
228:15
heard 78:7 117:3 173:23 218:25
239:13
hearing 13:20 60:6 86:18 137:14
hearings 18:6
hearsay 72:19 86:21 149:23
150:10,11,13
heavily 47:8
held 5:1 31:13
hello 109:19
help 48:15 141:11 209:15 210:5
210:14,15,16 214:10 226:8
hence 49:25
her 11:18 15:19 17:14 18:19,23
18:24 19:11,12,16,17 22:12
35:18,22 36:2,23 38:15 46:2
47:1,3,4,4 48:3 49:3,5,6 51:13
51:13,19 54:6 66:14,22 67:21
67:25 85:14 87:7 90:15 91:24
92:4 93:18,22 97:3,4 103:18
117:1,11,18 120:21 121:2
122:19 131:10,24,24 142:13
142:20 149:14 174:16 180:19
183:21 187:6,8,9 188:3,6,8,22
188:23 189:3,9 190:5,5,10,13
203:22 213:16 214:13 228:14
228:22 229:2,5,7,8,8,12
herself 36:3,11 79:3
hey 7:18 181:14 234:18
he'll 19:3 56:19 130:1
Hi 100:15
high 41:5 73:19 80:17 108:12,21
108:23 120:3 145:10
higher 74:2,2 79:2 87:24 108:3,9
108:10 110:8 223:11,12,13,14
223:14,14,15
highest 62:10 73:21 110:11
180:24
highly 142:5
him 9:16 11:9 16:7 24:25,25
25:8,10,11 26:18 28:13 46:13
56:19 68:14,17,17 69:1 74:9
76:4 77:12 94:22,25 95:1
102:18,22 105:19 118:9,10

126:25 127:20,21 128:1 130:1
133:18 134:15 135:8 136:1,13
138:1 139:5 141:11 142:4,6
143:4,16,16,22 150:4 152:13
152:22 159:3,3 175:1,3,8
176:24 177:16,17,25 178:4,4
178:6,11,23 194:5 195:3,4,12
196:5 197:20 198:6,6 201:5,9
201:10,12 203:1,6,23,24
204:2,4,5,6 209:4,7,22 216:19
221:16 237:7,9
hire 68:14
history 49:16 89:18 112:10
115:7 146:4 147:1,5,7
hit 117:4
Hoffar 1:16,20
hold 24:11 130:13 151:21 191:7
191:8,24 192:1,1,3 217:25
home 202:6 210:16,18
homestead 224:6
honest 187:10
Honey 1:9 5:3 27:20 28:20,20
32:8 35:7,14,16,21 36:2,6,9
36:15,17 38:12 45:17 46:1,8
47:4,6,15,25,25,25 49:1 51:6
51:11 52:21,24 54:6 69:20
82:21 91:15,20 97:14,23
103:17,20,24 104:8 105:6,9
125:18 126:6,19 154:24
155:11,11,17 156:19 157:1
174:19 175:19,20 179:10,13
185:11,12,14,17 186:25
194:11,11,18 204:21 221:3
228:1,13
Honey's 156:22 178:8 179:6
227:23 229:2
Honor 5:7,15,18 6:19 7:5 8:1,14
8:18 9:15,23 10:10,12 11:7,25
12:2,11,16,19,21 13:1,11
14:20 15:6 16:2,5,19 17:16,18
17:25 18:12 20:3,9,18 21:1,23
22:2,4,7 23:3,5,12 24:19
25:15,18,20,23 26:14,19,25
28:16 29:2,20,22 30:14,17
31:19 33:7 38:17,20 39:2,14
39:18,25 41:8,12,14 42:24
43:19 44:23 45:6,12,16,18
51:18 52:3,15 54:19 56:4,15
56:22 58:14,23 59:13 60:17
61:13,19,21,25 62:14,17 63:1
63:16,21,24 64:3,8 65:6,12,24
66:2,16,18 67:23 68:5,9 72:19
79:11,13,17 80:14,19,24
81:1,1,5 82:7,10,17,22 83:7
84:3,21,24 85:16 86:3,7 87:8
87:11 90:13 91:2 99:9,12,16
113:15 115:21 122:23 126:9
126:12 129:7 130:2,6,11,20
130:23 131:1,3 132:1,5 134:6
135:24 136:2 137:7 138:4,7
138:13,17,22 139:20,24 140:4
141:19 142:8 143:6,10 145:25
146:11 148:7,9,11 149:23
150:12,20,25 151:13,25 152:4
152:11,13,19,21 153:12,22
156:8 158:4,12,20,25 159:16
162:14 165:14 166:7 168:16
170:21 173:21 174:12,24
175:5 182:10 183:11 187:13
191:16,18,23 192:7,11,15,18
192:25 193:6,13,19 194:1,7
196:9,11,18,23 197:9 198:4,7
198:10,13 200:1,7 201:4,20
206:7 208:3,7,20 209:22,25
210:7 211:3 212:3,23 213:2,8
213:12 214:3 215:6 217:8,11
217:22 218:5 219:10,19
220:11 221:17,22 222:5,8,11
222:14 223:20 224:1,7 226:15

227:20 230:1 233:14 234:4,5
234:9,17 235:2 237:3,5,21,24
238:1 239:4,20 240:20
HONORABLE 1:12
honoring 35:3
hook 170:20
hope 217:22
hopefully 240:7
hospital 23:25
hostile 138:23,24,25 141:7,9,13
197:6
hour 13:7 25:7 192:14
hours 132:18 135:16 136:9,10
house 51:21 84:12,12,15 211:7,7
224:5,5
How's 25:3
HS 103:18
huh 20:13
hundreds 144:4,5,6
hurts 223:5
husband 229:20
hypothetical 80:10 91:7

I

icon 206:2
idea 126:24 180:7
identical 48:12 123:22 165:10
165:11
Identification 4:3
identified 141:8,17
identify 67:2 70:5 209:5,7 210:2
ignored 55:23
III 32:11 57:5 73:20 144:23
205:24 206:12
ill 51:20 228:20
illness 228:19
imagine 216:17
immediate 218:8
immediately 9:17 21:3,16
148:22 238:17
impeach 65:2 221:24
implementing 36:10
implications 53:23,25
important 108:5,20 133:1 134:2
139:5 172:6 239:9
imposed 28:17
impossible 16:14
inactive 147:6
inappropriate 170:25
include 38:11 64:11 90:7 111:8
114:15
included 110:10,17 111:23
112:2 113:2 114:13,18 115:8
115:14
includes 67:4
including 35:23 38:5,7,10 91:24
106:7
incomplete 88:3 167:17,19
inconsistent 173:24 181:23
221:25 239:7
inconvenient 20:2
incurred 227:8,9
indeed 197:7
indicate 78:7
indicated 40:18 78:20 79:5
indication 78:10
individual 1:4,5 46:17 126:17
individually 211:18
individuals 47:23 98:3,5 122:19
126:15 143:15 200:17 212:12
indulge 191:17
indulgence 65:23
inference 151:1,12 152:1,6,10
inferred 190:12
information 98:14 105:20 109:4
208:1
informed 129:18
initial 32:15 34:9,18 62:3 68:16
68:18 70:14 72:7 73:9 78:1

91:12 94:16 106:14,21 117:11
117:11 118:16 165:3 188:7
initialed 18:14,17 19:18 34:4,7
70:25 71:10,12 74:23 75:18
75:19,20 77:25 90:11,22
93:13 96:7,14,19 97:2 103:6
103:10 116:25 117:17,21
121:22 155:18,21
initialing 37:7 75:22 117:8,10
121:10
initially 68:24 69:5 145:9
initials 48:1 50:13 71:7 75:4
90:15,25 92:14 93:1,2 95:14
95:16 96:1,3,4,4,9,12,17,21
96:23,24 103:15 117:1,22
121:12,15,19 122:13,19,20
123:15,17 124:22 125:2 176:7
184:17 189:3 195:13,19
injuries 37:4
insisting 236:21
instance 85:6 95:2 118:1 143:2
157:13
instances 36:6 153:8 162:11,11
162:12,13,16 168:5 169:16
170:14
instruct 35:18 76:4
instructed 9:24 70:2 76:5 118:9
118:10
instruction 176:16
instructions 29:3,5 36:10 37:21
38:10 74:6,13 136:13 186:13
instrument 161:21
integrity 220:12
intention 35:2
intentional 152:7,9,12,16,18,19
intercoastal 89:10 111:15
interest 236:5,8
interested 189:11
interesting 206:25 211:14
Internet 30:24 44:1,4 64:1 82:1
87:2
interpret 104:3
interrupt 33:5 104:22 135:17,18
138:20 172:9 185:7
interruptions 168:14
introduce 66:2 99:8 199:25
introduced 56:23 57:21,23
introducing 62:13,15 99:6
130:22 146:10 148:8
invalid 35:6
investigation 150:4
investment 32:6 57:17 179:23
180:1,7 228:7,10
involve 125:9
involved 11:7 36:4 47:8 125:12
125:13 140:2 146:24
involves 143:17
involving 7:23 31:14 36:8 46:16
213:11
Irish 216:18
irrelevant 60:23 61:1 209:24
Isle 59:16
Isles 32:10 45:19 57:6,19 59:3
217:3 224:2
issuance 117:6
issue 18:24 22:8,8 23:3,7,19
24:13,24 25:15 26:4,5 30:3
38:4 77:9 80:6 83:1 133:5
137:2 138:1 184:25 186:14,21
212:12,23 215:24 220:10
224:16,22 229:3 232:21
236:14
issued 10:7,8 32:15,24 33:10
134:10 187:16
issues 125:12
issuing 28:21 37:21 47:6 166:5
iteration 122:4
it'll 17:22

J

jaded 6:14
jail 218:1,4 219:4
January 57:11 58:7 89:23 91:18
102:20 109:4
JK 122:17 123:5 124:9
Joanne 1:5 3:9 5:2 18:14,17
19:16 31:25 45:22 47:20 66:9
90:21,25 91:11 95:10 97:1,2
103:5,9 106:20,21 115:24
116:3,6 120:16 195:13
job 218:8
Joel 203:6
Jonathan 154:17
Joseph 3:12 22:24 28:6 32:18
33:3,16,23 35:18 36:8,10
37:18,20 38:2,10 46:3,6 47:16
47:18 48:10 49:8 50:12,18
53:3 55:22 56:1 68:21,22,24
69:3,8,12 70:3 71:19 72:15,18
74:14 76:1 79:1 92:1 93:23
94:2,7 98:19,21,24 99:20
100:7,20,23 101:8,11 102:4,8
102:13,17,21 127:19,22 128:8
129:16 132:8,10,13 133:2
136:20 137:11 139:10 143:25
149:14,22 150:4 174:16
176:10 194:10,17 198:24
200:13 201:23 208:8 209:11
210:4,19 221:14 233:7 235:15
236:12,15 239:3,5
Joseph's 93:15 101:19 220:16
239:7
Jr 2:7 241:5
judge 1:13 13:21,24 14:17 18:9
19:7,8,10 29:11 30:12 31:1,6
31:7 44:12 87:17 88:18 123:2
130:18 132:3,15 134:3 156:5
159:12 178:24 197:22 198:15
199:16,23 216:5,16,17 221:7
230:19 231:1,18 232:11 238:5
240:5
judges 6:12 9:5 17:20
judgment 28:24 213:15 217:20
218:21 224:16,22 232:20
238:3
judicial 211:5 220:12
July 112:11
jurors 20:15,23 30:5 210:18
jury 11:3,5,11,13,13,21 12:1,2,4
12:15,17 17:8 20:6,21 21:21
29:10 30:4 60:7 84:23 113:19
197:21 210:17 212:11
just 6:10 9:16,18 18:3,20 19:15
25:8 39:12 44:3 46:22 55:20
56:19 59:22 60:13,15 61:22
62:20 66:17 67:13,23 68:1
71:12 77:15 82:16 85:17,20
88:7 95:9,13 98:2,16,17 111:7
111:10,19 112:14,21 113:12
114:18 116:12 120:8 121:6,16
126:2,5,6 140:4 142:19 146:8
147:7,20,21,22 148:16 151:21
153:21 154:25 155:22 156:2
157:11,12 158:10,17 159:22
160:17 161:19 163:9 164:17
164:23 165:9 168:20 171:19
172:8 173:23 177:4 178:20,24
180:7 182:5 184:13 189:17
190:4,18 191:17 194:4 195:16
195:17 197:20 198:12 200:20
200:23 203:3,22 205:3 207:13
208:14 209:11 214:3 215:12
216:17 220:9 224:21 226:8
228:9 229:3 233:7,10 240:12
justify 87:2
J-o-s-e-p-h 132:13

K

Kamhazi 154:17
Katsantonis 1:4,5 3:6,9 5:2,2
15:19 17:1,11 18:14,17,22
31:15,25 36:22,22 45:21
47:20 56:7,9,12 57:3 66:9
85:2,11 87:14 89:19 103:5,9
111:1,25 112:3,14 113:11
114:25 115:24 116:3,6,10
195:13,14
Katsantonises 177:23 178:14,19
keep 44:14 73:22 89:17 101:22
102:10 129:3,10 153:13
156:10 199:4
keeping 170:7
Keheo 44:13
kept 74:2
key 114:13,24
kidding 164:23 171:19 214:1
224:9
kind 6:13 11:2 60:19 66:4
142:23 168:22 180:7 184:13
187:12,13 197:23 211:12
218:2
kinds 216:2
knew 97:24 98:12 108:11,25
109:9 143:24 183:13 190:4
197:12 234:20
know 7:17 9:4,5 11:3 14:4 16:16
18:25 19:5 21:24 25:4,8 30:8
30:21,21 40:14 43:2 44:22
46:4 51:17 52:4 55:3 60:1,9
60:11 67:24 74:13,14 75:6
78:4 79:1,7 82:20 85:12,17,18
85:20 86:6,7,22 87:22,24 88:1
88:10,10 89:24 93:14,17,20
95:22 96:3 97:24 98:15
100:17,21 101:3 105:13,21,22
106:9,11,12 107:3 108:1,5
109:2 110:20,20,25 111:9
114:7,12,17 115:8,10,11,13,14
116:1 117:4,4 119:2 120:1,2
121:16,20 122:16 123:19,20
124:3,21 125:20 126:18,23
128:2,23 129:23,25,25 131:9
131:10 135:10,13 136:21
140:1 142:1 144:24 145:10,11
151:25 153:1 160:20 161:15
163:10,13,24 164:6 168:8
172:19 177:1 178:11,23 179:9
180:4 182:1 187:11 189:6
190:12,14,15,2,1 195:9,13
197:16 199:15,22 200:7,8,10
200:11,18 201:1,3 204:8,15
208:14 210:3,4 211:6,16,16
211:22,23,25 213:9 214:12
215:10,11,12,18 216:1,1,3
217:3 218:11,16,24 219:15
220:8,14,22 227:2,3 230:4
231:16 232:7 234:6,12,25
236:7 237:7
knowing 189:9
knowledge 69:10,24 85:3 101:6
101:7 102:12 126:8 203:19
knows 9:2 44:5 131:11 150:3
K-a-t-s-a-n-t-o-n-i-s 56:13

