

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT
IN AND FOR MIAMI – DADE COUNTY, FLORIDA

STATE OF FLORIDA, OFFICE OF
FINANCIAL REGULATION,

GENERAL JURISDICTION DIVISION
CASE NO.: 07-43672 CA 09

Plaintiff,

vs.

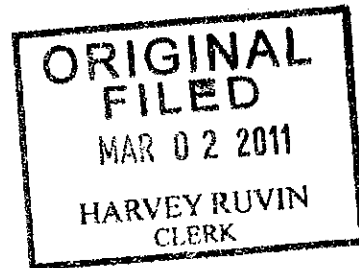
BERMAN MORTGAGE CORPORATION,
a Florida corporation, M.A.M.C.
INCORPORATED, a Florida corporation,
DANA J. BERMAN, as Owner and Managing
Member,

Defendants,

and,

DB ATLANTA, LLC, a Florida LLC, et al.,

Relief Defendants.



NOTICE OF FILING HEARING TRANSCRIPTS

Michael I. Goldberg, as Court Appointed Receiver over Defendants Berman Mortgage Corporation, M.A.M.C. Incorporated, et al., and Relief Defendants DB Atlanta LLC, et al, including Oceanside Acquisitions, LLC., (the “Receiver”) by and through its undersigned counsel, hereby gives notice of filing the following:

1. Transcript of Hearing held before Judge Bagley on July 2, 2010, attached hereto as
Exhibit A.
2. Transcript of Hearing held before Judge Bagley on July 12, 2010, attached hereto as
Exhibit B.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 2nd day of March, 2011, a true and correct copy of the foregoing was furnished via U.S. Mail to the parties on the attached Service List.

Respectfully submitted,

BERGER SINGERMAN

Attorneys for Receiver, Michael Goldberg

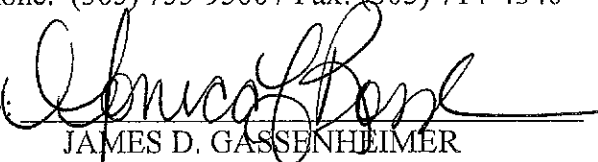
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cc: The Honorable Jerald Bagley *(via Hand-Delivery)*
Michael Goldberg, Esq., as Receiver *(via e-mail)*
The Investor(s)/Lender(s) Group *(via e-mail)*
Posted to the Berman Mortgage Website

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2 ELEVENTH JUDICIAL CIRCUIT, IN
3 AND FOR DADE COUNTY, FLORIDA
4
5 GENERAL JURISDICTION DIVISION
6
7 CASE NO.: 07-43672 CA 09
8
9 STATE OF FLORIDA, OFFICE OF
10 FINANCIAL REGULATION,
11
12 Plaintiff,
13
14 vs.
15
16 BERMAN MORTGAGE CORPORATION,
17 a Florida corporation, M.A.M.C.,
18 INCORPORATED, a Florida corporation,
19 DANA J. BERMAN, as Owner and
20 Managing Member,
21
22 Defendants,
23
24 and
25 DB ATLANTA, LLC, a Florida Limited
Liability Company, et al.,
Relief Defendants.
-----/
Dade County Courthouse
73 West Flagler Street
Miami, Florida
Friday, 8:45 a.m.
July 2, 2010
The above-entitled cause came on for
hearing before the Honorable Jerald Bagley, before
Paula D. Pace, Registered Professional Reporter,
Notary Public for the State of Florida at Large.

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11
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13 Harold Gassenheimer
14 Marvin Kaplan
15 Gail Corenblum
16 Miles Shapiro

INDEX

12	ANTHONY LINVILLE (transcript read)	
13	By Mr. Gassenheimer	48
14	By Mr. Baumgarten	53
15	GAIL CORENBLUM	
16	By Mr. Gassenheimer	58
17	By Mr. Baumgarten	75
18	PATRICK WALTER (transcript read)	
19	By Mr. Gassenheimer	112
20	By Mr. Baumgarten	126
21	By Mr. Basurto	135

EXHIBITS

19	Plaintiff's Exhibit No. 1 in evidence	49
20	Plaintiff's Exhibit No. 2 in evidence	51
21	Plaintiff's Exhibit No. 3 in evidence	65
22	Plaintiff's Exhibit No. 4 in evidence	67
23	Plaintiff's Exhibit No. 5 in evidence	68
24	Plaintiff's Exhibit No. 6 in evidence	69
25	Plaintiff's Exhibit No. 7 in evidence	70
	Plaintiff's Exhibit No. 8 in evidence	73
	Plaintiff's Exhibit No. 9 in evidence	115
	Plaintiff's Exhibit No. 10 in evidence	142

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50 JEANNIE REPORTING, INC. (305) 577-1705

EXHIBIT

tabbies

A

1 (Thereupon, the following
2 proceedings were held:)
3
4 THE COURT: Let me just state the
5 style of the case on the record and we'll
6 start announcing the appearances as well.
7
8 This is in the matter of State of
9 Florida, Office of Financial Regulation,
10 Plaintiff vs. Berman Mortgage Corporation,
11 MAMC Incorporated, Dana Berman, Defendants
12 and DB Atlanta, LLC and others, Case No.
13 07-43672.
14
15 We're set for an evidentiary hearing
16 today on specifically the matter relating
17 to the receiver's motion for order
18 approving the receiver's execution of sales
19 contract for the sale of two condominium
20 units owned by the lead defendant,
21 Oceanside Acquisitions, LLC.
22
23 There's also a motion filed by
24 plaintiff on the Case No. 08-7916H, that
25 being Bistricher, B-I-S-T-R-I-C-E-R, vs.
Coastal, plaintiff's motion to stay order
dated September 1, 2009.
(Phone ringing.)
THE COURT: Excuse me.

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1 Good morning, this is Judge Bagley.
2 Who's on the line?
3 MR. BISTRICER: Good morning, your
4 Honor.

5 MR. BASURTO: Good morning, your
6 Honor. This is also Mark Basurto with Bush
7 Ross and I'm here with Megan O'Neil and
8 we're both on the line as well.

9 THE COURT: All right, very good.
10 I have a court reporter present and I
11 just began announcing just the style of the
12 cases and what matter is before the Court.

13 More specifically, I've indicated that
14 we're here on the receiver's motion for an
15 order approving the receiver's execution of
16 sale of contract for the sale of two
17 condominium units owned by the lead
18 defendant, Oceanside Acquisitions.

19 I was just remarking, before I took
20 your call, that we're also here on Mr.
21 Bistricer matter, which is the plaintiff's
22 motion to stay order, dated September 1,
23 2009, pending appeal.

24 There's also a motion for the Court to
25 determine whether Axis Surplus Insurance

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1 Company may receive a declaratory judgment
2 action and that's under Case No. 07-43672.

3 Let me have everyone state your
4 appearance. I'm first going to begin with,
5 Mr. Gassenheimer, why don't you commence
6 stating your appearance and then we'll work
7 our way around.

8 MR. GASSENHEIMER: Thank you, your
9 Honor.

10 Good morning, your Honor, James
11 Gassenheimer from Berger Singerman; with me
12 is my colleague, Monica Rossbach, and we
13 represent Michael Goldberg, who is the
14 court appointed receiver over the
15 defendants and the relief defendants in the
16 action. We are the entity seeking the
17 relief to sell two condominium units and a
18 condition, to the extent the Court believes
19 a stay is appropriate, a condition to stay
20 on posting of a bond and we're prepared to
21 present evidence in support of our
22 position.

23 THE COURT: Okay, thank you.
24 All right, counsel.

25 MR. BAUMGARTEN: Maurice Baumgarten,
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1 your Honor, for Gulf Island Resort LP and
2 Mr. Bistricer, as limited partner of Gulf
3 Island Resort LP.

4 THE COURT: Thank you.
5 Are you involved in this or are you
6 just observers?

7 MR. SHAPIRO: Judge, Miles Shapiro.
8 I'm really an observer in the Axis matter,
9 the third matter that you mentioned.

10 THE COURT: All right.

11 MS. McELROY: I am as well, your
12 Honor, Dana McElroy.

13 THE COURT: Okay.

14 And let me have the gentlemen in the
15 back in the cheat seats make your
16 appearance.

17 MR. THROCKMORTON: Cheat seat, in
18 deed, your Honor, because I'm Mr. Berman's
19 bankruptcy counsel. I'm Chuck
20 Throckmorton.

21 THE COURT: Thank you, Counsel.

22 MR. JOSEPH: Good morning, Allan
23 Joseph, a special counsel for the receiver
24 and also counsel for the fugitive class in
25 the action against Dana Berman and Mitch

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1 Morgan.

2 THE COURT: Thank you.

3 MR. D'LUGO: Good morning, your Honor,
4 Michael D'Lugo from Wicker Smith in Orlando
5 on behalf of Axis Surplus Insurance
6 Company.

7 THE COURT: Thank you.

8 MR. COHEN: Good morning, your Honor,
9 Douglas Cohen from Walton Lantaff, I
10 represent Steven Kronshagen in a related
11 matter.

12 THE COURT: All right.

13 Anyone else wish to make an
14 appearance? You don't have to.

15 MR. GASSENHEIMER: Judge, the other
16 people in the courtroom are our witnesses
17 in the evidentiary hearing.

18 THE COURT: All right, very good.

19 And let me, again, have the gentlemen
20 on the telephone restate your names and who
21 you represent, please.

22 MR. BASURTO: Your Honor, this is Mark
23 Basurto with Bush Ross and I represent the
24 Gulf Island Beach and Tennis Club
25 Condominium Association and we have an
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1 interest in both of the motions here today
2 and I'm also here with, on the phone with
3 Megan O'Neil.

4 THE COURT: All right, thank you.

5 And I believe there's a plaintiff
6 present on the phone as well.

7 Was it Mr. Bistricher?

8 MR. BAUMGARTEN: Mr. Bistricher.

9 THE COURT: I'll get it by the end of
10 the hearing.

11 MR. BAUMGARTEN: Call him Alex.

12 THE COURT: No, I can't do that.

13 Sir, are you still on the line?

14 MR. BISTRICER: Yes.

15 THE COURT: All right, good. Thank
16 you. I'm known to butcher names, but don't
17 be bashful about correcting me if that
18 happens again, which it probably will.

19 All right, now, let me indicate where
20 the Court wants to begin. I want to first
21 address the plaintiff's motion to stay
22 order dated September 1, 2009, pending
23 appeal as styled in the Case No. 08-79168,
24 so I'll hear from you, Counsel.

25 MR. GASSENHEIMER: Thank you, your

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1 Honor.

2 THE COURT: And, by the way, you
3 should all know that I've read all the
4 motions, I do do that and the attachments
5 as well, and I've read the September 1,
6 2009 order issued by Judge Wilson as well.
7 So with that understanding, I'll hear from
8 you.

9 MR. BAUMGARTEN: Okay, thank you, your
10 Honor.

11 The motion that was filed, that was a
12 motion to stay the order that Judge Wilson
13 entered on September 1st, 2009 pending an
14 appeal.

15 THE COURT: Let me ask you to speak up
16 a little louder.

17 MR. BAUMGARTEN: Sorry.

18 THE COURT: Can you gentlemen on the
19 phone hear?

20 MR. BASURTO: Yes, we can hear or I
21 can hear.

22 THE COURT: All right. I just had a
23 hearing earlier and some people had
24 difficulty hearing. I think it depends on
25 your connection.

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1 Okay, go ahead, Counsel.

2 MR. BAUMGARTEN: Your Honor, our
3 position is, upon further research of that
4 issue, that Judge Wilson's order was, I
5 don't know how to say it, it's like an
6 advisory opinion, it in and of itself is
7 not anything that can be appealed because
8 Judge Wilson was not dealing with a
9 specific sale. His order, as your Honor --
10 if your Honor has a copy of it --

11 THE COURT: I do.

12 MR. BAUMGARTEN: -- just says, I'm
13 generally allowing you, the receiver, to
14 try and sell these units, but before you
15 sell any unit, you must come back to the
16 Court for approval of the sale of the unit
17 and not only that you have to come back to
18 the Court and get the real estate agent
19 that you hired to market this unit to be
20 approved for a potential listing, which was
21 not done in the case of the sale to Mr.
22 Linville. But, in any event, that order is
23 like an advisory opinion. So we have filed
24 an appeal in the underlying case which your
25 Honor is familiar with where we claim the

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1 relief defendants, Oceanside and DBKN,
2 don't even own the property that the
3 receiver is trying to sell.

4 THE COURT: One moment. There's
5 someone by the name of Chris Linde who just
6 called in and wants to join in.

7 THE CLERK: He's not a main party, but
8 he has an interest in the case.

9 MR. GASSENHEIMER: I believe his law
10 firm represents some holders of tax
11 certificates on the property. I can't
12 remember the law firm.

