

Line 1 IN THE CLARK CIRCUIT COURT NO. 2
STATE OF INDIANA
2 CAUSE NO. 10C02-1208-PL-88
3
4

STATE OF INDIANA,)
5)
Plaintiff,)
6)
-vs-)
7)
KEVIN ZIPPERLE,)
8 MARY LOU TRAUTWEIN-LAMKIN,)
SHARON CHANDLER, and)
9 FRANK PRELL,)
)
10 Defendants.)
11

12 The continued deposition upon oral
13 examination of KEVIN ZIPPERLE, a witness produced and
14 sworn before me, Angela Thompson Stidham, a Notary Public
15 in and for the County of Scott, State of Indiana, taken on
16 behalf of the Plaintiff at the offices of the Culotta and
17 Culotta, 815 East Market Street, New Albany, Floyd County,
18 Indiana, on the 18th day of November, 2013, pursuant to
19 the Indiana Rules of Trial Procedure.
20

21
22 _____
Angela Thompson Stidham, CCR
Court Reporting and Video Services
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1 A P P E A R A N C E S
2
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4 Sally Miller
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8
9 FOR THE DEFENDANTS: James Clayton Culotta
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12
13 ALSO PRESENT: Sharon Chandler
Mary Lou Trautwein-Lamkin
14 Frank Prell
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1 KEVIN ZIPPERLE, having been first duly
2 sworn to tell the truth, the whole truth and nothing but
3 the truth relating to said matter, was examined and
4 testified as follows:

5

6 FURTHER DIRECT EXAMINATION,

7 QUESTIONS BY JENNIE BELLER:

8 Q. We are back on the record, taking the
9 deposition of Kevin Zipperle.

10 I wanted to go back and just get an
11 understanding of, Mr. Zipperle, why did you prepare the
12 documents known as bulletin number one and bulletin number
13 two?

14 MR. CULOTTA: And I'm going to object to
15 the extent that he's already responded. If I remember
16 correctly from his testimony, he prepared one, and the
17 other one was not prepared by him. So to that extent, go

18 ahead and answer as you can.
19 A. Let's just say they were prepared for
20 purposes of educating homeowners that asked questions
21 about anything related to their content.
22 Q. Whose idea was it to prepare them?
23 A. Specifically, I don't remember any
24 particular person. The board and the property manager,
25 let's say.

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1 Q. But was a vote taken at any board meeting
2 that you should do this?
3 A. I don't remember.
4 Q. Do you remember who -- anyone who would
5 have directed you to do this, or that would have caused
6 them to be prepared?
7 A. Nobody would have directed me to do it. It
8 may have been suggested by someone. I don't remember.
9-25 [Personal information removed.]

210

1-25 [Personal information removed.]

211

1-25 [Personal information removed.]

212

1-25 [Personal information removed.]

213

1-13 [Personal information removed.]
14 Q. Do you recall on October 14, 2011 [former property
15 manager's name removed] decided to take a temporary leave of absence?
16 A. I remember that approximate time. I don't
17 remember a specific event around that.
18 Q. Did she discuss this with you? Did she
19 discuss the leave of absence with you?
20 A. I'm sure she did. I don't remember a
21 specific discussion, but I'm sure she did.
22 Q. Who would have approved her leave of
23 absence?
24 A. Approved it? I mean, it was her decision.
25 She decided to leave. The only approval would have been

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1 around the circumstances, that she would continue to work
2 for The Harbours.
3 Q. Who was her -- well, let's step back.
4 Was she a paid employee? Did she get a
5 W-2?
6 A. Yeah, she was on the payroll.
7 Q. So she got a -- so her employer was The
8 Harbours?
9 A. That's correct.
10 Q. And do you agree that in most employment
11 situations the employer approves someone's leave?
12 MR. CULOTTA: I'm going to object. That's
13 leading.
14 A. I don't directly hire anybody, so I -- I
15 mean, when I left an employer, I would give a two week
16 notice. I think she probably did that.
17 When you say approve, it was like you can't
18 leave. That wasn't the circumstances. She left because
19 she wanted to leave.

20 Q. Well, I'm saying that the employer has to
21 agree to time off?
22 A. As I said, the terms of her ongoing
23 employment were certainly discussed and approved.
24 Q. Okay. Who was responsible for that?
25 A. Well, the board would have been ultimately

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1 responsible. I wasn't president at the time.
2 Q. Did they take official action?
3 A. I don't remember. When you say official,
4 you mean like document it in the minutes or something? I
5 don't remember.
6 Q. You don't remember?
7 A. Huh-uh. I mean, she worked in that
8 capacity for the better part of the year, so obviously the
9 board knew about it.
10 Q. Who kept track of [former property manager's name removed]
11 time, her vacation time, and any kind of benefit time?
12 A. Benefit time? I don't think she really had
13 any benefits per se, except for vacation, and the last
14 year I think she took payment against her retirement
15 account or 401(k). But she kept track of it. Basically,
16 she and the secretary.
17 Q. Did she have a 401(k) with The Harbours?
18 A. I don't think so.
19 Q. Did The Harbours make any contributions
20 into any retirement account for her?
21 A. I think an IRA maybe, or something like
22 that.
23 Q. How are those payments recorded? Would
24 that be under employment in your line items?
25 A. I don't know. It's separately budgeted.

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1 Specific bookkeeping like that, I don't know.
2 Q. So who kept track of how she accrued her
3 time, her vacation time?
4 A. She and the secretary.
5 Q. The secretary. Who was the secretary?
6 A. [Former office assistant's name removed], whatever
7 title you want to call her.
8 Q. Okay. Now, who was responsible for reviewing
9 [former property manager's name removed] time sheets?
10 A. I don't -- are you talking about when she
11 left and went to part-time status?
12 Q. Yes.
13 A. Because that's the only time she had a time
14 sheet, to my knowledge. I don't really know. I believe
15 maybe it was W.T. Roberts, but I wouldn't swear to that.
16 Q. Okay. And you were the president at this
17 time?
18 A. No.
19 Q. Okay. You weren't. Who was the president?
20 A. Well, let's see. At the time she left, I
21 believe it was [former Board member's name removed].
22 Q. Okay.
23 A. And then it became -- if I'm correct about
24 that, then it became Russ Johnson.
25 Q. Okay. You know [former Board member's name removed]; correct?

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1 A. Correct.
2 Q. What do you know about him?
3 A. I know he is a retired UPS pilot.
4 Obviously, owned at The Harbours. I don't know a great deal
5 about [former Board member's name removed] personally.
6 Q. Okay. Did you have any conflicts with him
7 while he was on the board?
8 A. No. I think I -- you talked before at the
9 last deposition. You know, he and I didn't always see
10 eye-to-eye on things, but it was typically on business
11 stuff. It wasn't anything personal. At least, I didn't
12 take it that way.
13 Q. Why did you think he would think you were a
14 bully?
15 MR. CULOTTA: I'm going to object. It
16 calls for speculation. It's not been established that
17 [former Board member's name removed] said he was a bully.
18 Q. [Former Board member's name removed], in an interview,
19 told me that he thought you were a bully. Can you think of any
20 reason why he would think that?
21 A. Well, he and I didn't always agree on
22 things.
23 Q. Well, what sort of things didn't you agree
24 on?
25 A. I don't remember. I just remember a little

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1 bit of conflict. As I said in the last -- the first part
2 of the deposition, my experience is that sometimes people
3 call you a bully when they can't agree with you. People
4 throw that term around nowadays. I talked to him at board
5 meetings so, I mean, he is obviously not afraid of me or
6 anything.
7 Q. Do you recall having an interview with the
8 Attorney General's office in December of 2012?
9 A. Not 2012. I think in 2011.
10 Q. That may be a typo. That we were sitting
11 at Dawn Elston's office when she was with Vissing, the
12 Vissing Law Firm.
13 A. Yeah, I remember generally that, yes.
14 Q. Do you remember stating that [former property manager's
15 name removed] was paid her salary by the homeowner's association, and
16 that no one monitored the use of her vacation time, nor
17 the hours she was actually working on bookkeeping? Do you
18 recall making that statement?
19 A. I don't remember specific verbiage that
20 way, no.
21 Q. Do you recall making a statement similar to
22 that?
23 A. I remember we talked about it. And she --
24 Q. Do you remember what you said?
25 MR. CULOTTA: Let him answer the question.

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1 MS. BELLER: Okay.
2 A. I remember talking about it. I remember
3 that she kept track of her hours. I don't remember saying
4 that no one kept track of it. I know I probably said I
5 didn't keep track of it, because that is what I am telling

6 you today as well. Beyond that, I don't remember
7 anything.

8 Q. Do you think the treasurer should have had
9 a role in that?

10 A. I don't know.

11 Q. You don't know?

12 A. No, I don't have a --

13 Q. How long were you a board member?

14 A. I have been a board member since April of
15 2004.

16 Q. Have you ever had any training on the
17 responsibilities of a board member?

18 A. Training, like formally going to sort some
19 of program --

20 Q. Governance class or something?

21 A. No.

22 Q. No?

23 A. No.

24 Q. So you are winging it?

25 A. I don't particularly consider it winging

220

1 it, but I am not formally trained.

2 Q. Okay. From October 1st of 2011, the State
3 alleges that from October 1st of 2011 till December 15th
4 of 2011, that even though [former property manager's name removed]
5 was not physically present at The Harbours, and had only four weeks of
6 vacation time, she was paid her regular salary for ten
7 weeks.

8 You deny that in the Complaint, in your
9 Answer to the Complaint.

10 A. The way you described it there is not
11 complete.

12 Q. Okay. What's complete?

13 A. She was paid her salary--she was paid her
14 salary as a calculation, if you want to call it that--of
15 her vacation time, plus the time she actually worked on
16 the bookkeeping, added up to 40 hours a week. And until
17 she depleted all of her vacation time, that's the way she
18 was paid. So the check showed the same amount, but she
19 wasn't paid her regular salary. She was paid just for the
20 time she worked.

21 Q. And her vacation time?

22 A. And plus the vacation.

23 Q. So her time must have run out on December
24 12, 2012; is that correct?

25 A. That's probably about right. She worked

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1 about half-time, and it would have worked out maybe for
2 eight to ten weeks after she left.

3 Q. How much bookkeeping did she have to do for
4 The Harbours? Let's talk about that.

5 A. She did all of the -- she basically did
6 anything that was bookkeeping related.

7 Q. What kind of records do you have to keep at
8 The Harbours?

9 A. I have never worked as treasurer, so I
10 wouldn't know.

11 Q. You are familiar with the bill paying,

12 aren't you?

13 A. Yeah, I can give you the general
14 categories, like accounts payable and receivable, and
15 payroll, you know, that type of thing. But what's
16 involved in that in terms of hour hours per week or
17 whatever, I have no idea. Other than to say it was less
18 than 40 hours a week, and probably more than five or ten.

19 Q. So you don't know that it took however many
20 hours she was working on bookkeeping to actually do the
21 bookkeeping?

22 A. Not the exact hours, no.

23 Q. And no one, unless W.T. -- you weren't
24 verifying that at all?

25 A. I wasn't, but somebody evidently was.

222

1 Q. Somebody evidently was?

2 A. Right.

3 Q. And why do you say that?

4 A. Because she had time sheets, and they were
5 being initialed and signed off on. I think it was W.T.,
6 but I don't remember.

7 Q. Did anybody look at the work that was
8 getting done, or question how long did it take to do data
9 entry?

10 A. Perhaps. I mean, the bookkeeping is
11 self-evident. If it's not getting done, people start
12 ringing your phone that they're not getting paid, or
13 you're ending up finding back accounts short, or something
14 like that, so it's kind of self-evident after a little
15 while.

16 Q. After [former property manager's name removed] -- or when she was leaving,
17 she was allowed to take equipment home, to her home in Ken- --
18 does she live in Kentucky?

19 A. In Louisville, that's correct.

20 Q. Okay. So she was allowed to take Harbours
21 equipment from The Harbours to her home in Kentucky; is
22 that correct?

23 A. Computer-based equipment mostly, yeah,
24 that's correct.

25 Q. Okay. Did she sign a receipt for taking

223

1 that, or anything like that?

2 A. I don't remember.

3 Q. Was there any discussion regarding her
4 taking the equipment?

5 A. Among the board members? Probably. I
6 don't remember specifically.

7 Q. Was there any approval given, motion, or
8 anything that would be recorded in the minutes?

9 A. I don't know. I don't recall. I don't
10 know.

11 Q. So she just one day showed up and took the
12 equipment?

13 A. Well, she didn't take it. I'm sure board
14 members knew about it. I just don't know -- remember the
15 specific circumstances.

16 Q. You don't remember a lot, do you?

17 MR. CULOTTA: I'm going to object. You are

18 getting argumentative. Either ask a question or let's
19 just call it quits, because the whole thing has been
20 argumentative so far.

21 MS. BELLER: Well, I keep asking questions,
22 and he's having -- I mean, I would think, if I was
23 involved in all of this, I would have a better memory.
24 I'm just saying.

25 MR. CULOTTA: Maybe you would. Maybe you

224

1 would. But he has already said he doesn't -- he was not
2 involved with the bookkeeping. That was not his area, so
3 ask and move on. If he doesn't know the answer, he
4 doesn't know the answer.

5 Q. But you do know she had the equipment in
6 Kentucky?

7 A. That's correct.

8 Q. How did you find out she had the equipment
9 in Kentucky?

10 A. Well, I knew she was taking it to her
11 residence. I knew she lived in Louisville.

12 Q. How did you know that?

13 A. Well, I mean, she didn't hide it, of
14 course. We -- I'm trying to remember some specifics. I
15 don't remember the first time prior, but I know I went to
16 her house a couple times with -- just to work on the
17 equipment, set it up, for example, and to -- I don't
18 remember -- just deal with some stuff related to The
19 Harbours.

20 Q. So you're going to her house to help her
21 set up the equipment, and deal with some stuff related to
22 The Harbours?

23 A. Yes.

24 Q. But yet you're not familiar with the
25 bookkeeping requirements; is that correct?

225

1 A. Bookkeeping specifically, not in great
2 detail. No. I mean, the stuff I have told you about, I'm
3 familiar with.

4 Q. What were you helping her with at her
5 house?

6 A. I don't remember anything specifically. We
7 had -- we obviously had annual meeting things that took
8 place. I don't remember anything specifically.

9 Q. What were you doing to help her with the
10 annual meeting?

11 A. I don't remember.

12 Q. Would that have been election time?

13 A. Well, we would have elections at the annual
14 meeting, that's correct.

15 Q. Would you have been involved in the
16 preparations for that?

17 A. I don't -- not in any level that I was
18 never involved in before.

19 Q. What is that level?

20 A. Well, I mean, if we issued document changes
21 or whatever. Let's say ballots, or proxies, or whatever,
22 I would get to see those, as would all board members.
23 Nothing specific to me, really. Nothing that any other

24 board member wouldn't see.

25 Q. Would this be election that -- it may not

226

1 be. Never mind.

2 A. I took her occasionally some stationery
3 supplies, and things like that, office supplies, when she
4 needed something.