L

Lauderdale 2:3 7:7,13
law 2:2 8:11 9:12 14:18 23:23
28:25 42:15 48:2,24,25 59:7
111:3 157:4,6 198:16 212:25
213:2 226:23 227:6 233:2
238:3
lawsuit 34:22
lawyer 6:9 8:10 11:1 15:23 16:1
16:3 29:16 61:15 111:5 125:5
197:18 214:8 227:4 231:16
234:7,10,12,15
lawyers 10:18,19,20,21 14:3,7
27:24 29:10 47:21 61:17
211:1 215:8 216:8,10,12
218:7
lawyer's 216:13
Lazaro 111:22
lead 197:4,7,17,18,19
leading 58:10,14 80:19 81:5
139:17,22 140:3 141:3,6
145:6 166:7 196:21 197:24,25
198:6
learn 21:3 57:10 198:15
learned 77:17,21
lease 35:24 36:5 39:7,8,10,11,16
41:15,16,18,19,25,2 54:4,10
42:19,24 43:22 48:18 51:11
67:5 73:12 106:5 127:11
133:13 145:4,9 146:8 147:3
147:25 148:1,2,16,19,23
149:1,4,11,20,22 150:5,18,25
151:2,3,16,20 152:13,22,24
153:1,7,9,17 154:2,3,5,5,9,10
154:13 155:16,19,21,23,25
156:13,22 157:3,7,10,12,19
158:10,15,19,2 159:6,24
161:17,19 162:1,24 175:15
190:16 191:22
leased 52:8,9,11 145:19
leasehold 148:12
leases 106:21,23 147:8,14 162:5
least 14:24 35:23 55:13 56:18
57:17 100:4 101:25 108:12
216:3
leave 14:13 36:9 208:11 240:9
240:11,12,17
leaves 15:13
lectern 210:15,15
led 184:25 203:24
leeway 161:9,13 162:17,17
163:15,17
left 14:14,19 36:2 41:17 88:23
92:14 121:15 122:15 123:6,6
202:1
legal 32:9 35:11,22 78:4 79:10
161:7,15 219:11 227:10
lengthy 136:12,14,15,16
lenient 26:12
lens 214:3
less 44:7 53:10,10,19 101:22
129:4,10 135:9 136:2 138:20
198:6,7 199:4 211:2 217:5
let 16:3 20:25 25:8 33:5 38:18
46:3 58:22 67:11 84:20 94:1
102:3 104:4 107:17 109:12
121:14,18 123:2 126:4 135:17
158:1 160:9 164:6 177:1
178:11,23 194:20 205:21
232:16 237:9
letter 202:7
let's 7:21 44:21 64:20 80:11,17
83:5 90:6 92:9 99:2 113:12
121:9,24,24 122:7,7 124:6
136:16 144:8 156:10 158:13
159:5 165:13,15,16,19 173:25
176:4 187:15 209:15 217:19
231:24 233:8 237:4
level 65:16
liable 232:24

library 30:25 216:11
license 136:24
licensed 166:13
lightly 224:10
like 7:20 9:21 13:24 16:6 17:4
 18:13 26:3 28:16,19 39:4
 45:10 51:8 57:25 59:11,17
 62:11,18 66:4 74:1 76:6
 116:22 120:1 126:6 127:20
 138:18 139:6 140:18 141:1,10
 142:13,19 146:8 147:23,24
 148:5 158:25 159:11 162:18
 167:4 177:14,17 178:23
 180:14,15,18 185:21 188:9
 201:10 205:3 209:7,12 214:15
 214:22 215:12,12 216:7 217:2
 224:4 226:1 229:21 231:12,15
 238:16 240:12
liked 84:22
likely 153:9,11 239:24
limited 46:18
line 4:4,4 34:15 62:9 65:15 88:23
 92:16 96:6 97:11 102:7
 103:21,21 105:7,9,12 108:13
 108:16,19,23 109:1,7 125:14
 125:17 160:8 177:21 186:3
 188:12
lined 71:8
lines 62:10 117:22
list 47:16 54:21 62:20,22,23 98:6
 98:8 104:2 126:2,4,8,15 147:2
listed 32:12 34:15 48:25 50:1,4
 58:5 62:2 89:14,15 97:10,12
 97:25 98:3 104:18,19 105:2,3
 109:7 110:5,9 112:11 147:2
 155:15
listened 183:17
listing 51:23 64:3 82:16,18
 88:19 109:22 111:7,21 112:8
 112:9,16,16 113:4,9 114:9,9
 114:19,19 115:4,6,13,18
 126:24 145:17 160:10 223:2
listings 48:9 58:4 113:6 147:1,4
 147:4
lists 47:24 156:25
literate 79:14,15
litigation 47:22 229:5
litigator 125:5
little 81:9,17 82:13 104:23
 113:18 119:7 123:20 132:18
 175:20 214:4 226:25
live 144:6 172:2,6 179:12,14,16
 179:21,22 217:3 218:2 227:21
 227:22,23 228:3
livelihoods 17:5
lives 228:25
living 17:24 215:19
LLP 1:16,20
local 5:21 6:5,5,16 31:3 58:13
 214:13
located 57:4 110:16
locations 223:22
long 8:6 14:16 20:14 55:11
 57:14 58:21 120:2 132:19
 134:23 135:8,14 136:24 137:5
 137:6 143:17 175:2,19 184:13
 193:25 216:4
longer 13:22 175:20 236:19
long-standing 133:24
long-term 147:25
look 13:24 15:22 19:24 35:8
 58:25 62:11 66:11 70:24 73:7
 74:21 88:12,19 89:18 90:6
 92:9,19 96:8 97:5,10 98:22
 99:2,21 101:16 107:17 113:12
 114:19 116:22 117:13 121:9
 121:24,24 122:21,22 123:12
 123:22 124:6,19 125:14
 140:18 143:8 145:23 148:5

153:3 160:6,8 164:10 165:16
 165:20,22 176:4 177:14,17
 179:19 185:21 187:17 188:9
 195:21 199:14 201:12,23
 202:15 205:3 211:10,20 218:7
 218:10,18 231:12
looked 72:8 113:5,5 116:11
 120:1 190:16
looking 32:3 49:25 57:12,14,15
 57:16,17 58:3,21 66:25 68:18
 70:5 83:3 86:17,22 93:7 98:16
 98:17 107:12 108:23 113:21
 114:18,20 121:18 128:7,7,16
 153:16 199:22 205:7 218:9
looks 123:11 124:20 158:25
 203:4
lose 59:4,20 60:16 137:1,6
 211:21 215:14 225:24 229:23
 233:12
loses 211:21
loss 227:11
lost 41:16
lot 17:20 19:5 31:2 43:16 51:12
 73:22 138:20 142:23 151:6
 160:21,25 162:9 169:16
 197:22 211:6 215:14 219:8
 222:10,20,22 224:7,9 228:15
 228:17 231:16
lots 94:24
loudly 144:15
lounge 216:14,15,16
love 30:20,21 176:1 223:16
loves 224:4
Luckily 215:24
lunch 47:10 217:1
luncheon 31:12
luxurious 89:9 111:13 114:21
lying 158:5 170:19 201:16

M

M 1:19
made 7:8 8:19 9:7 16:6 34:8
 35:2 49:19 58:16 62:2 67:3
 72:24 74:25 75:10,14 81:17
 93:22 96:20 97:17 107:19
 112:9 116:18,25 121:14
 123:25 124:2,3 137:13,14
 149:22 150:18 164:8 167:1
 187:10,10 200:6 201:16
 210:19,20 211:17,18 213:7
 216:16 224:10 226:15 233:9
made-up 192:16,17
magically 16:13,14 52:16
mail 234:22 239:13
maintained 136:24
maintenance 42:22 45:3,4 225:8
major 36:4
majority 125:25 218:18,18
make 27:23 28:19 29:1,21 30:1
 31:18,20 35:14,19 37:20 38:4
 52:17 58:8,19 59:5 60:6,18,19
 67:12 73:25 75:9 80:4,7,16,18
 81:7 93:23 94:2 100:5 104:24
 119:2 120:9 122:21,22 130:15
 131:11,24 134:15,17,18
 136:25 137:18,19 139:14,15
 140:22 149:19 150:4 153:21
 158:9 159:2 164:10,16 166:25
 171:16 186:8 198:6 210:25
 218:21,22 220:19 222:18
 224:13 225:9 226:10 232:19
 237:13
making 19:23 38:11 137:21
 198:11 200:20 212:15
Malfeld 1:19 5:9,24,24 6:2,19,22
 6:24 7:1,5,12 8:1,3,8,12 22:16
 22:19,21,23 25:8 214:18
manage 36:3
manifested 37:6

many 17:5 26:22 30:17 38:19
 64:11 78:6 98:21 133:12,14
 134:21 135:20 143:25 144:2
 145:19 147:8 155:18 166:10
 168:5,24 207:19 211:4 217:4
 223:21
marble 89:12 111:16
March 70:17 76:11 119:7
 224:21
Mariela 1:19 5:8,24 114:3
mark 65:19
marked 4:2 195:21
market 40:3,7,7,18,18,2 41:2
 51:21 54:25 81:6,8 85:3 110:4
 147:6 181:4,12 182:16,19,21
 183:3 184:7,9,12
marshal 219:5,7
Mary 1:8 27:20 28:20 32:7,21
 34:4 35:6,14,17,22 36:3,6,9
 36:16,17 38:9,13,15 45:17
 46:25 47:25 50:13 51:6,11,15
 51:19 52:21 55:5,15 66:13,17
 69:19 71:1,1,5 72:14 78:22,24
 79:2,5 91:14,20,23,25 97:14
 97:22 98:15,18 100:19 104:8
 104:17 105:6,9 117:21 125:18
 126:5,18 154:24 155:10,17
 156:25 158:17,18 175:19,21
 176:7,10 179:10,12,15 185:10
 185:14 186:5,25 187:25 188:1
 188:16 189:3 194:21 204:20
 221:1,3 228:16,17 236:13
Mary's 187:6 228:18,18
Mason 175:6
matter 12:22 28:25 36:1 38:23
 47:21 54:17 58:22 60:23 61:7
 61:11 79:20 80:3 81:2,4,9,13
 81:16,18 83:8,12,13 87:1
 105:25 137:9 138:8 150:14
 172:5,12,15 179:18 180:19
 183:21 204:22 209:15 225:22
 238:3 241:2
matters 5:19 61:9,10
may 5:21 13:22 22:4,7,9 44:13
 47:17 61:13 85:4 100:5
 107:14,18 108:12 130:2 132:6
 132:24 136:2 199:16 214:7
 216:18 223:9 232:17 239:16
maybe 17:23 30:9 72:18 124:21
 126:18 132:22 138:19 144:14
 144:16 161:8 165:11 180:4
 190:12 197:5 211:5,21,21
 215:22 216:23
ma'am 111:12 114:2 115:22
McLean 1:17
mean 9:4 10:11 25:6 29:9,23
 43:22 60:11 69:11 76:15
 82:24 95:9 104:17 106:7,15
 107:22 120:1 121:21 122:18
 123:19,24 125:12 126:17
 127:20,24 128:11 129:18
 135:10 137:3 147:16 155:10
 163:17 169:25 170:6,10
 181:11 189:23 211:11 212:18
 216:10 218:20 224:3 228:16
 236:7
meaning 114:13
meaningless 169:2,18,24 170:5
 170:6,10,20 197:23
means 14:3 44:16 61:16 72:20
 98:2 104:3 135:17 168:12
 169:20 238:3,19
meant 164:24 181:6
measured 83:23
mediation 211:25 231:6
mediators 21:12
mediator 230:18
mediators 211:23
medical 24:13

meet 47:11 144:12
meeting 47:4 100:2 163:5 190:6
 207:23
meets 150:10
mention 172:14
mentioned 49:17
merely 81:5 82:3
merge 226:1
mergers 47:22
merry-go-round 215:17
mess 229:5
message 46:10 129:24 130:24
 140:8,11 201:24 235:10
messaged 200:18
messages 46:11 130:8 135:21
 136:15 199:18 200:14,15
 202:20 203:14 212:16 233:21
 233:24 235:3
met 21:6 55:11 102:18,22 127:20
 127:20
Miami 1:2,7,21 2:7,8 30:22,23
 228:23 240:6 241:6,6
Miami-Dade 57:6 111:22 112:24
 119:12
microphone 5:5 22:18 227:19
midafternoon 240:21
middle 53:4 88:25 99:22 128:19
 196:2 202:16
midnight 175:4
midway 11:8
might 86:16 211:11 218:19
 222:23
million 32:13,17,20,25 33:4,6,17
 33:20,23 34:5,15,16 35:15,17
 35:20 40:8,16,16 46:4 48:9,11
 50:9,17 52:2 53:20 54:9,15
 54:16,21 55:12,13 62:4 65:8
 65:10 67:4 70:18 71:11 72:15
 73:19 74:11,15,22 75:17 79:3
 80:12 81:1,3 82:9,19,23 83:3
 83:5 89:21 101:23 102:14,15
 107:12 108:16 109:8 110:5,7
 110:14 111:11 112:12,13
 116:18 117:14,21 129:11
 142:20 164:6,7,9,10,13,17
 164:21 167:4 171:16,24
 180:17,19 183:7,7,25 185:1
 185:16 186:14 187:7,12,16
 199:5 211:2,7 217:13,14,17
 217:18,21 224:8,16,24 230:10
 230:11
mincing 187:2
mind 34:21 101:22 129:3,10
 171:12 180:16 199:4
minds 51:4,5 52:12,17,18,20
 54:18 163:6 165:1 190:6
mindset 180:19
mine 124:20 207:7,16
minimally 53:6
minimum 33:3,17 100:15
minute 12:12 191:17
minutes 13:9 18:6,8,18,20
 132:20,21 134:5,21 135:12
 136:1 139:7 194:1
mirror 215:3
miscommunication 169:22
miserably 30:18
misinterpretation 8:19
misplaced 151:7
missed 23:22 207:25
missing 29:24 197:17 218:23
misstate 6:20
misstated 6:21
mistake 81:17 137:13,14,18,22
 137:23 138:5,6 187:10,11
 201:16 210:19,25 211:17,18
 213:7 233:9
mistaken 137:11,12
mistakes 137:21

MLS 58:4 110:23 114:4 126:24
 147:27
mode 58:2 140:21
moment 53:8
money 38:25 43:5 45:9 118:11
 118:13 180:20 211:23 216:2
 217:13,15 218:3 224:7,9,11
 230:15,16,17 235:23,25 236:1
 236:3,10,11
month 42:3 45:5,6 67:6 147:23
months 32:4 39:17 41:17 42:3
 48:17 57:16 109:5 137:1
 229:19
more 9:11 14:4 18:1 25:7 30:5
 40:16,21 44:7 51:13,19 73:17
 78:16 82:13 107:11 110:13
 119:7 123:6 132:18 135:9
 137:21 139:12 155:10 158:23
 181:2,9,10 183:8 189:11
 198:6,15 203:8 207:14 210:22
 211:22 214:16 218:3 222:10
 222:13,13,19 223:2,8 228:14
 228:22 230:15,16 231:17
Moreno 1:12 218:16
morning 5:7 18:6 21:18,19,25
 22:12 31:23 46:10 73:4 75:11
 129:21 195:1 198:18,20
 203:25 208:19 240:17
most 133:1 139:5 146:23 153:8
 194:1 223:16
mother 102:21 149:15,19 150:7
 150:9,10,15,18 151:4,5
 153:21
motion 6:17 7:6,22 8:22 9:9,19
 10:9 13:25 17:8 25:21,25 26:5
 28:12,14 238:3
motions 5:14 6:6,16
motivation 89:24 238:15
motive 64:23
move 68:5 77:16 100:17 114:13
 114:24 131:13 140:9 153:22
 167:6 175:10 180:3 191:18
moved 57:18 119:8 151:5 153:25
 191:21
move-on 68:7
moving 119:5
much 15:14 40:4 42:2,5 44:22
 44:24 46:2,9 47:18 50:2 62:2
 62:5 65:3,4,7 70:22 72:2 73:5
 81:9,18 82:12 84:23 110:23
 118:13 136:3,7 155:12 180:22
 181:10,13 224:4 230:17
multiple 239:6
must 20:2 46:16 48:25 58:11
 129:19 192:13
myself 117:1,10,17,21 121:10
 178:24 189:8