13 THE COURT: Let me find out. Is there
14 any way he can call one of the other
15 parties on the line and be connected in?

16 THE CLERK: I do not know. You mean
17 with the other parties already on the line?

18 THE COURT: Exactly.

19 THE CLERK: I don't know if their
20 office has that capability.

21 THE COURT: Gentlemen on the phone,
22 any one of you have the capability of
23 receiving a call to allow someone to be
24 connected in from your line to this
25 hearing?

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1 MR. BASURTO: This is Mark Basurto,
2 I'm not sure if it will work because the
3 phone that I'm on, I'm on a phone in a
4 conference room and, frankly, I'm not
5 familiar enough with the functionality of
6 the phone to know whether I can do it.

7 THE COURT: You got a teenager that
8 resides in your office? Sometimes that
9 works. They know everything and tell us we
10 don't know nothing, so what I can do is --

11 THE CLERK: I have to conference
12 everyone back.

13 MR. BASURTO: You want us to hang up
14 and call back in?

15 THE COURT: I think that's what we're
16 going to have to do. I apologize, but I
17 don't want to deprive anyone from being
18 heard in this matter or participating.

19 So let me ask if you all would just
20 hang up. I'm not going to do anything else
21 until we get you back on the line. Okay.

22 MR. BASURTO: Are we to call in or
23 will the Court call us?

24 THE COURT: You call in to Ileana, the
25 number you were provided earlier, which is

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1 349-7161.

2 THE CLERK: And maybe use that number
3 to call that person.

4 THE COURT: I tell you what, I'm going
5 to let her do it. It's probably easier
6 that way.

7 You have their numbers?

8 THE CLERK: Yes.

9 THE COURT: Just hang up, stand by,
10 she's going to get you all on the line.

11 All right.

12 MR. BASURTO: Thank you.

13 THE COURT: Relax for a moment,
14 gentlemen and ladies.

15 Good morning, this is Judge Bagley.
16 Would you all please tell me who's on the
17 line.

18 MR. BASURTO: Your Honor, this is Mark
19 Basurto again with Bush Ross.

20 MR. LINDE: This is now Chris Linde
21 with Burr & Forman.

22 MR. BISTRICER: Your Honor, Alex
23 Bistricer.

24 THE COURT: All right, very good then.

25 Mr. Linde, you should know that the

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1 Court has already started, but not by much,
2 about a good three to five minutes.

3 MR. LINDE: Okay.

4 THE COURT: I've already announced the
5 style of the case and we're now addressing
6 the motion to stay pending appeal filed by
7 the plaintiff in the matter of 0879168.

8 So, Counsel, let's continue to hear
9 from you. I know you left off speaking
10 about the September 1, 2009 order of Judge
11 Wilson, which you've described as being
12 advisory, an advisory opinion and some
13 other matter. So why don't you continue
14 on, if you will.

15 MR. BAUMGARTEN: Thank you, your
16 Honor. I mean it's not an order that is
17 appealable right now. Now, if your Honor
18 in this proceeding were to permit the sale
19 of units, authorize the sale of units to
20 Mr. Linville, then I think we would have an
21 appealable order. So that's our position
22 over Judge Wilson.

23 THE COURT: Are you asking me to make
24 this an appealable order by granting the
25 motion --

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1 MR. BAUMGARTEN: No, no. So I'm just
2 saying that's our position. But we will
3 argue in any event the same, basically the
4 same arguments, but we'll argue as if it's
5 an order that -- Well, we believe the order
6 should be stayed. Okay. And the reason,
7 your Honor, is the standards for obtaining
8 a stay pending appeal, which are set forth
9 in this case of In Re: Raven. May I
10 present it?

11 THE COURT: Yes.

12 MR. BAUMGARTEN: This is a case from
13 the bankruptcy court of the Southern
14 District of Florida in which the parties
15 seeking the stay wanted to stay an order
16 allowing the sale of real property.

17 As the case says, the four elements in
18 determining whether a stay pending appeal
19 is appropriate are likelihood of success on
20 the merits, irreparable injury, if the stay
21 is not granted, no substantial harm to the
22 adverse party if the stay is issued and
23 issuing the stay will serve the public
24 interest.

25 Now, as the Court notes here, if the

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parties seeking the stay can show irreparable harm and no substantial harm, then the party does not have to actually show the success on the merits is likely or probable, although that is our position, simply that party needs to show there is a serious legal question.

Now, our position, your Honor, is that there are several serious legal questions regarding Judge Wilson's order or opinion that when the receiver does find some buyer who's willing to pay an appropriate price for the units at issue here that that buyer can buy that unit free and clear of liens, claims and encumbrances.

Now, the first problem is the receiver did not present a single case to Judge Wilson which permits a receiver to sell property where there's a dispute as to whether or not the receiver, in fact, owns the property. Now, and the caselaw on that issue is that before a receiver can even sell property there's got to be clear that the property belongs to the receiver and that is set forth -- May I approach your

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Honor -- In this case from the bankruptcy court of the Ninth Circuit, In Re: Kahn vs. Zimmerman and I would direct your Honor's attention to page nine. Page nine at the top of this opinion on the top right where on the bottom of the left-hand column it says, "adopting a rule designed to discourage piecemeal litigation." The Ninth Circuit ruled that a bankruptcy court may not allow the sale of property as property of the estate without first determining whether they, in fact, own the property.

Now, in this case what we had is an order by Judge Cobb in another case, that's Case No. 08-79169. That's the case of Gulf Island Resort vs. Oceanside and DBKN. Now, that case was transferred to Judge Wilson, but it actually never got consolidated with the receivership case, which is why Mr. Gassenheimer didn't receive a copy of the motion for stay because there was some confusion here. Anyway, that was an order that Judge Cobb issued. It's not a final, it's not a final judgment that the property

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belongs to Oceanside and, in fact, it's been appealed and, in fact, your Honor, we have filed briefs with the Third DCA on that. And I don't expect your Honor to read this brief now.

THE COURT: Thank you.

MR. BAUMGARTEN: Or even weigh it. But in this case, in this appeal we claim that Judge Cobb abused his discretion, did not follow the law in determining that Oceanside and DBKN own the subject property, which, by the way, your Honor, I don't know if this was in the pleadings, it was in our motion for stay, that order was not based on any decision on the merits. The judge didn't consider did Gulf Island Resort own the property, did that partner ever sold it without authority and stole the proceeds, did he have the right to do that? He didn't decide whether Oceanside, which was aware of the issues regarding that partner's authority, he didn't get to any of those issues, he simply said there was an alleged discovery violation, I'm throwing out all the pleadings.

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So for the reasons set forth there that Judge Cobb's order is on appeal and the caselaw in Florida is that until you have an order that the appeal process is either run or it's been told and there was no appeal, it is not a final judgment. So there has been no final judgment in this case that the property belongs to the estate and, your Honor, I have case law on that issue as well. For instance, there's a quote from Section 156 of Florida Juror, it says, a judgment becomes final after expiration of the appeal time without an appeal having been taken and when an appeal has been taken a brief has been filed and we have the Irvin vs. Southwood case, which indicates that when you, that an order labelled the final judgment is not necessarily final until it becomes final and the appeal process has gone through.

So, first off, the problem here is why there'd be at least a likelihood of success on the merits of the appeal. Number one is we think Judge Cobb's ruling that the property belongs to Oceanside or DBKN,

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1 there's serious issues regarding that
2 ruling because there was a claim of a
3 discovery violation, there has not been any
4 order of the Court to produce documents, it
5 was simply there was a request for
6 production, a motion for protective order
7 was denied, the trial court ordered
8 documents be produced, documents were
9 produced, but unbeknownst to Gulf Island
10 Resort, certain documents were not
11 produced, they didn't find that out until
12 we were in the middle of a break of a
13 non-jury trial. The documents were
14 immediately given to Oceanside and DBKN and
15 the other side said, oh, that's terrible
16 and; therefore, all the claims should be
17 dismissed and your Honor, when your Honor
18 has the time, could read all the arguments
19 there.

20 So the first likelihood of success on
21 the merits is the merits that this property
22 does not belong to Oceanside and DBKN and
23 the second part of likelihood of success on
24 the merits is that Judge Wilson given the
25 status of the proceedings, the fact that

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1 the issue of ownership of the property is
2 on appeal, that Judge Wilson did not have
3 any authority to allow the property to be
4 sold and another important point, your
5 Honor, is Gulf Island Resorts' position has
6 been before receiver was appointed, before
7 receiver was appointed, Oceanside has this
8 judgment or from Judge Cobb, Oceanside
9 could have, had they wanted to and they
10 tried, to sell these units and they were
11 successful in some instances.

12 Gulf Island Resort did not post a bond
13 pending an appeal because Gulf Island
14 Resort's position was, go ahead, try to
15 sell the property to somebody, try to get
16 title insurance on it, given the fact that
17 the appeal process hasn't gone through,
18 nobody in his right mind who's given all
19 the facts regarding the status of the
20 property is going to buy it and that's
21 still our position. If Oceanside wanted to
22 sell the property to somebody given the
23 fact that the property may come back, go
24 ahead. If the receiver wants to sell the
25 property, go ahead. The problem here is

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1 that what the receiver wants your Honor to
2 do and asked Judge Wilson to do was say,
3 no, we don't just want to be able to sell
4 the property, we want the Court to rule
5 that Gulf Island Resort, LP has no interest
6 in this property itself and that all its
7 interest is being transferred to the funds.

8 Now, there is absolutely no case that
9 I've been able to find, no case that's been
10 cited by the receiver to Judge Wilson or
11 presented here which allows a receiver to
12 sell property and over the objections of
13 the true owner of the property and say, too
14 bad, party with claims that you're the true
15 owner, you don't get the property, the most
16 you get is money. Now, the only case that
17 the receiver provided to Judge Wilson at
18 the hearing on July 15th, and I have the
19 transcript of that hearing if your Honor
20 wants to see it --

21 THE COURT: I don't need to see it. I
22 accept your representation.

23 MR. BAUMGARTEN: -- is this case of
24 Arzouman vs. Salud (phonetic), a Fourth DCA
25 case, where the Court allowed the receiver

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1 to sell the property and have liens of a
2 taxing authority and a homeowners
3 association transferred to the proceeds.

4 Now, the big difference in that case
5 is nobody objected to that sale except the
6 defendant, receivership company itself.
7 There was a creditor that the original
8 owner was seeking recovery of the property
9 claiming that the receivership company had
10 stolen it. That party, which would be Gulf
11 Island Resort in this case, wanted the
12 property sold, the receiver wanted the
13 property sold. There's no indication that
14 anybody was against the sale of property
15 except for somebody representing the
16 receivership entity and there the Court
17 said, fine, go ahead, there was no issue of
18 the ownership of the property, other than
19 the owner claiming it was really his and he
20 was in favor of the sale.

21 Here, we have Gulf Island Resort,
22 which claims to be the true owner of the
23 property saying, "It's not your property,
24 we object to the sale." And there's no
25 case that allows the receiver to sell the

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1 property under those circumstances. And,
 2 your Honor, just to look at it this way,
 3 let's assume there has been no receiver
 4 here at all, which there wasn't for several
 5 years after Judge Cobb issued a ruling that
 6 Oceanside to keep the property and let's
 7 say Oceanside, which they've tried to do,
 8 says we want to sell the property and,
 9 guess what, you know, we really need to
 10 sell the property because we have no money,
 11 because we haven't paid the condominium
 12 fees, we haven't paid the condominium
 13 maintenance, we haven't paid the dues, we
 14 haven't paid the fees, we haven't paid
 15 taxes, we don't have any money, things are
 16 happening to the unit, we're going to go to
 17 Judge Cobb, who was the judge at the time,
 18 and say, judge, let us sell this property
 19 and force Gulf Island Resort to give up its
 20 right to the property and give up its right
 21 to appeal by transferring the funds to,
 22 transferring the claim, taking away his
 23 claim to the property and giving him a
 24 claim to the money. That shouldn't happen,
 25 there's no basis for that.