5 Q. Did she ever come back to The Harbours?

6 A. Not a lot. A couple of times. She was
7 afraid of some of the people who lived there, so she tried
8 to stay away.

9 Q. Why has she been allowed to maintain -- she
10 still has that computer in her possession?

11 A. I believe that's true, yes. It's an old
12 desktop computer. It's probably worth \$50, as a
13 commodity.

14 Q. But that computer has Harbours records on
15 it; is that correct?

16 A. I don't know exactly what status the hard
17 drive is at this point.

18 Q. Okay. But at the time she took it, it had
19 Harbours --

20 A. She didn't take it. At the time she was
21 allowed to move it, yes.

22 Q. At the time she removed it from the
23 building, and took it to her residence in Louisville --

24 A. Uh-huh.

25 Q. -- it had Harbours records on it; is that

227

1 correct?

2 A. It certainly had financial records on it, I
3 know, because she did all the bookkeeping. It probably
4 had some, you know, Word files or something like that on
5 it. I have no idea.

6 Q. Okay. Has anybody requested that she
7 return it?

8 A. I remember occasionally this subject coming
9 up. But, again, the item has such little value in terms
10 of the commodity portion of it, that it's not really
11 something that you're going to say, well, let's get that
12 back so we can sell it, or something like that. The
13 information would have more value than anything.

14 Q. Well, do you think that homeowners -- let's
15 just be candid. You are aware that some of the other
16 homeowners have requested that that computer be brought
17 back; is that correct?

18 A. I am aware that some homeowners bring that
19 up occasionally, yeah.

20 Q. Yeah. And yet you don't -- you don't -- do
21 you understand why -- why do you think that they want that
22 back?

23 MR. CULOTTA: Objection. Calls for
24 speculation.

25 MS. BELLER: It's speculation, but I'm

228

1 getting --

2 A. They think it maybe has some value. I
3 don't know. It doesn't, but they may think that.

4 Q. And you don't think that, you know --
5 because sometimes, Kevin, I am just -- I don't mean to be
6 argumentative here at this point. That is not my intent.
7 My intent is, sometimes it seems like you like to do
8 things to make people angry.
9 A. Some of the people that you're getting
10 information from probably have left you with that
11 impression.
12 Q. No, that's my own impression. That's my
13 own impression of watching you. You know, simple things.
14 Bring the computer back to The Harbours, and yet --
15 A. Well, she occasionally would need it for
16 something.
17 Q. What is she doing for The Harbours now?
18 A. Well, I mean, I can give you an example.
19 The secretary just had her computer crash about a month
20 ago, and she had some of her old files still on there.
21 She wasn't using it for anything, but she still had them
22 on her hard drive, so she had the hard drive backed up.
23 And if you ask the secretary, she might tell you that it
24 was pretty valuable assistance, and she did it for
25 nothing.

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1 Q. Well, the question is why wasn't that
2 computer at The Harbours? Why was the computer at [former property manager's
3 name removed] house?
4 A. She needed it when she was doing our
5 bookkeeping.
6 Q. Is she still doing the bookkeeping?
7 A. No.
8 Q. How come it hasn't been returned to The
9 Harbours?
10 A. I can't -- it has no value.
11 Q. Other than the value it gives you for
12 control -- I'm sorry, that was argumentative.
13 But the issue is, why not ask for it back
14 if it served a useful purpose? I mean, that's logical. I
15 mean, you're telling me that it had a useful purpose.
16 A. It did.
17 Q. [Former office assistant's name removed] needed a backup?
18 A. Uh-huh.
19 Q. And yet it's at a place in Louisville, out
20 of state.
21 A. Uh-huh.
22 Q. And you see no value in having it back at
23 The Harbours. Is that what you're telling me?
24 A. Well, I mean, I do things typically that
25 have value. I don't do things -- I don't not do things

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1 that have no value. I mean, you're asking why I would go
2 over to retrieve a piece of equipment that has no value as
3 a commodity.
4 Q. But you're telling me it had value as a
5 backup?
6 A. It did.
7 Q. It did?
8 A. Uh-huh.
9 Q. So why wouldn't you have it at The

10 Harbours?

11 A. I'm not sure it would be a backup if she
12 didn't have it. I mean, if it was brought back to The
13 Harbours, it might be on a slagheap somewhere. It would
14 be a good thing that she had it at the time. That's
15 probably the way [former office assistant's name removed] sees it. Now, that's
16 not the way we commissioned the computer when it went out the door,
17 but...

18 Q. Well, how did you commission it when it
19 went out the door?

20 A. Just to help her do her job.

21 Q. Okay. Who made that decision?

22 A. Again, it was a board decision. The board.

23 Q. Do you recall when the board made that
24 decision?

25 A. She had to move it right about the time she

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1 left, because bookkeeping couldn't wait a week to get
2 done. So when she walked out the door, we moved the
3 computer to her residence so she could use it.

4 Q. But who authorized that? Was it done by --
5 here, Kevin, here is what I want to know. Did you pick up
6 the phone and, say, call any number of board members and
7 say, hey, [former property manager's name removed] needs to take the computer
8 to her house. Did you say that that was okay? Did you ask people?

9 MR. CULOTTA: I'm going to object to the
10 extent that you're assuming that he's the one that made
11 the decision to allow her to take the computer. As he has
12 indicated, he was not the president at the time, and would
13 have not had the ability to --

14 Q. Did you get a call from [former Board member's name removed]?

15 A. I don't remember. It's been too long ago.
16 It may have been an e-mail. Typically, it would have been
17 an e-mail, but I can't say that I could go to the e-mail.
18 I don't know.

19 Q. Do you think you might still have that
20 e-mail? Do you save your Harbours e-mails?

21 A. Possible. I don't know. Yeah, I save my
22 Harbours e-mail, but -- I may still have that one. I
23 don't necessarily save every one of them, but that might
24 have been one that I still have. If I've got it, I don't
25 know. You are welcome to it.

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1 Q. Yeah, because I would like to see that, how
2 did this decision come to be.

3 A. Okay.

4 Q. You know, people think that you -- you are
5 aware that people think you run everything; right?

6 MR. CULOTTA: Objection. Again, calls for
7 speculation.

8 MS. BELLER: I'm asking what he's aware of.

9 Q. You know people think that you are the top
10 dog there?

11 A. It's the Facebook group that thinks that.

12 Q. Well, other people think it too, I can
13 assure you.

14 A. If you want to give me names, I will be
15 glad to try to explain it for you.

16 Q. But that the -- that you run the show
17 there.
18 A. Do you have any names?
19 Q. I am asking you. What Kevin wants, Kevin
20 usually gets.
21 A. That's a generality.
22 MR. CULOTTA: Again, it's getting
23 argumentative. There's no question being asked. Don't
24 answer unless there is a question.
25 A. Okay.

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1 Q. Let's go to the short sale of condominium
2 number 1103 and 1104.
3 MR. CULOTTA: And I'm going to tell you
4 now, we're not going to answer any questions about --
5 well, we'll answer questions about -- is it 04? Which one
6 was --
7 THE WITNESS: That was the Fannie Mae, the
8 short sale.
9 MR. CULOTTA: The short sale. Okay.
10 MS. BELLER: Okay. Well, we're going to
11 ask him, and if he wants to assert his privilege, he will
12 need to assert his privilege.
13 MR. CULOTTA: That's fine.
14 Q. Have you been questioned by any law
15 enforcement?
16 A. No. You asked me that the last time. No.
17 Q. Okay. So that hasn't changed?
18 A. No.
19 Q. Did you discuss your procedures, Fannie Mae
20 procedures, with anyone from Fannie Mae?
21 A. Not to my recollection.
22 Q. Have you had any discussions on buying
23 short sale properties from Fannie Mae with anyone you were
24 seeking advice from?
25 A. I don't remember anything. Perhaps the

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1 closing attorney, but I'm just speculating.
2 Q. Okay. You're familiar with Mr. Prell?
3 A. I do know Frank.
4 Q. And that at one time he owned condominium
5 1103 at The Harbours?
6 A. That's correct.
7 Q. Bank of America -- you purchased that
8 condominium 1103 from him on a short sale?
9 A. Uh-huh.
10 Q. And you dealt with Bank of America on that
11 short sale; is that correct?
12 A. That's correct.
13 Q. And that Mr. Prell also owned condominium
14 number 1104; is that correct?
15 A. That's my understanding.
16 Q. Okay. And Bank of America was ultimately
17 the mortgagee on that one as well?
18 A. That's my understanding, yes.
19 Q. Yeah. Now, you're aware that Mr. Prell
20 physically combined units 1103 and 1104 at some point?
21 MR. CULOTTA: You can answer that one.

22 A. I'm aware that -- when you say he combined
23 them -- that they were originally combined. He took them
24 apart.

235 Q. He purchased them separately, is my
1 understanding. 1103 was one condominium, and there was a
2 wall?
3 A. That's correct.
4 Q. And 1104 was one condominium, and there was
5 a wall?
6 A. That's correct.
7 Q. And after he purchased them, he combined
8 them into one unit?
9 A. That's correct.
10 Q. Okay. And that one unit had one kitchen?
11 A. Correct.
12 Q. Okay. Did Mr. Prell seek permission from
13 the board to combine these units?
14 A. The only thing specifically I can remember
15 is the window changes that were made, which were done at
16 the time he was combining them. I don't remember a
17 specific -- you say request. It would be more of a
18 disclosure, because it's his prerogative to combine them.
19 It's a simple amendment procedure.
20 Q. Okay. Was there any concern about whether
21 structurally it was safe to do?
22 A. Typically, our maintenance manager, [maintenance
23 manager]; typically he would look at that and
24 tell us if we're okay to allow it.

236 Q. What was [maintenance manager's] background to make that
1 kind of a decision?
2 A. He knew the building structure, basically.
3 Q. Is he an engineer?
4 A. No.
5 Q. Does he have a degree?
6 A. I don't really know what [maintenance manager's] exact
7 training is. He's got, I think, vocational-type training.
8 Q. How long have you known [maintenance manager]?
9 A. Since I moved to The Harbours.
10 Q. And you are an engineer; correct?
11 A. I'm a chemical engineer.
12 Q. You're a chemical engineer. Do you feel
13 comfortable having someone who's not an engineer make a
14 structural assessment?
15 A. If I know the person, and I know their
16 background. I didn't have any reason to question what he
17 was saying.
18 Q. Okay. Do you recall having a conversation
19 that it was okay with Reed to combine them?
20 A. I don't know remember specifically, but
21 Reed would normally weigh in on a lot of these type of
22 projects.
23 Q. Well, are there any minutes where he would
24 have made that discussion --
25 A. Could be. I don't know.

237 Q. -- decision?

2 A. Specially, I don't know.
3 Q. Do you remember --
4 A. I do remember the window. That's one thing
5 I remember that was -- the board got involved with.
6 Q. You knew it was being combined then; is
7 that correct?
8 A. I did know that at some point. I don't
9 remember an event, but at some point I found that out.
10 Q. And at that time you were the board
11 president?
12 A. I think that's probably correct.
13 Q. Okay. Are you aware that when condos are
14 combined, according to the bylaws, there is supposed to be
15 an amendment filed?
16 A. Right. I am aware of that.
17 Q. And there was no amendment filed for this;
18 is that correct?
19 A. That's my understanding.
20 Q. Why wasn't there an amendment filed?
21 A. I don't know.
22 Q. You don't know?
23 A. No.
24 Q. You just didn't follow up on it perhaps?
25 A. Probably.

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1 Q. Do you think it was your duty to follow up
2 on it?
3 A. My specific duty? No. It was the
4 responsibility of the entire board to do that type of
5 thing.
6 Q. Do you know if Mr. Prell sought a building
7 permit to combine these units?
8 A. I didn't really know, one way or the other.
9 Q. Okay. Are you aware in July of 2010 that
10 Mr. Prell put these units up for sale?
11 A. Up for sale?
12 Q. Listed them.
13 A. I know he had been trying to sell them
14 since he had them finished. I don't remember any
15 particular event.
16 Q. Do you know that he listed them at one time
17 with Sharon Chandler?
18 A. I believe that to be true, but I don't know
19 that specifically.
20 Q. And at that time Sharon was the preferred
21 realtor with The Harbours; is that correct?
22 A. That's probably true, based on timing.
23 Q. Okay. And then around July of 2010, Mr.
24 Prell had some difficulties and was unable to make the
25 mortgage payment on those condominiums. Are you aware of

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1 that?
2 A. I don't know the circumstances, but I know
3 that he did try to short sell them. That's correct.
4 Q. Okay. Tell me about how you became
5 involved in the purchase of 1103.
6 A. Well, both of them, I believe -- I am going
7 from what I believe happened. Frank talked to me about

8 it, but I don't remember exactly how that contact took
9 place. I don't know if it was a phone call, an e-mail, or
10 referral. I don't remember. I didn't know about it until
11 somebody told me about it. Let me put it that way.
12 Whether it was Frank or somebody else.

13 Q. Okay. Do you know a real estate agent
14 named [real estate agent]?

15 A. Yes, I do.

16 Q. How do you know [real estate agent]?

17 A. I don't know her personally. I don't think
18 I've ever met her personally. I have talked to her on the
19 phone before, and I believe she had some prior business
20 relationship with Frank.

21 Q. Okay. And she became the person to
22 negotiate the short sale; is that correct?

23 A. She was the real estate agent involved. I
24 am not sure if she was really involved in the negotiating.

25 Q. Who was negotiating for it, if it wasn't

240

1 her?

2 A. I think Frank just dealt with me directly
3 on that.

4 Q. Well, the bank had to approve the short
5 sale; is that correct?

6 A. That's correct, yes.

7 Q. And tell me what a short sale is. Let's
8 get that defined.

9 A. Well, I'm not sure what the technical
10 definition is, but to my understanding, it's a sale that
11 takes place for less than the -- the lien -- the bank's
12 lien on the property.

13 Q. Okay. So the bank has to give its approval
14 for this type of purchase; is that correct?

15 A. That's correct.

16 Q. Okay. Now, you submitted a number of
17 purchase agreements for both 1103 and 1104; is that
18 correct?

19 A. That's my recollection, uh-huh.

20 Q. And the starting price that you were going
21 for was \$150,000 as a short sale offer to Bank of America?

22 A. That sounds right.

23 Q. Okay.

24 A. Per condo.

25 Q. Per condo. So you were looking to try to

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1 purchase them at 300,000?

2 A. That's right.

3 Q. Do you recall offering to get these
4 condominiums on short sale, and offering to sell them to
5 Kathy Bupp?

6 A. I remember a discussion with Kathy. I
7 don't remember whether I -- I don't believe I had
8 ownership of them at that time, but I remember a
9 discussion I had with her.

10 Q. That you were trying to get them on short
11 sale, and you would sell them to her?

12 A. There very well could have been what was
13 said. I don't remember.

14 Q. So your intent at this time was not to live
15 in these condominiums?

16 A. Originally, it was as an investment.
17 That's correct.

18 Q. When did that change?

19 A. Probably -- I don't know. Do you want --
20 is this --

21 MR. CULOTTA: When did it --

22 THE WITNESS: It involves 1104 and Mary
23 Lou.

24 MR. CULOTTA: Yeah. Well, I mean, to the
25 extent -- and perhaps you can be a little more specific.

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1 I am not sure that it has ever been established that he
2 ever decided to live in it, or ever changed his decision
3 to live in it or not live in it. Perhaps we'd better
4 define that question.

5 MS. BELLER: We'll, let's go on little bit
6 for a minute.

7 Q. At that time you had no -- when you were
8 negotiating for the purchase of 1103, you had no intention
9 of moving up there?