N

name 5:22 19:17 31:23 56:10
 94:16,17 97:24 103:14 104:2
 104:14,16,20 116:4,6 127:12
 132:11,12 149:14 156:22
 161:21 173:8 174:16 187:6,8
 188:3,6,8,23 189:3,9 190:5,10
 190:13,14,15 197:24
names 24:11 38:5 98:7 105:2,7
 105:12
nature 8:14 17:3 58:24 207:3
near 48:11 217:3
necessary 36:11 60:2 141:4
need 19:12 25:11 44:2 59:21,23
 60:9,11 62:23 66:23 68:3,4
 79:3 100:16 140:12 158:21
 163:25 164:14 180:14 197:14
 202:13 203:1,1 207:10 215:3
 218:17 234:7,19
needed 46:9 72:15 74:4 76:20
 78:23 103:23 110:13 162:19

176:16 178:8,11 179:1,6,12
 179:16,17,18,24,25 180:20
 194:24 204:3 239:7
needing 8:9
needs 22:12
need-to-know 59:24 60:11
negative 222:6
negligence 143:7
negotiate 102:11 161:8,13,14
 162:17 164:3 166:11 169:17
 184:22 187:9,11 188:4 190:5
 190:13 194:22
negotiating 53:4 163:16,18,18
 164:18,19 167:1,20 171:25
 226:19
negotiation 79:25 168:22 186:17
 186:18
negotiations 22:23,25 37:18
 127:18 162:16 177:7 186:15
 186:16 213:3
neither 110:1 155:20
never 7:8 19:11 30:15 34:21
 35:14 36:8 46:12 47:15 48:16
 52:24 78:9,9,9,14 90:11 92:5
 94:22 98:5 109:15,18,20
 119:24 127:14,25 145:16
 163:3,5 174:3,4 187:12 189:6
 190:13 191:3 211:24
new 11:1 32:24 33:10,11,12
 41:20 96:1,3 137:4,18 138:8
 240:15
newly 22:11
next 5:22 14:12 17:22 32:19
 46:10 63:4,9 64:20 72:21,23
 76:13 86:9 108:11,12,20,22
 112:10 115:23 131:7 132:2,7
 136:22 151:17 153:4 155:13
 158:13,13 159:5,5,6 161:20
 165:12,22 176:21 192:4,22
 193:3,8,18 197:12 198:14,22
 201:21 202:15 203:7 204:9
 208:6,14,17 215:20 229:18
 235:7
nicer 9:21 227:24
night 129:19,19 225:2
nitpick 123:21
nobody 44:4 49:7 52:7
none 63:1 67:18 103:11 132:1,5
 168:12
nonlawyer 10:17 27:23
non-jury 11:6
noon 10:7 74:20
normal 183:23
normally 155:3,5 157:18
north 2:7 217:2 241:6
note 8:22
notebook 116:14
nothing 6:13 25:17 167:13,14,15
 189:15 190:20 191:8 209:19
 230:2
notice 46:25 47:3 105:23 106:15
 127:6,8 211:5
notified 207:15
notified 21:11 129:21,25
November 160:2
nowhere 11:12 35:10 48:11
 103:16
number 1:3 4:5,6,7,8,10,11,12
 4:13,14,15,16,17 5:3 57:8
 63:3,8,13,19 66:21 87:16 90:6
 90:13,14 92:10,19 95:24 96:9
 97:11,19 99:2,10,14 101:25
 103:7 113:21 120:18 121:4,9
 121:25 122:8 123:9,12 124:6
 128:3,5,17 130:9,10,19 133:7
 133:14 135:2 146:15 148:5,14
 149:11 191:21,25 192:3,5,5
 192:21,23 193:2,22 195:6,21
 196:9 199:18 201:19,23

213:17 219:10 227:9
numbers 4:9 43:3,4 62:16 65:20
 191:20 211:24

O

O 2:1
oath 189:12,14
obey 26:9,13 230:5
object 198:8 200:3
objection 17:9 58:10,11,12,14
 62:25 63:6,11,15,18,22 64:2
 64:25 66:15,16 72:19 79:10
 91:2,8 99:10 122:23 123:3
 126:9 130:21,22 131:4 145:6
 146:12 148:10,11 149:23,25
 158:20 166:7 192:6,24 193:5
 193:10 196:18 198:13 200:2
objectionable 86:15
objections 24:23 212:11
obligation 149:10 166:4
obligations 35:3 37:2,13 79:9
obstructed 108:21
obtain 203:17
obtained 74:11
obviously 21:4,12 41:5 43:7,13
 43:17 49:23 82:8 89:25
 101:24 103:23 106:13 129:12
 199:10 209:17
occasions 171:4
occur 76:2 217:19
occurred 76:3 202:21,24 204:8
 204:16
ocean 89:10 111:14
oceanfront 89:9 111:14 114:21
October 160:10
odd 126:2
off 7:12 51:9,21 57:18 75:6
 184:12 214:14 230:13
offer 23:9 32:16,24 33:10,11,12
 40:8 46:5 53:5,8,15 54:10,18
 54:22 55:14 58:9,16,19 62:3,5
 67:3,8 68:18 70:3,10,18 71:9
 71:14,22,24 72:1,2,6,10,24,25
 73:5,8,15 74:1 75:8,9,12,14
 80:13 81:8,21 87:5 88:2 89:25
 90:3,4 97:17 101:21 110:6
 116:18 117:14,15,23 118:10
 119:4 121:22 139:11,14 164:8
 164:9,10,16 166:5,19 169:2,5
 170:10,15 171:16,18 173:20
 173:24 178:10 186:8 213:16
 213:18,20,23,24 223:3
offered 62:7 81:18 90:3,3
offering 73:21 81:17
offers 36:25 40:11,12,13,19
 49:17 50:23 52:13 53:1,2 58:2
 62:10 69:7 73:17 78:23 93:24
 94:25 101:13 106:25 107:1,6
 107:19 108:25 168:24 186:18
 222:18
office 13:8 14:10,13 21:13 121:2
 146:19,20 150:17 151:4
 195:11
officer 11:16
official 2:6 234:22 241:5
offset 48:15
often 121:16 155:10 158:23
 161:4 170:3
oh 10:21 15:4 18:20 22:21 25:20
 26:17 42:11 62:22 68:3 84:5
 88:16 122:18 128:16,20 129:5
 130:10 132:23 137:22 140:11
 140:18 143:4 144:24 147:14
 164:23 172:16 192:2 197:14
 205:19 208:21,23 211:6
 216:17 224:9 227:7 228:17
 237:22
okay 6:23 10:2 11:15,16,19
 12:23 14:9,19,25 15:13,16

16:16 17:2,6,8,14 19:21 23:10
 24:11,12,20 25:6,7,14,24
 27:22,24 28:11,14 29:22
 30:11,18 31:8,16,20 33:5,13
 38:23 40:1 41:9 42:16 43:10
 44:14 45:1,11 49:16,21 50:14
 50:20 52:1,12,25 55:23 56:3,8
 56:19 57:8,10,12,24 58:6,8,19
 59:25 60:24 61:8,22,24 62:5,8
 62:11 63:23 65:1,3,9,17,25
 66:7,20 68:6,14,18,22 69:2,6
 69:10,14,17,21,24 70:2,5,8,14
 70:16,20,22 71:2,7,13 72:2,12
 72:16 73:2,5,7,8 74:6,16,21
 74:25 75:9,12,14 76:11,15,21
 77:17,25 78:6,11 79:21 80:11
 82:5,8,21 83:21,25 84:9 85:1
 85:14,19 86:2,9,25 87:6 88:7
 88:17 89:8,23 90:10,21 91:9
 91:14 92:2,5,9,11,14,20 93:1
 93:9,14 94:1,14,22 95:4,10,12
 96:1,23 97:1,3,5,6,22 99:2,4
 100:22 101:10,15,17 103:24
 105:5 106:11,13,19 108:3
 109:18,20 110:1,17 112:7,22
 114:6,11 116:1,4,16,17,19,22
 116:24 117:3,8,13,15,19,25
 118:6,9,13,15,18,24 119:11,17
 119:25 120:5,7,11,21 121:7
 122:7,9,17 123:8 124:9 125:6
 125:11,14 127:1,18 128:3,13
 128:21,23 130:19,24 131:6,14
 131:19 132:9 133:4,8 134:4
 134:20 135:6 136:14,16,17
 137:17 138:14 139:5,8,14
 141:15 142:18,21,22,25
 143:12,19 144:8,15 145:1,14
 145:18,21 146:6,9,24 147:3
 148:2,5,19,22,25 149:7,13,17
 149:19 151:18 153:9,12,23,24
 154:4,5,12,23 155:18,21,24
 156:1,3,10,12,15,19,22 157:16
 157:23 159:2 160:1,4,7,8
 161:10,17 162:4 164:8 165:7
 165:12,16,22 166:1,4,13,18,21
 166:24 167:16,21,24 168:2,20
 171:22 172:19 173:11,16,25
 174:18,20,22,25 175:10,18,22
 176:7,12,15 177:4,8,14,19
 178:6 179:15 180:13 181:18
 182:25 184:3,14,20,24 185:21
 186:3,21,24 187:1,6,15,24
 188:9,11,19 189:17,20 190:6
 190:9,16,19 191:5,7,12,15
 192:20 193:21 194:6 195:13
 196:12 197:10 198:14 199:8
 199:21 201:1,5 202:23 203:1
 203:5,18 204:20 205:10,11,13
 206:3,4,10,15,19,23 207:8,19
 208:2,23 209:4,15 210:1,11
 210:24 213:22 214:5,11,17
 215:4,6 217:16,17 220:21
 221:10,15 224:23 225:3,4,17
 225:24 226:8 227:7 228:3,5
 228:12,15,23 230:2,12,14
 231:12 232:2,10,16 233:4,23
 234:15 236:9 237:11,19 238:2
 238:25 239:3,19,21,25 240:12
 240:14,18
old 11:2 96:3 138:9 236:18
older 57:15
once 33:22 100:5 104:21 139:14
 167:10 177:24 178:23,25
 218:15 221:21
one 5:5 6:2,3,4,5 8:10 10:14,15
 10:15,23,23,25 11:1,5 12:5,6
 12:19,20 15:2 16:3 17:11,21
 20:5,20 22:7,8 23:15,15 24:13
 25:20 26:13,23,24 28:1 32:21

34:15 35:23 38:6 47:22 48:3
 51:20 54:17 56:18 57:21
 58:24 59:17 60:13 61:3 62:9
 62:23 63:20 64:16 66:4,5 77:9
 78:15,17,23 82:23 85:22
 88:17 89:25 91:25 94:21 96:4
 97:21 98:8,10,11 103:8,18,24
 108:24 110:4,4,5,6,12,15
 113:19 114:8,11 116:12,20
 122:14,17 123:10 124:9,19,20
 126:2,7,16,20 128:14,16
 130:15,17 133:7 141:2 142:15
 142:16 144:24 147:24 153:2
 154:25 155:5,6 158:22,23
 160:21 161:21 162:5 163:9,13
 163:25 164:4,10 165:5 166:18
 169:5,7,8,22 175:14 179:1,22
 183:5 187:2,5 190:5,19
 197:25 199:23 205:9,14
 207:21,21,23 208:21 212:23
 215:24 216:22 218:19 223:9
 223:15 225:20,24 226:5 228:5
 229:12,17,18,25 232:6 234:2
 235:20 236:5 238:18 240:16
ones 64:10 87:17 93:2 95:7,12
 98:23 110:9 124:18
one-and-a-half-month 160:19
one-month 147:20,23
online 57:24 58:1
only 25:15 26:24 35:6 36:4
 47:16 48:17 54:4 64:11 73:12
 78:22 83:13 86:22 87:18
 93:15 95:4,7 98:8,10,12
 108:13,14,18 110:9 111:21
 112:23 132:17 137:4 142:12
 155:11 158:18 161:21 163:12
 164:4 183:15 186:25 200:3
 213:17 215:24 217:14 222:13
 232:18
onto 214:25
open 189:25
opened 216:6
opening 3:4,5 26:8 31:18,21,22
 49:18
operated 37:21
operations 38:14
opinion 151:9 181:8,22,23 182:3
 182:4,7,10,11,13,20 194:20
opponent 231:21
opposed 21:19
opposing 198:5 201:7
opposite 197:9
opposition 14:15 213:15
option 113:14
oral 9:9 23:17 55:20 145:3,14
order 10:7,8,25 13:4 26:10,21
 34:24 140:21 176:17 177:2
 180:14 201:11,13 217:6,20
 219:1 229:23 230:5
ordered 5:19 26:10 200:24
 219:14,20,22 220:8
orders 26:13 61:23 220:13
Ordinarily 141:5
original 51:10 53:6 75:7,8
 121:22
originally 51:2,11 71:11 228:13
other 10:23 11:1 17:17 18:5
 21:25 23:16 27:16 28:2 34:14
 34:15 35:22 37:13 40:13
 46:12 47:22 50:23 53:23 54:5
 54:9,17 58:4 60:3 63:20 64:23
 65:18,22 71:13,15 72:7 82:15
 82:20 85:23 102:9,9 104:23
 108:15 109:15 113:17 123:22
 126:21 128:2 133:11 143:5,13
 143:14,16,17 144:6 155:5,8
 157:20 163:25 164:5 165:5,13
 167:6,8 168:7,15 170:9,19
 171:3,17 173:5 176:2 179:17
 187:5 197:7 209:14 215:20
 216:22 225:4 229:9,18 231:8
 231:11 236:22
others 85:4
otherwise 22:18 104:24 150:1
out 7:4 8:4 12:9 19:25 21:10
 25:2 44:2 45:9,18 46:22 47:3
 47:10 48:24 52:8,9,11 56:21
 60:15 68:22 71:9,10 75:1,17
 75:18 88:17 96:6 109:8
 113:22,25 114:6 118:23
 119:15,22 126:23 129:15
 131:16 140:20 141:17 171:19
 187:13 195:16,17 198:12
 207:13 209:1,15 210:15,16
 214:4 229:21 236:8 237:4
 238:17
outages 169:21
outside 240:13
outstanding 26:5
over 5:5 18:3 28:8 38:24 41:16
 43:14 46:3,6 47:21 54:15 97:3
 97:4 101:21 111:5 119:9
 120:21 121:17 140:21 155:8
 155:11 233:19
overpaid 83:11
overrule 58:12 145:7
Overruled 58:15 166:8 196:20
 196:22
overtime 240:14
own 44:21 47:1 66:14 123:1
 153:14 211:22 237:9 239:8
owned 42:17 97:21 98:11
owner 42:12,12 47:2,2 69:14
 154:4 155:15 227:9
owners 32:9 42:23 48:7 98:4
ownership 42:14