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1 So now the receiver is saying, oh, but
 2 it's not just Oceanside now, now it's a
 3 receiver who's come in. The receiver can't
 4 be in a better position than Oceanside
 5 itself.
 6 And, as I've said, there is no
 7 authority that says that a receiver can
 8 sell property as to which there's a dispute
 9 as to whether or not it belongs to the
 10 receivership over the objections, the
 11 owner, and especially here, your Honor,
 12 where if your Honor allows that, Gulf
 13 Island Resort will lose its ownership right
 14 to the property. And you can't just say,
 15 well, you have the money, you have the
 16 property. As that Ninth Circuit case
 17 indicates there are reasons why someone
 18 would want the property and not the money;
 19 particularly here in the real estate
 20 climate that we have in Florida now and
 21 else where in the country where real estate
 22 prices are way below what they should be,
 23 an owner of property has the right, as the
 24 Ninth Circuit says, to say I want to hold
 25 onto the property and I want to wait until

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1 real estate prices go up. If the Court
 2 says, too bad, I'm not going to let you do
 3 it, it's going to be sold now for rock
 4 bottom or below rock bottom prices because
 5 we, the lenders of Oceanside, need money,
 6 then there's no appeal rights, we basically
 7 lose, you've lost the property, all we have
 8 is a right to some, you know, paltry
 9 proceeds and that's why we believe another
 10 reason there is little -- there's a
 11 likelihood of success on the merits, not
 12 just that we'll probably -- while we think
 13 for sure it's a serious legal issue, but we
 14 believe we will probably win on both the
 15 issue that the property does not belong to
 16 Oceanside, as well as the likelihood that
 17 the court of appeals will not allow the
 18 property to be sold until that appeal is
 19 resolved.

20 Now, as far as the other elements of
 21 stay, of course there's irreparable harm.
 22 Now, as I've just explained, if the Court
 23 allows this property to be sold free and
 24 clear of Gulf Island Resort's ownership
 25 claim, Gulf Island Resort has a meaningless

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1 appeal in terms of getting the property
 2 back. Gulf Island Resort wants this
 3 property, Gulf Island Resort wants to hold
 4 onto this property, Gulf Island Resort
 5 wants to rent this property, in the
 6 meantime until the real estate prices go
 7 up, in fact, your Honor will see from Mr.
 8 Linville's deposition testimony, that's why
 9 he's buying the property, he's not an
 10 idiot, he's not buying the property to go
 11 turn around and sell it, he's buying the
 12 property to fix it up, to rent it and then
 13 sell it when it becomes a good time to sell
 14 it.

15 Now, one of the things that are going
 16 to come up here, the receiver has never
 17 done that, Oceanside has never done that,
 18 they just want to get rid of the property
 19 and for what, for the lenders? Your Honor,
 20 the lenders are simply creditors here. The
 21 lenders deem -- I don't know if your Honor
 22 is aware of this, what happened is,
 23 Oceanside and DBKN, which were prorated by
 24 Dana Berman and Berman Mortgage, borrowed
 25 money from these lenders. These lenders

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1 are individuals for whom Dana Berman
2 presented a loan sheet or two sheets,
3 little required saying, "Hey, how would you
4 like to earn 14 percent interest on your
5 money, lend Oceanside and DBKN money so
6 that we can go ahead and buy this property
7 really cheap from this guy who's selling it
8 and, by the way, we're not even going to
9 tell you the reason why it's so cheap is
10 because he doesn't even have authority to
11 sell it. But whatever it is, so all these
12 lenders come in, they say, oh, great, we're
13 going to earn 14 percent interest, we're
14 going to earn 15 percent interest and then
15 guess what, there's a problem, they can't
16 collect. Well, that is a risk that all
17 lenders take when they lend money to
18 somebody and that is the risk that they're
19 not going to get paid back, that something
20 is going to happen, and particularly when
21 you're offered 14, 15 percent interest --

22 THE COURT: All right, Counsel, let's
23 stick to the main issue here. I'm aware of
24 what took place.

25 MR. BAUMGARTEN: And the balance of
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1 harm, your Honor. That's an issue, the
2 balance of harm. We believe the lenders
3 are simply other creditors, we are a
4 creditor of Oceanside and DBKN, Gulf Island
5 Resort is, because we say it's our
6 property, they are creditors and there's no
7 reason why those creditors should be
8 favored over Gulf Island Resort by causing
9 Gulf Island Resort to permanently lose its
10 right to get this property back.

11 Now, with regard to irreparable harm,
12 what was presented to Judge Wilson was,
13 well, you know, if you don't let us sell
14 these units, they're going to be foreclosed
15 upon by the association to whom money is
16 owed in terms of fees and dues. Well,
17 that's not going to happen, your Honor,
18 because there's currently a stay in effect,
19 which was entered by Judge Wilson. And
20 Judge Wilson has not lifted the stay and in
21 addition, and the association hasn't asked
22 the stay to be lifted, but even if the
23 association were to ask the stay to be
24 lifted, we have the testimony two days ago
25 from the president of the association, Pat

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1 Walter, who admitted that the association
2 is not considering filing for bankruptcy,
3 they haven't looked at it, they haven't
4 retained anybody, that's simply not on the
5 horizon. So in terms of any harm to the
6 association, that is -- it's not there. In
7 fact, he testified, and I'll present the,
8 offer the -- it's been filed by the other
9 side in this case. He said they, in fact,
10 admitted the only irreparable harm is that
11 the association will have to impose,
12 perhaps have to impose a special assessment
13 against the other unit owners. That's not
14 irreparable harm to the association.

15 He also admitted that it wasn't even
16 necessary to sell for the association to
17 get all of the money that it claimed it's
18 owed and only he would need to sell at most
19 five of the sixteen units that are at issue
20 here.

21 Now, in terms of the balance of harm,
22 again, the issue, there is no -- there's
23 going to be nothing left for Oceanside or
24 DBKN to settle. I think everybody could
25 agree that no matter what happens here

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1 Oceanside and DBKN are going to be left
2 with nothing.

3 You have the lenders who lent money
4 and are claimed that they are owed money,
5 and then you have Gulf Island Resort which
6 claims that it really owns the property.
7 These lenders, again, can't be in a better
8 position than Oceanside or DBKN itself.
9 Oceanside and DBKN, as your Honor is aware,
10 as we've presented evidence before Judge
11 Wilson, it's in the record, that they, Dana
12 Berman, was aware that Gulf Island Resort
13 was claiming that it owned the property
14 before they bought the property. There's
15 correspondence between Oceanside and DBKN's
16 attorney and the attorney for Gulf Island
17 Resort for a month before the deal saying,
18 you can't do it, Mr. Morgan doesn't have
19 authority, so, again, the lenders cannot be
20 in a better position than Oceanside and
21 DBKN itself.

22 So we believe that the standards for a
23 stay have been clearly met here, your
24 Honor, success on the merits, irreparable
25 harm to Gulf Island Resort, because once we

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1 know the property is sold and our claim is
2 off of it, we can't get the property and
3 the balance of harm favors Gulf Island
4 Resort because the other parties, it's just
5 money, which they -- when they went into a
6 situation where the receivership company
7 knew that this was the very risk that
8 existed if they went ahead and bought
9 property knowing there was claim by Gulf
10 Island Resort that they own the property.

11 THE COURT: Thank you.

12 Mr. Gassenheimer, let me hear from
13 you.

14 MR. GASSENHEIMER: Thank you, your
15 Honor. Good morning and thank you for
16 allowing us to proceed this morning.

17 So what I just heard was rearguing the
18 ultimate order issued by Judge Wilson, not
19 an argument on the stay at issue. What has
20 been argued by Mr. Baumgarten is all the
21 reasons why this Court should depart from
22 the prior order that Judge Wilson entered
23 authorizing the receiver to market the
24 property and to obtain buyers and to
25 proceed with the sale of the property with

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1 the liens -- with the proceeds of the sale
2 to attach as liens of cash rather than
3 property. Mr. Baumgarten has filed an
4 appeal of that order, unfortunately, this
5 court, I don't believe, has jurisdiction to
6 revisit that order and we are bound by that
7 order unless an appellate court reverses
8 the order entered by Judge Wilson, which we
9 believe was correctly entered.

10 The issue before the Court today is
11 whether this court should grant a stay of
12 that order and condition that stay on an
13 appropriate bond to protect my clients and
14 let's just complete the story of what
15 happened before we are here today, because
16 I think this is an equitable receivership
17 and I think the Court should do equity and
18 in order to do equity the Court should
19 understand the true facts.

20 The dispute, which dates back to 2003,
21 over ownership of these units, is that
22 Oceanside Acquisitions bought the units,
23 the president of that company signed the
24 deeds and Mr. Bistricher contends, that as a
25 limited partner, that there was a

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1 non-produced partnership agreement or a
2 non-executed partnership agreement which
3 required all limited partners to sign off
4 on the sales of this. That issue was
5 litigated for four years, eventually got to
6 trial and in the middle of trial it was
7 discovered that 67 bankers boxes of
8 documents were not produced that were the
9 subject of multiple court orders. Not only
10 were they not produced, but when you went
11 and looked at those documents, there were
12 substantial inconsistencies between what
13 was in the documents and what they
14 testified to under oath by Mr. Bistricher.

15 MR. BAUMGARTEN: Your Honor, I object
16 to this. We're not discussing the merits
17 of those --

18 THE COURT: Overruled, Counsel. I've
19 allowed you to, you know, factually present
20 what took place in the matter involving
21 Judge Cobb and we will now allow counsel an
22 opportunity to respond, and that's what
23 this is, it's just a response to your
24 presentation.

25 MR. GASSENHEIMER: Thank you, your
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1 Honor.

2 THE COURT: We're not in front of a
3 jury today, you're in front of me. You
4 know, let's presume I'll discard anything I
5 shouldn't consider for purposes of this
6 motion.

7 So go ahead.

8 MR. GASSENHEIMER: And based on Judge
9 Cobb in Pasco County, review of those
10 documents, he thought it was appropriate to
11 strike Mr. Bistricher's pleadings, the
12 ultimate sanction, something that is rarely
13 visited by a judge and must be
14 respectfully, must respect his counsel's
15 decision in looking at what happened in
16 making that decision and entered an order
17 in favor of Oceanside on the issue of
18 entitlement to these units. Subsequent he
19 entered a partial final judgment of title
20 in favor of Oceanside because there were
21 also tort claims that were involved in that
22 case. The appeal didn't start at that
23 time. The M.A.M.C. Berman entities failed
24 and the State of Florida appointed Michael
25 Goldberg, as receiver, over this

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1 conglomerate of some forty companies, one
2 of them being Oceanside. And as is our
3 right in the receivership, we ask that all
4 of the litigation all over the state be
5 transferred down to this court, so that the
6 receivership judge, who has the best
7 knowledge and understanding of all the
8 issues and how they interrelate, could
9 decide these cases.

10 So the matters that have been
11 previously handled by Judge Cobb were
12 transferred from Pasco County Circuit Court
13 to the Eleventh Judicial Circuit and
14 brought before Judge Wilson.

15 Judge Wilson then heard summary
16 judgment arguments on the tort claims and,
17 again, ruled in Oceanside's favor, finally
18 making the case right for appeal and Mr.
19 Baumgarten, on behalf of his client, did
20 file that appeal and finally after a year
21 has filed a brief and now these issues can
22 proceed before the Third DCA.

23 But the ultimate issue is that there
24 is currently a judgment claiming title in
25 favor of Oceanside, Oceanside is, by the

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1 matter of law, the title holder to these
2 properties until an appellate, and only if
3 an appellate court were to reverse the
4 correct rulings of the trial judge would
5 that change.

6 So I would submit that the issue
7 before the Court today is whether you
8 should grant the stay and if you decide to
9 grant the stay, we will require that stay
10 be conditioned on a bond and this is my
11 opportunity to explain to you why I think a
12 substantial bond is required for this case.
13 We have cited to the Cerrito vs. Kovitch
14 case in which the trial court has
15 considerable latitude in controlling
16 circumstances under which proceedings are
17 stayed pending an appeal. Under
18 9.310(b)(1) a stay is required in a cash
19 situation upon payment of money that
20 represents 115 percent of the money
21 judgment, but in the case of an appeal
22 involving real property there are specific
23 rules of procedure that apply. In rule
24 9.310(b) -- I'm sorry, 9.310(c)(2), A bond
25 should be conditioned on the following: It

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1 says, "The conditions of the bond shall
2 include a condition to pay and comply with
3 an order in full, including costs, interest
4 fees and damages for delay, use, detention
5 and depreciation of the property."

6 And so unlike in the bankruptcy
7 proceedings where it's more of this
8 standard, we have an appeal ate rule of
9 procedure that specifically guides this
10 court as to the considerations that should
11 be made as to whether the delay will result
12 in waste, deterioration of the property
13 or --

14 THE COURT: So what amount of a bond
15 are you recommending if I were to grant the
16 stay?

17 MR. GASSENHEIMER: So to answer that
18 question, let me just remind the Court I
19 think we previewed some of the facts. What
20 do we have here? We have units that have
21 never been occupied. Mr. Bistricher claims
22 that if he loses these units -- that it
23 represents an important property right.
24 Well, the bankruptcy cases which we would
25 submit are not relevant to this issue that

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1 they cite to which one bankruptcy case
2 discusses a condominium unit in the chapter
3 7 case, a personal bankruptcy where the
4 person actually lived in the unit and that
5 was his home that was being taken away and
6 the court conditioned -- Judge Mark from
7 the Southern District of Florida provided
8 an analysis as to why he thought this
9 gentleman had a real property.