10 A. That was my original intention, yes, that's
11 correct.

12 Q. You just wanted to flip it, sell it, and
13 make money?

14 A. You said no intention, like there was
15 a zero percent chance. I can't ever say that. That is an
16 absolute.

17 Q. You just didn't have that intent at that
18 time?

19 A. The main priority was to turn it over,
20 that's correct.

21 Q. Turn it over and make some money?

22 A. That's correct.

23 Q. Okay. So during the negotiation problems,
24 were you aware that Bank of America referred -- the short
25 sale for 1104 was stopped because whoever was reviewing

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1 that at that time referred it to the fraud department? Do
2 you recall [real estate agent] making mention of that?

3 A. I don't remember. I know that there was a
4 fraud department involvement at some point. I don't
5 remember how I found out about it.

6 Q. Okay. And then you up your purchase
7 agreement. You resubmit a purchase agreement for 1103 and
8 1104, one for each of them, for 151,000. So you raise
9 your price a little bit?

10 A. Uh-huh.

11 Q. And at some point you submit a purchase
12 agreement for a purchase price of the combined units for
13 300,000. You tried to purchase them combined?

14 A. No. That was the first one.

15 Q. The first one was combined?

16 A. Right.

17 Q. And then you tried to purchase them
18 separately?

19 A. Because the bank wanted them separated.

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20 Q. Okay. I have a question. Okay. Number
21 171 of the State's Complaint, you say Zipperle told Bupp
22 that he could get 1103 and 1104 at short sale for her, at
23 a price of \$599,900, and that he would be making some
24 money on the deal. Why did you deny that in your Answer?
25 MR. CULOTTA: Hold on one second. What

1 paragraph are you referring to?

2 MS. BELLER: 171.

3 A. Well, the way it's worded there is like I
4 was -- that was going to be the short sale price. I mean,
5 that's obviously misleading.

6 I don't remember making a specific comment
7 about making some money on the deal to her. I don't
8 remember a particular comment about that, but I
9 probably -- I mean, that would have been true.

10 Q. You were planning on making a profit then?

11 A. Well, it would have been an investment.
12 You don't go into an investment to lose money.

13 Q. All right. Okay. So other than the
14 wording, that you were offering the condo to her for
15 \$599,900, and that your intent was to make money on it as
16 an investment?

17 A. That sounds right.

18 Q. Okay. Well, let's talk about the wall. I
19 don't know if we introduced this at the last time, but
20 we'll call this Photograph 1.

21 (DEPOSITION EXHIBIT 1 MARKED FOR IDENTIFICATION)

22 Q. This is a picture that appeared on the
23 Facebook page, The Harbours, can you believe this stuff.
24 Have you ever seen this picture?

25 A. I don't know if I have seen the picture,

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1 but I have seen the items.

2 Q. Okay. You have seen the wall?

3 A. Uh-huh.

4 Q. That goes directly through the sink?

5 A. Uh-huh.

6 Q. Now, how did that wall come to be?

7 MR. CULOTTA: I am going to object. It
8 calls for speculation. If you know, you can answer.

9 A. I mean, you say come to be. I'm not sure
10 on the specifics you want. Frank built it, or had it
11 built.

12 Q. Tell me everything you know about the wall.

13 MR. CULOTTA: You can answer that.

14 A. My understanding is, the bank wanted the
15 condos separate, since they were never recorded combined.
16 They wanted the contracts submitted separate, which is why
17 we separated them.

18 And then eventually, someone at Bank of
19 America, or a contractor at Bank of America, presumably an
20 appraiser, an inspector of some type, came in and said
21 these condos need to be separated at least temporarily, or
22 in a makeshift sort of way, so that they would bless it.

23 Q. Now, did they say --

24 A. That's my understanding.

25 Q. That's your understanding?

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1 A. Uh-huh.
2 Q. How do you have that understanding?
3 A. Frank, I believe, conveyed that to me.
4 Q. Frank told you they just needed to put up a
5 temporary wall?
6 A. That's my understanding, or recollection.
7 Q. That's your recollection?
8 A. Uh-huh.
9 Q. And you understood that that was going to
10 be put up; is that correct?
11 A. I believe that's correct, yeah.
12 Q. And you were a board member at the time
13 that you understood that this temporary, substandard --
14 can I call it substandard?
15 A. It was substandard from the standpoint of
16 permanent construction.
17 Q. Okay.
18 A. It certainly, as I understood, served its
19 purpose, which was the Bank of America appraisal.
20 Q. Okay. What were you going to do if you
21 weren't able to get condominium 1104 in the purchase --
22 well, let's go back and establish.
23 This wall that's shown in the photo is
24 between condominiums 1103 and 1104; is that correct?
25 A. Correct.

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1 Q. And you were ultimately able to purchase
2 condominium 1103 on a short sale with Bank of America?
3 A. Correct.
4 Q. What happened to condominium 1104 when you
5 purchased 1103 at short sale?
6 A. My understanding and recollection is that
7 it eventually went into foreclosure, and it was auctioned
8 by Fannie Mae -- or by Bank of America, however that
9 process works, and that Fannie Mae took possession of it.
10 Q. Okay. Now, on your side, 1103, what was
11 the condition of the condominium? Did you have kitchen
12 appliances?
13 A. It was short a refrigerator, I believe. I
14 think that was the only thing that was short.
15 Q. Okay. You had half a sink; is that
16 correct?
17 A. Half a countertop with a half a sink in
18 there, right.
19 Q. But you did have the stove; right?
20 A. The stove was on that side.
21 Q. And you had space for it; right?
22 A. Did you say space?
23 Q. There was space for the things to be?
24 A. That's correct.
25 Q. Okay. Did you see what 1104 looked like

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1 before you bought 1103? Did you know what was on the
2 other side of 1104?
3 A. Working from memory, I don't think I went
4 into 1104, after the offer to buy just 1103 took place, so
5 I could reacquaint myself. I don't think I did that, but

6 I remembered visually.
7 Q. Now, when this temporary wall was put up,
8 do you know if it was on the actual -- was there a survey
9 done?
10 A. To my knowledge, no. But I saw where it
11 went up, and it was very close to where it was originally.
12 Q. Okay.
13 A. Within a matter of inches.
14 Q. But it was being done for appraisal
15 purposes; is that correct?
16 A. That's correct. That's my understanding.
17 Q. So you don't think accuracy mattered for
18 the appraisal?
19 MR. CULOTTA: Objection. Calls for
20 speculation.
21 A. Evidently not, because they appraised it.
22 I mean, the short sale wouldn't have been happening if
23 they had had any issues with the location of the wall, is
24 my understanding.
25 Q. I mean, would you agree that it's one thing

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1 to say you need to return them to the two units? It's
2 another thing to say you needed to put up a substandard
3 wall just to make it look like it's divided?
4 A. Well, I mean, you will have to take that up
5 with the bank, and Frank, and Fannie Mae. I have no idea
6 what -- the understanding they had.
7 Q. Now, was it communicated to you that the
8 wall needed to go up? Did Frank tell you that?
9 A. That was what I recall. That's correct.
10 Q. Did you contribute any funds to putting it
11 up?
12 A. No. No, that was all Frank's. I assume it
13 was all Frank's cost, or the bank's cost, or whoever.
14 Q. Were you aware when construction was going
15 on on the wall?
16 A. I don't remember when I found out about it.
17 I may have found out after it was done, actually. I
18 certainly didn't see it until after it was done.
19 Q. Okay.
20 A. I had seen the condo in the past, and knew
21 what it looked like with the wall not there.
22 Q. Now, was this -- did this wall go up more
23 than one time?
24 A. I think it went up twice.
25 Q. So you would have knowledge that this was

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1 going up and down twice?
2 A. I think that went up twice. From my
3 understanding, once it had served its purpose, it came
4 down, and then the bank wanted it up again. My
5 understanding was Frank was being directed by the bank.
6 Q. Are you aware if there was a building
7 permit sought for this?
8 A. I'm not aware.
9 Q. Are you aware that there was a stop order
10 ultimately put on it?
11 A. I know that someone came in from the

12 construction -- the planning and zoning -- the planning or
13 building inspection, or whatever, from Clark County -- I
14 guess it was Clark County -- and put some kind of sticker
15 on the wall, and sent a letter, maybe. I can't remember.
16 I remember some correspondence as well.

17 Q. So, typically, when there is remodeling in
18 the building, or some sort of thing, people need to get
19 building permits; is that correct?

20 A. I don't think that's always true, no.

21 Q. But for a major division, you would think
22 you would need a building permit?

23 MR. CULOTTA: I'm going to object. It has
24 not been established that he is a building inspector, or
25 has any knowledge of the laws regarding building

251

1 inspections.

2 Q. Okay. Let me ask you this, Kevin. You
3 have had work done in your condominium; is that correct?

4 A. Uh-huh.

5 Q. When you were dividing and combining, did
6 you ever get --

7 A. Permits?

8 MR. CULOTTA: Wait for the question to be
9 asked.

10 A. No. Well, I have never done anything
11 approaching that.

12 Q. Okay.

13 A. I mean, approaching the division of it.
14 Minor stuff, no, I have never had a building permit done
15 for it.

16 Q. Okay.

17 A. Nor do I think most people in The Harbours
18 do, really.

19 Q. Okay. You say that this is an accurate
20 picture --

21 A. It looks like what I recall.

22 Q. -- of that condominium.

23 And would you agree that 1104 did not have
24 a kitchen after the separation?

25 A. I'm not sure what defines a kitchen, but it

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1 certainly was missing a lot of appliances and things out
2 of it.

3 Q. Was it missing a refrigerator?

4 A. Well, it had space for a refrigerator, as I
5 recall.

6 Q. Okay.

7 A. I think that was on that side of the wall.

8 Q. Was there space for a stove?

9 A. I don't believe so.

10 Q. There was no space for a stove?

11 A. Well, not the way it was configured. I

12 mean, I'm assuming someone would have to go in there and
13 reconfigure it.

14 Q. Okay. No dishwasher?

15 A. No. I think the dishwasher was on the 1103
16 side.

17 Q. And half a sink?

18 A. And half a sink, that's correct.
19 Q. Okay. Were you aware that if you flipped
20 the light switch in one condominium, it affected the
21 other?
22 A. I was not aware of that at the time of
23 purchase, but it's not a surprise.
24 Q. Okay.
25 A. It wasn't designed to keep everything on
253
1 one side or other, since it was a combined condo.
2 Q. Okay. You ultimately bought the
3 condominium for -- let's see. What was the price you
4 ultimately paid for 1103? 175,000?
5 A. I was getting ready to say, I think it was
6 175.
7 Q. Okay. And then, as you said, it went to
8 sheriff's sale, and then it was ultimately back to Fannie
9 Mae; is that correct?
10 A. I believe that's correct.
11 Q. Okay. And are you familiar with a real
12 estate agent named [real estate agent]?
13 A. I am.
14 Q. How are you familiar with her?
15 A. She was the listing agent, I believe, when
16 the property was in Fannie Mae's hands, 1104.
17 Q. Okay. What was your plan at that time?
18 You have got this substandard wall. You owned 1103, and
19 1104 is up for sale to somebody else. What was your plan?
20 MR. CULOTTA: I'm going to object to the --
21 for sale to -- I mean, it was going to a sheriff's sale.
22 MS. BELLER: No, it's already gone to
23 sheriff's sale.
24 MR. CULOTTA: Okay.
25 Q. At this point in time and space, when
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1 Fannie Mae becomes the agent for 1104. Okay? Fannie Mae
2 owns 1104, you own 1103, and there was a substandard wall
3 in place between the two units; is that correct?
4 A. That's my recollection.
5 Q. What was your plan at that time?
6 A. For?
7 Q. Acquiring 1104, or unloading 1103? Did you
8 have a plan for dealing with half a condominium?
9 MR. CULOTTA: You can answer that.
10 A. Certainly, 1103 -- certainly, to the extent
11 that 1103 was a mostly complete kitchen, and it's really
12 the only reason I agreed to go ahead and purchase one at a
13 time, was that it could be -- it could be permanently
14 modified again to make it one condo.
15 Q. Okay. What do you think that would have
16 cost?
17 A. Well, I'm not a contractor, but I had
18 obviously come up with a wag in my own mind. I am going
19 to guess probably \$20,000.
20 Q. Okay. What about that wall? It would have
21 to be made permanent; is that correct?
22 A. That's correct. My share would have been
23 20,000. The wall would have been, hopefully, a joint

24 project between me and the neighbor in 1104.

25 Q. Okay. So in February of 2012, you

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1 submitted a purchase offer for \$150,000 for 1104 to Fannie
2 Mae; is that correct?

3 MR. CULOTTA: You can answer that.

4 A. Are you saying in February of 2012, the
5 purchaser -- repeat your question, if you don't mind.

6 Q. On February 22, 2012, [real estate agent], on behalf of
7 Zipperle, submitted a purchase -- or February 16th, excuse
8 me, 2012, [real estate agent], on behalf of Zipperle, submitted a
9 purchase offer with a purchase price of \$150,000 for 1104
10 to Fannie Mae.

11 MR. CULOTTA: Hold on. Hold on for two
12 seconds. We may be getting into areas where I am just
13 going to simply instruct him not to answer.

14 Actually, as to any particular questions
15 with regard to the purchase of 1104, I am just going to
16 instruct you now not to respond to any of those questions.
17 You can ask him, and I am just going to simply -- as to
18 any of the purchase questions, I am just going to instruct
19 him not to answer those.

20 MS. BELLER: Okay. He'll be
21 asserting -- he has to assert --

22 MR. CULOTTA: That's fine.

23 MS. BELLER: Yeah. Okay.

24 A. That question, was that about 1103 or 1104?

25 Q. We are on to 1104 now.

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1 A. Okay. 1104. All right.

2 Q. Yes. Okay. On February 16, 2012, [real estate agent],
3 on behalf of yourself, Mr. Zipperle, submitted a purchase
4 offer with a purchase price of \$150,000 for 1104 to Fannie
5 Mae; is that correct?

6 MR. CULOTTA: I'm going to instruct you not
7 to answer.

8 A. I'm not going to answer the question.

9 Q. On what basis?

10 A. On the basis of --

11 MR. CULOTTA: The particular area of
12 questioning in which you're getting into raises potential
13 issues with regard to -- under the statute that I know you
14 brought your action, raises -- has a criminal component
15 attached to it, and I'm not going to let him expose
16 himself to any potential criminal action.

17 MS. BELLER: Okay. I need him to assert
18 the Fifth Amendment. I need him to say those words.

19 MR. CULOTTA: That's fine.

20 A. I'm not -- to the extent that 1104 could
21 lead to a possible criminal charge, I am not going to
22 answer the question.

23 Q. Based upon your Fifth Amendment privilege?

24 A. Based on my Fifth Amendment privilege.

25 Q. Okay. On the advice counsel. You need to

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1 get those words out. Okay?