P

page 3:2 4:4,4 71:3 75:20 88:12
 88:14,25 89:1,2,4 96:8,17
 99:22 101:14 112:10 128:5,6
 128:7,17 160:6 177:15,17
 185:21,23 188:12 195:22
 196:2,13 200:5 202:4,15,16
 203:7 204:9 206:1,7
pages 200:4 204:16
paid 43:12,13 84:12 107:11
 231:17
paper 93:17 232:19
paperwork 147:20 157:11,12,25
 161:20
paragraph 67:4 125:14
parameter 179:25
parameters 47:17 51:2 55:11,12
 166:10 167:2,3 171:12 184:22
 188:5 190:13 214:12
pardon 7:18 54:12 96:11 140:16
 159:13 162:15 169:10 182:18
 221:8 238:9
parent 60:14
parents 32:4 57:15,15 60:4
parol 23:1
part 35:7 67:6 98:19 164:18
 172:21
parte 6:16
participated 134:9
particular 46:1 47:14 55:4 58:20
 60:13 95:2 139:18 142:10
 155:8 162:23,23 185:17
parties 24:9 36:25 67:14,15
 76:11 80:5 97:10,11 125:17
 125:24 136:4 160:11 162:3,20
 163:6,7 164:15 165:3 169:4
 169:22 173:1,3,5 190:7
 194:23,23 204:3 213:3
partner 146:23
party 141:7,7,8,15,18 167:6,8
 168:3,7 169:6 176:17 233:1
 233:19
past 100:15 133:10 170:4 171:6
paste 91:25
PASTOR-HERNANDEZ 2:6
 241:4
pattern 133:8
pay 42:17,21,23 43:6,14 44:11
 44:20 48:15 54:11,13 80:16
 224:23
paying 42:21,22 67:5 107:12
 230:14
payments 41:16 42:1,19 43:7
 67:6
pays 42:12,12 236:8
PDF 206:12
PDF'ed 118:8
peace 44:13 216:18
penalties 47:1
pending 25:17 61:18 147:7
 230:7
penthouse 87:25 88:1,8,11 89:9
 107:24 108:2 111:14 114:21
 216:12 223:16
people 12:12 18:3 19:5 21:25
 31:8 67:18 97:20 104:21
 126:8 143:9,13,14 144:6
 147:21 168:25 197:17 212:15
 215:16 216:3 220:13 222:3,20
 222:22 223:16 229:21 230:18
 231:13
people's 17:5
per 42:3 45:6 67:5 73:20,21
 99:25 190:17 205:15,22
percent 86:14,15,16,16 189:19
 190:25 191:2 211:9 230:14
 236:5
perfect 237:24
perform 35:1 37:2,12 79:8
 118:25 120:4,10 224:18
performance 36:20 38:22,24
 58:24 59:6,7 60:8 61:4 211:15
 217:6,10 219:2,14,22 220:2
 223:23 225:14,25 226:11
 229:24
perhaps 222:4
period 39:15
perjury 47:1
permission 6:18 7:17,18 8:17,23
 16:18 215:4
Perry 175:6
person 61:7 78:15,23 95:4 98:10
 100:3,6 130:15 164:12 170:9
 170:19 171:17 195:14
personal 59:18 91:16 101:5
 181:8
personally 92:3,7 102:22 129:19
 146:21 209:3 216:24
pertained 5:19 207:22
pertaining 191:10
Philadelphia 30:20
phone 9:9 90:14 91:11,16 97:3,4
 99:25 100:10 118:4,5 136:15
 167:9 176:20 205:15,22
photographs 107:20
physically 7:6 34:23 35:11
picked 8:7
picking 106:9
picture 203:3
piece 58:25 59:3
pinch 222:23
Piotrowski 203:6
place 8:7 32:3 53:9 54:10 57:14
 57:16 58:2 100:17 167:6
 171:24,24 172:2,6 173:10
 179:9,12,13,14,16,21 180:14
 180:15,16,17,18 207:17 218:2
placed 118:16
places 47:12
plaintiff 10:25 15:22,25 18:10
 31:18 56:9 81:18 116:3
 131:23
plaintiffs 1:6,15 4:5,6,7,8,9,10
 4:11,12,13,14,15,16 5:4,8
 7:22 8:5,10 10:20 12:15 29:16
 31:16,24 32:3,14,24 33:3,17
 33:18,21 34:1,6,13,25 35:15
 35:19 37:4,21 40:24 45:21
 46:3,24 47:21 49:17 56:7
 62:12 63:3,8,13,19 65:20
 66:21 67:16 70:8 71:18 80:20
 83:1 99:10,14 115:24 117:9
 117:10 132:10 145:24,25
 146:15 148:6,7,14 153:16
 162:19 165:18 166:22 167:12
 167:16,25 176:12,15 177:18
 186:14 187:22 192:21 193:2
 193:22 196:10 199:19 205:4,5
 207:10 210:23 217:17 219:1
 222:17 227:5 233:23
plan 229:5
plane 16:7,15 17:1
planned 76:24 228:24
pleadings 21:14
please 56:6,11 67:2 70:24 73:7
 99:2,25 100:14 108:7 115:23
 115:25 116:5,15,22 117:13,19
 119:2 132:9,12 136:20 145:23
 148:5 160:6 165:16,18 168:17
 168:17 177:15 187:17
pleases 31:19
plural 98:2
plus 107:11
point 17:16,17,18 52:4 114:17
 119:8 127:21 150:1 163:3
 174:6 183:5 197:17 239:13
pointed 187:13
pointless 237:5
poor 216:3
popped 214:3
posed 61:16 113:16
position 76:19 77:18 235:21
positive 222:7
possible 9:19 156:5 191:3,4
post 230:9
postpone 8:9
power 17:20 157:9,17,18,20,21
 160:17 161:16 169:21 189:10
 215:22
powers 216:2
practice 143:8 153:6 157:9
 159:8,23 160:22,24 161:5,10
 162:8 183:23
practices 143:6
practicing 111:5
preceding 148:22 204:15
precisely 223:24
precludes 166:5
pregnant 22:11
prejudice 238:13
prejudicial 26:14
preliminary 25:21,25
prepare 105:11
prepared 62:17 67:8 105:15
 154:2,3
present 14:22 15:9 17:12 21:12
 31:16,16 37:16 38:2,12 47:5
 53:25 97:8 167:16 225:13
 226:21
presented 71:24 140:22 167:24
presenting 143:3 168:3
president 9:3
Presumably 27:14
pretrial 66:18 174:12
pretty 53:21 124:16
previous 185:14 204:10
previously 36:12
price 32:17 33:3,17,22,24 39:5
 40:10,22 50:2,3 53:6 65:3

70:12 71:8 73:13,22 75:17
 80:2,4,20 82:18 83:3,16 85:7
 89:17,18 90:7 93:11,12 102:9
 110:11,23 112:8,11,20,24
 115:5 124:20 142:13,20
 145:10 167:20 180:18,24
 222:18 223:2,15 224:13
prices 48:21 52:5 57:24 74:2
 82:16,16 109:9,22 145:11
 162:18 182:5 184:12
principal 213:16,25 232:22,23
 233:4
principals 233:19
print 113:22
printed 105:7 113:25 114:6
prior 26:20 39:6 78:6,11,18
 105:24,24 106:1,2,3,6,9,21
 108:25 116:11 127:6,8,11,16
 128:9 148:19 150:5 153:9
 179:8 180:12 187:15 202:21
 202:24 204:1,9,16 221:25
prisoners 219:8
privacy 44:4
private 14:16,18
pro 214:16
probably 9:11 18:7 33:25,25
 84:22 140:2 144:13 180:3
 181:9 211:4 229:25
problem 19:12 194:15 197:16
 216:21 221:20 234:16,20
 235:1
procedural 22:8
procedures 140:23
proceed 12:2 29:25 30:7 76:11
proceeding 11:8
proceedings 1:12 5:1 31:12
 241:2
procure 74:10
produce 107:1 149:8 152:6
 203:10,16 207:19
produced 46:12 149:7 190:23
 191:12
profession 125:4 136:20
professionally 89:11 111:16
 115:12,17
promised 26:15
promissory 41:10 44:16 46:19
 46:21 225:5,6,18 232:1,6
promptly 9:19
prone 137:21
proof 222:16
properties 58:5 145:19,20
property 27:2,15 28:3 32:12,16
 35:25 36:3,5,17,19 38:14,16
 42:14,15 43:12,23 46:16 47:7
 47:17 57:8,13 58:9,25 59:3,8
 62:2,5 68:24 69:4,14 70:6
 73:11 74:12 76:25 77:1,3,12
 83:14,15 97:21 98:4 102:18
 102:19,23 110:22 111:22
 112:10 115:7 119:10 120:2,3
 120:5 139:11 144:19,22 146:4
 146:5 147:1,5,10,15 154:4
 155:15 164:6 168:6 179:23,24
 180:1,1,7 182:17,20 184:11
 185:16 213:11 219:6,7,9
 221:2 228:7
prosecutor 5:6
prospective 48:7,13
protect 140:24
Protestant 15:14
prove 133:1 150:19 152:16
 227:2,11 239:14,17
provide 26:15 33:24 70:12,16
 139:12 147:25 151:20 153:17
 159:9 177:9,10,12 191:9,10
 199:15 204:4 207:14
provided 26:19 28:9 34:22 39:9
 41:24 42:9 43:24 70:23 72:1

78:25 105:23 152:22 156:9
 162:5 195:10,12 203:19 207:6
provides 42:24 77:2 79:7 156:25
providing 38:10
proximity 64:24
prudent 47:19
public 44:5,5 109:4
publicly 17:4
pull 51:21 231:24 232:11
pulled 51:9 73:23 74:2 88:17
purchase 32:1,5,16,17,2 50:13
 45:19 48:13 53:6 55:16 57:4
 58:9 62:5 65:3 70:12 71:8
 74:12 75:17 82:16 120:5
 139:10 167:22 180:21 223:2
purchased 60:22 107:12 145:19
purchaser 67:7 171:18
purchasers 39:10,10 210:6
 211:10 233:11
purchases 125:6 213:11
Purchasing 161:3
purpose 80:9 118:15
purposes 141:20,21 186:17
pursuant 26:20
push 214:25
put 7:21 9:11,13,20 13:25 45:9
 46:9 47:19 48:8 50:2 51:10
 54:1,20 55:7,9,10 74:4 80:11
 82:21,23 88:2 89:25 90:3,3,4
 90:25 93:14 96:24 106:25
 110:6 112:4,22 114:22,25
 115:4,15 117:14 145:10
 171:17 177:3 180:11,20
 181:14 216:8,10,11 240:13
putting 50:13 58:2 80:6 107:6
 122:19 127:9
P.A 2:2
p.m 15:19 31:13 101:16 128:15
 195:24 199:7 206:21 240:23

Q

quality 43:16
quarter 89:4
quarters 89:2,3
query 211:14,16
question 18:13 61:18 72:21,21
 79:16 80:15 86:10 93:20 94:1
 94:14 102:3 104:4 108:7
 109:12 113:18 121:14,18
 126:4 132:2 136:4,22 142:10
 144:25 146:5 150:2,3,15
 151:17 153:4 155:13 159:5
 160:13,16,22 161:1 165:12,22
 166:13 174:10 177:22 178:9
 178:13 179:15 184:24 186:4,7
 188:13,18,21,2 5 197:13,25
 198:14,22 206:25 212:8,19
 229:25 232:8
questioning 138:18
questions 18:18 19:2,3 61:16
 66:22 82:12 87:9 113:16
 115:19 116:12 120:12 132:3
 139:17,22 140:3 141:3,6
 153:13,14 156:10 165:13
 176:2 197:23 204:24 208:3
quick 6:8 10:11 29:1 214:2
quicker 211:8
quickly 132:24 134:6 140:9
 205:3
quite 121:16

R

R 240:25
raise 22:7 56:8 116:2 132:9
 238:7,10,12
raised 26:5 150:21
range 41:4
rather 7:18 12:4 33:9 194:4
 240:17

ratified 66:14 91:3 95:18,20
 121:22 174:15
ratify 121:16
Raul 22:21 24:12 32:15 37:17
 46:7 50:7 57:20 68:12,20,25
 70:2 71:20 72:13 74:9,10
 75:25 76:5 90:2 92:25 93:1
 94:4,16,22 101:18,19 102:4,8
 105:14 107:4 113:22 117:23
 118:8 119:2,15 126:24 127:24
 128:2,8,9 129:16,18 131:9,16
 131:19,21 178:4 188:13 192:8
 194:25 195:10 196:3,16
 198:24 199:12 200:10,13
 201:2,3,24 203:12,25 208:7
 209:16 235:7,10 236:16,17
reach 31:8 170:8
reached 36:12
read 79:14,15,19,20 89:8 94:14
 100:14 101:18 102:6,7 110:18
 111:7 128:13 129:5 141:3,3
 155:22 167:9 177:16 178:1
 189:17 197:3 205:21
reading 47:24 79:18 104:1 199:3
 207:5
ready 18:11,12,25 25:5 120:4,9
 120:10 210:16
real 24:9,10 27:3 28:4,5 29:1
 32:15,18 33:2,16,21 35:11,18
 36:25 37:8,16,19 40:25 43:3,3
 46:16 49:10 53:21 59:8 67:21
 125:10 136:24 139:10 144:15
 144:19 166:13 168:2 201:15
 213:17 216:23 223:23 225:9
 231:15 232:8 236:18
reality 108:12 222:12
realized 21:6
really 6:5 12:13 18:24 23:9
 25:11,22 73:22 81:13,18
 101:20 120:2 129:2 140:7
 147:2 159:12,14 164:24 171:4
 171:10,18 180:6,9 183:21
 195:11 200:23 201:14 209:5,9
 209:14 210:2,11,19,25 212:21
 218:11,12,17 222:16 225:10
 225:22 226:5 230:25 234:19
Realtor 58:4 136:21 137:1,4,4
 137:17,18 142:2,7 158:7
 159:4 166:4 181:7 182:8
 183:15,19 209:17 210:6
 211:17,22 212:20 213:1 232:9
 236:22 237:12 238:20
Realtors 93:24 130:25 131:2,12
 200:12 211:4,6,9,15,19
 212:25 213:13
reargue 238:13
reason 6:8 20:22 30:9 51:10
 57:12 78:11,14 109:6,23
 134:3 139:18 151:10 169:1
 172:10,12,14,2 1 173:2 197:17
 204:8 216:25 222:3 223:21,24
reasonable 140:21 231:12
 233:12
reasonably 232:25 239:12
reasons 222:20,22
rebuttal 23:11 24:25 239:22
recall 7:12 26:25 95:19 98:22
 128:11 149:5 151:1 153:2
 155:1 160:1 191:14 203:24
receive 70:20 72:16 77:3 139:14
 195:18 207:11
received 4:2 10:7 14:11 23:15
 45:22 63:3,8,13,19 65:20
 66:21 73:18 74:14,19,19
 75:12,13,15 92:5 93:16 99:14
 133:2 134:10 146:15 147:17
 148:14 176:18 177:22 178:9
 178:18 192:21 193:2,22
 201:19 205:11 207:4,5,9