10 Here we have units that have never
11 been occupied, in fact, the units have no
12 appliances, no toilets, no floors, they're
13 full of mold and are deteriorating. We
14 have a buyer who as a second job, buys
15 units, fixes them up and rents them and so
16 in terms of public policy issues, one of
17 the four criteria, we have a circumstance
18 where if Mr. Bistricher is liable to prevail
19 the public good is not being done, in fact,
20 it's being negatively impacted because we
21 have units that are damaging the
22 surrounding units, interfering with all
23 their unit owners pride and enjoyment of
24 these properties. We have a buyer, who I
25 have evidence, which I'm ready to present

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1 today, and I'll summarize it for the Court,
2 who has testified that he will buy these
3 units now, he has the capital wherewithal
4 to fix them up, he will fix them up, get
5 rid of the mold and then he will rent them
6 and so they will add -- it will reverse
7 this deterioration that occurred and the
8 evidence will be that the market for these
9 type of units currently, if they're fixed
10 up, is somewhere between \$150,000 and
11 \$180,000. This gentleman estimates it will
12 take him \$50,000 to fix up the units by his
13 testimony and we have a purchase price of a
14 \$120,000 a unit.

15 I would submit to the Court that if we
16 do not -- if we're not allowed to proceed
17 with these sales, I can't tell you if I can
18 find somebody else with the capital and
19 wherewithal down the road to fix up these
20 units. And I would submit to the Court at
21 a minimum the purchase price of each of
22 these units should be posted as a bond and
23 then as an additional component to the bond
24 what we're asking for is that a portion of
25 that bond be used to currently pay the

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1 association dues and the taxes and here's
2 the reason why: If Mr. Bistricher wins he's
3 going to have to pay that anyway. So he's
4 not out. And if Mr. Bistricher loses, then
5 when the units are sold he can be paid back
6 his money, but at the current time the
7 evidence will be that the association is
8 owed \$350,000 on these units. That
9 represents almost eighty percent of a one
10 year annual budget for the association and
11 is putting a tremendous burden on the
12 association.

13 The evidence will also be that there
14 are taxes due for three years on the
15 property, the tax certificate holders who
16 are entitled to be paid, the interest is
17 accruing on both the condominium
18 association fees and the taxes. And,
19 therefore, there is waste occurring if the
20 Court does not condition the bond and so
21 with the Court's permission, if I answered
22 your question, I can complete my opening
23 and proceed to present any evidence,
24 however, whatever the Court's indulgence
25 is.

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1 THE COURT: Before I allow you to do
2 so, are there any other parties or
3 representatives that wish to be heard on
4 this matter before the Court receives any
5 evidence? That will be the next step.

6 MR. BASURTO: Yes, your Honor. This
7 is Mark Basurto, who represents the Gulf
8 Island Beach and Tennis Club Condominium
9 Association, and I have a brief argument
10 I'd like to make before any evidence.

11 THE COURT: I will permit that,
12 Counsel.

13 MR. BASURTO: Thank you, your Honor.

14 What I'd like to add, I agree with the
15 receiver that the issue here is whether
16 your Honor should impose a stay and,
17 second, whether there should be, if the
18 stay is imposed, what the bond amount
19 should be.

20 But in addition to that, if the stay
21 is going to be imposed, your Honor, we
22 would request that there be additional
23 conditions imposed in addition to posting a
24 bond and the reason for that is a stay with
25 the posting of a bond does not help the

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1 association at all. If a bond is being
2 held by the Court during the tenancy of the
3 appeal, the appeal goes on for another
4 year, the association is going to be out
5 another \$72,000 as a result of the
6 Oceanside units not paying their
7 assessments. And so a stay with a bond
8 does us no good. What we need is either no
9 stay or a stay that imposes as a condition
10 the payment of our fees that are owed and a
11 condition of the bond and the receiver is
12 right, we are owed a substantial amount of
13 money, you're going to hear evidence that
14 we are owed from the Oceanside units alone,
15 \$318,000. The association has receivables
16 of \$355,000, which means that almost
17 89 percent of our receivables are due to
18 the delinquencies of the Oceanside unit and
19 if we go another year, it's going to be
20 another \$72,000.

21 Now, Mr. Baumgarten eluded you to some
22 testimony from my client, from Mr. Walter,
23 that the association has not contemplated
24 filing bankruptcy. That's true; however,
25 earlier this year we had to impose an

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1 assessment on all the other unit owners of
2 \$2,000, which was basically for a total of
3 \$184,000. Why do we have to do that?
4 Because we're not getting paid by the
5 Oceanside units. In fact, the evidence is
6 going to show we haven't been paid by the
7 Oceanside Units since November of 2006. It
8 is an extremely heavy burden on the
9 association and it's one that we cannot
10 bare without having to impose special
11 assessments on all of these other units
12 and, frankly, if Mr. Baumgarten and his
13 client are so confident that they're going
14 to prevail on appeal, if your Honor is
15 going to impose a stay, then as a condition
16 of the bond they should be required to pay
17 the past assessments that are due to the
18 association.

19 And with that said, I'm prepared to
20 proceed with the evidentiary portion of the
21 hearing.

22 THE COURT: Thank you.

23 Anyone else?

24 MR. BAUMGARTEN: Yes.

25 THE COURT: Mr. Baumgarten, I'm not

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1 going to hear from you now, because this is
2 the opening statement that I've allowed,
3 which is a very unique argument. This is
4 normally what openings are for. What I
5 want to do is get into the evidentiary
6 portion of this hearing. You'll be
7 permitted -- just hold your thought -- in a
8 final argument before the Court to address,
9 as all of you will, all remaining matters.
10 All right.

11 So let's now proceed with the
12 evidentiary hearing.

13 Mr. Gassenheimer, you wish to present
14 any witnesses on your motion for
15 authorization to sell the units?

16 MR. GASSENHEIMER: Yes, your Honor.

17 THE COURT: Okay. Who is your first
18 witness?

19 MR. GASSENHEIMER: First I would
20 present the deposition testimony of Mr.
21 Anthony Lanville. I have filed his
22 deposition of record. Since we don't have
23 a jury here, rather than reading page and
24 lines, if I could just direct the Court to
25 certain page and lines in the form of a

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1 proffer, I think that might save some time.

2 THE COURT: That will be fine, but let
3 make sure -- you filed the deposition when?
4 Do you have an extra copy with you because
5 I don't have all the volumes of the court
6 file.

7 MR. GASSENHEIMER: Sorry it's not
8 stapled.

9 THE COURT: It's all right. I'll give
10 it back to you.

11 So you may designate any portions you
12 wish to read from. Any other counsel who
13 wishes to do cross designations, you're
14 permitted to do so.

15 MR. BAUMGARTEN: Now, your Honor?

16 THE COURT: Well, once Mr.
17 Gassenheimer is finished, as a way of
18 cross, if you will, I will allow you to do
19 cross designations.

20 So, Counsel, you may.

21 MR. GASSENHEIMER: Thank you, your
22 Honor.

23 I would just proffer in going through
24 the deposition for the Court, I filed the
25 whole deposition and would ask the Court to

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1 consider the whole deposition, but I'm
2 going to just highlight a few items. I'll
3 note for the Court Mr. Lanville lives in
4 Zephyrhills, Florida, so he's beyond
5 subpoena jurisdiction of this Court and I
6 believe I have the right to use his
7 deposition. On page 6, at line 16, Mr.
8 Lanville explains that he was on the
9 property looking at the units and met Ms.
10 Claudia Traywick, who is a broker who sells
11 -- who's been involved in this property.
12 On page 7, he testified that Claudia, the
13 broker, has been working the property for a
14 couple of years. On page 8, at line 8, Mr.
15 Lanville notes that his mother-in-law lives
16 at Gulf Island, which explains why he was
17 there. At page 10, line 12, he identifies
18 Exhibit 1, which is in our binder as
19 Exhibit A for these proceedings, I believe
20 we gave your clerk an exhibit finder.

21 THE COURT: I have it.

22 MR. GASSENHEIMER: Which he identifies
23 and lays the necessary predicates as we
24 move into evidence the "as is" sales
25 contract, which we've marked as Exhibit A,

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1 which is executed by Mr. Lanville for the
2 acquisition of unit 601.

3 MR. BAUMGARTEN: Your Honor, I have no
4 objection to the admission of that
5 document.

6 THE COURT: All right, it will be
7 admitted as Plaintiff's Exhibit 1.

8 THE CLERK: Plaintiffs 1 is admitted
9 as Exhibit 1.

10 THE COURT: For purposes of this
11 hearing.

12 (Thereupon, Plaintiff's Exhibit No.
13 1 was admitted in evidence.)

14 MR. GASSENHEIMER: On page 11, your
15 Honor, the witness testifies that the unit
16 is gutted -- I'm using his words -- in
17 terrible condition, it's going to take a
18 lot of remodeling, he says both units are
19 trashed out, there's nothing in them --
20 again, using his words -- there are no
21 appliances, no hot water heater, walls have
22 mold, tile on the floor is broken. He also
23 testifies that unit 601 is a two-bedroom
24 unit.

25 On page 12 he testifies that his plans

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1 are to fix-up the units and rent it. He
2 testifies it will take \$50,000 to fix up
3 the unit. He testifies that he had paid
4 \$154,000 for unit 504, that that unit did
5 not need work like 601. 504 had
6 appliances, washer/dryer, the tile was
7 fine, all it needed was cleanup and some
8 paint touchup.

9 On page 13 he testifies and explains
10 why the contract is in the name of Sunwest
11 Inc., that's his company, he signed on
12 behalf of Sunwest, Inc.

13 On page 14 he testifies that he
14 understands that the contract contains an
15 "as is" rider.

16 On page 15 he marks and identifies
17 Exhibit 2 to the deposition, which is
18 Exhibit B, sorry, Exhibit D in our binder
19 for today's presentation, which is the
20 sales contract for 706 and lays the
21 necessary predicate to remove 706 -- that
22 contract in evidence that we would offer
23 that Exhibit D as a binder into evidence.

24 MR. BAUMGARTEN: Exhibit D is
25 incomplete in my packet. Exhibit D is one

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1 page, it's just an addendum. Are we
2 missing something?

3 MR. GASSENHEIMER: You're missing C
4 and D.

5 MR. BAUMGARTEN: I don't know how --

6 THE COURT: I have the "as is"
7 contract for sale and purchase for unit
8 706.

9 MR. BAUMGARTEN: You have the
10 addendum?

11 THE COURT: That's correct.

12 MR. BAUMGARTEN: I have no objection
13 to that.

14 THE COURT: That will be admitted as
15 Exhibit Number 2 for purposes of this
16 hearing.

17 THE CLERK: Plaintiff's No. 2 is now
18 admitted in evidence.

19 (Thereupon, Plaintiff's Exhibit No.
20 2 was admitted into evidence.)

21 MR. GASSENHEIMER: On Page 16 the
22 witness testified 706 is also in terrible
23 condition.

24 On Page 18 the witness testifies that
25 he's prepared to close if the Court can

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1 grant him clean title.

2 On page 23 he testifies that he would
3 still consider closing as late as
4 June 30th, whenever the Court can give him
5 clean title.

6 On page 32 he testifies that he has
7 done an estimate of labor and cost to fix
8 up the unit.

9 And only page 35 he testifies that he
10 has fixed up at least three other homes and
11 he knows what people will charge to do this
12 type of work. He says, "I bought several
13 houses and had to redo them. I still own
14 three of the houses, plus one condo. I'm
15 pretty familiar with these types of costs."

16 And that would be what we would
17 highlight for the deposition for the Court.

18 THE COURT: All right. Any cross
19 designations, Mr. Baumgarten?

20 MR. BAUMGARTEN: Yes, your Honor.

21 First of all, we do object to your
22 Honor considering any portion of this
23 deposition other than what's been
24 designated by the party. It's hearsay,
25 relevance, no foundation. So I don't

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1 object to anything that Mr. Gassenheimer
2 designated, but I do object to the Court
3 considering parts that are not designated
4 by Mr. Gassenheimer or myself or any other
5 party.

6 What I would like the Court to include
7 in the record, just to be specific, is the
8 last line on page 11, line 25 and the first
9 three lines of page 12 where Mr. Linville
10 is asked, "Is it your plan to fix up the
11 unit and sell it?" And he says, "I'll
12 probably fix it up and rent it and then
13 sell, you know, if ever the market gets
14 better."

15 On pages 18 and 19 I would like both
16 of those pages to be admitted in full.
17 There Mr. Linville admits that he has not
18 been presented with any title commitment
19 from any title company that's willing to
20 give him clear title.

21 And on page, specifically page 19,
22 lines 12 and 13 he says, "I'm willing to
23 close if the title is clean. On page 20,
24 also lines 1 through 13, he is asked:
25 "When you say get everything resolved, you

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1 mean we have an order from the Court
2 authorizing the sale?"