2 A. Obviously.

3 Q. Okay. On February 22, 2012, you signed an

4 addendum, and that addendum stated, in his offer to
5 purchase 1104, buyer accepts the unit as is, and where is
6 in its current condition. The buyer accepts the property
7 with all knowing and unknowing defects including, but not
8 limited to, the electrical, mechanical, survey, plumbing,
9 water leakage, and mold issues; is that correct?
10 MR. CULOTTA: Which one of the units?
11 MS. BELLER: 1104.
12 MR. CULOTTA: I will assert the same
13 privilege.
14 A. Yeah, I will assert the same privilege.
15 MR. CULOTTA: Per the Fifth Amendment
16 right.
17 A. Per my Fifth Amendment right.
18 MR. CULOTTA: Based upon advice of counsel.
19 A. Based upon advice of counsel.
20 MS. BELLER: Okay. We can do this.
21 Q. Fannie Mae declined the offer, as the
22 property was not even on the market yet; is that correct?
23 A. I'll refuse to answer the question, on my
24 Fifth Amendment privilege, per advice of counsel.
25 Q. Okay. On or about May 24, 2012, [real estate agent],

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1 on behalf of Zipperle and Trautwein-Lamkin, submitted a
2 purchase agreement with a purchase price of 205,000 for
3 1104, which provides in part, quote, condominium 1104 is
4 being purchased as is, whereas with all defects known or
5 unknown including, but not limited to, all defects created
6 by dividing condominiums 1103 and 1104 by a temporary wall
7 of substandard construction; said defects being plumbing
8 lines and electrical circuitry crossing through the wall
9 and kitchen cabinetry, a countertop and a sink with faucet
10 extending through the wall and into both condominiums; is
11 that correct?
12 A. I refuse to answer the question, per my
13 Fifth Amendment privilege, on advice of counsel.
14 Q. At no time during his purchase offer to
15 Fannie Mae did Mr. Zipperle, yourself, acknowledge that he
16 is in part, or in whole, responsible for the substandard
17 condition of 1104?
18 MR. CULOTTA: I'm going to actually allow
19 him to answer that particular question, because I think
20 that it doesn't go to the underlying issues of the
21 purchase.
22 As far as the substandard wall is
23 concerned, and his involvement, I think he has responded
24 to that already, but I will let him go ahead and answer.
25 A. I'm sorry. Would you remind repeating the

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1 question for me?
2 Q. Okay. At no time during your offer to
3 Fannie Mae, did you acknowledge that you are in whole or
4 in part responsible for the substandard condition of 1104?
5 A. I don't remember. I don't remember that --
6 I don't remember disclosure one way or the other, other
7 than what was on the purchase agreement.
8 Q. Okay. You don't tell them that you -- you
9 benefited from the substandard wall; is that correct?

10 MR. CULOTTA: Well, no, that's a different
11 question than what's being asked here. And I'll go ahead
12 and -- I mean, to the extent that you have asked him what
13 is in paragraph 200, and I think he's already explained
14 that he did not have any part in --
15 MS. BELLER: No, he didn't explain that.
16 He said that he didn't recall.
17 MR. CULOTTA: Well, in previous questioning
18 he had already said he did not put up the wall, that Frank
19 Prell was the one responsible for constructing the wall.
20 MS. BELLER: But at the same time he was a
21 board member who had an obligation to look out for the
22 building as well.
23 MR. CULOTTA: But it had nothing to do with
24 whether or not he was responsible for construction of the
25 wall. That wasn't the question that was asked. And I

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1 think he has already previously said that he and others
2 were aware of the fact that that wall was up. It was not
3 just he. Nor was he responsible for -- as he has already
4 said that he was not responsible for the construction of
5 the wall, so...

6 MS. BELLER: Well, let me ask another
7 question --

8 MR. CULOTTA: Okay.

9 MS. BELLER: -- and then you can decide.

10 Q. Did you benefit from the erection of that
11 substandard wall?

12 A. In what way? Financially, you are talking
13 about?

14 Q. Uh-huh.

15 A. I don't know how I would have benefited.

16 Q. Were you able to then purchase 1103?

17 A. I already owned 1103.

18 Q. Well, no. When it was put up. You didn't
19 own 1103 when it was put up, did you?

20 A. That's correct.

21 Q. Okay. They put it up, and by building that
22 wall, erecting that wall, you benefited by your ability to
23 purchase 1103; is that correct?

24 MR. CULOTTA: Again, I am going to have to
25 ask you to define what you mean by benefit. Because,

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1 obviously, it was two separate units at that point in
2 time. If you can clarify. Maybe he understands. I don't
3 understand what you mean by that.

4 Q. Okay. Let's break it up.

5 A. Benefit implies financial gain. Maybe I
6 can clarify what --

7 MR. CULOTTA: Well, let her ask the
8 question --

9 MS. BELLER: Okay.

10 MR. CULOTTA: -- before you start
11 speculating on what she's trying to get to.

12 Q. The wall goes up, and after that -- because
13 the wall went up, you were able to get a purchase
14 agreement on 1103; is that your testimony?

15 A. That's correct.

16 Q. And you wanted to purchase 1103?
17 A. I agreed to purchase 1103. That's correct.
18 Q. Okay. Prior to the wall going up, you
19 hadn't been able to purchase 1103?
20 A. That's my understanding.
21 Q. Okay. So the erection of the wall
22 facilitated your purchase of 1103?
23 A. That's correct.
24 Q. And you wanted that to happen?
25 A. I agreed to purchase it. Uh-huh.

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1 Q. So when you say you agree to purchase, you
2 wanted it to happen. Is that a yes or no?
3 MR. CULOTTA: Well, he said he agreed to
4 purchase it. I mean, he was in the process of trying to
5 purchase it.
6 A. Well --
7 Q. Did you want to purchase it? Yes or no?
8 A. At the price they offered it for, I
9 considered it a fair price, so I agreed to purchase it.
10 Q. Yes?
11 A. Yes, that's correct.
12 Q. Okay. Okay. I'm going back to 1104. As
13 part of your purchase agreement on May 24th of 2012, you
14 and Mary Lou Trautwein-Lamkin signed a Fannie Mae
15 owner-occupant certificate in which you certified that you
16 are going to occupy, establish, and use the above
17 referenced property as your primary residence within 60
18 days after closing, and will continue to occupy the
19 property as your primary residence for at least one year
20 after the date of occupancy; is that correct?
21 MR. CULOTTA: I am going to instruct you
22 not to answer.
23 A. I refuse to answer, per my Fifth Amendment
24 privilege, on advice of counsel.
25 Q. Okay. I am now showing you what is marked

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1 State's Exhibit GG to the State's Complaint. Do you
2 recognize this document?
3 A. I believe I do. Uh-huh.
4 MR. CULOTTA: And I'm going to instruct him
5 not to answer any questions with regard to it. The
6 document speaks for itself.
7 Q. What is this document?
8 A. I am going to refuse to answer the
9 question, per my Fifth Amendment privilege, on advice of
10 counsel.
11 MR. CULOTTA: It's titled. It says what it
12 is.
13 Q. Okay. Now, do you know about the Fannie
14 Mae bidding process?
15 A. I'm generally familiar with it.
16 Q. What is your understanding of the Fannie
17 Mae bidding process?
18 A. My understanding is that Fannie Mae
19 solicits offers for the property from interested parties
20 on a -- on the basis of a sealed bid type thing. I don't
21 think they probably call it that, but it's basically --

22 it's not a public auction. It's a private bidding
23 process. And I understand that there is a period of time
24 upfront where owner-occupants can bid, and then after that
25 anyone can bid.

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1 Q. So by signing an owner-occupant
2 certificate, that gives an individual preferential
3 treatment in the bidding process?

4 A. I don't understand anything about
5 preferential treatment, but it certainly let's them bid up
6 front versus investors.

7 Q. So let's try this again. By signing an
8 owner-occupant certificate, you get to go ahead of the
9 line from investors?

10 A. There is apparently that benefit.

11 Q. Okay. Both you and Ms. Lamkin have
12 personal residences at The Harbours currently?

13 A. That's correct.

14 Q. Okay. Or at that time -- at that point?

15 A. Uh-huh.

16 Q. Okay. And you both have had rental
17 properties at The Harbours?

18 A. I have. I don't believe Mary Lou had
19 rental property until she moved out of her prior
20 residence.

21 Q. Okay. But you've had several rental
22 properties; is that correct?

23 A. I have, yes.

24 Q. Okay. Well, what was your plan on how you
25 were going to occupy 1104 as your primary residence while

265

1 you had a primary residence?

2 MR. CULOTTA: I'm going to instruct him not
3 to answer.

4 A. Yeah. I'll refuse to answer that, based on
5 my Fifth Amendment right, per advice of counsel.

6 Q. Okay. Were you aware that the Office of
7 the Indiana Attorney General was investigating this
8 purchase at the time it was happening?

9 MR. CULOTTA: I mean it calls for
10 speculation. If you know, you know. If you don't, you
11 don't.

12 A. I vaguely remember something about that,
13 but I don't remember seeing a specific complaint or
14 anything like that.

15 Q. Okay. Do you recall? Were you told
16 anything from [real estate agent] that this was too much
17 trouble?

18 A. I remember [real estate agent] mentioning she had been
19 asked questions, or received a phone call, or something
20 like that. Too much trouble, I don't remember that.

21 Q. Okay. Did [real estate agent] at some point
22 decline to continue the negotiation with Fannie Mae for
23 the purchase of 1104?

24 MR. CULOTTA: You can answer that.

25 A. She didn't decline -- my understanding is

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1 she didn't decline it, except that her license expired for

2 practicing in Indiana.
3 Q. Okay. Had she ever met Mary Lou Trautwein?
4 A. I don't know.
5 Q. Did Mary Lou ever talk to [real estate agent]?
6 MR. CULOTTA: I'm going to object. Calls
7 for speculation.
8 A. I don't know.
9 Q. Was Mary Lou involved in the negotiations
10 for the purchase of 1104?
11 MR. CULOTTA: Go ahead. And I'm going to
12 instruct you just not --
13 A. I refuse to answer, per my Fifth Amendment
14 privilege, based on advice of counsel.
15 Q. Okay. In June 29th of 2012, Ms. Lamkin
16 suddenly switched real estate agents, and she submitted a
17 bid for 1104 through [real estate agent] rather than [real estate agent]. Do you
18 know why she did that?
19 MR. CULOTTA: Objection. Calls for
20 speculation. And I'm going to instruct you not to answer.
21 A. I refuse to answer, per my Fifth Amendment
22 privilege, based on advice of counsel.
23 Q. Okay. On July the 10th of 2012,
24 Trautwein-Lamkin's bid for 1104 was accepted by Fannie
25 Mae; is that correct?

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1 MR. CULOTTA: Which paragraph?
2 MS. BELLER: It's 209.
3 MR. CULOTTA: 209.
4 A. I can tell you I don't remember that
5 specifically. I mean, the date, for example. I don't
6 remember the date.
7 Q. Was her bid ultimately accepted for 1104?
8 MR. CULOTTA: You can answer.
9 A. I think that's self-evident. Yeah.
10 Q. Okay. Now, did Deborah Zipperle provide a
11 check written on an account held by you and Deborah
12 Zipperle in the amount of \$22,000 as earnest money to
13 RE/MAX First, which was [real estate agent's] brokerage for the
14 purchase of 1104?
15 MS. BELLER: That's 211.
16 MR. CULOTTA: Yeah, I'm just debating on
17 that one. I think you can answer that one.
18 A. Okay. That's my recollection.
19 Q. Why did you give her the \$22,000 earnest
20 money?
21 MR. CULOTTA: You can answer that.
22 A. Mary Lou needed the money temporarily.
23 Q. Has she paid you back for that?
24 A. Yes. Uh-huh.
25 Q. Okay. How did Mary Lou become involved in

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1 this transaction?
2 MR. CULOTTA: I mean, if you know, you
3 know.
4 A. Yeah, I do know.
5 MR. CULOTTA: Okay.
6 A. Mary Lou, at some point in the process --
7 and I don't remember exactly a date or an event -- had

8 expressed an interest in living in the condo, and said to
9 me that if I -- or we were successful in obtaining it,
10 that she would move into it. So it came -- there was a
11 different end result plan for it.

12 Q. Did she call you? Did you ask her?

13 A. I don't remember the circumstances. I
14 believe my wife and her spoke, and probably my wife said
15 something to me, and then I spoke to Mary Lou directly.
16 Mary Lou and my wife are pretty good friends.

17 Q. Okay. And according to the real estate
18 closing file, you provided a letter dated July 6, 2012
19 that stated, please be advised that Mary Lou
20 Trautwein-Lamkin will receive from me cash funds to close
21 on the purchase of The Harbours condominium 1104. And
22 that letter was signed by you; is that correct?

23 MR. CULOTTA: I think you've got an Exhibit
24 II, and I think the letter speaks for itself. But you --

25 A. I will take a look at the exhibit, if you

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1 like.

2 Q. I am showing you what's marked as Exhibit
3 II. Do you recognize that document?

4 A. I do.

5 Q. And what is that document?

6 A. It's basically a guarantee of funds for
7 closing.

8 Q. Okay. So why were you guaranteeing the
9 funds for Mary Lou to purchase this condominium?

10 A. Again, I was just loaning her the money
11 temporarily until her condo -- her property sold.

12 Q. Has she paid you back for that?

13 A. The bulk of it, yes.

14 Q. In cash?

15 A. Uh-huh.

16 Q. How did she pay you back? Did she pay you
17 back with a check?

18 A. Oh, yeah. That kind of money would have
19 been a check.

20 Q. Okay. Now, I am showing you what's marked
21 State's Exhibit JJ. Do you recognize this document? Have
22 you ever seen this? This is page two of it, I'm sorry.

23 A. Yes, I am familiar with the document.

24 Q. And what is the document?

25 A. It's basically -- I'm not a lawyer, so I

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1 may misspeak on some of the technical terminology, but
2 it's my understanding it's a quitclaim deed for defining
3 ownership interest in the condo.

4 Q. Okay. And this quitclaim deed is -- she
5 gets to keep it for her life. She gets to live in 1104
6 for her life, and that the remainder would go to Deborah
7 Zipperle. Is that your understanding of this document?

8 MR. CULOTTA: This document speaks for
9 itself. To the extent that you -- I mean, if that's what
10 it says, that's what it says.

11 A. Yeah, if the document says that, that's
12 what it means.

13 Q. So Ms. Trautwein-Lamkin is giving this

14 condo basically to your wife?
15 MR. CULOTTA: I'm going to object to the
16 extent that it calls for a legal conclusion that he is not
17 qualified to be able to respond.
18 Q. When did Miss Lamkin pay you back? When
19 did she start to pay you back?
20 A. I don't remember the -- I don't remember
21 specific dates.
22 Q. Was it after this quitclaim deed?
23 A. What's the date on it?
24 Q. July 24, 2012.
25 A. I believe that's right.

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1 Q. Was it after September 2012?
2 A. I don't remember specific dates beyond
3 that. Probably not, but I don't remember.
4 Q. Was it in August of 2012?
5 A. I don't remember specific dates.
6 Q. Was it before the State filed its
7 Complaint, or after the State filed its Complaint?
8 A. I don't remember when the State filed --
9 the State filed its claim the end of August, I think.
10 Q. Yeah.
11 A. I mean, it's -- when we -- the
12 understanding when we closed was how it's working out
13 financially. So the date that a check was written, or
14 something like that, really was not relevant to...
15 Q. Were there any witnesses to your agreement
16 with Mary Lou?
17 A. No. This was private between us.
18 Q. So the closing attorney wouldn't know?
19 A. I don't remember talking to the closing
20 attorney.
21 Q. Would your wife know?
22 A. Know what?
23 Q. Know the arrangement between you and Mary
24 Lou?
25 A. Sure.

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1 Q. Okay. Okay. Now, the quitclaim deed, has
2 that been recorded with the Clark County recorder?
3 A. I don't know.
4 Q. Okay. Who is the property currently titled
5 in?
6 THE WITNESS: Is that okay?
7 MR. CULOTTA: Yeah, you can answer that.
8 A. To the extent -- again, it's a legal
9 document, and I don't understand all the nuances. It's
10 titled to my wife, with Mary Lou retaining a life estate
11 interest.
12 Q. What about 1103? What's its arrangement?
13 A. They are combined, so it should be the same
14 title on both of them.
15 Q. Okay. Did you have to do a quitclaim deed
16 to your wife and Mary Lou with a life estate for 1103?
17 A. I don't remember the mechanics of that
18 process.
19 Q. Do you recall signing some sort of

20 document?
21 A. I very well could have. I don't remember.
22 We did sign documents, I just don't remember what they
23 were for.
24 Q. Would you have kept that document?
25 A. I probably did.