209:12 210:7 213:24
receiving 13:4 44:17
recently 207:13
recess 31:9,12 159:19
recognize 71:2 99:18 116:17
 146:3 165:24 176:5
recollection 161:4
record 19:10 112:4 129:6 189:17
 207:2
recorded 36:8
records 44:5,5
recuse 30:8
redirect 3:15 115:20,21 132:4
 204:25 205:1
reduced 43:5
refer 56:23 102:1 160:10
referenced 71:7
references 147:3
referencing 87:17 148:17
referred 98:19
referring 148:3
reflecting 37:19
reflects 146:6
refresh 161:4
refused 236:10,11,14
regard 68:15 73:11 74:7 139:10
 145:18
regarding 36:4 37:17 38:14 57:3
 127:23 143:24 173:24 178:7
 198:2
regardless 180:18
regular 98:20
Reich 1:8 45:17 69:19 91:15,20
 97:14,23 104:8 105:6,9
 125:18 126:5,18 155:17
 156:25
reject 222:1
rejected 33:1,15 40:11 50:23
 72:11 74:1
related 27:2 35:23 43:23 227:4
relating 27:4
relationship 67:15 133:25
 143:22 175:22
relationships 67:14 184:4
release 229:6 236:13,13
released 107:5
relevant 61:2
relied 36:24 232:25 233:19
 239:12
relying 20:11 179:25
REM 88:23 89:4,6
remainder 38:25 39:5
remaining 39:13,17 42:4
remarks 89:5,7 110:18 111:13
 112:9,14,16 115:12
remedies 219:11 225:13 226:6
remedy 59:9 79:8 219:17 226:4
 226:12
remember 39:6 42:7 113:19
 128:11,22,24,2 5 129:2,20
 131:18,19 135:17 144:13
 159:3 160:21 175:7 189:12,15
 191:21 197:2 240:3
reneged 109:20
renewing 87:4
renew 154:13
renewal 41:20 154:10,11 157:10
renewed 42:4 175:15
renovation 36:4
rent 43:7 44:7,17,2 1 48:17 60:15
 225:10 228:9 229:3
rental 44:22,22 45:10 73:11
 147:4 160:9,19
rentals 147:20 160:23
rented 147:6 228:6,13
renting 57:20 227:16
rents 39:13,14 48:14
repeat 158:22
rephrase 194:20

replacement 18:16
 report 219:25
REPORTED 2:6
 reporter 2:6 15:5,8,11 18:7
 22:18 56:11 104:22 129:8
 159:20 194:13 210:16 241:5
 represent 31:24 49:9 61:15
 143:2 147:8 154:18,21
 representation 11:24 93:21,23
 representations 20:8,11,16
 23:16,17 36:24 94:2
 representative 90:20 93:19
 175:11
 represented 67:22 68:15
 representing 16:3
 repudiated 35:4 37:3,24
 request 203:22
 requested 11:21 12:1,8 147:15
 149:4 207:15
 requesting 203:23 208:1
 require 139:11
 required 26:11 34:10,23 35:10
 36:5 77:19 78:12,17,21 98:9
 103:18 104:18 118:16,19
 120:10 168:2 177:5 178:17
 requirement 34:21 59:6 72:7
 180:10
 requires 19:1 35:10 60:12 70:14
 requiring 78:7
 research 21:4
 residences 179:20
 resolve 21:9 26:7,9 220:10
 resolved 228:21
 resources 20:23
 respect 109:21 220:12
 respecting 219:2
 respective 213:3
 respond 70:18 72:10 75:21
 responded 32:19 75:22 77:7
 101:13 202:11
 response 10:6 34:2 82:12 100:7
 100:10,12,14 186:4 204:11
 responses 19:4,6
 responsible 232:22
 rest 44:13 142:24 216:18 237:11
 238:19
 restroom 132:16 159:14 215:2,3
 215:5
 result 37:4
 resulted 147:9
 retain 149:10
 retained 144:18
 retired 215:7
 return 16:20,23 37:8 176:19
 returned 16:18 34:3,8,17 177:6
 179:2
 review 21:14 74:16 139:14
 reviewed 97:16
 revolves 45:24
 re-sign 95:17
 Richard 230:19
 Richmond 102:24
 ridiculous 172:16,17
 right 5:5,16,17 7:24,24 8:13
 10:11 12:7 14:14 15:15 16:1,9
 16:20 18:8,11 19:13,21,23,23
 20:4 21:21 25:7 26:8 27:8
 29:6,19 30:2,16 39:3,7,19
 42:13,21,23 43:18 44:1,2
 45:13 49:24 50:17 52:7 53:6
 53:16 54:18 55:23 56:3,5,8
 60:22 65:5 66:22 69:6 71:8
 72:25 75:12 81:24 82:9,13,16
 82:22,25 83:12,16,19 85:13
 86:9 87:7 89:24 96:9,12,14,16
 96:23 102:3 107:15 108:25
 109:10 112:18,20,21 114:13
 114:16,17 116:2 117:14 121:3
 121:12,13 122:1,3 123:6,14

124:1,10,11,2 125:16 128:19
 130:25 132:9,18 133:7,19,22
 134:8 135:12 138:3,22 143:14
 143:20 146:18 149:4,10
 151:12,14 152:7,9,10 155:15
 158:12 161:7 162:6 167:14
 168:22 172:8,10 174:20 175:8
 176:10 178:4 179:5,10,13
 180:6,10 186:18,19 187:6
 193:24 195:7,19 198:1 201:11
 201:13 202:1 205:24 206:4,17
 206:21 207:12 209:6,10,16,19
 209:20,24 210:5 211:1 212:16
 212:21 215:23 217:7,21 218:9
 218:23 222:1,4,7 223:14,15
 223:18 224:6 225:6,11,23
 226:3 227:14 232:12 233:2,13
 234:8,10,11 236:5,22 237:20
 239:18,23
 rights 219:2
 rise 8:8
 rises 45:18
 road 100:18
 role 36:2
 room 30:24 231:15 240:13
 Roughly 45:8
 RPR 2:6 241:4
 rule 5:20 23:1 58:13 84:2 139:25
 140:1,14,15,17,18 150:11
 197:2 218:13 234:21
 ruled 58:15
 rules 6:5,16 7:4,16 8:19 17:6
 31:3 140:13 211:12
 ruling 123:3 150:1 220:1
 run-on 126:20
 rush 7:14

S

safe 18:21
 sale 7:23 32:12 34:15 36:5 41:22
 45:19 51:10 54:1,20 55:7,9,10
 57:4 58:5 64:8,10,12 65:3
 74:12 80:1 82:21 86:4 110:21
 111:23 112:20,22 115:4,7,14
 127:16 133:19 139:10 145:4
 145:22 146:8 147:4 181:14
 219:14,20,20
 sales 48:9,11,12,25 49:1 64:11
 64:11 112:24 125:6 134:25
 137:16 147:7 182:5
 same 14:3 19:3,4,6 32:23 34:7
 34:13,14,14 35:25 36:15
 40:19,19 41:19 43:21 47:4
 64:5 65:5,11,13,15 70:21 72:4
 73:9,10,11,12 80:5 83:5,9,21
 93:2,10 95:21 96:5,17 105:7
 108:16,19 110:6 114:8 123:10
 123:17,19,23 124:13 146:19
 148:24 149:17 150:7,9,11
 159:17 165:9 178:21 182:23
 195:14 203:3 205:6 222:18
 226:3 227:6 231:15
 sanctions 28:16
 Santidrian 22:21 24:12 32:15
 33:21,25 37:17 46:8,11 47:19
 50:8 57:21 68:12,15 69:11
 70:2 71:20 72:13 74:6,8,13
 75:25 76:5 92:25 99:19 100:8
 102:14 105:14 107:23 176:15
 176:22 178:17 184:18 192:8
 192:12 195:10 200:10,13
 201:6,24 203:12,18 208:7,16
 209:16
 sat 116:10 213:18,25 231:15
 saves 56:20
 saw 106:4,11 109:19 127:14
 234:22
 saying 23:4,7 27:4 42:11 50:16
 77:3 95:9 108:17,18 146:21

158:5 162:5 165:9 176:24
 182:23,25 183:2 189:24,25
 190:1,18 198:11 207:11
 225:11 234:7,18
 says 6:6 16:17 79:22,22,22 82:20
 88:23 89:4,6,9 97:13,14 99:24
 100:12 101:19 105:9 111:10
 111:13,20,21,2 112:1,18,24
 114:12,23,23 115:11,18
 122:17 125:17,18 126:5,5,18
 129:13,14 139:25 140:14,19
 154:4 163:19 164:12 171:17
 174:13,20 176:22 183:25
 197:11 199:2 201:13,15 202:4
 202:18 203:21 204:13 205:22
 206:12,18 210:19 211:13,17
 212:20 213:2 218:18 226:17
 232:8 235:7,9,10,15 238:25
 scenario 94:21
 schedule 25:5
 scheme 220:23
 school 48:2 111:3 198:16
 scope 142:3
 screen 20:10
 seal 6:16,17,18 16:17
 sealed 6:16
 Sean 3:12 22:24 28:6 32:18 33:3
 33:16 35:18 46:3,6,13,13
 47:16 48:10 49:8 50:12,18
 53:3 68:21 69:1 71:19 72:14
 72:17 74:14 76:1 78:25 92:1
 99:25 100:11,20 101:19 102:4
 127:19 128:8 129:15 131:9
 132:10,13 176:10 200:13
 202:4 205:15,22 221:14
 235:15 236:12,15 239:3,5
 search 150:18
 searched 149:9
 seasonal 160:23
 seat 56:10 116:4 132:11
 second 6:2,4 7:6 32:24 33:2,5,15
 42:16 64:12,16 71:3 102:7
 128:17 130:17 134:8 151:21
 178:17 195:22 196:13
 see 14:12 19:8,21,24,25 21:22
 22:5 25:19 26:12 30:12,13,18
 43:20 48:10,13 77:6 84:19
 98:21,23 100:5 106:5,13,15
 106:17,21,23 123:20 127:6,11
 128:9 146:19 154:4 177:21
 179:19 186:3 193:15 195:24
 197:2,6,16 205:17 206:1,13
 206:14 207:24 210:11 211:20
 212:10 214:19 215:23 216:21
 218:6,7 221:20 223:25 224:2
 227:19 232:21 234:7,16
 238:13 240:18
 seeing 86:21 128:11,22,24,25
 129:2
 seek 7:17,18 8:23
 seeking 6:17 46:4 53:1,2
 seem 198:6
 seems 138:18 170:25 215:12
 216:2 226:1 235:16
 seen 127:8 128:23 215:13
 Seestrom 213:15 232:13
 seize 219:5,7
 seizing 219:8
 selfish 61:6
 sell 35:17 49:23,25 50:16,25
 51:6 52:24 74:3 100:16
 101:22 110:23 129:4,10 167:5
 168:6,9 169:1 171:15 173:9
 180:2,14,17,18 185:15 199:4
 211:8 219:2 221:2 222:25
 224:16
 seller 24:10 32:21 34:5 53:22
 66:12,13 68:25 70:18 71:20
 75:1,13,16,17,23,24 76:19

78:1,7 79:8 97:12 100:1,3
 101:12,22 102:1,5 105:2
 107:7 116:23 117:20,24 118:8
 119:3 120:3 129:3,10 143:2
 199:4 202:13 203:2,6 232:9
 sellers 33:22,23 34:20 35:3 39:9
 48:1 64:24 67:17 68:17,23
 76:1,13 77:18 97:25 99:20
 103:21,25 142:12 143:2
 211:11
 seller's 89:24 202:7 213:18
 selling 145:12 167:15 180:16
 semi-offer 123:13
 senate 9:3
 send 68:25 70:2 76:5 94:4,4
 100:1 101:21 156:19 162:20
 187:21 196:3 202:5,6,7
 203:23 210:17 218:15 233:19
 sending 71:14 75:22 77:11,13
 78:3 117:23 121:16 205:16,23
 206:15
 sense 200:3
 sent 15:19,20 23:15 24:24 46:3,6
 50:7,12 54:7 55:21 70:10
 75:15 76:25 77:25 78:19,19
 79:2 91:19 92:21,24 93:1 94:3
 94:7 100:7 117:15,20 118:7
 119:9 176:21 184:17 185:2
 187:21,24 196:5 200:22,23,24
 201:1,24 203:1,5 206:23
 212:1,5 234:23 238:24
 separate 64:10 110:24 190:21
 separated 230:25 231:18
 separately 110:22
 separating 98:7 105:10
 September 41:21 48:18 148:2,25
 175:17
 serious 58:2
 SESSION 31:11
 set 8:15 36:9 47:17 180:9 226:11
 settlement 30:15
 settling 141:23
 several 102:23 112:6 167:9
 178:6 192:7
 Shechtman 1:8,9 5:3 27:20
 28:20 31:15 32:8,22 34:4 35:6
 35:14,17,22 36:3,16,17 38:9
 38:15 45:17 47:25 48:1 66:14
 66:17 69:20 71:1,1 72:14
 78:23,24 79:5 91:15,20,23
 93:18 94:3 97:14,23 98:15,18
 98:19 100:19 104:8,9,15,17
 105:6,9 117:21 125:18 126:5
 126:19 141:16 142:17 144:8
 144:18 145:4 154:24 155:17
 156:18,19,25 159:8,17 160:13
 173:9 174:1,19 175:19 176:8
 176:10 186:5 188:2,16 189:3
 194:11,21 204:20 229:18
 Shechtman's 50:13 71:5 76:18
 91:25 100:11 187:25
 Sherman 1:9 5:3 27:21 28:20,20
 31:15 32:8 35:7,14,16,21 36:2
 36:15 38:12 45:17 46:2 47:25
 47:25 69:20 76:20 77:5 91:15
 91:20 97:15,23 103:17,20,24
 104:8 105:6,9 125:18 126:6
 126:19 144:19 145:4 155:17
 157:1 159:8 160:14 174:19
 175:19 194:11,18 204:21
 Sherman's 36:18
 she'll 77:6
 shocked 13:5 29:16
 shopping 47:11
 short 138:19
 shortness 7:3
 shot 100:4
 show 32:2,7,14,17,23 33:1,15,18
 33:20 34:2,5,12,16,25 35:16