3 "Yes, get an order from the Court that
4 shows you guys, everyone has clean title,
5 there's no problems."

6 On pages 20, the bottom of page 23 and
7 24, which continues with the part that Mr.
8 Gassenheimer quoted about him willing to
9 wait until June 30th of this year, starting
10 at line 22, on page 23 Mr. Linville was
11 asked, and I think this is particularly
12 important for this hearing:

13 QUESTION: "Would you still consider
14 buying this unit if clear tile, as you've
15 described it, wasn't provided until say
16 June 30th?"

17 ANSWER: "Whenever you guys get clear
18 title, I'm willing to buy it at that
19 price."

20 QUESTION: "Even a year from now?"

21 ANSWER: "Even a year, two years,
22 three years, whatever you want to do."

23 And then continuing on page 24 and 25,
24 which I'd like to be designated as starting
25 on page 22 and page 24:

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1 QUESTION: "Am I correct you never
2 received any kind of title insurance
3 commitment with respect to your purchase of
4 these two units; is that right?"

5 ANSWER: "That is right."

6 The next question starting at page 25:

7 "Has anyone told you or given you the
8 name of a title company that, let's say if
9 the Court allows the receiver to sell the
10 units tomorrow, has anyone given you the
11 name of a title company that will give you
12 a title commitment?"

13 ANSWER: "No."

14 QUESTION: "Okay. Are you aware of
15 any title company if the Court says the
16 receiver can sell those units to you that
17 will give you a title commitment?"

18 ANSWER: "Well, I'm sure if the Court
19 said they were ready to sell it to me, I
20 can find someone."

21 QUESTION: "And what do you base that
22 on?"

23 ANSWER: "Just my knowledge that if
24 the Court says it's clean, I'm sure I can
25 find a title company I would think."

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1 Then I asked him, "Have you asked the
2 seller why they have not provided you with
3 a title commitment?"

4 ANSWER: "Again, it's been held up in
5 court. They thought that the titles would
6 be clean at this next go-around. That's
7 all I know, I really don't get into that
8 part."

9 And then continuing on the bottom of
10 page 25:

11 QUESTION: "But do you know one way or
12 the other whether if tomorrow the Court
13 says the receiver could sell you the unit,
14 you will be able to get a title
15 commitment?"

16 ANSWER: "I don't know that for a
17 fact, but I assume that I could."

18 Then pages 28 through 29, starting
19 with line 22 on page 28:

20 QUESTION: "Did you have ever have an
21 attorney look over this contract, referring
22 to the two contracts for the two units for
23 sale?"

24 ANSWER: "No, sir."

25 QUESTION: "Okay."

JEANNIE REPORTING, INC. (305) 577-1705

1 And then he continues on page 29:

2 "But I obviously will before I buy the
3 property and then -- Sorry, I skipped this
4 part on pages 22 and 23, beginning at line
5 12 I said:

6 QUESTION: "Okay, let me ask you this:
7 When you keep saying you want clear title,
8 what do you mean when you say you want
9 clear title?"

10 ANSWER: "Well, I want to show that
11 you guys, whoever has title, is willing to
12 sell it to me and there's nothing pending
13 on the title like I owe back taxes or
14 whatever. I want it all, you know, like a
15 normal sale. I go, everything is clean, I
16 sign off, it's mine. I don't want to buy
17 something that you guys are still in court
18 haggling over who owns what."

19 QUESTION: "Okay. So I if understand
20 you correctly, if someone gave you title to
21 the unit, let's say, tomorrow, right, that
22 there is a possibility that, you know, six
23 months from now or a year from now you will
24 have to give title back; am I correct that
25 you would not want to buy the units under

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1 these circumstances?"

2 ANSWER: "That is correct."

3 And those are the parts that I would
4 like your Honor to be part of the
5 evidentiary record, in this case from Mr.
6 Linville.

7 THE COURT: Thank you.

8 Any other counsel wishes to address
9 this matter on this witness? Anything
10 further, Mr. Gassenheimer, as to Mr.
11 Linville?

12 MR. GASSENHEIMER: No, your Honor.

13 THE COURT: Thank you. Let's move on
14 to the next witness.

15 MR. GASSENHEIMER: Next we will call
16 as a live witness, Ms. Gail Corenblum, who
17 is in the courtroom.

18 THE COURT: All right, if you'll come
19 forward, please. Come to the middle there
20 and I'll have you have a seat after you've
21 administered the oath.

22 Thereupon,

23 GAIL CORENBLUM,
24 was called as a witness and, having been first duly
25 sworn, was examined and testified as follows:

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1 THE COURT: All right, thank you. Why
2 don't you come over and have a seat there.

3 DIRECT EXAMINATION

4 BY MR. GASSENHEIMER:

5 Q. Good morning, can you introduce
6 yourself to the Court by telling us your full name
7 and your home address.

8 A. Gail Elaine Corenblum. My address is
9 12785 Maple Road, North Miami, Florida 33181.

10 Q. And can you tell the judge what your
11 interest is in these receivership proceedings?

12 A. I am a Berman lender. I was invested
13 in Oceanside Acquisitions, I invested in Oceanside
14 Acquisition and DBKN and Gulf.

15 Q. And do you hold any special position
16 compared with these other lenders with respect to
17 the Oceanside loans?

18 A. I am on the committee, I'm heading the
19 committee on the Oceanside property for the
20 receiver, a small committee of involved lenders.

21 Q. Just so the Court is clear as to what,
22 and just so we all make sure we understand what
23 committee is, did the receiver ask each loan to
24 designate certain lenders to speak on behalf of
25 that loan that you address as a committee those

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1 issues?

2 A. Yes, at the time that the properties
3 went into the receivership I held interest in many
4 properties and I'm serving on a limited number of
5 committees.

6 Q. And you are the chairperson of the
7 Oceanside committee?

8 A. Correct.

9 Q. Now, do you also have personal
10 knowledge, have you been to and seen the Oceanside
11 -- the properties at Gulf Island Resort?

12 A. Yes, I have an elderly aunt who lives
13 in very close proximity and I have visited the
14 properties, I believe, it's four or five occasions,
15 most recently the first week in May.

16 Q. So, the first one I'll have you
17 explain to us what your observations have been
18 about the properties. Are you familiar with units
19 601 and 706?

20 A. Yes, I am.

21 Q. And can you describe for the Court
22 what your personal observations have been when you
23 had an opportunity to see the insides of unit 601
24 and the outside units of 601 and 706?

25 MR. BAUMGARTEN: Your Honor, can we

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1 get a clarification if she's stating the
2 inside or the outside?
3 BY MR. GASSENHEIMER:
4 Q. I'll break down the question.
5 First, describe for the Court what
6 your access has been and what you've been able to
7 see with respect to those two units, 601 and 706.

8 A. I visited both units.

9 Q. Have you had a chance to look inside
10 those units?

11 A. Yes.

12 Q. Did you have an opportunity to
13 photograph both units?

14 A. Yes.

15 Q. And describe for the Court as to each
16 unit separately, identifying which unit you're
17 talking about, what you recall as best you can.

18 A. As best I can, both units are trashed,
19 the kitchens have been gutted, ceilings are falling
20 down, air-conditioning, ductwork is exposed, and
21 hanging, water heaters are gone, there is no
22 electrical wiring, the circuit boxes have been
23 removed, mold everywhere, the apartments are in
24 need of just being totally reconstructed in the
25 interior.

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1 Q. Any appliances?

2 A. No.

3 Q. Any washer/dryer?

4 A. No. Bathroom fixtures are gone,
5 there's no cabinetry, baseboards in some places are
6 removed, other places are molded.

7 Q. How about windows?

8 A. I can't be specific to those units. I
9 visited over a dozen units and I would have to look
10 at my pictures to refresh my memory.

11 Q. And some of the units have missing
12 windows?

13 A. Have broken windows, the fire
14 department has cited Oceanside Acquisitions for
15 broken fire windows.

16 MR. BAUMGARTEN: Objection, hearsay.

17 THE COURT: Sustained.

18 BY MR. GASSENHEIMER:

19 Q. Now, does Oceanside Acquisitions or
20 the receivership, the state of Oceanside
21 Acquisitions have funds available to fix-up these
22 units?

23 A. No.

24 MR. BAUMGARTEN: Objection, no
25 foundation.

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1 THE COURT: Overruled. As the chair
2 of the Oceanside committee on this matter,
3 I'll allow her to testify as to these
4 issues.

5 Go ahead.

6 MR. GASSENHEIMER: Your Honor, if I
7 could approach, I have another one of the
8 exhibit finders for the witness.

9 THE COURT: You may.

10 BY MR. GASSENHEIMER:

11 Q. If you would turn to what I've
12 identified under tab B, which tab A is already in
13 evidence. It's a one-page document.

14 Do you recognize that document?

15 A. Yes, I've seen it.

16 THE COURT: Now, I know, Mr.
17 Gassenheimer, you didn't sabotage his
18 binder.

19 MR. BAUMGARTEN: I know, this was --

20 MR. GASSENHEIMER: I thought he was
21 going to look at something else.

22 THE COURT: All right, go ahead.

23 Thank you.

24 BY MR. GASSENHEIMER:

25 Q. Just so we're all looking at the same

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1 thing, this is a --

2 A. Contract extension.

3 Q. -- contract extension document for
4 unit 601 in which Mr. Linville has agreed to extend
5 the time to close on unit 601?

6 A. Yes.

7 Q. And were you involved in the
8 negotiations of this extension?

9 A. I had been in touch with Claudia
10 Traywick, the realtor, and I was aware that the
11 original contract was expiring shortly after the
12 last hearing, which was postponed, I asked for an
13 extension.

14 Q. On behalf of Oceanside, did you
15 approve this extension?

16 A. Yes.

17 MR. GASSENHEIMER: We move this
18 document into evidence.

19 MR. BAUMGARTEN: On behalf of
20 Oceanside? Your Honor, I object, she
21 doesn't represent Oceanside, she's a
22 creditor of Oceanside. I don't see how
23 this witness can testify on behalf of
24 Oceanside.

25 THE COURT: As a member of the
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1 committee I'm going to overrule your
2 objection and it shall be admitted. A
3 committee that she chairs on behalf of
4 Oceanside.

5 MR. BAUMGARTEN: I thought the
6 receiver approves those --

7 THE COURT: Well, that goes to the
8 weight of the evidence.

9 MR. BAUMGARTEN: I thought she just
10 misspoke.

11 BY MR. GASSENHEIMER:

12 Q. Just so we're clear --

13 THE COURT: Just one moment.

14 THE CLERK: Plaintiff's Exhibit No. 3
15 is admitted in evidence.

16 (Thereupon, Plaintiff's Exhibit No.
17 3 was admitted into evidence.)

18 THE COURT: Thank you.

19 BY MR. GASSENHEIMER:

20 Q. As the committee chair of Oceanside,
21 has Michael Goldberg, as court appointed receiver,
22 given you or advised you of certain authority to
23 act on behalf of Oceanside?

24 A. Yes.

25 Q. Are there some decisions that you're

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1 allowed to make and some decisions that he requires
2 you to review with him?

3 A. Just about every decision is reviewed.

4 Q. Okay. And did you have the authority
5 to enter into the extension on behalf of Oceanside?

6 A. Yes.

7 Q. So if you would turn to the next tab
8 in your binder, tell us what you have so we all
9 make sure we're on the same page.

10 A. Copies of photographs.

11 THE COURT: That would be C, tab C.

12 BY MR. GASSENHEIMER:

13 Q. Okay. Can you describe for the Court
14 these photocopies of certain photographs that were
15 taken, what those depict, if you can?

16 A. It's what's been stated, the
17 apartments are in need of gutting, new electrical,
18 new fixtures, new furnishings, woodwork, ceilings,
19 air-conditioning, water heaters and cleanup.

20 Q. Are these photographs that you took?

21 A. Yes.

22 MR. GASSENHEIMER: We would move these
23 into evidence.

24 THE COURT: Any objection?

25 MR. BAUMGARTEN: Your Honor, I would

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1 object on the ground of relevance, unless
2 some witness, this witness or another
3 witness, can establish that these are
4 conditions that did not exist at the time
5 the lenders first became involved in
6 investing in Oceanside.

7 THE COURT: Overruled, it shall be
8 admitted.

9 THE CLERK: Composite Exhibit 4,
10 Plaintiff's Exhibit 4, has been admitted in
11 evidence.

12 (Thereupon, Plaintiff's Exhibit No.
13 4 was admitted into evidence.)

14 BY MR. GASSENHEIMER:

15 Q. If you would turn to the next tab.

16 A. Yes.

17 Q. And just describe what you have, so I
18 can make sure --

19 A. The contract for unit 706.

20 Q. All right. And that's already in
21 evidence and let's go to the next tab.

22 A. The next tab I have the extension for
23 the contract.

24 Q. Okay. Would your testimony if I asked
25 the same questions as to the extension for 601 be

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1 the same for the contract on 706 extension?