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1 Q. Okay. So after you got the purchase done
2 and --
3 MR. CULOTTA: Purchase of what?
4 MS. BELLER: Of 1103 and 1104.
5 Q. But both the condominiums are now owned by
6 either you or Ms. Trautwein-Lamkin, or both of you, or
7 your wife, or however this is set up, someone has the
8 entirety of 1103 and 1104. The wall is still in place, is
9 that correct, after you purchased it?
10 THE WITNESS: Do you want me to answer the
11 question?
12 MR. CULOTTA: I think -- you're talking
13 about after --
14 MS. BELLER: After they closed on 1104.
15 Paragraph 213 will help you. On July 24, 2012, which is,
16 I believe, the same date they closed on it, she signs a
17 quitclaim deed.
18 MR. CULOTTA: And that's the one that you
19 just presented a minute ago?
20 MS. BELLER: Yes.
21 MR. CULOTTA: Okay.
22 Q. Okay. At that time, is the wall still up?
23 A. At this time?
24 Q. Yeah. At the time you closed on 1104, is
25 the wall still there?

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1 MR. CULOTTA: Because I don't understand
2 the question, I am just going to instruct him not to
3 answer.
4 A. I refuse to answer based on my Fifth
5 Amendment privilege, and per the advice of counsel.
6 Q. How did the wall come down?
7 MR. CULOTTA: You can answer that.
8 A. I recall, but I don't remember
9 specifically. I recall that we paid The Harbours to take
10 it down.
11 Q. Okay. And who at The Harbours would have
12 done that?
13 A. The specific handyman that would have done
14 it, I don't know.
15 Q. Okay. And would there be an invoice on
16 file at The Harbours that you paid it?
17 A. I would think so, yes.
18 Q. Would you have paid your bill by check?
19 A. I don't know who paid it. When you say
20 you, I don't know that I --
21 Q. Was it you? Was it Mary Lou?
22 A. You will have to ask Mary Lou. I would
23 guess Mary Lou would have paid it by check.
24 Q. Okay.
25 A. If Mary Lou paid it. And my wife would

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1 have paid it by check too, for that matter.
2 Q. Okay. And you have no recollection that
3 the board gave permission for 1103 and 1104 to be
4 combined?
5 A. I don't remember the matter coming before
6 the board specifically that way.
7 Q. Now, during all the times these
8 negotiations are going on, you and Mary Lou served on the
9 board; is that correct?
10 A. That's correct.
11 Q. Okay. And the board did not give
12 permission for that substandard wall to be erected?
13 A. I don't remember the matter coming before
14 the board, but we never blessed it.
15 Q. Okay.
16 A. I mean, I don't remember.
17 Q. Okay. Now, you are aware that some people
18 consider you to be intimidating. Are you aware of that?
19 MR. CULOTTA: Calls for speculation.
20 MS. BELLER: I am asking him.
21 Q. What knowledge do you know that some people
22 consider you to be intimidating?
23 A. I am sure there are a couple of people at
24 The Harbours that don't like me. What words they use for
25 that, I don't know.

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1 Q. Okay. Are you familiar with two security
2 cameras mounted on the far west side and the far south
3 side of the wall near former board member Pike's
4 condominium? Do you know Tom Pike?
5 A. I do.
6 Q. Are you familiar with those cameras that
7 are located by his condo?
8 A. I am.
9 Q. Why did those cameras go up?
10 A. There was an incident. Specifically, there
11 was an incident that took place between Tom Pike and his
12 neighbor around Thunder. The animosity increased between
13 those two residents, and we were -- I don't remember if
14 that was the first set of cameras that were installed, but
15 we were -- at that time we were looking into other
16 technology to use for security like that inside the
17 building that wasn't too expensive. So we decided -- I
18 think those were the first ones. We decided to test them
19 there to see how well they worked.
20 Q. Okay. How many others have gone up since
21 then?
22 A. There is a set of cameras at the other end
23 of that hallway on the eleventh floor, there is a set on
24 the fifth floor, and there is a set in the lobby of the
25 first floor.

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1 Q. Okay. But other than that, you haven't
2 installed any other cameras anywhere else except --
3 A. We haven't had really incidents come up
4 that have driven that.
5 Q. Okay. What is Mr. Pike's relationship to

6 his neighbor now?
7 A. I don't know. I think it's still strained.
8 I mean, you will have to ask them.
9 Q. Okay.
10 A. That's my understanding.
11 Q. Did Mr. Pike complain about having the
12 cameras put on his door?
13 MR. CULOTTA: I'm going to object to the
14 extent it's not been established that the camera is
15 actually facing Mr. Pike's door.
16 A. Yeah, I don't believe the cameras face his
17 door. They are actually closer to his neighbor's door
18 than they are to his, is my recollection. But I'm sure he
19 doesn't like it.
20 Q. Has he ever voiced that concern to you?
21 A. I don't remember him saying it to me
22 specifically, but I believe he's gone on the record saying
23 that.
24 Q. Okay. Let's talk about Exhibit KK. Do you
25 recognize this document?

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1 A. Uh-huh. I recognize the first one. And,
2 yeah, I recognize that one, I believe.
3 Q. Okay. What was that? What was your
4 purpose in sending this letter? And it's Exhibit KK of
5 the State's Complaint. It's a letter to the Boca Raton
6 Resort and Club in Boca Raton. And it's regarding Sheila
7 Rudder, and it's signed by Kevin Zipperle, the president.
8 What was your purpose in sending that?
9 A. I don't have the second page of that
10 document in front of me, but she was making -- Ms. Rudder
11 was making some -- I don't remember specifically some of
12 the references here. It's been too long. But she is
13 basically -- she being Ms. Rudder, is making references to
14 me and the association, she references a prior election,
15 and she's doing it on someone else's stationery,
16 basically.
17 Q. Okay. Have you ever been to like a Holiday
18 Inn --
19 A. Uh-huh.
20 Q. -- or some hotel?
21 A. Uh-huh.
22 Q. And you get little notepads --
23 A. Uh-huh.
24 Q. -- that they provide?
25 Would you say that that looks like a little

279

1 notepad?
2 A. It could be. I don't know. I mean, from
3 the copy, it looks like it could be.
4 Q. And I am showing you page two of Exhibit
5 1212.
6 A. Uh-huh.
7 Q. Would you say that was representing
8 themselves on someone's stationery?
9 A. She is using their stationery.
10 Q. Wouldn't you call stationery like an
11 eight-and-a-half by eleven piece that -- is she signing

12 her name there?

13 A. She's got her initials. That's all.

14 Q. But it's not the same as this, is it? And

15 by this, I'm showing you page one, which is the letter on
16 Harbours stationery, which clearly says The Harbours, and
17 is signed by you as the president. That's very different
18 than these handwritten notes?

19 A. Well, I mean, I don't know -- I don't know
20 what someone would interpret, reading that. I mean,
21 someone might think that she is an employee of that place.
22 I don't know. I mean, I have never heard of Boca Raton
23 Resorts. I have heard of Holiday Inn, obviously.

24 Q. So this -- never mind. It just seems so

25 obvious to me. It seems like -- were you doing -- why did

280

1 you think this letter was necessary? What was your
2 motivation behind writing this letter?

3 A. I don't know what other -- I don't know
4 what other connection there was, and what she was trying
5 to accomplish by putting on their stationery, but we
6 wanted to make sure they knew about it. She had done that
7 type of thing before.

8 Q. What else had she done?

9 A. I think -- let me look at the date on that,
10 and see if I can remember -- '07. She had posted -- she
11 had posted documents before in the second floor business
12 center referencing The Harbours, and -- and the
13 neighboring property. And we just basically tried to keep
14 anyone informed that was being brought into one of The
15 Harbours issues that they were -- that that, in fact, was
16 happening.

17 Q. Okay. So this is a letterhead; right?

18 It's more formal.

19 A. Uh-huh.

20 Q. And we'll call this just like a Post-it

21 note stationery type thing.

22 MR. CULOTTA: Well, I'm going to say that
23 that's your description of it. I don't know that he
24 necessarily agrees to that particular --

25 Q. Would you say there's a difference between

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1 number one, which is The Harbours letterhead, and number
2 two, which are the small notes on Boca Raton's notepad?

3 A. Well, that one is smaller, and it's
4 handwritten. I mean, that's the major difference, I'd
5 say.

6 Q. Would you say there is a formality
7 difference?

8 A. Well, again, one's handwritten, and one's
9 typed.

10 Q. Would you say one carried more weight, was
11 more serious?

12 A. I have no idea. That's -- that's your
13 definition. I have no idea. I don't know what --

14 Q. What's your relationship with Sheila
15 Rudder?

16 A. I think it's fair to say it's probably just
17 mutual dislike.

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18 Q. Okay. At some point you filed a complaint
19 with the Office of the Attorney against her; is that
20 correct?

21 A. On her -- are you talking about her real
22 estate practice?

23 Q. Yes.

24 A. Yes. Uh-huh, that's correct.

25 Q. And did you also file a complaint against

1 her in Kentucky?

2 A. I believe that's where it was filed.

3 That's the same complaint, I believe.

4 Q. Okay. You filed it both in Indiana and in
5 Kentucky?

6 A. Okay. I don't remember the particulars.

7 Q. Okay. What was the resolution of the
8 Kentucky complaint?

9 A. There was no -- well, my knowledge is there
10 was nothing -- no one took her license, for example. She
11 has still got her license. Whether there was any formal
12 or undisclosed action taken against her, I don't have any
13 knowledge of that.

14 Q. Okay. At some point you filed complaints
15 against Becky Ledogar and Tom Pike; is that
16 correct?

17 A. That's correct.

18 Q. And I am showing you what is marked as
19 State's Exhibit LL, which are attached to the State's
20 Complaint. Do you recognize these documents? Is that
21 your signature on the Complaint?

22 A. I am looking at them before I give you an
23 answer. That's my signature on that one, and my
24 handwriting -- or my writing.

25 MR. CULOTTA: On the -- I am going to -- is

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1 this --

2 THE WITNESS: Attachment.

3 MR. CULOTTA: This is the attachment that
4 you're referring to?

5 MS. BELLER: Yes.

6 A. They look to be the documents that I
7 recall.

8 Q. Now, were these complaints -- why did you
9 file these complaints?

10 A. Why did I file them?

11 Q. Uh-huh.

12 A. It's pretty clear on the documents, I
13 think, why I filed them, my intention. It was --
14 generally speaking, it was a nondisclosure complaint.

15 Q. It wasn't filed in retaliation?

16 A. No.

17 Q. No?

18 A. No. Retaliation for what?

19 Q. For filing complaints against you?

20 A. I don't remember that they had filed --
21 well, Becky Ledogar, probably. I don't remember Tom Pike
22 filing complaints, if they filed complaints.

23 Q. Do you remember the last time, I showed you

24 a whole bunch of complaints from a whole bunch of people
25 when we were doing this?

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1 A. Uh-huh.

2 Q. One of them was Becky Ledogar.

3 A. Okay. I mean, it could have been.

4 Q. Do you think maybe that that motivated you
5 to do this?

6 A. What motivated me was what they did,
7 basically -- or didn't do.

8 Q. Because you alleged that they -- is there a
9 place on the -- you alleged that he is -- have you
10 received any notices by any governmental or
11 quasi-governmental agencies affecting this property?

12 A. Uh-huh.

13 Q. Okay. What notice would he have gotten
14 that his condominium unit was being affected by the
15 Attorney General's office?

16 A. Well, he filed complaints; right?

17 Q. Right.

18 A. And he filed them with the AG. I would
19 consider you guys quasi-governmental, if not governmental.
20 So that basically, while there was a pending complaint
21 that was unresolved, I would consider that to be something
22 that needed to be disclosed.

23 Q. Okay. Was there any threatened or existing
24 litigation regarding this property?

25 A. Again, the word threatened. I don't know.

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1 I mean, I -- would I -- the way I interpret the word
2 threatened, it's possible.

3 Q. Well, what property are we talking about?
4 We're talking about --

5 A. The Harbours.

6 Q. -- his condominium unit.

7 A. Well, The Harbours. He has a percentage
8 interest in The Harbours.

9 Q. But he was making a disclosure on his
10 condominium unit that he was selling.

11 A. Well, there is a question on there about
12 action relative to the property.

13 Q. And he wouldn't have had knowledge? I'm
14 just saying --

15 A. Well, if he filed the complaints, or was
16 aware of the complaints, he would have.

17 Q. Can you understand why this looks
18 retaliatory?

19 MR. CULOTTA: I'm going to object.

20 A. No. I mean, it's speculation on your part
21 that it is. So, no, I don't -- I don't --

22 Q. It's not circumstantial that it follows --
23 had you ever filed a consumer complaint with the Office of
24 the Attorney General before this?

25 A. No. I think -- I seem to recall that you

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1 guys suggested that this was filed during the discourse
2 that we had with you.

3 Q. Well, I would have had said if you had

4 complaints, that you would need to file them.

5 A. I think I was following your directive to
6 do that.

7 Q. Was that the same with Ms. Rudder?

8 A. No, that was previous. I don't remember
9 the date on that, but I think that was after you all
10 visited the first time.

11 Q. Are you in the habit of filing consumer
12 complaints?

13 A. Not with the AG's office per se. I don't
14 remember doing one before. I filed the one against the
15 Real Estate Commission, I guess it was, with Sheila
16 Rudder.

17 Q. Okay. Do you have -- do you know Betty
18 Cantrell?

19 A. I do.

20 Q. How do you know Betty Cantrell?

21 A. She is a long-time resident at The
22 Harbours.

23 Q. She's what? I'm sorry.

24 A. She's a long-time resident at The Harbours.

25 Q. Have you had any altercations with her,

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1 disagreements?

2 A. Over the years there's been any number of
3 disagreements. Her husband attacked me on the property.

4 Q. Okay. Do you recall writing her an e-mail
5 that stated -- it had the subject line, Bets, the
6 Activist. And it said, you losers have been seeking
7 remedy elsewhere for a while now, and what it's got you?
8 Zilch, nada, not a damn thing. You waste time plotting
9 and congratulating each other on what you're doing, and
10 it's all groupthink. I know you're just around the
11 corner. A new day is dawning, and Zipperle is getting his
12 comeuppance. Slogans, rhetoric, feel good nonsense. As
13 always, you are too stupid to realize that's all it is.

14 MR. CULOTTA: And I'm going to -- just for
15 the record, it's being read from paragraph 236 from the
16 State's Complaint.

17 Q. Yeah.

18 A. That's portion of an e-mail exchange
19 between her and me.

20 Q. Do you recall writing that?

21 A. I didn't recall it when I first read it,
22 but I went back and looked at the entire e-mail chain, and
23 I do recall. Uh-huh.

24 Q. Okay. What's your regard you have for Ms.
25 Cantrell?

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1 A. Say that question again.

2 Q. What kind of regard do you have for Ms.
3 Cantrell?

4 A. We don't really see eye-to-eye on many
5 things.

6 Q. And she thought that some things needed a
7 better -- over the years, Ms. Cantrell has asked you for
8 better explanations on some issues; is that correct?