35:21 36:1,6,14 43:12 102:19
111:23 113:2 114:7 116:11
207:7 221:19
showed 15:2,3,4 68:24 69:4
78:22 102:18 136:10
showing 73:10 207:6
shows 109:3 111:22 112:11
115:6,6,6,7 154:8,8 207:7
shut 135:18
side 23:16 60:13 88:23 96:9,12
96:23 123:14 195:19 197:7
211:21 216:22 218:11 236:1
sides 31:17 36:14 215:8
sign 18:23 19:17 35:11,22 38:5
45:21 47:4 48:25 49:3,6 54:22
68:16 77:7,8 78:13,15,23
90:15,19 91:12 94:16 95:1,7
100:1 116:19 117:25 120:19
156:12,22 158:19 159:9,23
160:12,16,18,19 161:6,7,8,12
161:14 162:1,4,9 164:2 165:3
168:7 171:4 172:18,20,22
173:11,14 174:1,10,14 176:17
187:6,8 188:3,6,8,22 189:3
190:10,14,17,18 204:3 212:13
signature 46:8 66:14 71:6 76:20
78:17 90:15 92:16,16 95:14
95:16 96:4,6 98:9 103:16,21
126:2,7 127:1,9 169:13,19,25
170:9 171:5,17 176:7,9
178:17 179:6 187:25 188:19
218:17
signatures 71:3,4 76:18 77:18
78:8,21 103:11 124:13 126:1
162:18 167:19,21 168:25
177:5,22 234:8,19 239:7
signed 18:14,17 19:11,11,17
32:19 33:19 34:4,6 35:6 46:25
49:8 65:25 66:7,9,12,13,17
67:22 70:10 71:1,2,4,23 73:3
74:10 75:10,20 77:5 80:6,6
90:10,11 93:19 94:3 95:10,13
96:7 100:3 103:7,9,14 104:17
116:20 117:17 120:20 121:4
122:10 124:9 155:18,21,23
157:22 158:15 160:12,13
161:17,21 162:20 164:15
168:12 169:4,5,9,11,11 170:2
172:1 174:16 178:10,10,13,14
178:18 179:2 187:25 188:14
189:9 190:5,7,13,15 212:13
signing 36:11 106:18 117:8
120:24 121:2,5,5 127:11
160:9 161:14 178:24
similar 11:17 84:13 109:8 123:6
219:23 222:18
similarly 114:23
simple 47:24 93:20
simply 80:19
Simultaneously 78:25
since 19:2 39:7 40:8,18 60:6
184:4 207:20 211:13,24 216:6
224:22 240:14
single 61:6 75:20
singular 102:2
singularly 79:5 179:16
sir 132:9 144:1 200:14 208:4,9
234:14
sister 10:17 11:1 18:23 19:11
27:24 35:22 36:2 49:3,5,6
58:1 69:10,24 70:4 71:4,5
90:15 95:5 103:9,12,14
106:14,20 116:20 117:18
120:1,20 121:5,5,11,14,20
127:9,25 163:13 164:10
sisterly 30:21
sisters 10:15 27:15,19,22,22,23
31:15,15,25 32:8 36:22 47:8
47:13 81:17,18 163:8,8,10
sister's 19:16 117:1,11,22
163:25
sit 31:20 56:10 198:10
sites 57:24 58:3,4
sitting 101:4 102:12
situation 11:5 51:20 168:20
six 39:17 41:17 42:3 48:17 137:1
skipped 142:23
slant 124:13,17
slanted 124:22
slightly 87:24
Slow 178:1 205:18
smarter 9:5
smoothly 139:4
snapshot 204:10
sold 48:21 64:4,6 84:15,17 85:4
85:8 89:16,21,23 90:5 107:14
107:18 108:15,24 110:2,3,3,4
110:5,9,11,12,15,17,2 4 111:10
112:13,21 147:24 222:23
solid 180:6
soliloquy 66:17
Solis 111:22
some 9:18 28:9 56:15 57:11 58:7
64:8,9 69:1 71:7 75:4 77:21
85:3,4,4,6,7 93:4 100:17
101:2 102:12,20 107:3 109:3
109:5 110:21 116:11 127:21
129:21 147:19 161:8 162:5,11
162:11,12,13,1 6 167:5 168:21
170:14 173:23 179:9 191:18
200:24 211:12 212:18 214:10
215:15 223:9 238:17
somebody 104:4 171:23
someone 13:20 50:14 54:15
67:24 81:24,25 82:19 84:12
131:10 139:23 150:6 152:2,6
163:18,19 171:9 181:13
183:24,24 195:11 200:18,20
218:13 227:16
someone's 180:16
something 9:21 21:15,16 30:10
79:12 94:7 101:3 105:11
117:5 136:11 158:2 167:11
171:4,11 182:22 187:14 189:6
190:8 193:16 195:11 211:23
215:15 216:7 218:23,24 222:6
222:7
sometime 112:22
sometimes 36:8 44:8,8 124:21
124:21 125:10,24,24 126:6
155:6,6 158:22,22 163:12,25
167:9 187:2,3,4,5 211:10
217:1
somewhere 180:20 214:7
son 229:8
sons 229:12,12
soon 18:1,5 21:13
sorry 5:23 14:17 16:2 19:18
22:17 24:12 25:20 33:13
41:14 53:7 57:12 61:14 69:12
75:2 89:19 90:24 91:5 93:7,8
100:25 103:2,3 108:7 117:3
118:18 125:15 126:13 128:16
128:20 130:14 135:19 157:5
161:24 165:17 168:16 178:2
180:8 185:8,8 187:18 192:2,5
192:13 194:12 200:15 201:7
205:19 210:17 213:21 228:16
229:10 235:2 239:4
Sotheby 118:11
Sotheby's 202:6 236:19
Soto 2:1,2 3:5,8,11,14 5:11,11
10:14,16 11:9,17 12:1,7,19,21
13:11,14,16,18,21,2 4 14:6,8
14:10,14,17,20,22,2 4 15:1,3,6
15:8,11,20,21 16:6,25 17:16
17:18,22,25 18:18 19:7,10,20
21:1,3,6,11,16,18,20 22:2
25:17 26:19,23,25 29:20
30:12,22 31:1,6 45:16,16 49:4
49:6,8,10,13,15,20,22,2 5 50:4
50:7,10,12,15,18,22,2 4 51:2,5
51:9,15,18,23,2 5 52:3,6,8,11
52:15,18,21,2 4 53:1,3,7,10,12
53:14,17,19,2 3 54:2,4,11,13
54:19,21,2 5 55:2,4,8,10,13,15
55:19,21,2 5 56:2,4 58:10,14
63:1,16,18,2 2 64:3,14 65:14
66:16 72:19 79:10 87:11,13
87:21 90:13,16 91:9,10 99:8
99:16,17 105:1 113:15,20
115:19 120:15 123:2,4 126:12
126:22 129:7,9 130:2,4,6,8,10
130:17,20,2 5 131:1,3,6,8,13
131:15,22 132:1,3,15 145:6
146:13 148:11 149:23 156:5
158:20 159:12,14,16 166:7
185:23 191:23 192:7,17,18,20
192:25 193:6,11,13,17 194:1
194:4,7,9,14,1 6 196:9,11,13
196:15 198:15,19,23 199:9,16
199:18,20,23 200:1,9,14
201:6,22 204:24 208:8 212:2
212:3 215:16,24 216:4,8,13
216:15 221:6,7,9,11,13,19
227:17,20,23,2 5 228:2,4,6,8
228:11,13,16,18,21,2 4 229:1,8
229:10,12,14,17,2 5 230:6,8,11
230:13,16,19,23,2 5 231:4,7,9
231:11,14,22,2 4 232:3,11,15
233:3,6,14,16,18,2 2 234:4,9
234:11,14 236:10,12,17 237:5
237:21 238:5,7,10,16 240:1,5
240:11,16,20
Soto's 13:8
sought 48:5
sounds 237:24
South 32:3
SOUTHERN 1:1
so-called 87:4 197:6
SP 112:18,20
space 104:23
speak 37:25 64:23 80:22 144:15
149:24 155:3,5 164:5 165:5
168:8 177:1,7 186:25 187:4,5
194:23 202:13 203:2
speaking 104:21 162:14,15
204:7
speaks 83:13
specific 36:20 38:22,24 42:25
48:24 57:22 58:24 59:6,7 60:8
61:4 62:18 98:12,13 151:15
211:15 217:6,10 219:1,13,22
220:1 223:23 225:13,25
226:11 229:23
specifically 20:22 32:10 34:19
37:19 39:9 57:13 95:19 97:24
108:23 149:4 160:10 190:14
221:13,14
speculative 48:5,19,22
spell 56:11 132:11
Spellman 216:16
spend 32:4 51:12,12,19 57:16
211:22 228:21
spent 136:3,7
splint 20:25
spoke 38:14 143:23 155:1,10,11
158:22,23 175:13 186:25
203:6
spouse 82:20,20,25
square 65:11 73:20,21
stage 87:3
stand 58:11,12 115:25 116:1
120:9
standard 153:6
stands 112:20
start 6:13 132:15 231:24 232:1
started 9:16 41:20 57:17,18
77:11 89:18 91:21
starting 133:1 186:3 240:1
starts 25:21,24 140:20
state 5:22 46:15 56:10 60:5
136:20 149:2 180:16 220:5
stated 46:20,23 48:3 90:10 92:21
158:17 167:6,8
statement 3:4,5 26:8 31:18
49:18 151:15 221:25 233:2
statements 13:25 31:22
States 1:1,13 2:6 9:3 241:5
statute 46:15,21 48:23
stay 229:1,2 230:7
stayed 14:10,23,24 73:12
staying 157:11
steal 83:10
step 132:6
steps 118:24
sticks 139:3
still 39:1 52:22 54:11,13 56:20
61:9 80:7 83:6 119:19 140:12
150:23 153:20 171:24 175:11
218:24 230:5 236:3 238:19
stipulated 20:21 45:20
stipulating 19:10,14
stipulation 66:19 174:12
stood 98:15 120:4
stop 75:2
storage 151:5
story 209:1 237:23
straight 65:15 105:11
strewn 240:11
strict 26:13
struck 71:11 93:12
stuck 30:6
stuff 43:16 211:20 240:9
style 123:17,23
styled 126:16 226:7
subject 80:1 87:23 144:20 147:9
submit 17:4
submitted 101:12
subpoena 22:11 46:12 147:17
subpoenas 44:3
subscribe 166:16
subsection 141:1,2
subsequently 76:25
substance 16:21 231:3
substantive 22:8 221:21
subtract 42:20
sudden 168:8
sue 104:7,13 211:22
sued 27:23 104:4,8,11,1 2 211:18
suffered 37:4
sufficient 19:19,20
suggested 213:5
suggestion 168:22
suit 105:25 106:1
Suite 1:17,21 2:3,7 241:6
summary 213:15 218:21
summer 147:21
Sunny 32:10 45:19 57:5,19 59:3
59:16 217:3 224:2
super 42:15 216:3
supersedes 230:9
support 189:20
suppose 219:5
supposed 41:16 82:19
supposedly 28:25
Supreme 46:19,23 232:3
sure 27:23 56:17 75:3 80:9
95:18,18 101:9 102:21 106:3
116:13 119:2 120:9 124:16
128:6 130:3 139:15,15 190:25
191:2 199:17 219:10 224:13
surprised 176:22
sustain 64:25 91:8 131:4 212:10
212:11 227:10
Sustained 72:20,20

swear 189:14
SWORN 56:9 116:3 132:10
system 6:6 9:24 220:12
S-e-a-n 132:13

T

T 240:25,25
tab 107:17 114:9 160:4
TABLE 3:1
take 8:6 10:13 13:22 14:7 15:5
 16:10 17:14 19:12 22:12 25:1
 25:12 41:16,23 65:5 82:6
 88:12,19 90:6 92:9,19 96:8
 97:5,10 99:2,21 101:16
 104:22 113:12 118:24 121:9
 121:24,24 123:12 124:6
 125:14 132:15 139:7 156:5
 165:20,22 195:21 199:14
 201:23 202:15 207:17 211:5
 236:20 240:9,13,21
taken 10:13,23 31:9 43:14 54:5
 105:11,20 160:1
takes 44:8 175:2 216:23
taking 76:19 77:18
talk 61:20 110:2,8 123:2 134:4
 136:1 144:8 154:25 163:22
 173:20,25 203:1 231:16,17
talked 86:24 95:13 109:15,18
 110:10 120:8 143:23 179:17
talking 35:19 41:19 43:4 84:2
 88:7 90:12 93:3 113:9,13
 114:7,11 123:24 124:18,25,25
 128:14 135:20 150:24 154:7
 164:17 168:11,13,20,21,23
 173:18 182:1,5 196:8 201:7
 216:3 231:8,15
tax 20:22 42:15 44:25 53:23,25
taxes 42:5,6,12,14,20,2 143:1,6
 43:6,12,13,14,2 54:2,6,7,11
 44:20 45:1 54:6 225:9
TDR 32:10 57:5 144:23
teach 198:17
teaching 240:3
teenagers 7:17
telephone 120:22 177:25 178:6
 204:2
tell 24:3,25 62:17 67:21 85:13
 96:19 97:10 98:16,17 99:5,24
 102:24 111:10 112:1 116:4
 122:25 125:17 126:16 132:11
 143:4 162:13 168:6,6 170:9
 170:11,13,21 171:9,18 173:4
 173:6,8 183:14,15,19,23
 184:4,6,9 189:14 195:4
 197:10 200:23 220:25 222:4
 230:25 231:2,5 237:15,22
telling 12:5 29:19 102:4 108:15
 111:7 123:5 138:11,12,16,24
 138:25 139:22 151:24 162:2
 171:3 174:22,24 189:5 190:11
 220:20,20 224:23 232:10
 238:14
tells 171:23
tenant 42:11 67:5 148:24 154:13
 154:15,16,18 219:3
term 41:20 148:2,23 149:1
 167:12,17 179:24 180:6 229:6
terminated 48:18
terms 24:4 35:8 36:23 71:15
 72:6,7 73:9,11,12 78:4 80:21
 162:18 163:16,18 166:18
 167:1,20,22,2 5 168:1 171:25
 185:5
test 130:8
testified 18:17 28:1 29:4 81:5
 90:17 106:24 120:18 122:10
 123:10 124:3,23 133:25 134:2
 162:4,8 190:9 207:4,5 211:1
 233:7

testify 15:1 22:12,23 23:11 24:7
 24:20,21 36:22 37:1,6,9,11,17
 38:3,8,13 40:23 46:6 48:7
 50:18 67:19 131:2,5 134:1
 210:1 221:7,9 239:21
testifying 178:16
testimony 18:22 27:3,8 35:9
 36:14 37:16,23 38:2,8,12
 40:25 47:14 48:4,10 62:21
 85:10 96:20 103:6 139:4
 141:5 158:18 160:6 173:23,24
 174:16 177:4,18 188:10 189:2
 189:4,11,17,20 190:2,23
 198:3 207:8 209:13 220:17,23
 220:23,24 221:1,6 222:1,4
 233:8 235:17 238:8,11 239:5
 239:8
testing 54:25
text 46:10,11 129:24 130:24
 135:20 136:15 199:18 200:14
 200:15,18 201:23 202:12,20
 203:3,14,25 212:16 233:21,24
 235:3,10
texted 210:4,4
texts 135:14 200:23
thank 21:23 22:2 30:14 31:1,6
 38:17 45:14,15,16 56:4,25
 61:21,22,25 87:11 99:16
 115:19,22 126:12 130:4 132:6
 132:14 159:16 194:7 199:8
 201:20 204:24 208:4,9 215:6
 240:19,20,22
their 28:4 29:3 32:4,11,15,18
 33:2,3,16,17 35:18 36:8 37:7
 40:8,11 43:23 46:19 47:12
 51:4,5 52:12,17,18,20 54:17
 67:17 68:20 74:22 87:4 92:7
 100:3 109:15,17,23 113:6
 120:9 121:6 131:22 141:19,20
 152:21 159:4,9 160:12,18,18
 161:6,12 162:10 165:1 166:11
 171:12 176:14 177:8 184:17
 210:10 213:3 220:25 221:5,19
 221:24 222:1,4 231:16 235:21
 236:12 237:2,22 238:7,10
themselves 20:23 27:3 36:7,14
 38:1 102:11 172:7 210:9
 237:1,20
themselves 225:13
theory 198:2 226:3
thereof 37:5
thing 14:3 21:18 47:16 54:4
 58:24 73:13 80:17 126:20
 134:2,8 147:21 172:6 182:23
 194:25 211:14 218:8
things 7:19 12:13 19:25 37:14
 54:5 86:15,18,18,20,22,23
 94:24 132:25 139:6 151:7
 157:9 161:8 181:5 197:3
 216:11 223:22
think 7:16 11:11 12:3,13,21
 25:11 29:13,23 30:9 40:6,7
 60:10 61:2,3,9,10 68:7 72:18
 73:3 74:19 76:22 78:12,21
 79:14,15,17 84:3,11,13,14,15
 85:2 86:9 87:4 88:17 89:21
 90:17 91:17 95:21 96:22
 98:19,19 100:9 102:4,8,10,12
 102:13,23 103:6,18 104:2,20
 105:10 106:1,10,24 107:15
 108:14,17 109:3 110:15 111:9
 112:23 113:14 119:13 120:18
 122:2,22 123:7,10 124:8,23
 128:16,17 129:18,18 132:19
 133:15 135:8 136:3,7 141:25
 142:5 143:25 144:2 151:8,13
 152:12,15 157:12 158:5
 165:10 167:10 168:9 171:19
 174:9 178:20 180:22 181:2,4
 181:7,8,15,17,19 182:4,15
 183:3,20 191:5 192:16,17
 198:5,15,19 200:6 207:21
 209:15 211:11 215:10 216:24
 216:25 218:6,19 220:18
 225:11 226:25 239:17
thinking 170:16
thinks 209:19,23,24 228:1
third 8:22 33:19 72:25 133:20
 200:4,5 225:17 233:1
third-party 22:10,14
Thirty 27:5
though 6:16 17:6 52:13 77:1
 139:22 156:25 162:8 182:8
 207:8 210:12 211:14 212:24
 233:18
thought 76:23 78:2 80:16 82:8
 98:5 109:10 110:15 150:23
 181:6 183:14 184:4,7,8,20,24
 185:3 187:12 189:7 209:16
 225:2 234:2 238:16
thoughts 11:10
thousands 27:1
thread 101:14
three 5:13 18:18 21:9 27:1 38:20
 89:2,3,10,11 111:15,15
 133:21 134:4,5,7 135:25
 197:3 204:16
three-minute 132:16
through 8:25 9:9 11:8 24:9 27:1
 32:14,18 33:2,16 36:24 62:21
 65:22 71:9,11 90:19 91:22,23
 91:24 92:4,7 93:12 95:22
 98:22 101:4 127:24 128:2,4
 130:23 133:9 134:12 136:16
 144:5 145:19 150:17 156:2
 167:10 177:8 191:19 199:6
 207:1,15,24 210:10 211:1
 213:3 219:21 230:20,21
throughout 144:6
throw 7:4 218:1,4 219:4 238:17
Thursday 21:13 26:20 99:21
tick 60:13 61:3
Tieder 1:16,20
tight 119:6,8
till 14:12,23,24 175:3 201:17
time 7:1,3,8,8,11,24 8:7 10:3
 11:3 12:1 13:2 17:1,13 19:9
 20:14 22:14 25:2 26:10 27:18
 34:13,20 39:15 40:19 41:17
 44:12,13 46:1 51:12,13,19
 57:11,14 58:7,21 62:9 64:24
 71:21 74:16 76:17,19 77:21
 83:24 86:16,17 88:2 90:3,4
 91:17 93:16 97:8,16 98:17
 100:16 101:2,12,12 102:20
 109:3 110:6 113:18 118:21
 119:7,13,22 120:2 123:1
 129:15,21,25 130:15 136:3,7
 137:5,6 139:21 140:24 145:11
 146:23 149:3 153:2 159:17
 169:21 174:5 175:1,13 177:11
 177:13 178:16 179:4,6 180:23
 182:20 184:2,13 185:12,17
 186:7 187:24 188:13,14
 193:15 195:16 196:16 198:24
 200:5 202:21,24 204:6 205:13
 208:24 211:22 213:9,19
 219:13 222:18 227:10 228:22
 234:12
times 28:1 30:17 78:6 102:23
 163:25 167:9
today 20:7 27:5 70:6 96:20
 120:5 140:12 141:22,23 189:4
 194:4 195:16,17 197:14
 220:20 235:17
today's 44:3
together 11:4 47:12 118:4,5
 179:19,19 227:22 228:3 231:6