2 A. Yes.

3 MR. GASSENHEIMER: With that proffer,
4 I would move the extension on 706 into
5 evidence.

6 THE COURT: Any objection?

7 MR. BAUMGARTEN: No, your Honor.

8 THE CLERK: Plaintiff's No. 5 is
9 admitted in evidence.

10 (Thereupon, Plaintiff's Exhibit No.
11 5 was admitted into evidence.)

12 BY MR. GASSENHEIMER:

13 Q. I believe the next tab is photographs
14 of unit 706.

15 A. Yes.

16 Q. And did you take those photographs?

17 A. Some of them, some of them mine didn't
18 come out and Claudia provided me with some.

19 Q. Can you look through each of the
20 photographs and let the Court know if they
21 accurately depict what you saw when you were inside
22 unit 706?

23 A. Yes.

24 MR. GASSENHEIMER: With that testimony
25 we would offer these photographs in

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1 evidence.

2 THE COURT: Any objection?

3 MR. BAUMGARTEN: Just the relevancy
4 before of it.

5 THE COURT: Based on her prior
6 testimony it shall be admitted.

7 THE CLERK: Plaintiff's Exhibit 6,
8 Composite Exhibit 6 admitted in evidence.
9 (Thereupon, Plaintiff's Exhibit No.
10 6 was admitted into evidence.)

11 BY MR. GASSENHEIMER:

12 Q. If you can let me know what the next
13 tab is in your binder.

14 A. The next tab are photographs of unit
15 510, just another unit.

16 Q. So let's skip that and move to the
17 next tab.

18 A. Tax notices.

19 MR. GASSENHEIMER: We have filed, your
20 Honor, with the Court a request, for the
21 Court to take judicial notice of certain
22 public records of Pasco County and those
23 are marked in the binders as Exhibit G,
24 which show the delinquent taxes on unit
25 706.

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1 THE COURT: You said G?

2 THE CLERK: H.

3 MR. GASSENHEIMER: I apologize, H.

4 THE COURT: Is there any objections,
5 Mr. Baumgarten?

6 MR. BAUMGARTEN: No, your Honor.

7 THE COURT: Then it shall be admitted
8 as the -- Well, the Court will take
9 judicial notice and I will admit it as the
10 next exhibit in evidence.

11 MR. GASSENHEIMER: Thank you.

12 THE CLERK: Plaintiff's No. 7 has been
13 duly noted.

14 (Thereupon, Plaintiff's Exhibit No.
15 7 was admitted into evidence.)

16 BY MR. GASSENHEIMER:

17 Q. Ms. Corenblum, on behalf of the
18 committee, have you been involved with, for
19 instance, market research or analysis in order to
20 put you in a position to make a recommendation with
21 respect to the sales price of these units?

22 A. Yes.

23 Q. Can you describe for the Court the
24 type of documents and the things that you did to
25 educate yourself on the market?

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1 A. I looked online on the computer at
2 recent sales and properties that were listed for
3 sale. I spoke with more than one realtor up there,
4 I believe I spoke with three realtors. I have an
5 aunt who lives probably a half of mile from the
6 property.

7 So in my visits I see what's going on
8 in Hudson, Florida. It's a very sleepy area,
9 shopping centers are vacant, things are not --
10 business is not booming in Hudson, Florida and
11 until there was any kind of an ability to try to
12 get clear title there was nothing to sell, there
13 was nothing to do with these units.

14 These units have been in litigation, I
15 have -- you know, since seven years already. I
16 have no idea what those expenses will amount to.
17 But on my visits every time I'm there I feel more
18 and more that something has got to be done for the
19 homeowners --

20 Q. Okay, let's just stick with --

21 A. -- of these units.

22 MR. BAUMGARTEN: I just move to strike
23 the testimony of Ms. Corenblum about the
24 market conditions in Hudson County. She's
25 not qualified as an expert.

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1 THE COURT: Sustained.

2 BY MR. GASSENHEIMER:

3 Q. Perhaps I wasn't clear, I just want
4 you to focus on the type of things you looked at,
5 so that as the chairperson of the committee you
6 felt like you could be in a position to make a
7 recommendation to the receiver about the
8 appropriate pricing.

9 A. I looked at sales in that building and
10 listings in that building.

11 Q. If you would, I believe the next -- I
12 think it's under tab K.

13 A. Yes.

14 Q. Is this one of the documents that you
15 looked at and considered?

16 A. Yes.

17 Q. And describe for the Court what this
18 is and why you looked at it?

19 A. These are active listings on the MLS
20 and a couple of closed listings in the same
21 building, different units.

22 MR. GASSENHEIMER: Now, we would offer
23 this document not into evidence, not for
24 the truth of the matter asserted, but to
25 show the due diligence that was done by the

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1 committee in recommending the price to the
2 receiver, that the type of information that
3 was reviewed and to show that there was due
4 diligence performed in the decision to
5 recommend the price.

6 THE COURT: Any objection, Mr.
7 Baumgarten, for that noted purpose?

8 MR. BAUMGARTEN: I don't object to it
9 being admitted as toward the issue of due
10 diligence, but I don't know if this
11 document constitutes due diligence.

12 THE COURT: All right, I'll allow the
13 admission for purposes of showing what this
14 witness, Ms. Corenblum, has done as a
15 member of the committee for those certain
16 obligations. So it's the next exhibit.

17 THE CLERK: This will be Plaintiff's
18 Exhibit No. 8 admitted in evidence.

19 (Thereupon, Plaintiff's Exhibit No.
20 8 was admitted into evidence.)

21 BY MR. GASSENHEIMER:

22 Q. Now, Ms. Corenblum, have you also met
23 with the association?

24 A. Yes. On my last visit I met Mr.
25 Lawford.

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1 Q. And what was the purpose of that
2 visit?

3 A. He was at the property and he was sort
4 of appealing to me for some sort of help. 92 units
5 in the building are current with their assessments
6 and their dues and we have 16 units that are in
7 arrears.

8 They've recently had to put up a
9 seawall, which he showed me, to retain the property
10 and that burden has been carried by the other
11 homeowners. The building is in tremendous need of
12 painting. We have pigeon problems in some of our
13 vacant units --

14 MR. BAUMGARTEN: Your Honor, I object
15 to this testimony about pigeon problems
16 and --

17 THE COURT: Sustained.

18 THE WITNESS: I'm sorry.

19 BY MR. GASSENHEIMER:

20 Q. So, Ms. Corenblum, based on your
21 discussions with the president of the association,
22 your observations of the units, your observations
23 of the conditions of the units, the market research
24 that you've done, did you make a recommendation as
25 to the receiver in regard to the appropriateness of

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1 the \$120,000 offer on each of the units?

2 A. Yes, I did.

3 Q. And was it your recommendation to the
4 receiver that the receivership accepts these
5 contracts at the Court's approval in light of your
6 research and the work that you've done?

7 A. Yes.

8 MR. GASSENHEIMER: Your Honor, those
9 are the questions that we would present on
10 the direct testimony.

11 THE COURT: All right. Mr.
12 Baumgarten, you may cross-examine.

13 MR. BAUMGARTEN: Thank you, your
14 Honor.

CROSS EXAMINATION

16 BY MR. BAUMGARTEN:

17 Q. Ms. Corenblum, when did you first
18 become a creditor of Oceanside or -- I'm sorry, are
19 you a creditor of Oceanside or DBNK or both?

20 A. Both.

21 Q. When did you first become a creditor
22 of Oceanside and DBKN?

23 A. At the initial purchase, I guess it's
24 '03, early '03.

25 Q. 2003?

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1 A. Yes.

2 Q. Why did you become a creditor of
3 Oceanside and DBKN in 2003?

4 MR. GASSENHEIMER: Objection,
5 relevance, beyond the scope.

6 THE COURT: What is the relevance?

7 MR. BAUMGARTEN: This has to do with
8 the issue of a bond and a stay and the
9 equities which Mr. Gassenheimer said is
10 something the Court should consider, I'm
11 trying to establish, your Honor, that the
12 lenders got into this case knowing that,
13 either knowing what the problems were or
14 not caring what the problems were, and also
15 not bothering to spend any money to fix the
16 problems, which are supposed to be the
17 reason why an extraordinary sale is
18 necessary.

19 THE COURT: All right, I don't want to
20 get into a final argument about this, but
21 I'll give you some leeway. But let's just
22 get to the heart of it, please.

23 THE WITNESS: Repeat the question.

24 Sorry.

25 BY MR. BAUMGARTEN:

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1 Q. Why did you decide to become a
2 creditor?
3 A. I had seen an offering on this
4 property, I did not -- my extent of the problems
5 that you've addressed, there was title insurance,
6 it was a beautiful piece of property, it was going
7 to be fixed up and I was going to receive interest
8 payments.

9 Q. And interest of at least 14 percent,
10 correct?

11 A. I believe so.

12 Q. And you received approximately \$40,000
13 of interest on your investment; is that right?

14 MR. GASSENHEIMER: Objection,
15 relevance.

16 THE COURT: Sustained.

17 BY MR. BAUMGARTEN:

18 Q. Did you or any other lender examine
19 any of the Oceanside units before you invested
20 money in Oceanside and DBKN?

21 MR. GASSENHEIMER: Objection.

22 THE COURT: Sustained.

23 MR. BAUMGARTEN: Your Honor, I need to
24 establish that this witness has no idea
25 what the status of the units was in 2003

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1 and that it's gotten worse.

2 THE COURT: There are some other
3 questions you could ask regarding that.
4 You could ask what she did.

5 Go ahead. You mentioned other things. --

6 MR. BAUMGARTEN: Oh, okay.

7 Ms. Corenblum, did you -- but I
8 thought you were speaking on behalf of the
9 committee.

10 Are you here to testify on behalf of
11 the other lenders, Ms. Corenblum, or just
12 yourself?

13 THE WITNESS: I'm speaking for myself.

14 BY MR. BAUMGARTEN:

15 Q. Okay.

16 Did you, Ms. Corenblum, look at any of
17 these units, the Oceanside units at issue here,
18 before you invested money in Oceanside and DBKN?

19 A. No.

20 Q. Did you ever visit the property?

21 A. Not initially. Shortly after.

22 Q. After you invested the money you
23 visited the property?

24 A. Yes.

25 Q. Did you ever look at any photographs

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1 of the inside of the units before you invested
2 money with Oceanside?

3 A. I really don't recollect.

4 Q. Are you aware of any other lender who
5 looked at any of these units before they invested
6 money in Oceanside?

7 MR. GASSENHEIMER: Objection,
8 predicate.

9 THE COURT: Sustained.

10 Don't answer.

11 THE WITNESS: Okay.

12 THE COURT: If I sustain it, you don't
13 answer it. If I overrule it, you answer.

14 All right, go ahead, your next
15 question.

16 BY MR. BAUMGARTEN:

17 Q. Does the committee know what the
18 status, the committee that you described, did the
19 committee know what the status was of these units
20 back in 2003?

21 A. I visited in 2004 and I can tell you
22 what I saw then.

23 THE COURT: The question is about what
24 the committee knows about what the status
25 was back in 2003. If you are able to

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1 testify about what the committee members
2 knew.

3 THE WITNESS: I do not know what
4 others know.

5 THE COURT: Thank you, next question.

6 BY MR. BAUMGARTEN:

7 Q. Does the committee know whether or not
8 the status of these units has deteriorated since
9 2003 through today?

10 A. Yes.

11 Q. Okay. And what does the committee
12 know about that?

13 A. I personally saw units under
14 construction or refurbishing, furnished units, and
15 they are, in my last visit, they are not the way I
16 had seen them.