9 A. That's probably true on any number of

10 occasions.
11 Q. And some of those issues had to do with
12 your purchase of condominium 320?
13 A. 312.
14 Q. 312.
15 A. I don't recall that specifically, but she
16 may have.
17 Q. Yeah. She's probably asked that a lot, and
18 about how you got the number of parking spaces?
19 A. Uh-huh. Oh, she has always been
20 preoccupied with parking spaces.
21 Q. Okay. Now, have you ever told the office
22 staff to ignore requests made from HOA members you
23 consider malcontents?
24 A. No, no. No. Not people that someone
25 doesn't like, or I don't like. Risk situations is where

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1 we typically avoided them.
2 Q. Who would those people be?
3 A. I don't remember the full scope. I think
4 anyone who either posed some sort of personal risk, or
5 financial risk to the HOA, is what it would be. I would
6 qualify that.
7 Q. Who would you believe that to be?
8 A. Well, certainly a financial risk would be
9 anyone who, basically, we have done work for that hasn't
10 settled up with us, or questioned the -- unnecessarily or
11 unreasonably questioned charges they were being billed, we
12 simply opted not to do business with them.
13 Someone who was a personal risk was someone
14 who was a threat to an employee, or a staff member, or a
15 board member, or someone that would go into that condo,
16 into their personal space.
17 Q. Okay. So if someone comes in to ask [former office assistant's name
18 removed] a question, or some other property manager, or someone who
19 is in there, who are some of the people you have told
20 them? Do you have names of people you have told them not
21 to --
22 A. Well, one we have talked about today is
23 Sheila Rudder.
24 Q. Okay.
25 A. She has been -- she has had an issue with

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1 the staff members over the years. She has alleged all
2 kind of unfounded things. Obviously, she is a female. We
3 are not going to send -- well, at least we haven't sent a
4 male employee into her condo that she had issues with, for
5 obvious reasons.
6 Q. Who else?
7 A. I don't -- I mean, if you have a name, I
8 can confirm whether or not we have done it or not, or I
9 can speculate.
10 Q. Well, you are the one -- you have given
11 instructions to employees, people in the office; is that
12 correct?
13 A. Well, situations as I have just described,
14 whether they were a personal or a financial risk, we have
15 not done that with.

16 Q. Okay. Do you recall those names?
17 A. I don't remember -- like on the financial
18 risk thing, that is pretty black and white. If someone
19 hasn't paid work orders, and they want a work order done,
20 we are not going to do that work for them until they pay
21 them up. But I don't remember the names. It has been a
22 quite a while.
23 Q. What about just responding to general
24 inquiries? Have you --
25 A. No.

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1 Q. Would you have Betty Haley -- or not Betty
2 Haley -- Betty Cantrell's work done?
3 A. Well, I mean, just based on my own personal
4 experience with her, and some of issues we've had done,
5 probably I would second guess doing work for her.
6 Q. Okay. But she pays her condominium fees;
7 right?
8 A. Yeah, but these aren't covered by
9 condominium fees.
10 Q. Okay. What about just general services?
11 A. Anything that they've paid for, they've
12 always been allowed to do.
13 Now, if they were a personal risk to
14 somebody, we might send somebody else in there with them
15 as a witness, or we -- I don't think we've ever done it --
16 but recorded, you know, audio record it, or something like
17 that, just to make sure there wasn't any after-the-fact
18 allegations.
19 But these are discretionary work orders we
20 are talking about. They are not paying for this unless
21 they pay for it separately.
22 Q. Well, I am talking about general services.
23 A. No, general services, everybody gets what
24 they pay for.
25 Q. Were packages ever dropped off? Like

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1 concierge? Do you have a concierge?
2 A. Yeah, I mean -- well, again, if they are
3 paying for it, they are getting the service, because they
4 pay for it.
5 Q. Okay. Are you in the business of
6 providing -- I mean, I guess I'm unclear on the provision
7 of services by having someone available to come and repair
8 things at a charge, versus the provision of services that
9 you just pay for, like being able to use the pool, or
10 whatever the staff does in the office.
11 A. Uh-huh. You mean --
12 Q. Are you in the business of -- is The
13 Harbours in the business of providing repairs, and that
14 sort of thing?
15 A. To the extent that we have resources
16 available, we will do a personal work order for somebody,
17 and be billed separately for that, and be paid separately
18 for it. We call that ancillary income.
19 Q. So you just don't -- if you're not on the
20 preferred list, you're not going to get that work done?
21 MR. CULOTTA: I'm going to the object to

22 the form of the question.
23 A. That's not the way we --
24 Q. If you are not on the naughty list?
25 A. Yeah, it would probably be -- it would be

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1 more of the latter. We don't call it that, but it would
2 be more like an exclusion, than it is a -- we only do work
3 for these people. Everybody is on the list unless you
4 take yourself off the list, basically.
5 Q. And who makes the determination that you're
6 taken off the list?
7 A. Basically, the property manager, the
8 president, and the board.
9 Q. Have you ever made that determination?
10 A. Probably did.
11 Q. And would that determination be based on
12 people who had perhaps filed complaints with our office,
13 the Attorney General's office?
14 A. This would have preceded that, in all
15 likelihood.
16 Q. Do you think that maybe contributed to the
17 people's discontent?
18 MR. CULOTTA: I'm going to object. Calls
19 for speculation.
20 A. I'm sure people don't like being on the
21 list.
22 Q. Okay.
23 A. That's self-evident.
24 Q. Is there an actual list that's maintained?
25 A. I don't think so.

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1 Q. So it's just passed on from board president
2 to board president?
3 A. Yeah. I mean, just because you are on the
4 list, that doesn't mean you can't come off the list, you
5 know, so to speak. I mean, we are referring to it like it
6 physically exists.
7 Q. There is no physical list that says that --
8 so you had to go in -- and let me reestablish this here
9 real quick. I want to make sure I understand.
10 You have personally told office staff not
11 to provide services for certain people; is that correct?
12 A. I have been involved in that decision. I
13 don't think I have ever said you don't go in there and do
14 a work order. I don't think I have ever said that to
15 anybody.
16 Q. Have you ever told staff, office staff, not
17 to send someone?
18 A. Perhaps, but I don't remember specifics. I
19 mean, I mentioned Sheila Rudder as an example of somebody
20 we had issues with. I don't remember the correspondences
21 or communications of taking place to execute on that.
22 Q. Okay. There was a woman who was a property
23 manager in the interim, and I don't recall her name. Do
24 you recall her name?
25 A. Are you talking about the one after [former property manager's name removed]?

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1 Q. Yes.

2 A. [Former property manager's name removed].
3 Q. [Former property manager's name removed]?
4 A. Uh-huh.
5 Q. Would you have told [former property manager's name removed] that --
6 A. I could have. But she was there such a
7 short period of time, I don't know specifically that we
8 covered that, but we could have.
9 Q. But you weren't the president at the time;
10 correct?
11 A. I don't think I was at the time she came to
12 the property.
13 Q. So why were you involved in her training?
14 A. The board --
15 MR. CULOTTA: I am going to object to the
16 extent that he didn't say he was involved in her training.
17 That's never -- that part's not been established.
18 Q. Okay.
19 A. That's not the way I would use it. I
20 certainly communicated with her as a board member.
21 Q. You communicated with her as a board
22 member?
23 A. Yes.
24 Q. And as a board member, you told her you
25 need to not provide services, or watch what you do with

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1 these people?
2 A. I don't remember specifically what I told
3 her. I could have talked to her about the issues we have
4 with certain people in doing work orders.
5 Q. Okay. So why did you -- why were you
6 communicating that with her?
7 MR. CULOTTA: Object to the extent that --
8 well, you can answer that. Go ahead.
9 A. I don't remember the circumstances. If I
10 did, it would have been if she asked me a question,
11 potentially, and I would have made sure she knew.
12 Q. Okay. I am showing you what is marked as
13 State's Exhibit MM. Do you recognize this document?
14 A. It looks like a letter I sent to
15 homeowners.
16 Q. Okay. Do you recall when the term
17 malcontents came into use for the group of people that had
18 filed complaints with the Office of the Attorney General?
19 A. I mean, you asked that question in some
20 form or fashion the last time, and I remember -- I
21 remember that they -- that people have called them that,
22 and that they have called themselves that for some time.
23 I don't remember when it first started.
24 Q. Okay. Do you recall using that term to
25 describe them?

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1 A. Well, it's in the letter, I believe, there.
2 Q. Yeah.
3 A. And I believe I have probably used it
4 before.
5 Q. Okay. What was your motivation in
6 describing them as the activities of a handful of hard
7 core malcontents in our community continue to -- and I'm

8 reading from paragraph 239, which quotes the letter in the
9 State's Complaint.

10 As much we have tried to meet their attacks
11 without bothering rank and file homeowners, that is not --
12 no longer possible. We are seeing our community in
13 newspaper headlines and on television. We are smeared by
14 hearsay and frivolous accusations. We are being
15 investigated by outside legal and regulatory, based on
16 trumped-up inflammatory charges of misconduct that would
17 make The Sopranos proud. And then you go into that these
18 people live among you. And then you even enclosed a
19 photograph. What were you trying to accomplish with that?

20 A. Well, basically, obviously I am
21 communicating. And I am trying to -- it looked that was
22 in conjunction with an election, maybe. I think I saw a
23 bio for me. So I was probably soliciting people to vote.
24 And I was probably trying to energize people. We've got
25 some issues to deal with, and you might vote for me to

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1 continue to deal with those issues.

2 Q. Well, you include this paragraph here. It
3 says the people behind these efforts live among us, maybe
4 even next door to you, and they need to hear from you.
5 They're costing you money and/or depriving you of the
6 lifestyle for which you bought into The Harbours. A few
7 of them are nothing more than troublemakers. The rest are
8 supporters of troublemakers. I won't name them here, but
9 if you want to know how to contact any of them, I'll help
10 you with that. What was your intent with that paragraph?

11 A. Again, I was trying to appeal to people's
12 emotional side, to continue to support me as a board
13 member, and to even take action themselves, if they wanted
14 to, you know, speak against people and let them know how
15 they feel.

16 Q. Okay. You don't consider that kind of
17 stirring the pot?

18 A. Well, I mean, if you take it out of
19 context, it might be seen that way. But if you look at
20 correspondence that had come out during elections, it's
21 pretty much part and parcel of what you see going around
22 there. And I think probably people understand that, too,
23 when they receive them.

24 Q. Okay. In August of 2012 there was a
25 message forum which was started on The Harbours website.

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1 The Harbours has a website, www.theharbours.com; is that
2 correct?

3 A. Yes, that's correct.

4 Q. And that was a message forum started?

5 A. Not on that website, but another one.

6 Q. Well, on The Harbours website. Not the
7 Facebook one?

8 A. The one you just said, www.theharbours.com,
9 does not have a message forum on it. It never has.

10 Q. What would you call it then?

11 A. That's the other -- that's the message
12 board website.

13 Q. Okay. But there is a link from The

14 Harbours?
15 A. There was at one time. I don't know if
16 it's still there or not, but there was.
17 Q. Okay.
18 A. It was supposed to be a website for
19 homeowners to be able to communicate with each other.
20 Q. Okay. And at one point you used an avatar
21 on the message forum that had a character of a man with
22 his middle finger extended?
23 A. That's not true.
24 Q. That's not true?
25 A. No.

300

1 Q. What was it?
2 A. That was photo-shopped. I had an avatar on
3 there, but they -- whoever submitted it, if that's what
4 they've submitted to, they photo-shopped that image, a
5 portion of the image.
6 Q. So you mean if I pulled that up off the
7 website, and I printed out that, I'm printing out a
8 photo-shopped image?
9 A. Yes. Yes, you are. It was a -- it wasn't
10 a photo. It was a caricature-type image. So it's fairly
11 easy to photo shop.
12 Q. Okay. But they photo-shopped it on the
13 actual message board?
14 A. No. They photo-shopped the image. If you
15 saw an image that had an obscene gesture, it was
16 photo-shopped. What you were given was photo-shopped.
17 Q. I am pulling it off the website.
18 A. Well, I am telling you it was never put on
19 the website with an obscene gesture. It was my avatar, so
20 I know what was put on there. For the record, it was a
21 peace sign. It was two fingers.
22 Q. Okay.
23 A. I will say that the image that's out there
24 in the public domain does have an obscene gesture on it,
25 but I would not put that on The Harbours website.

301

1 Q. Then why was that avatar -- I guess I'm
2 confused. But it says that you ultimately replaced the
3 avatar; is that correct?
4 A. It was creating enough controversy that I
5 agreed to take it off there, even though there was nothing
6 obscene about it.
7 Q. Okay. And it says previous avatar removed
8 voluntarily at the request of the few it was intended for?
9 A. That's correct.
10 Q. What were you intending --
11 A. I took it off at the request of those
12 people that were complaining about it.
13 Q. But your avatar said previously -- and on
14 page 243.
15 A. Yeah, I remember.
16 Q. Previous avatar removed voluntary at the
17 request of the few it was intended for?
18 A. Correct.
19 Q. So were you giving people a peace sign?

302

20 A. There was a message on there, too.
21 Something about haters. I don't remember what it said.
22 Q. Okay.
23 A. Behind -- I think it was behind every
24 successful person lies a pack of haters, or something like
25 that. And I am just paraphrasing. Something like that.

1 Q. What was the reason you began posting links
2 to the photos of 1103 and 1104 under each of your posts on
3 that message board?

4 A. I did it temporarily, because there was
5 evidently a big controversy of whether the wall was still
6 up or not. And a picture is worth a thousand words, so I
7 figured what the heck, put the picture on there, so people
8 can see the wall is not up there.

9 Q. Okay.

10 A. This was -- I don't know how far after the
11 fact, but this would have been after the purchase of the
12 condo, and the wall would have been removed.

13 MS. BELLER: Where are we at on time?

14 MR. SCHILLING: I've got about seven
15 minutes to noon.

16 MS. BELLER: Okay. Do you want to break
17 for lunch? And that way we can converse, and then come
18 back and either -- if I have some additional questions.

19 MR. CULOTTA: Fine by me.

20 (A BRIEF RECESS WAS TAKEN AT THIS TIME.)

21 QUESTIONS BY MS. BELLER:

22 Q. Okay. Mr. Zipperle, you are still under
23 oath.

24 A. Okay.

25 Q. I wanted to make sure I had some clarity on

303

1 this question. Is [former property manager's name removed] still employed by
2 The Harbours?

3 A. No. No, she's not -- there is no -- she
4 was a contractor. I guess she is a contractor. But, no,
5 she is still not receiving any kind of pay.