told 15:11 33:23 46:13 67:24
 76:19 77:15 78:9 90:4 109:20
 110:7 131:10,19 133:18 139:2
 141:10,12 142:19 153:21
 162:18 170:12 171:2,11
 172:23,25 173:5,6,7 178:25
 179:7 181:17 182:13 183:10
 183:11,21 184:7 188:25 190:4
 190:9,14 196:16 198:24
 199:12 201:16 204:4,6 228:20
 239:6
tomorrow 100:2 192:10,14
 194:3,5 197:13,15 198:17
 202:7,8 208:25 239:18,23
 240:19
tonight 100:1 202:5
tool 226:19
top 7:12 123:6 205:13 216:8,11
Toronto 51:20
totally 169:13,18,25 170:25
 190:21 230:24
tough 16:3 101:24 223:4
Towards 231:11
tower 32:11 34:14 57:5 144:23
 205:23 206:12
town 77:6
trace 121:17
tradition 223:13
Traditionally 53:20
traffic 240:7
trail 179:18
transaction 27:5 39:5 46:16 67:6
 68:16 69:4 91:17,21 133:13
 134:25 137:16 147:2,22
 148:16 190:21 191:9
transactional 125:5
transactions 78:22 79:4 91:22
 125:6 133:11,12,16 134:4,5,7
 135:25 146:7,17,22,24 147:3
 147:9 161:6
transcript 160:5 177:15
transcription 241:2
transferred 76:7 93:19 135:7
 234:1
transmit 29:3 93:24 94:13 166:1
transmitted 71:20 73:4 75:24,25
 94:22,24 118:7 166:21
travel 160:21 211:12
traveling 160:20 169:22 185:13
 228:14,15,17
travels 155:11
treatments 89:13 111:18
treats 59:8
triable 218:20
trial 1:12 5:17 6:18 10:25 11:3
 12:14,15,17 17:8,9,10 18:1,4
 18:9,25 19:2,3,6,22 25:21,24
 25:25 26:2 29:1 30:3,4,6 43:3
 201:17 210:17 213:9 221:21
 240:23
tried 40:10 90:2 110:6 149:21
 153:3 222:17,18
trier 175:9
trigger 6:9 214:2
trip 56:20
trouble 189:9
TRS 48:1 97:23,23 98:6,7,8,8
 103:24 105:3,3,9,9 125:18,18
 126:6,6,19,19 155:17,17
 156:25 157:1
true 44:8 53:9 54:19 64:6 90:11
 108:24 110:2,3 111:20 129:21
 151:8,8 164:25 191:13 196:7
 196:16 198:24 200:17,17,20
 200:20 223:3,5 226:24 233:8
Trump 57:21 73:20 205:23
 206:12
trust 1:9 32:9,12 34:21,22 35:8,8
 35:9 36:3,17,19 38:10,14,16

39:1 47:9 55:16 67:3 69:16,17
 69:19 78:16 97:12,21,22,24
 98:1,12,13 104:2,9,11,12,14
 104:15 105:5 118:12 119:19
 126:16,21 141:16 144:9 163:9
 218:18 229:15
trustee 36:2 69:20,20 76:20
 97:14,15
trustees 69:19 97:12,25 98:2
 104:2,13,18,19 105:3,5
 125:23,25 126:4,7,17 144:9
 158:16 239:21
trusts 78:15 98:6 125:24
truth 29:19 93:21 138:11,12,16
 138:25,25 139:2,22 140:23
 141:12 150:13 151:24 174:22
 174:24 189:14,15,18 198:1
 220:20,20 222:4 238:14
truthful 29:12,14,17 233:9
try 13:8 84:22 122:21 158:10
 164:6 170:19 175:1 214:15,21
trying 59:12 67:13,23 68:1 77:4
 80:20 102:9,10,14 104:3
 114:19 122:22 123:20 131:23
 140:8 150:22,23 152:3 175:9
 187:11 189:6,8 198:12 201:13
 207:14 227:11
Tuesday 21:6 25:2,5
turn 38:24 114:12,23 116:15,24
 117:19 160:4
turning 229:19
twice 193:14,16
twin 117:11
twins 229:19
twist 100:3
twisting 182:9
two 16:4 21:12 24:9 27:15,19
 32:21 34:14 35:24 36:14,14
 47:8,23 48:9 55:18 60:19
 69:22,25 77:19 83:25 84:5,14
 85:8,14,20 86:22,23 87:14,18
 98:3,5 104:19,21 105:2 109:7
 110:3,9 117:22 122:18 123:24
 126:4,8,15,17 130:25 131:2
 131:11 133:3,15,16 144:9
 145:20 146:6 147:3 151:6
 155:6 163:8,8,10 177:5 181:5
 200:12,17 215:25 218:19
 223:10 225:4 226:5 229:12,19
 229:19 231:18,19 235:14,20
 236:24,25 239:7
two-minute 156:5
type 161:1 226:12
types 146:6
typical 42:22
typo 199:11

U

ultimately 32:5 35:4 89:22
um-hum 100:13 119:21 186:2
unable 149:8 170:8 203:17
unauthorized 90:23 232:23
unbelievable 10:22 12:14
unclear 200:4
uncles 60:4
under 8:19,20 15:24 16:11,12,17
 22:10 29:25 35:3 37:2,13
 38:10 46:12,15,21 47:1 48:15
 48:19 51:2 55:16 58:12 79:9
 84:1 88:19 112:14,16 135:22
 135:23,25 149:10 166:4
 189:12 211:12 226:24
understand 8:16 17:18 57:3
 69:15,17 80:9 85:21 119:11
 134:22 144:22 147:14 226:8
 238:20
understanding 65:14 67:9 71:17
 71:19 72:12 78:4 86:12,14,15
 86:17 93:24 97:20 98:10

107:6,24 110:21 181:18 188:1
 188:15 198:9
understood 8:18 30:7 68:5 71:23
 76:23 93:18 97:21,22,25 98:3
 101:11 108:1 158:15 167:11
 185:15 188:22
undue 140:24
unethical 170:22,23 190:8
unfinished 107:8
Unfortunately 193:18
unfurnished 85:9,15,18,22,24
 85:25 86:1,2,4
unique 58:25 59:3,8 223:25
 224:3,4,12
unit 26:20 32:1,10,10 40:10
 45:19 48:8,14 49:25 52:24
 55:15 57:4,8,9,10,22,22 58:6
 58:20 62:10 64:12 72:4 73:19
 83:2,4,22 87:23 88:3 106:6
 107:8,8,10,11,13,21,2 4 108:4
 108:15,24 109:2 114:22 115:5
 133:18 142:10,13 144:24,25
 145:4,9 147:12 148:13 174:7
 184:23 205:24 206:12 222:19
 227:23,24 228:13 229:2
United 1:1,13 2:6 9:3 241:5
units 34:14 40:13,20 48:12,21
 64:4,7,7 85:4,6,15,20 87:14
 87:16 108:13,14,18 109:7
 110:1 136:10 151:5 161:3
University 240:6
unless 16:13,14 30:8 60:1 110:7
 131:10 167:5 173:10 180:17
 220:25 232:19
unlikely 142:5
unlock 240:14
unreachable 169:23
until 10:5 12:12 34:22 91:18
 93:16 101:7 109:5 128:25
 168:12 169:4 174:25 176:18
 178:18 179:8 194:22 229:2
 238:4 240:17
unusual 42:8
up-for-sale 64:7
use 5:5 22:17 60:15 65:2 131:5
 159:14 180:4 194:12 210:15
 210:15 215:3
used 31:2 44:13 141:4
useless 230:24
using 48:14 52:7 227:10
usually 14:2 218:14 222:6 236:8
U.S 241:5

V

v 103:3 213:15
valuable 223:2
value 40:3,7,7,9,18 41:2 48:8,8
 83:14,15 182:14,22 183:4
 222:25 224:24
variables 223:21
various 38:6 184:12
verbal 107:3 159:9,23 160:18
 161:5,7,8,11
verbally 168:10
versa 221:4
versus 5:3 27:22 181:19,22
 182:4 232:13
vertical 123:5 124:20
vertically 124:21
vertigo 223:15
very 16:6 19:20 26:12 35:24
 36:15 40:19 47:23,24 48:24
 59:18 98:6,8 100:4 108:20,21
 132:24 134:6 138:19 139:4
 153:9 181:12 182:25 184:12
 202:4 206:7,25 219:23 231:4
 233:10 235:12 239:24
via 29:5 129:24
vibration 117:3

vice 214:16 221:3
view 55:24 65:13,15 80:23
 108:21 112:10 115:7 138:11
 146:4 147:1 157:18 158:7
 169:3 174:23
viewed 102:23
views 89:10 111:14 223:22
violate 7:16
Virginia 1:17 8:11 20:13 68:8
 102:25
visit 57:24 58:6
Vivian 1:4 3:6 5:2 15:18 16:7
 17:11 19:11 24:17 31:24
 45:21,23 47:20 56:7,9,12
 66:10 118:1 120:20 122:10
 127:20 195:14
Vivian's 19:17
VK 123:6 124:11
volatile 181:12
vs 1:7

W

wait 12:12 19:23 42:16 77:6
 121:6 123:24 140:12 150:1
 159:15,18 176:18 201:17
 211:11 238:3
waited 8:5 10:5
waiting 22:1 156:6,7
waive 11:4
waived 11:23
want 5:21 7:16,19 8:1,6 9:13,14
 9:20 12:17,20 13:19 17:14,25
 20:1,21,22 22:3,6 23:10 24:25
 25:3 26:7,9 27:23 28:14,18,24
 30:6,20 38:24 39:3 41:13 43:2
 43:4 44:15,16,17,19 45:10
 50:25 51:6 55:3 60:1,20 61:11
 61:14 65:2 67:21 73:25 77:6,9
 82:15 85:17,18,20 87:18
 120:5 129:5 132:25 134:4,15
 134:16,18 135:25 140:9 143:4
 144:5 145:23 152:16 163:13
 163:21,22,24 164:6,9 168:6,9
 169:1 171:23 175:5,24 177:16
 180:18 181:14 183:25 194:2
 197:20 199:25 201:5 208:13
 208:14 215:1 217:14,15,16,16
 217:18 218:1,4 220:9 224:3
 224:13,14 226:8,10 227:11,15
 227:15 229:4,4 231:2 236:1
 236:20 237:7 238:5,6,20
 240:10,14,18
wanted 30:2,4 31:4 49:23 51:12
 51:19 73:23,25 107:7,13
 119:7,22 120:2,3 141:2,3
 152:22 176:23 180:21 183:18
 183:22,22 184:23 191:18
 209:17 228:21
wants 25:10 79:1 209:17 210:21
 211:1
Washington 13:6,7 16:15
wasn't 77:9 94:14 102:21 103:23
 121:2 169:5,11 179:7,15,22
 180:6,9,9,14,15 190:20
 209:18
waste 184:2
wasting 140:24 230:14
watch 18:3
watching 81:6,8 85:3
water 43:16
Watt 1:16,20
way 7:6,18,20 13:24 21:11 48:19
 62:14 73:23 80:11 82:5
 102:24 103:1,3 104:1 123:11
 124:13 152:3 165:9 200:25
 203:4 214:18,18 222:25 226:7
 230:4 231:17 232:18,19
wealth 239:16
Wednesday 21:13 25:2 128:8,15

195:24
week 20:8,16 77:6,15 140:11
 229:18
weekend 21:9
weeks 207:18,19,20
weigh 220:23
weight 215:15
welcome 198:18 240:4
well 5:12 8:4,25 10:6 12:23
 14:21 15:13 16:9,13 17:17
 19:5,16 20:11,20,21 21:21
 24:23 25:10 26:1,3 28:13 29:2
 38:18 40:6,9,25 42:14,20 43:2
 43:13 44:12 53:10,23 54:4,19
 55:3 58:23 59:15 61:2 62:20
 67:11,16 76:8 77:5 83:1,17,23
 84:17 87:16 93:20,21,23 94:5
 94:24 95:7,21 96:5,8 104:4
 107:9,25 108:1 110:7,12
 112:23 113:1,17 119:1 121:24
 124:23 125:23 133:15,24
 134:7,12 135:14 136:6 138:10
 139:1 142:3 149:25 152:1
 154:10 155:10 156:7 163:17
 163:21 164:5 166:1 168:11
 169:16 171:11,18 172:19
 173:22,23 175:5,20 176:18
 179:6,7,10,12 180:11 181:6
 181:13,16 182:13,25 183:2
 185:14,19 187:15 188:6,21,23
 189:11,24 190:20 191:1
 197:14 201:12 203:21 207:4
 208:16 209:11 212:5,7 213:8
 214:5,12 216:1 217:24 218:7
 219:25 220:18 221:1,1,20
 222:15,17 224:13 227:1,18
 228:16 229:14 230:2 231:12
 231:24 234:15,18,25 235:5,17
 235:25 236:18 237:7
went 12:7 49:22 83:3,24 91:21
 109:6 110:25 111:3 112:12
 113:5 120:3,3 153:3 206:25
 230:20
were 5:1,14,19,20,25 7:1 8:20
 11:4 13:10 24:9 26:11,22
 27:13,14 31:12 34:15,23 37:1
 40:19,20 41:16,17 43:15 47:4
 48:14,14 49:25 51:3,11 52:13
 53:1,2,9,13,25 54:5 55:1,12
 57:12,15,16 58:1,1,3,3 60:3
 65:20 66:25 69:7 71:8,13,14
 71:15 72:13 73:17,19,20,23
 74:3,25 75:14 76:18 77:4,18
 77:19 78:3,9,12,21,25 80:5,20
 82:12 83:2 85:8 87:14,14,16
 91:11 97:20,25 98:3,3,5 102:8
 102:10 105:23 107:3,9,11
 108:5,11,23 109:7,9 110:7
 113:12 118:4 119:6,8 124:18
 140:5 142:7 144:18 146:24
 147:6,7,15,19 148:16 150:23
 153:16 156:8 157:11 159:22
 160:20,20 167:3,11 168:24
 171:1 172:8 176:22 177:5
 179:19 181:14 182:5 183:12
 183:13 185:15 189:12 194:23
 195:14 197:24 200:22,23,24
 201:1 207:14,24,25 212:10
 215:20 220:11 221:2 222:19
 225:13 229:2 230:25 231:4,18
 233:25 234:12 236:21 238:7
 238:10,16
weren't 17:7 93:3 178:16 186:13
 231:8
we'll 10:25 11:2,4 17:9 19:22,25
 25:2,20 37:16 38:2,12 64:18
 64:22 65:19 74:9 125:24
 130:15 132:18 159:15,18
 163:19 200:16 201:17 216:23