17 Q. You've seen units that have been
18 improved?

19 A. Yes, probably in '04 or '05.

20 Q. And which units had you seen were
21 improved, the ones at issue here or other units?

22 A. I can't tell you specifically. We're
23 talking 16 units, some of the units were improved.

24 Q. Now, you've previously testified at
25 the hearing before Judge Wilson that as far back as

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1 2003, these units needed repairs.
 2 You recall that?
 3 **A. I don't recall.**
 4 **Q.** I'm sorry?
 5 **A. I don't recall.**
 6 **Q.** Let me show you the transcript of the
 7 hearing held on July -- May I approach the witness?
 8 THE COURT: You may.
 9 BY MR. BAUMGARTEN:
 10 **Q.** -- the hearing held on July 15th,
 11 2009, in this matter before Judge Wilson.
 12 You were present at that hearing, were
 13 you not?
 14 **A. Yes.**
 15 **Q.** And you testified at that hearing, did
 16 you not?
 17 **A. Yes.**
 18 **Q.** And do you recall I asked you the
 19 following question at page 62, line 3:
 20 "QUESTION: Do you know what condition
 21 these units were in at the time you
 22 invested in them?
 23 "ANSWER: I knew that every unit
 24 needed repair.
 25 "QUESTION: Back in 2003, right?
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1 "ANSWER: Yes, I believe so."
 2 Was that your testimony at that time?
 3 **A. Yes, I guess.**
 4 **Q.** And was it true?
 5 **A. I knew that units were going to be**
 6 **fixed up, I hadn't seen them in '03.**
 7 **Q.** Was your testimony that I read to you
 8 true?
 9 **A. Yes.**
 10 **Q.** Has the committee sent any money to
 11 repair the Oceanside units?
 12 **A. No.**
 13 **Q.** Have you spent any money to repair the
 14 Oceanside units?
 15 **A. No. I believe I contributed money for**
 16 **certain costs for insurance. I may have loaned**
 17 **some insurance on the property and corporate**
 18 **reports. I don't recall. I know I have invested**
 19 **money in the property.**
 20 **Q.** Are you aware of any lender that has
 21 spent any money to maintain the Oceanside units or
 22 repair them?
 23 **A. No.**
 24 **Q.** Just so I understand, Ms. Corenblum,
 25 is it your position that you're asking the Court
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1 rather than having the lender spend any money to
 2 correct any deteriorated conditions in the unit,
 3 the Court instead should just let the units be
 4 sold; is that your position?
 5 **A. Can you repeat your question?**
 6 MR. BAUMGARTEN: Could you read it
 7 back?
 8 (Thereupon, the question was read back.)
 9 THE WITNESS: Yes.
 10 May I explain?
 11 THE COURT: I'm hoping that you
 12 explain, yes.
 13 THE WITNESS: Because the ownership
 14 issue has not been resolved and there's no
 15 clear title to these units, no one is going
 16 to invest in these units, but the
 17 obligations, the taxes are accruing at a
 18 percentage of, I think 18 percent a year.
 19 There are certificates out for three years,
 20 the HOA is accumulating costs.
 21 I just feel that if the price is
 22 reasonable, rather than letting costs to
 23 keep accruing at these high percentages,
 24 we're better off doing what's best for
 25 everybody because somebody eventually is
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1 going to have to pay these costs anyway.
 2 BY MR. BAUMGARTEN:
 3 **Q.** Well, why did the committee not
 4 recommend to the receiver that the units be fixed
 5 up and rented out until they could be sold?
 6 **A. No one is in a position to put money**
 7 **in.**
 8 **Q.** And how do you know that?
 9 **A. We have requested previously, we asked**
 10 **for monies to come in, you mentioned interest**
 11 **earned. We are in arrears to M.A.M.C. for monies**
 12 **that have been laid out on these properties.**
 13 **Q.** When you say no one is in a position,
 14 are you referring to the other lenders?
 15 **A. Yes.**
 16 **Q.** Is it your testimony you simply asked
 17 them for money and they refused to give it to you,
 18 right?
 19 **A. On at least three occasions.**
 20 **Q.** And did you look at any documents,
 21 financial statements of any of these lenders --
 22 **A. No.**
 23 **Q.** I'm sorry, let me finish the
 24 question -- to determine whether, in fact, they
 25 could give you the money, they just choose not to?
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1 **A. No.**
 2 **Q.** So you don't know whether the lenders
 3 are in a financial position or were in a financial
 4 position to have spent money to repair units and
 5 rent them out; is that correct?
 6 **A. That's correct.**
 7 **Q.** Ms. Corenblum, do you know what real
 8 estate prices will be like in a year from now at
 9 the resort?
 10 **A. No, I do not.**
 11 **Q.** Does anyone in the committee know what
 12 real estate prices will be in year from now at the
 13 resort?
 14 **A. No.**
 15 **Q.** Has the committee retained an expert
 16 to determine what real estate prices are likely to
 17 be in a year from now?
 18 **A. No.**
 19 **Q.** Is it fair to say, Ms. Corenblum, that
 20 your interest in having the unit sold is simply to
 21 get back whatever part of your investment that you
 22 haven't gotten back yet?
 23 **A. Absolutely not.**
 24 **Q.** Ms. Corenblum, are you aware of
 25 efforts that the association has made to fix the

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1 mold issues in these units?
 2 **A. Yes. Mr. Walter, on his own personal**
 3 **decision, bought a fogging machine and has been**
 4 **fogging some of our units.**
 5 **Q.** And those results have been
 6 successful, correct?
 7 **A. To a degree.**
 8 **Q.** When did you first meet Claudia
 9 Traywick?
 10 **A. This past year.**
 11 **Q.** Okay. Was Claudia Traywick the real
 12 estate agent who was retained to arrange for the
 13 potential sale or intent to a contract with Mr.
 14 Linville for the sale of two units?
 15 **A. No, we never retained a realtor.**
 16 **Q.** And why not?
 17 **A. Because we were not in a position to**
 18 **sell without clear title.**
 19 **Q.** Well, can you explain to me why
 20 Coastal Real Estate is listed as the real estate
 21 broker for unit 601 and 706 as evidenced by the
 22 contracts that have been admitted in this case?
 23 **A. When I visited the property last year**
 24 **I knew I had called Fred Gould and asked him about**
 25 **admission into their apartments and I spoke with**

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1 **them, a couple of months prior to these contracts**
 2 **Claudia called me. I had left my contact**
 3 **information when I was there and she said she had**
 4 **somebody looking at units, would it be okay to show**
 5 **the Oceanside units and had we gotten anywhere with**
 6 **title and --**
 7 **Q.** I didn't want to cut you off.
 8 Go ahead.
 9 **A. That's --**
 10 **MR. GASSENHEIMER:** I move to strike as
 11 nonresponsive.
 12 **MR. BAUMGARTEN:** I object, your Honor,
 13 it's exactly responsive to the question.
 14 **THE COURT:** I'm going to overrule;
 15 however, you may file a petition on the
 16 questions, on the first question asked in
 17 this issue.
 18 **BY MR. BAUMGARTEN:**
 19 **Q.** Let me show you the contract for sale
 20 of unit 601.
 21 **A. Right. Claudia had called me and said**
 22 **that she had somebody who would like to see the**
 23 **units.**
 24 **Q.** Okay. Would you look at the contract
 25 of the signature page and who's placed there as the

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1 listing broker?
 2 **A. Coastal Realty.**
 3 **Q.** Now, does it indicate what fee she
 4 intends --
 5 **A. Six percent.**
 6 **Q.** I'm sorry, let me finish for the
 7 record.
 8 Does it indicate what fee she intends
 9 to receive as a broker in connection with the sale
 10 of unit 601?
 11 **A. Six percent.**
 12 **Q.** Are you saying that's invalid, she's
 13 not entitled to six percent?
 14 **A. I'm saying there's no listing**
 15 **agreement.**
 16 **Q.** So you're saying she's not going to
 17 get any money out of any sale as far as you
 18 understand?
 19 **A. No, sir, I'm not saying that.**
 20 **Q.** I'm sorry, I just want to get to 706.
 21 Okay, I'll show you also the contract
 22 for unit 706 that's been admitted into evidence and
 23 ask you who, if it's Coastal Real Estate, who's
 24 listed as the listing broker?
 25 **A. Yes, it is.**

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1 Q. And how much of a fee would Coastal
2 get?

3 A. Six percent.

4 Q. And Ms. Traywick works with Coastal
5 Real Estate, correct?

6 A. Correct.

7 Q. And so does Craig Gould, correct?

8 A. Correct.

9 Q. Was Coastal Real Estate, was a motion
10 ever made with this Court to have Coastal Real
11 Estate approved as the broker in connection with
12 the sale of unit 601 and 706?

13 A. Not to my knowledge.

14 Q. Do you know why that wasn't done?

15 A. To the best of my knowledge, we are
16 proceeding to try to obtain clear title, so that we
17 can move some units.

18 Q. Anything else you want to say in
19 response to that question?

20 A. No, no thank you.

21 Q. Are you aware that approximately
22 \$50,000 of proceeds from the sales of other units
23 that were owned by Oceanside were generated by the
24 receiver?

25 A. Could you repeat that, sorry?

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1 (Thereupon, the question was read back.)

2 MR. GASSENHEIMER: Objection,
3 relevance --

4 THE WITNESS: No.

5 MR. GASSENHEIMER: -- beyond the
6 scope.

7 THE COURT: Overruled. Her answer is
8 no. Let's move on, please.

9 BY MR. BAUMGARTEN:

10 Q. Okay, let me show you the testimony
11 from page 103 at the hearing on July 15th, 2009.
12 You were present for the testimony of
13 Harold Gassenheimer, were you not?

14 A. Yes.

15 MR. GASSENHEIMER: This is improper
16 impeachment, your Honor. He's trying to
17 recall her testimony by showing her the
18 testimony of another witness.

19 THE COURT: Is that what you're trying
20 to do, show the testimony of Mr. Howe
21 Gassenheimer?

22 MR. BAUMGARTEN: To refresh her
23 recollection about what the receiver did or
24 did not do.

25 THE COURT: Sustained.

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1 BY MR. BAUMGARTEN:

2 Q. Can you tell us why the receiver spent
3 \$50,000 of the proceeds from the sale of Oceanside
4 units to pay legal fees to its counsel not in
5 connection with the sale of the Oceanside units?

6 MR. GASSENHEIMER: Objection,
7 relevance and predicate.

8 THE COURT: If you know, you can
9 answer.

10 BY MR. BAUMGARTEN:

11 Q. Do you know why?

12 A. Without more specific information I
13 don't.

14 Q. Did the receiver ever ask you or
15 anyone else on the committee whether to take any of
16 the proceeds from the sale of other Oceanside units
17 and use them for anything other than paying overdue
18 fees or overdue maintenance fees or taxes?

19 A. No. To the best of my knowledge there
20 has been no sales since the receiver has -- since
21 the receivership.

22 Q. Do you know if the receiver ever asked
23 you permission for use of fees generated by prior
24 sales, of sales prior to the receiver being
25 appointed, that were in Oceanside's accounts, the

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1 receiver ask anyone from the committee for
2 permission to use those fees for things that are
3 not related to Oceanside?

4 MR. GASSENHEIMER: Objection,
5 predicate, foundation.

6 THE COURT: Overruled. If she knows.
7 If you know.

8 THE WITNESS: No.

9 BY MR. BAUMGARTEN:

10 Q. Can you tell us why the lenders have
11 allowed these units to allegedly waste away during
12 the proceedings in this case until now?

13 A. Without a resolve to the litigation
14 issues, our hands were tied.

15 Q. Any other explanation?

16 A. No.

17 Q. Did Ms. Traywick ever tell you that
18 Coastal Realty was a defendant in the underlying
19 case in which Gulf Island Resort was seeking to --