6 Q. She doesn't do any contract work, or
7 anything like that?

8 A. No.

9 Q. Okay. Now, we did discuss that she still
10 has the computer in her possession that belongs to The
11 Harbours?

12 A. That's my understanding.

13 Q. And you said that it has Harbours records
14 on that?

15 A. Of some sort, yes.

16 Q. Would that include homeowner information?

17 A. I don't know. Personal information you
18 mean?

19 Q. Yes.

20 A. Not -- I don't know. Probably not, but I
21 don't know that.

22 Q. So you don't know that?

23 A. Yeah.

24 Q. Would you consider it the board's
25 responsibility to protect personal information?

304

1 A. Yes. If that kind of information is on
2 there, yes.
3 Q. Okay. And there has been no discussion
4 about getting it returned; is that correct?
5 A. I'm sure there has been some discussion by
6 some people. I haven't been party to it.
7 Q. Has [former property manager's name removed] refused to return it?
8 A. Not to my knowledge.
9 Q. Okay. She hasn't volunteered to return it?
10 A. I guess she doesn't know when she might
11 need it for something, Harbours-related request or
12 something. Like the secretary whose computer crashed.
13 Q. Have you ever left a job and took your
14 employer's stuff, just in case they needed it at some
15 point?
16 A. I don't think I have ever left a permanent
17 employment somewhere and then worked part-time afterwards,
18 so that's probably...
19 Q. Well, she is not working there at all; is
20 that correct?
21 A. That's correct. That's my knowledge, yes.
22 Q. Do you find it unusual that she's not
23 working, and she didn't return the equipment?
24 A. Again, if it had particular value, yes.
25 Q. Let's not talk about value. Let's talk

305

1 about it belongs to someone else?
2 MR. CULOTTA: Go ahead.
3 A. I don't -- the relevancy of ownership
4 without value doesn't have a lot of meaning to me.
5 Q. Can you acknowledge that some things are
6 important even though they may not be -- have a monetary
7 value assigned to them?
8 A. If it's got some personal risk associated
9 with it, or something like you just -- the example you
10 just gave, that's potentially true, yeah.
11 Q. And you told me you didn't know whether
12 there was personal information on it?
13 A. I don't think I have ever asked, to be
14 honest with you.
15 Q. So you helped load it -- you admitted you
16 help load it into the car, and you helped her set it up?
17 A. Yes. Some of that I did, yes.
18 Q. And you never checked to find out if there
19 was sensitive information?
20 A. I didn't personally. I wasn't -- again, I
21 wasn't the board -- the president of the board at the
22 time, so...
23 Q. Okay.
24 A. I was just doing what I was requested.
25 Q. Who requested you to do that?

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1 A. Well, it would have been the board and
2 [former property manager's name removed], basically.
3 Q. Do you recall the board asking you to do
4 that?
5 A. No. When I said board, I meant members of

6 the board, and [former property manager's name removed]. When it came to technology,
7 by default, I ended up doing some of that stuff because a lot
8 of people don't know how to do it.

9 Q. So we established earlier that you had
10 written a letter that included the word malcontent?

11 A. Uh-huh.

12 Q. How do you define a malcontent?

13 A. I don't know the dictionary definition, per
14 se, but it's --

15 Q. Let me add some clarification. I am
16 looking for your definition.

17 A. I would say someone who is terminally
18 unhappy; can't be satisfied.

19 Q. Okay. Who are individuals at The Harbours
20 that you consider to be malcontents?

21 A. In general, I'll just say the Facebook
22 group.

23 Q. Okay. Who is the Facebook group?

24 A. Well, you know, because you -- it's a
25 public domain website, I think. People like Betty

307

1 Cantrell, Sheila Rudder, Tom Pike, Kathy Bupp, although
2 she is not an owner. People that are on an ongoing basis
3 who have expressed dissatisfaction with what goes on at
4 The Harbours, regardless of who is in charge, or what the
5 circumstances are.

6 Q. There was a recent election to keep you, to
7 see if you were going to be retained on the board; is that
8 correct?

9 A. That's correct.

10 Q. Did you spend any time the evening before
11 that election in the office with the manager?

12 MR. CULOTTA: Object to the extent that
13 it's not relevant to the litigation.

14 MS. BELLER: It's relevant as to his
15 influence in the board.

16 A. Well, if you have evidence, I will be glad
17 to look at it.

18 Q. Well, I'm asking you. Did you, or did you
19 not, spend time --

20 A. I don't remember. I don't remember the
21 night before. I visited the office one night that week
22 for about 10 or 15 minutes, and that's the only time I was
23 there, that I recall. There was no extended visits to the
24 office. If you've got evidence, obviously I will be glad
25 to look at it.

308

1 Q. Are your investments at The Harbours your
2 main source of income?

3 A. No. No. It's a contribution.

4 Q. What percentage?

5 MR. CULOTTA: I'm going to object to the
6 relevance to the litigation. It has --

7 MS. BELLER: It has to do with his exertion
8 of power, and maintaining control at The Harbours.

9 MR. CULOTTA: Okay.

10 A. I would question that premise, basically.

11 I mean, I have owned investment property for years, so I

12 don't know how that would -- I can buy investment property
13 anywhere. I just happen to like it at The Harbours. It's
14 close by, easy to manage, there's a built-in maintenance
15 infrastructure.

16 Q. Well, my question was, how much of your
17 income? What percentage is your income derived from your
18 investment?

19 A. Well, if you look at net income, very
20 little.

21 Q. Okay. What about gross?

22 A. Gross, because rent doesn't include taxes
23 and maintenance fees, and mortgage payments, and all of
24 that, it's measurable. Maybe a third.

25 Q. Okay.

309

1 A. By the time you net that stuff off, it's
2 very small.

3 Q. Okay. Do you own any other property
4 outside of The Harbours?

5 A. Direct ownership, no.

6 Q. What about indirect?

7 A. I have got a lien on a house, and I have
8 got -- my bad. I have got a -- my brother and I jointly
9 own my mother's property.

10 Q. Okay.

11 A. I forgot about that one.

12 Q. Does your mother live there?

13 A. Yeah, she has a life estate interest.

14 Q. Okay. And what other property -- do you
15 have a lien on a property?

16 A. I have a lien on a house that I used to
17 own.

18 Q. Okay.

19 A. I have got a mortgage lien on it.

20 Q. Okay.

21 A. And to my knowledge, that's the only other
22 real estate I've got.

23 Q. Were you living in that house before you
24 moved to The Harbours?

25 A. The house that I have the mortgage lien on?

310

1 Q. Yeah.

2 A. No, that was bought for investment
3 purposes.

4 Q. Okay. But your primary investment holdings
5 are at The Harbours?

6 A. At this point in time, they are.

7 Q. Okay. And you've been on the board --

8 A. Real estate. I don't know if you said real
9 estate.

10 Q. Real estate investment, yeah. Thank you
11 for clarifying that.

12 You have put a lot of work in as being a
13 board member; is that correct?

14 A. Probably more than I should. That's true
15 with most board members, though.

16 Q. Right. Is it something you derive pleasure
17 from?

18 A. Pleasure? No. It's not particularly
19 gratifying. It's something that needs to be done.
20 Q. Okay. Is it -- you know, most people do
21 their tour of duty, and then get off the board. But it
22 seems somewhat -- do you find it odd that you have
23 continued to stay on for so long?
24 MR. CULOTTA: I'm going to object. I mean,
25 I'm not exactly sure -- you're trying to -- for him to

311

1 compare and speculate his basis for wanting to be on the
2 board, and compare it to what other people may or may not
3 do. I don't even know that you're necessarily limiting it
4 to The Harbours only, or hundreds of thousands of people.

5 Q. Okay. Let me ask you this: Why is it that
6 you hang on to being on the board at The Harbours?

7 A. I don't hang onto anything. I've been
8 continually approached about being on the board, and
9 staying on the board, and providing a service, and all of
10 that, and to the extent that I have got time to do it, and
11 the willingness to do it.

12 Q. Who continually asks you that?

13 A. Well, the existing board members when my
14 term of service, whatever you want it call it, comes up.
15 Other homeowners who are concerned about The Harbours in
16 my absence, let's say, on the board.

17 Q. Who are some of those other homeowners?

18 A. You mean by name?

19 Q. Yes.

20 A. Well, there would be -- it would be people
21 like Kathy Quiggins, let's say, who I think's contacted
22 you guys. But there are various people that agree with the
23 way I look and approach things, that would like me to stay
24 on the board.

25 Q. Okay. Kathy Quiggins is one. Who else?

312

1 A. Most certainly these two ladies here would
2 like me to be on the board. They are no longer on the
3 board.

4 Q. Okay.

5 A. They felt that way when they were on the
6 board. But, you know, if you want, I can get a directory
7 and go down and pencil -- and circle names, if you'd like.

8 Q. We may at some point.

9 A. Okay.

10 Q. Is there anything that you want to tell me
11 that I have not considered in our suit?

12 MR. CULOTTA: I'm going to object to that.
13 I mean, if you have a specific question that you want to
14 ask, ask. But he is not going to sit her and just give a
15 narrative.

16 A. That's correct. I am not going to sit here
17 and talk.

18 Q. Is there anything I'm missing?

19 MR. CULOTTA: Again, the same objection.

20 A. You've got all the facts. There is
21 nothing -- there's no undisclosed documents, or anything
22 like that that you haven't seen, or interpretations of
23 things, or whatever. You can interpret them however you

24 want.

25 MS. BELLER: Okay. I believe we're at this

313

1 time done with this deposition.

2 MR. CULOTTA: I have just a few.

3

4 CROSS-EXAMINATION,

5 QUESTIONS BY CLAY CULOTTA:

6 Q. Kevin, we are going to go all the way back,
7 because this initially started in February, so I'm going
8 to ask you some questions when the original portion of
9 this deposition occurred.

10 One question had to do with when Frank
11 Prell purchased a number of parking spots. And there was
12 discussion about the -- there being a proposal put forward
13 by the developer. And at the time was it a board decision
14 to make -- to make the sale to Frank Prell according to
15 the modified terms?

16 A. The board -- the board made the decision to
17 sell the parking -- you are talking about the block of
18 parking spaces, right?

19 Q. Correct.

20 A. The board made the decision to sell the
21 block of parking spaces to Frank Prell.

22 Q. That was not a personal decision on your
23 part to make that determination?

24 A. No, I didn't have the authority to do that.

25 Q. And the proposal made by the developer,

314

1 that was not mandatory or set in stone?

2 A. No. The developer had no obligation -- by
3 my interpretation by anyone that I have talked to that's
4 interpreted the Declarations, who I think has the
5 credibility, the developer had no obligation to surrender
6 any parking spaces to the association free of charge.

7 Q. And as I believe you may have characterized
8 it before, the decision was to sell them all to Frank
9 because of the fact that they were -- he was buying -- at
10 a discount, because he was buying -- at a discount from
11 the developer's proposal, because he was agreeing to buy a
12 block -- to buy the property in a block; is that correct?

13 A. That's correct.

14 Q. As I think you had characterized it,
15 everyone agreed that that was a good decision, and decided
16 to take a haircut on that?

17 A. That's correct. And I believe history has
18 borne that decision out, that it was a good decision.

19 Q. And is it the board's responsibility to
20 make business decisions that they feel to be in the best
21 interest of The Harbours?

22 A. The Harbours overall, yes.

23 Q. And I think you just mentioned, it was a
24 business decision to sell to Frank those spaces in a block
25 at a discount?

315

1 A. That's correct.

2 Q. Board decisions are not required to be
3 unanimous; is that correct?

4 A. That's correct.
5 Q. Is it simple majority, or super majority?
6 A. Simple majority, of those casting votes.
7 Q. So if a simple majority of those casting
8 votes determined something to be in the best interest of
9 The Harbours, then the majority rules?
10 A. Unless it's otherwise specified that that's
11 not the process, yes.
12 Q. So with regard to then, say, the parking
13 spaces and Frank, that would have been a simple majority
14 decision?
15 A. Correct.
16 Q. With regard to -- and there are occasions
17 where members of the board are in the minority, and may
18 disagree with the decision of the majority; is that
19 correct?
20 A. That's correct.
21 Q. But that doesn't necessarily mean that the
22 majority were acting in a manner that was against the
23 interest of the homeowners; is that correct?
24 A. That's certainly my understanding of
25 things.

316

1 Q. At the time when [former Board member's name removed] was looking to
2 sell 312, unit 312, the developer -- and he was intending
3 to purchase -- what was the number? Ten?
4 A. 1110.
5 Q. -- 1110 from the developer; is that
6 correct?
7 A. I don't know. I mean, obviously, he had to
8 live somewhere, and he wanted to live at The Harbours. I
9 don't know that the two transactions were always linked.
10 Q. Okay. That's not where I was going, but I
11 appreciate that.
12 A. All right.
13 Q. But at that point in time the developer
14 still held parking spaces; is that correct?
15 A. Correct.
16 Q. And there were no prohibitions as to what
17 the developer could do with his parking spaces, or his
18 property at The Harbours; is that correct?
19 A. Not to my knowledge.
20 Q. And at the time that the developer -- while
21 the developer was still involved with The Harbours, it was
22 his discretion to assign the parking spaces as he saw fit,
23 to whatever he needed, as he saw fit; would that be
24 correct?
25 A. That's my understanding.

317

1 Q. And if the developer saw fit to assign
2 additional spaces to unit 312, was it within his
3 prerogative to do so?
4 A. He could do pretty much with the parking
5 spaces whatever he wanted. And anybody who stayed at The
6 Harbours for that matter.
7 Q. Okay. This morning there was discussions
8 with regard to bulletins one and two. And I believe there
9 were discussions, and even citations in the Complaint,

10 that there were other individuals involved with the
11 approval of those bulletins; is that correct?
12 A. Well, for sure, you can trace the e-mails
13 in terms of who was making communications back and forth
14 on them. I believe -- as I'm recalling, Doug Farnsley,
15 [former Board member's name removed], and [former property manager's name removed]
16 were all three specifically referenced in some of those communications.

17 But beyond that, the board blessed
18 basically both of them before they were finalized and
19 communicated to the homeowners.

20 Q. And the board, while those may have been
21 the only individuals that commented on the bulletins in
22 advance of their publication, did all board members have
23 possession of the drafts prior to their being released?

24 A. I don't remember the mechanics of that. I
25 don't remember if we drafted them and sent them around,

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1 and then solicited comments. I don't remember, basically.

2 Q. But they were at least provided to the
3 legal committee, and to the --

4 A. Board president.

5 Q. -- board president?

6 A. And the property manager.

7 Q. Okay.

8 A. And I had more knowledge on the one
9 subject, and the property manager had more knowledge on
10 the other subject.

11 Q. Okay. Was it ever shared with you -- or
12 did [former property manager's name removed] ever share with you her reason
13 why she wanted to go part-time, or work from her home?

14 A. Well, probably the more salient question is
15 why she wanted to leave The Harbours, and then decided
16 to -- and I don't mean to not answer the question you
17 asked, but the circumstances surrounding her working
18 part-time were offshoot of her wanting to leave The
19 Harbours. And if you don't mind, I'll answer --

20 Q. Well, I'll ask you that later, so we keep
21 it all there.

22 What reason did she give you for wanting to
23 leave The Harbours?

24 A. Okay. Well, she was -- most of it, I
25 think 99 percent of it, was due to the fact that it was a

319

1 very hostile work environment for her with certain
2 homeowners.

3 Q. What sort of hostility was there, and who
4 was being hostile?

5 A. Well, she had been physically attacked by
6 one of them, but she was constantly dealing with the
7 issues that were raised by a small group of homeowners,
8 and she just got tired of it.

9 She felt -- at the end, she was carrying a
10 camera back and forth to the bathroom, so she could go to
11 the bathroom and feel secure, which no employee should
12 have to go through that kind of thing. Whether she was
13 overdramatizing it or not? Perhaps. I have a hundred
14 percent confidence that her feelings were genuine.

15 Q. And you said that she was physically

16 attacked. By whom was she physically attacked?

17 A. Betty Haley physically attacked her in the
18 office. We have a portion of it on video, and she is -- I
19 think she is still pending criminal charges for that.
20 Betty Haley, that is.