238:2 239:23
we're 15:16 18:25 19:2,14 26:17
 27:5 31:14 36:20 41:15,19
 43:3 50:16 54:16 57:3 60:5
 68:10 70:6 79:17 83:10 84:24
 114:7 118:4 122:5 124:16
 141:21 150:22,23 153:20
 156:6 164:23 171:15,25
 173:18 182:23 183:25 197:16
 199:22 216:3 226:15,18,21
we've 30:17 43:23,24 72:7
 132:17 150:20,21 184:11
 201:15,17 215:8
whatsoever 43:24 48:21
while 43:15 120:24 156:6 218:15
 227:8
white 199:14,23
whole 45:23 108:21 133:25
 177:16 189:14 229:3 232:8
 238:4
wife 22:11 24:1 25:1,13 168:8
 208:21 209:2
Wilkie 2:7 241:5
willing 37:2 50:16 74:3 100:16
 101:24 171:15 180:2
win 41:7 60:15 80:8 137:1,6
 217:10 218:11 219:1 224:15
 224:17,18 225:19
window 40:19 89:13 111:18
wins 218:11
winter 32:4 57:16
wire 76:7
wired 34:9,18 118:11
wiring 37:10 118:15 202:6
wish 31:18 127:7
wit 216:18
withdraw 198:13
withdrawing 226:16,18
witness 22:10,15,20 23:10,11,25
 56:5,12,23,25 58:16 59:13
 61:13,14,16,19,21 62:16,18
 65:22 79:20 80:12 85:16,19
 85:21,24 86:1,3,5,13 87:20
 90:14 91:3 113:15 115:23
 116:1,6,11,14 122:25 126:15
 130:23 132:7,10,13,19 138:23
 138:24,25 139:19,21,23 141:5
 141:7,9,17 142:8,11,15,17
 142:19 144:1,4,16 145:9
 146:1 149:24 151:4 152:20
 153:1,14 154:10,13,15,17,20
 154:22,24 155:1,4,7,10 158:3
 162:14,16,23 163:1,3,5,8,10
 163:15,21 164:1,5,11,14,18,22
 164:25 165:3,6,9,11,20
 166:10 167:4 168:14 169:4,7
 169:9,11,14,16,20 170:1,4,7
 170:12,14,17,21,23 171:1,6,8
 171:11,21,23 172:3,8,11,13,18
 172:21,24 173:1,3,5,7,9,13,15
 174:2,4,6,8 175:12,15,17,20
 175:23 176:1 177:19 180:23
 181:1,4,8,11,16,21,25 182:3,9
 182:16,19,23 183:2,5,7,9,11
 183:13,17,21 184:2,6,11
 191:19 192:14 196:19,25
 197:1,4,7,18,19 198:3 199:16
 205:6 208:6,12,13,14 209:5
witnesses 20:5 25:12 140:22,24
 158:1
women 83:9,11
wonder 20:12 215:18,19
Wonderful 30:19
word 14:2 163:25 184:7
words 54:9 60:3 165:11 182:9
work 15:14 21:9,11 101:25
 110:13 135:13 149:17 171:19
 227:6
worked 231:5

working 7:2 8:20 33:9 209:19
 240:14
works 56:21 150:4,7,9,11 236:19
world 44:3 155:12
worse 192:13
worth 180:22 181:2,9,9 182:4,17
 182:20 183:15,20,24 184:5
 211:2,7,7 217:5 222:10,13,13
worthless 169:13,25
wouldn't 9:16 29:1 54:4 60:7
 77:12 84:23 88:18 110:8
 126:20 149:8 172:17 184:2
 236:14
Wow 15:23 134:5 136:1 221:18
write 47:2 121:20,21
writes 112:17
writing 9:11,13,21 36:9 55:18
 102:8 171:13 176:21 177:3
written 23:6,13,14,18 33:19,24
 72:14 100:9 139:11 145:16
 168:21,23 169:2,5
wrong 49:24 128:16 189:6
 190:12 212:24 230:2 234:10
wrote 47:1 71:12 75:10,18,19
 112:9 114:20 115:13 210:4

X

X 213:17

Y

yeah 10:11 13:14 14:25 15:10
 20:24 29:15 30:8,23 42:7
 65:14 88:9,20 89:2 93:4
 107:18 112:6 121:16 122:5
 124:2,15 145:22 149:24
 162:15 163:19 169:8 174:11
 193:20 201:15 209:21 214:21
 215:18 216:12,12,16 219:12
 230:20 238:6
year 17:22 45:2,7 48:2 57:17
 144:13,13 148:22 149:2
 161:20 216:23 224:21
years 19:8 111:5 149:11 151:6
 157:7 158:8 216:7 224:5
yesterday 203:6
yield 168:15
young 56:20 175:7

Z

Zip 57:6

\$

\$1,008 45:4
\$1,200,000 62:7
\$1,270,000 73:14
\$1,300,000 75:13
\$1,546 232:20
\$1.2 32:17 70:18
\$1.27 33:20
\$1.3 33:4,17,23 34:5 35:14,17,20
 40:8,15,16 50:9 52:2 74:15
 80:12 81:1 83:3 184:25
 185:16 186:14 187:7 217:13
 217:14,16,18,21 224:8,16,24
 230:10
\$1.33 32:19 187:16
\$1.35 54:9,16
\$1.4 83:5
\$1.65 34:16
\$1.7 34:15
\$10 82:18,23
\$100,000 107:10 110:13
\$12,000 45:7
\$120,000 222:13 223:8,19
\$30,000 45:9
\$40,000 225:8
\$42,000 45:10
\$5 183:25

\$5,900 42:3 44:23
\$50,000 34:9 39:1 53:10,18,20
 54:3 70:15 76:7 118:14
 119:17
\$500,000 53:10
\$6,000 44:25
\$600,000 40:21
\$7 164:6,7,9,10,12,16,20
\$72,000 45:10
\$900,000 80:5 211:8,8

0

02 109:8
07 62:10 108:13 109:1,7
07s 65:14

1

1 4:10 38:21,23 66:6,7,15,21
 71:11 74:21,22 90:6,13,14
 97:5,11 103:11,14 105:7,9
 108:14 110:14 111:11 112:12
 117:19 125:2,14,14,14,17
 127:12 176:4 184:16 195:6
 212:9 235:2 239:2
1st 160:10
1,200,000 70:13 71:9
1,230,000 72:3
1,270,000 73:6,9 75:8
1,300,000 75:18
1,330,000 70:23 71:10
1,480,000 112:1
1.2 67:4 116:18 183:7 184:11
1.23 32:25 33:12 72:17 95:21,23
1.230 116:25
1.25 183:7 184:11
1.27 75:17 97:17 103:7,9 117:14
 186:4
1.3 46:4,5,7 50:6,16 53:15,20
 54:21 55:13 72:15 73:18,25
 74:1,3,4,10,2,2 79:1,3 81:2
 82:9 87:2 100:1,16 101:22
 102:4,13,15 107:13 108:15
 109:1,7 117:21 129:4,11
 142:20 167:4 171:16,23
 177:24 180:17,25 186:5,7,9
 187:12 199:5 211:2,2 217:16
 230:11
1.33 33:6 95:22 173:19
1.330 116:23
1.35 32:13 50:4 53:12,13 54:8,15
 55:12 62:4 107:6
1.4 82:13 90:3 107:6
1.45 65:10 107:7,11 110:12,14
1.48 65:8 89:21 110:11,17
1.480 89:16 112:18
1.5 107:7 180:19
1.55 107:12
1.6 48:11 110:7
1.6/5 112:12
1.65 89:14,15
1.7 48:9 109:8 112:12
1.72 109:9
1.8 89:20 112:11
1.9 48:9,11
1.95 110:5
1:30 16:8
1:45 16:8
10 1:8 4:5 62:11,12,24,25,25
 63:3 66:25 68:19 70:5 86:16
 92:10 93:8,8,10 95:13 116:15
 120:19 122:8 124:23,25,25
 135:21,22,23,25
10th 106:23,6,9,10,11 128:25
10,000 147:23
10:44 5:1
10:45 204:9,13,16
100 1:17 189:19 190:25 191:2
100,000 107:11
101 177:15,17

11 93:2,3,4
11:10 31:9
11:21:35 99:22
116 3:9,10
12 4:6 63:5,6,8 70:24 92:19 93:4
 93:8,10 95:15,16,20,24 96:9
 96:12 116:22 121:4,6,25
 123:9 165:16,18,18,19 187:16
 187:18,19
12th 223:17
12-foot 89:12 111:17
120 3:11
1200 1:20
13 4:7,15 109:4 192:5,23 193:2
13th 223:17,18
13-21482-Civil 5:3
13-21482-CIV-MORENO 1:3
13-3 1:6 2:7 241:6
136 3:12,13
14 4:11,13 95:24,25 96:1,15,23
 116:24 121:9,10,15,19 123:12
 124:19,25 160:8
14th 30:25 48:18
146 4:12
148 4:13
15 4:12 18:6,20 70:17 76:12
 125:25 126:7 194:1 230:14
15th 41:21 119:7
15-minute 13:22
15811 57:5
16 4:7 63:10,11,13 73:7,8 97:19
 103:7 117:13 124:6
17 107:14
17th 107:18
18,509 45:2
1800 1:21
19 4:8,17
192 4:14
193 4:15,16
194 3:14

2

2 4:11,15 39:19,20 99:2,11,14
 101:14 108:14 128:3,5,5,6,7
 128:17 195:21 196:9,10 205:3
 205:4,5 206:8,9 225:12
 234:23
2:00 10:7 15:11 16:14 19:22,25
 20:1 22:5,6 30:11,19 76:7
2:30 22:19 31:13
20 4:9 67:4 111:5 157:7 158:7
 194:1 229:19
20-year 47:21
2006 144:14,16
2007 144:16 175:21 184:4
2008 175:21
201 4:17
2011 160:10
2012 32:13 148:25
2013 32:16,24 33:19 34:3,7,11
 34:17 35:20 37:9,22 38:7
 41:21 45:2 46:22 57:11 58:17
 62:6 67:3 69:6 70:3,17 71:13
 73:4 75:16 76:9,12 78:1,16,11
 99:22 101:7,16 102:20 107:10
 112:11 128:8,15 148:2,25
 160:2 195:24 202:18,23
 204:13 206:21
2014 1:8 89:23 113:22 224:22
205 3:15
21 4:10,14 229:17
22 4:8,16 63:14,15,19 193:4
 229:18
24 63:21 64:4,15,18 88:12,15
 107:17 111:8 112:5 113:21
 114:1,11,25 115:4
24A 4:9 64:19 65:19,20
24B 4:9 65:20
2400 2:2

25 64:4 114:9,22
27 19:8
28 4:16 193:9,22

3

3 4:5,13 41:9,10 108:14 148:5,6
148:7,14 153:16 191:21 192:3
193:14
30 27:25 28:1 132:22 160:4
177:14,18,18 185:21 188:10
217:9,19 224:18
300,000 168:6,9
305.523.5118 2:8 241:6
305.693.7797 1:22
305.777.3572 1:22
31 3:4
33128 2:8 241:6
33131 1:21
33160 57:6
33308 2:3
35 108:12
35th 108:19
37 108:10
3707 108:14
38 108:14 114:12
3807 32:10 45:19 57:9 58:6
87:23 106:6 108:9 113:4
114:10,22 147:12 148:13
205:24 206:13
39 108:14

4

4 4:12 58:16 62:6 67:3 70:3
71:13 145:23,24,25 146:15
160:2 188:12
4th 32:16 91:21 92:17
4:42 101:16 128:15,20 195:24
199:7
4:45 13:9 14:11
4:57 15:19
40 27:5,25 28:1 108:14 224:5
225:9
40s 223:12
400 2:3,7 40:21 41:4 48:20 241:6
4007 88:16 110:4
42 88:10
4207 64:12,13,18 65:3,7 85:25
86:1 87:20,22 88:1,5,11,13,14
88:16,19 106:25 107:4 110:3
110:17 114:19,20 115:5
4307 64:21,22 65:9 85:16,24
87:20 88:1,3,6,11 106:24,25
107:4,16,18 108:1 110:3,12
45 3:5 132:20,21 134:5 136:1
480 111:11

5

5 164:24 177:21 186:3
5th 32:24 78:20
5,900 67:5
5.5 110:14
5:00 12:25 13:9 14:19 15:12,14
26:20
5:06 14:14
50 27:5 28:1,1 71:11
50,000 53:11 73:10 202:6
51 160:6
57 3:6,7

6

6 4:17 33:19 101:16 128:8,15
130:10,20,21 195:24 199:18
199:24 201:12,18,19,23
210:13 211:9 233:24
6th 73:4 75:11,15 173:7 196:7
199:7 201:14
6:00 14:24
6:51 240:23

600,000 41:4
611 140:15,17,18
63 4:5,6,7,8
65 4:9
650 112:13
66 4:10

7

7 34:7,11 35:20 37:8,22 38:7
73:4 75:15 76:9 78:1 164:9,24
206:21 211:9
7th 31:5 34:3 52:1,17 66:1 74:19
75:11,15 76:3 78:2 89:23
91:22 99:21 106:10 109:6
118:19 128:9 173:7,7 178:20
195:4 234:23 235:3,23,24
238:24
7:00 14:23 198:17,20 240:4
7:24 128:10,18
7:30 75:11
703.749.1000 1:18
703.893.8029 1:18
75 214:16

8

8 4:6,14 34:17 78:6,11 101:7
108:14 113:22 191:25 192:5
192:21 193:17 202:18,23
8th 51:25 52:19,23 76:13 77:22
77:23 93:16 106:10 109:9
129:20,20,22 131:17 195:1
203:25 204:8,18 234:13,18,20
235:7,19,22
8:26 206:21 234:23 235:3
8:55 202:18
8:56 128:14,20
8218 102:24
84 188:12
8405 1:16
87 3:8

9

9th 51:25 201:14
9:00 240:7
9:30 239:19 240:1,7,17,18
90 86:14,15,16
900 48:20
954.567.1776 2:4
954.567.1778 2:4
96 185:22,24
99 4:11