21 Q. Have there been other instances where
22 people have been physically attacked at The Harbours?

23 A. Well, the same person, Betty Haley, was
24 involved in the now famous shoving incident at the indoor
25 pool. It's my opinion, but it looked to me from the video

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1 like she instigated it, and then the other employee shoved
2 back, and she ended up in the pool, the other pool party
3 did, who was an employee. Both parties were charged, I
4 believe, with battery on that.

5 In the employee's case, he agreed to a
6 probation, and that's long since passed. I think Betty
7 Haley's terms of probation was that she would not
8 resurface with any other issues. And I think those
9 charges -- I believe -- now, this is my understanding,
10 that those charges have been reinstated because she hasn't
11 performed as the prosecutor asked her to. That's one that's
12 documented.

13 I was physically attacked by Don Cantrell
14 in the courtyard of The Harbours. We call it the
15 courtyard. It's adjacent to the office and the fitness
16 center and the indoor pool. And I think it was June of
17 2008, and he was given probation for that. He also was
18 convicted of a misdemeanor charge for -- this would be
19 property violence, so to speak, or property damage, not
20 personal, but for taking a club to a board member's
21 windshield. And those things are all documented.

22 Q. Was there an incident involving Mr. Pike?

23 A. Yeah. That was the reason the cameras were
24 put out in front of the two condos, his condo and his
25 neighbor's condo. There was an incident at Thunder a few

321

1 years ago where police were called.

2 Q. Who?

3 A. Mr. Pike's condo. They were exiting the
4 condo, got into it with someone at a party of the other
5 condo.

6 MS. BELLER: This is all hearsay. I have
7 to object. Were you at the party?

8 THE WITNESS: I said it was hearsay.

9 MS. BELLER: I don't see its relevancy at
10 this point.

11 MR. CULOTTA: Well, this one goes to the
12 reason why the cameras were being installed on the tenth
13 floor.

14 MS. BELLER: But he can't describe the
15 incident if he didn't see it.

16 Q. Were you on the board at the time that the
17 cameras were installed?

18 A. Yes, I was.

19 Q. What was told to the board, and why did the
20 board decide to put the cameras up?

21 A. Well, to try to step back, and be as fair

22 to both parties as possible, there was a physical
23 confrontation between the two parties, involving the two
24 different condos, and in order to -- more to deter it than
25 to catch it. But to deter it in the future, we put the

322

1 cameras up. And the cameras are a good deterrent for that
2 type of thing we found out.

3 Q. Have you had any incidents -- any incidents
4 occurred since?

5 A. No.

6 Q. Are any of the cameras focused on
7 Mr. Pike's or the neighbor's door, or are they -- well,
8 how are the cameras set up in the building, or on the
9 floor?

10 A. Well, they are focused in such a way as to
11 look down both hallways where the cameras are situated,
12 and to catch any confrontation that would occur at the
13 point -- at the most immediate point where the travel
14 from -- to and from the two condos would connect, would
15 cross paths. There are some blind spots, but I mean they
16 are all within the cameras, so...

17 Q. There was a discussion about Mr. Prell's
18 combining of 1103 and 1104. And the question of whether
19 or not he had received an amendment to be able to do that.

20 Are there other condos that have been
21 joined in The Harbours?

22 A. Yeah, a lot of them.

23 Q. And to your knowledge, how many of those
24 have received amendments to be able to join?

25 A. I am going to just wag a number of about

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1 four or five that have been legally combined.

2 Q. Four or five that are current. That would
3 have been eight or ten separate units?

4 A. That's correct.

5 Q. Okay.

6 A. Yeah, it would have been two units put into
7 one.

8 Q. Okay. And approximately how many are
9 combined units now?

10 A. I think it's probably about 15 -- somewhere
11 between 15 to 20.

12 Q. So it would not have been unusual for Mr.
13 Prell not to come to the board, nor would it have been
14 unusual for the board not to have confronted Mr. Prell
15 regarding the combining of the units?

16 A. No. And as a matter of fact, as far as
17 what's appropriate for an amendment, it goes beyond simple
18 combining condos. Any floor plan change at all in the
19 condos has to be -- if you read the Declarations, I think
20 it's Section 23 -- has to be formally documented with an
21 amendment. And there are probably -- I'm just going to
22 wag another number -- 40 in the building, or 50, that fall
23 into that category.

24 So he would be -- anyone whose got an
25 amendment is in the vast minority of condos in the

324

1 building that are applicable.

2 Q. And the board has not found or seen that it
3 was necessary to confront any of those homeowners
4 regarding those changes?

5 A. Well, it's an ongoing debate that -- I'll
6 just mention her name. Betty Cantrell keeps raising --
7 she raises it every year. In principle, I think it's a
8 good thing. And I'll be honest, because it does ensure
9 that inappropriate or prohibited things don't happen with
10 the condos and floor plan changes. If someone were to try
11 to take out a load-bearing wall, or something like that,
12 potentially. So in principle, it's a good idea.

13 In practice, we inherited something that
14 had already deteriorated, and we really never took -- we
15 as an association -- not me personally, or these two
16 ladies back here -- we never have taken -- and we have yet
17 to take a more definitive stand to try to bring all those
18 records up to date. Obviously, the damage, if you want to
19 call it that, has been done with all of these changes that
20 have taken place, that somewhere, some day, they probably
21 need to be all brought up to date, and kept up to date.

22 Q. There was some questioning earlier with
23 regard to some complaints that you had filed with the
24 Attorney General's office regarding Mr. Pike, and is it
25 Ms. --

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1 A. Ledogar.

2 Q. -- Ledogar. Do you recall the response --
3 well, first off, let me ask you this: What office of the
4 AG did you send that to? Do you recall?

5 A. I think it's the same office that is
6 dealing with this litigation, I believe. I believe it is.

7 Q. Do you recall the response that you
8 received regarding those complaints?

9 A. Well, it has been a little while. I think
10 I got a response that it was not within their
11 jurisdiction. I'm not a hundred percent sure on that,
12 though.

13 Q. The issue with regard to certain people
14 receiving or not receiving services, so that I'm clear,
15 there are certain services that as a homeowner or renter
16 at The Harbours, and the monthly dues that are paid, there
17 are certain services that come along with the payment of
18 those dues; is that correct?

19 A. That's correct.

20 Q. What sort of things are those?

21 A. Well, beyond services, certainly access to
22 amenities and maintenance to the exterior of the building,
23 and all of that is included.

24 If there is a -- if there is any kind of a
25 service needed on a common element in a unit, let's say a

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1 pipe in the wall, that's all -- all the members are paying
2 that cost, and we would go in and try to do that work
3 ourselves, or have a contractor go in and do it.

4 Q. Okay. And you were mentioning then there
5 were other services, ancillary services, that The Harbours
6 provides from time to time. What sorts of services are
7 those?

8 A. Well, it would be anything related to a
9 particular appliance, or fixture, or something in your
10 condo. If you had a leaking faucet on the sink, and you
11 had bought the fixture, you could have contacted the
12 office, and for 25 bucks, or 40 bucks, or whatever, they
13 would have done the work order to replace that for you.
14 But it was strictly on your property, not on the common
15 property.

16 Q. So when there was a discussion with regard
17 to certain people that were not being allowed to -- or
18 that were, for lack of a better -- put on the naughty
19 list, who made those decisions, or who typically was
20 involved with that decision-making?

21 A. Well, typically, we are going back probably
22 to the time frame when [former property manager's name removed] was
23 property manager, had a very detailed history with regard to just
24 about every homeowner in the building, as well as a staff
25 that is fairly well tenured. Most of our employees are

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1 there years, not months or weeks.

2 So, you know, after enough experience with
3 homeowners that have caused issues, they basically didn't
4 want to do work for them, because there was either risk
5 involved -- well, there was some risk involved of some
6 type, either personal or financial, and more typically it
7 would be -- let's say a situation where the property
8 manager herself, or himself, would have made that
9 determination, and then asked for, you know, my blessing
10 if I was the president, or whoever the president was,
11 along with the board eventually, and that would be kind of
12 the way it was handled from that point forward. There
13 wouldn't necessarily be documentation around it. Maybe an
14 e-mail or something like that, but that would be it.

15 Q. And those were -- the management or the
16 ex-management would come to the board after the fact and
17 indicate that they had refused a service?

18 A. I'm sorry. Say that question again.

19 Q. The management -- the property manager
20 would come to the board after the fact, and indicate that
21 they had requested service, or would they come to the
22 board prior to and just simply say we don't want to work
23 for --

24 A. It may have been in the process of, you
25 know, fielding the request before answering it. I don't

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1 know if it was always an answer was given -- but probably
2 not necessarily that often, that an answer was given and
3 then, oh, by the way, we decided to do this.

4 And there's certain -- and there's a
5 perception in this room maybe that this happened a lot.
6 It was very few and far between that this happened. Two
7 people maybe in the total history of the association.

8 Q. And when you're talking about the ancillary
9 services, so I'm clear, these are not -- these individuals
10 who might have been declined the service, they are not
11 being told they can't bring in a contractor to provide it?

12 A. Oh, absolutely not.

13 Q. And these are not services that are

14 required to be provided by The Harbours; is that correct?
15 A. That's correct. No, we've never -- to
16 embellish that, we've never -- there has never been an
17 issue of whether you need the service or not. It's
18 whether we are the ones who are going to provide it. We
19 assume a contractor would have been brought in if The
20 Harbours would have denied it.
21 MR. CULOTTA: I have no further questions.
22 MS. BELLER: Okay. I'd like to go back on
23 a couple of things.
24
25 REDIRECT EXAMINATION,

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1 QUESTIONS BY JENNIE BELLER:
2 Q. We were discussing -- your counselor asked
3 you about Frank Prell's parking spaces?
4 A. Uh-huh.
5 Q. And when the developer put his proposal
6 forward, you had previously testified and identified the
7 documents that were memorializing that. Presumably [former
8 property manager's name removed] had contacted all the board members,
9 and they were in agreement to the marketing proposal. Do you
10 remember that?
11 A. Yeah. I don't remember the developer
12 putting -- I mean, the way you started, the developer
13 didn't put that out there. I think it was more [former property manager's
14 name removed] recommendation to the developer and the board.
15 Q. Okay. Because it's the fact coming from
16 the developer. We can get it out and look at it.
17 A. Okay. Maybe it is. I don't remember it
18 that way, but maybe it was.
19 Q. Okay. My point in that was there was a
20 board action taken by telephone. People were contacted
21 that this is what we would -- was there a memorialization?
22 You testified just a moment ago that the board made a
23 simple majority business decision that they were going to
24 sell to Frank Prell. Can you point me to the e-mail or
25 the board minutes that -- the document I previously

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1 identified was board minutes. Is there anything
2 documented to make that decision?
3 A. I mean, it has been six years ago. I don't
4 remember. If I was going to go on a treasure hunt for it,
5 I might be able to find something, but I have no idea.
6 And the question that I was asked was, is
7 that the typical process? And I answered that question,
8 yeah, it was the majority decision of those casting votes,
9 or a majority vote of those casting votes would be enough
10 to carry something. I don't remember that specific
11 instance exactly how that was decided.
12 Q. Do you recall answering a subpoena issued
13 by the Office of the Attorney General? And we met at that
14 time at Dawn's office at the Vissing Law Firm.
15 A. Uh-huh.
16 Q. Do you recall turning over all documents
17 related to this?
18 A. I do remember that, yeah.
19 Q. So would it be safe for me to believe that

20 if you didn't turn over a document, then that document
21 wouldn't exist? The document would be memorializing that
22 the board made a decision to accept Frank Prell's offer?
23 A. Well, first of all, I didn't personally
24 answer that request. I believe it was served on the
25 association, and the association turned over records that

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1 it was requested to provide. And to my knowledge, did
2 that to the best of our ability.

3 Is that -- does that include every document
4 that ever existed about anything related to any of this?
5 I have no way of knowing that. I have no way of knowing
6 that. You know, someone's e-mail account, whatever, I
7 don't know that.

8 Q. Okay. Now, as was discussed, bulletins --
9 and I believe it's actually referred to in the Complaint.
10 Bulletins number one and two were tacitly approved by --
11 there was an e-mail that said, looks good to me, basically
12 from Tom Pike and -- not Tom Pike, excuse me, Doug
13 Farnsley and [former Board member's name removed]; is that correct?

14 A. Those were two of the people I remember
15 involved in it.

16 Q. Okay. Now, would Mr. Farnsley have any of
17 the knowledge of any of the details regarding the purchase
18 of 312?

19 MR. CULOTTA: I'm going to object to the
20 extent that it calls for speculation.

21 Q. Are you aware, did he -- has he seen the
22 purchase agreement?

23 A. I don't remember. I don't remember showing
24 him. I may have given him copies of documents. I don't
25 remember.

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1 Q. Was he relying on your written account of
2 it?

3 MR. CULOTTA: Again, that calls for
4 speculation.

5 A. I wouldn't say rely on it, no. I don't
6 know. I don't know.

7 Q. Would he have any reason to doubt that you
8 would not include the entire truth?

9 MR. CULOTTA: Again, calls for speculation.

10 A. Well, to the extent that he trusts me, and
11 I tell the truth, sure. I mean, he would -- he had no
12 reason to doubt it, to answer your question.

13 Q. So he might just approve it without having
14 the underlying facts?

15 MR. CULOTTA: Calls for speculation.

16 A. To the extent that anybody wasn't involved
17 directly in the transaction, either in support of or
18 against it, that same allegation could be made.

19 Q. Did you show them documentation?

20 A. Who is them?

21 Q. The board members. Did you show them?

22 A. I don't remember.

23 Q. You don't remember?

24 A. I certainly didn't deny anybody any
25 information that they asked for.

1 Q. Okay. Did the board make a decision on the
2 placement of the cameras in front of Tom Pike's and [former Board
3 member's name removed] apartment on the eleventh floor?

4 A. I think so. But, again, I can't point you
5 to the document that says that.

6 Q. Were you the person in charge of cameras
7 and security?

8 A. I wasn't in charge of security or
9 technology, I'm going to call it, but very often I got
10 involved in those things as far as execution.

11 Q. Were you involved in it in this case?

12 A. I was involved -- the maintenance manager
13 and I were involved in locating those cameras, and getting
14 them running, getting them connected up.

15 Q. Okay. Now, did you have access to those
16 cameras via your computer in your home?

17 A. Yes, I did.

18 Q. Do you still have access?

19 A. I haven't gone to it in a while, but I may.
20 I don't know. I haven't looked at it.

21 Q. Okay. So you can monitor the comings and
22 goings of people if you wanted to?

23 A. Well, there are hundreds of hours of video
24 per day.

25 Q. Does it give you a live feed at all?

1 A. Yes, it does. But that's not typically
2 where we get information.

3 Q. But you could log on and look if you
4 wanted?

5 A. Theoretically.

6 Q. Have you ever done that?

7 A. No. I have more important things to do
8 with my time.

9 Q. Okay. You did acknowledge that the board
10 probably should have been more diligent on making sure
11 changes to the condominium association -- or to the
12 building itself were updated?

13 A. It was in the Declarations that we shall do
14 that. So, I mean, whether I felt -- whether I agreed with
15 it or not, we shall do it.

16 My personal opinion is it was a good --
17 it's good to have that up to date. If we had it up to
18 date, we probably would try to keep it up to date. But
19 it's woefully out of date.

20 MS. BELLER: Okay. I believe I'm done.

21 MR. CULOTTA: I have nothing else.

22

23 AND FURTHER THE DEPONENT SAITH NOT.

24

25

KEVIN ZIPPERLE