20 A. Yes.

21 Q. -- obtain title to these units?

22 MR. GASSENHEIMER: Objection, hearsay.

23 THE COURT: Sustained.

24 BY MR. BAUMGARTEN:

25 Q. The list that was admitted regarding

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1 the issue of due diligence, I believe that's
 2 Exhibit H.
 3 Did you print out this list?
 4 **A. H?**
 5 **Q.** I don't know which one it is in your
 6 book.
 7 **A. Okay. On the sales?**
 8 **Q.** Right.
 9 **A. Yes, I did print that out.**
 10 **Q.** And what period of time do these sales
 11 cover?
 12 **A. I have to look.**
 13 I'm sorry, I'm not finding it.
 14 **Q.** Here, you could look at mine.
 15 **A. Here.**
 16 **Q.** There you go.
 17 **A. This was done, this was printed**
 18 **March 18th in preparation of --**
 19 THE COURT: The question is, what
 20 period did those sales come?
 21 THE WITNESS: We were looking at
 22 everything within the last, I believe it
 23 was, six to eight months.
 24 BY MR. BAUMGARTEN:
 25 **Q.** Okay. So looking at the -- and,
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1 sorry, does this document provide the sale prices
 2 for any of the units described there or the list
 3 prices or both?
 4 **A. Both, four were active listings in**
 5 **March and four were closed.**
 6 **Q.** And which units were closed?
 7 **A. The bottom four.**
 8 **Q.** So one unit, the one next to MLS No.
 9 7446518 was sold for \$225,000?
 10 **A. Yes.**
 11 **Q.** In the last six to eight months?
 12 **A. Yes, I saw pictures.**
 13 **Q.** And the next unit identified with MLS
 14 No. 7425676 sold for \$198,000 in the last six to
 15 eight months; is that correct?
 16 **A. Yes.**
 17 **Q.** And then the last two were sold for
 18 \$169,900 and \$156,000; is that correct?
 19 **A. Correct.**
 20 **Q.** And the other four have not been sold
 21 yet or were not sold as of March 18th; is that
 22 right?
 23 **A. Correct.**
 24 **Q.** At what price did the committee or
 25 receiver list the two units that Mr. Linville is
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1 contemplating purchasing?
 2 MR. GASSENHEIMER: Objection,
 3 predicate.
 4 THE WITNESS: They were never listed.
 5 BY MR. BAUMGARTEN:
 6 **Q.** Never listed at all.
 7 **A. No.**
 8 **Q.** Why is that?
 9 **A. Because of title issues.**
 10 **Q.** Besides yourself, is there any other
 11 person who has -- I'm sorry, besides yourself and
 12 the receiver, is there any other person who has
 13 determined that \$120,000 is a fair price for these
 14 two units?
 15 **A. I discussed this with other investors,**
 16 **Mr. Parker and Mrs. Kidney, Mr. Kaplan.**
 17 **Q.** Anyone else?
 18 **A. Probably spoke with a couple of other**
 19 **people also.**
 20 **Q.** What people, other investors?
 21 **A. Other investors.**
 22 **Q.** Besides other investors, anyone else
 23 you spoke to about what a fair price would be for
 24 these two units?
 25 **A. I spoke with another realtor in the**
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1 area.
 2 **Q.** I believe I'm finished.
 3 **A. And --**
 4 **Q.** I'm sorry, I didn't mean to cut you
 5 off.
 6 Are you aware as you sit here today of
 7 any other unit owners who are complaining about the
 8 conditions of unit 601 and 706 in terms of it
 9 adversely affecting their physical health?
 10 **A. Not to me personally, but I've been**
 11 **told.**
 12 MR. BAUMGARTEN: Okay. No further
 13 questions.
 14 THE COURT: Any redirect?
 15 MR. GASSENHEIMER: Brief redirect,
 16 your Honor.
 17 REDIRECT EXAMINATION
 18 BY MR. GASSENHEIMER:
 19 **Q.** Just so we're clear, did the receiver
 20 or the committee ever retain Ms. Traywick to list
 21 any units owned by Oceanside?
 22 **A. No, sir.**
 23 **Q.** Was it Ms. Traywick who brought you
 24 Mr. Linville as a client?
 25 **A. Yes.**
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1 Q. Your understanding is she was
2 representing Mr. Linville?
3 A. Yes.
4 Q. Is it your understanding that she is
5 getting a commission because she was representing
6 Mr. Linville and that's something Mr. Linville
7 agreed to?

8 A. Correct.

9 Q. With respect to, you said you were
10 rushed through the discussion of the price of unit
11 for the \$225,000 sale and you said you saw pictures
12 and Mr. Baumgarten cut you off.

13 A. Yes.

14 Q. Was there more to that answer; can you
15 tell us what those pictures showed?

16 A. A completely furnished unit with
17 granite kitchens and marble floors and tremendous
18 upgrades.

19 Q. If you would turn in your binder to L.

20 A. Yes, sir.

21 Q. Is it an e-mail from Michelle Perkins?

22 A. Yes.

23 Q. When you're asked about it, did you
24 speak with another broker about an appropriate
25 price for these units, is that what you were

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1 referring to?

2 A. Yes.

3 MR. BAUMGARTEN: Your Honor, this is
4 beyond direct.

5 THE COURT: I'll overrule, because you
6 opened the door in cross. Either way --

7 MR. BAUMGARTEN: The door is opened.

8 THE COURT: Thank you.

9 Go ahead.

10 BY MR. GASSENHEIMER:

11 Q. And the e-mail says that this broker's
12 opinion was the price of \$99,000 or \$110,000 would
13 be reasonable in the condition of those units; is
14 that something you relied upon in making your
15 decision?

16 A. Yes.

17 MR. BAUMGARTEN: Objection, it's
18 hearsay testimony.

19 THE COURT: Overruled.

20 MR. GASSENHEIMER: Those are the
21 questions I have.

22 THE COURT: Thank you.

23 Are there any other parties that wish
24 to ask any questions of this witness?

25 All right, thank you. You may step

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1 down.

2 THE WITNESS: Thank you.

3 THE COURT: Let me do this, I've been
4 at --

5 MR. LINDE: Your Honor?

6 THE COURT: Yes.

7 MR. LINDE: This is Chris Linde with
8 Hurr & Foreman, I guess I should wait till
9 I hear what you were going to say, but I
10 just came in for a limited point, which I
11 came in for the last hearing and wanted to
12 just maybe make the point and then ask your
13 Honor to be dismissed from the hearing.

14 THE COURT: What's your limited point?

15 MR. LINDE: If you do rule on the
16 motion and agree to the sale, which I
17 understand might not occur, your previous
18 order mentioned that the net proceeds from
19 the sale would be paid outstanding
20 condominium fees and taxes and we had
21 previously come to a hearing and just made
22 the point, and I don't think there were any
23 objections last time, that the phrase taxes
24 include tax certificates which our client
25 holds on the subject property.

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1 I don't believe there were any
2 objections last time and I haven't heard
3 that that would change, but I wanted to
4 make that point on the record and then
5 asked to be dismissed.

6 THE COURT: I won't dismiss you, but
7 I'll excuse you.

8 MR. LINDE: Okay.

9 THE COURT: Okay, you're excused.
10 Thank you so much.

11 MR. LINDE: Thank you very much.

12 THE COURT: All right. Let me do
13 this, ladies and gentlemen, I've been going
14 at this since eight o'clock. There was
15 another hearing I started before this. I
16 need to take at least a five-minute recess.

17 I'll ask everyone else who's on the
18 phone to remain on the phone unless you
19 want to have us contact you and then
20 resume. But I will resume promptly within
21 the next five minutes. Some of you may
22 want to break as well. All right, so let's
23 resume in five minutes. Thank you.

24 (Thereupon, a short recess was taken
25 at 10:45 a.m. and at 10:50 a.m. the hearing

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1 continued as follows:)

2 THE COURT: Thank you, have a seat
3 everyone.

4 Before we resume with the next
5 witness, let me just find out, Mr Joseph?

6 MR. JOSEPH: Yes, sir.

7 THE COURT: Is your matter something
8 that can be taken up quickly or and are you
9 going to be remaining or desire to sit
10 through these proceedings?

11 MR. JOSEPH: I think that my motion
12 will take about ten minutes. I may remain,
13 but I know that Mr. Throckmorton -- I'm
14 guessing that Mr. Throckmorton and the
15 others will not. And I may leave as well.

16 THE COURT: I'll tell you what then,
17 maybe what I want to do, and I apologize to
18 you, I should have considered taking up
19 your motion earlier to get you out of here,
20 and I'm sure you have many other things
21 you'd rather be doing and places you'd
22 rather be. Let me address that motion now
23 and then that way I can resume with the
24 evidentiary hearing.

25 So we're going to break now to take up

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1 the matter of the motion for the Court to
2 determine whether Axis Surplus Insurance
3 Company may proceed with the declaratory
4 judgment action. So I'll first hear from
5 Mr. Joseph.

6 MR. JOSEPH: May I take the podium,
7 sir?

8 THE COURT: Yes.

9 MR. JOSEPH: Your Honor, by way of
10 very brief history, you read the --

11 THE COURT: I did.

12 MR. JOSEPH: Okay. We were hired in
13 May 2008 to explore whether or not there
14 was insurance coverage for certain -- by
15 Dana Berman and the insured, Berman
16 Mortgage Corporation and their insured,
17 their officers. We conducted an
18 investigation and sent out demands and
19 dialog with two representative insurance
20 companies, one of which we were successful
21 with, the other, Axis Insurance Company,
22 which we received no success in the
23 negotiations, so about a year later in May
24 of 2009 we filed a class action lawsuit.

25 The lawsuit is brought by the receiver

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1 on behalf of the lenders as well as the
2 lender on behalf of the lenders.

3 So with our complaint, the insurance
4 company, Axis, filed a dec action in
5 federal court. Moving forward, your Honor
6 became involved in November of '09 where
7 Judge Seitz from the federal bench wanted
8 to know what your thoughts were. And, as
9 you said, we had a hearing before you and
10 you indicated that you were going to let
11 Judge Seitz know and, in fact, you ruled
12 that you wanted the dec action to be abated
13 until the underlying class action was
14 determined. Judge Seitz then dismissed the
15 dec action on November 25th.

16 A few months later in February Axis
17 filed a second dec action in state court.
18 Also in February, Dana Berman, the
19 defendant in our suit, filed bankruptcy.
20 So the dec action in state court was filed
21 in February.

22 Now, moving forward, we had a motion
23 to dismiss -- Well, actually moving forward
24 in my class action, which isn't in the
25 papers, in May of this year the defendants

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1 moved to stay the class action pending a
2 determination of the dec action and that's
3 before Judge Siegler. Judge Siegler ruled
4 I'm going to go and give a temporary stay,
5 a six-month stay and we report every
6 90 days, I believe and let her know what's
7 going on because one of my oppositions to
8 the motion to the stay is they're not
9 moving quick enough for it. They, being
10 Axis, isn't moving very quickly.

11 Long story short, the next month we
12 had a hearing on a motion to dismiss the
13 dec action. That was heard by, not Judge
14 Esquiroz, I'm drawing a blank.

15 MR. BAUMGARTEN: Gordon.

16 MR. JOSEPH: Thank you. I would have
17 been here forever. Judge Gordon heard the
18 motion to dismiss and he deferred. He
19 wanted us to come back to you to figure out
20 whether or not that can proceed with the
21 dec action. I will tell you that as we sit
22 here there's been no relief sought in the
23 bankruptcy court to lift the stay, so we
24 can actually serve Dana Berman, who is a
25 party to the dec action.

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1 So we're sitting here a year later and
2 we haven't really moved too much of my
3 class action. They're trying, they, being
4 Axis again, is trying to move forward with
5 their dec action.

6 My clients at this point need to move
7 forward, we're happy to go forward with the
8 dec action, we're happy to go forward with
9 the class action, but we need to move
10 forward, we can't just be at a standstill
11 anymore.

12 So Judge Gordon had asked us to come
13 back to you for your reference rather than
14 wait for Axis to come before you and ask
15 for relief. I'm asking you to make a
16 decision one way or the other on behalf of
17 our clients, whether the dec action will
18 move forward or whether the class action
19 will move forward. We're prepared and
20 happy to go either way.

21 MR. GASSENHEIMER: Your Honor, James
22 Gassenheimer on behalf of Michael Goldberg,
23 in the dec action because Michael Goldberg,
24 as receiver, has been sued in addition to
25 the lenders. I represent Michael Goldberg

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1 as receiver. I've discussed the matter
2 with Mr. Goldberg, it is his preference
3 that to the extent the Court deems it
4 appropriate with the dec action, the dec
5 action is to proceed, that the Court
6 consider as it has with other matters, this
7 matter to be consolidated with the
8 receivership court and your Honor hear it,
9 given your familiarity with the court and
10 the issues of judicial conduct, so I would
11 ask to -- And to minimize the expense on
12 the receivership, so I've been asked by Mr.
13 Goldberg to make that request of the Court,
14 a consideration of the Court subject to and
15 defer to your Honor what you think is best.

16 THE COURT: Thank you.

17 MR. D'LUGO: Thank you, your Honor,
18 and thank you for taking us in the middle
19 of the evidentiary hearing.

20 Michael D'Lugo on behalf of Axis. We
21 joined in the motion to have the Court make
22 a determination as to whether a declaratory
23 action can be forward. We would
24 respectfully request that the declaratory
25 judgment action be allowed to go forward

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1 first and we will do everything we can to
2 make that happen as quickly as possible,
3 obviously understanding and in agreement
4 with what Mr. Joseph said with regard to
5 the amount of time that has passed, I need
6 to press this to go forward and we would
7 ask that the Court enter an order allowing
8 that to happen.

9 Now, I brought some caselaw with me.
10 I'm not sure that I necessarily need to
11 present it, although I'm happy to do so.
12 That stands for the proposition of that and
13 under circumstances such as what we have
14 here, it is appropriate for the declaratory
15 judgment action to proceed prior to the
16 litigation involving the damages case and
17 so if the Court would like me to present
18 that.

19 THE COURT: No, I don't need that.
20 Let me ask you, either one of you have a
21 position on Mr. Gassenheimer's position as
22 it relates to consolidating the matter
23 before this Court?

24 MR. JOSEPH: Our position is we're in
25 favor of consolidating it here for the

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1 purpose of we would like to move this as
2 quickly as possible.

3 THE COURT: Mr. Chuck Throckmorton,
4 I'm sorry.

5 MR. THROCKMORTON: Yes, sir. I
6 represent, as I told you, I represent Mr.
7 Berman. I can't agree to that today
8 because, first of all, they need stay
9 relief, the insured, needs stay relief in
10 order to proceed with the dec action. I've
11 told all the parties that they can file the
12 dec action in bankruptcy court without stay
13 relief and that's an appropriate forum to
14 do it. If they were to do it in state
15 court they would need to first get the
16 permission of the bankruptcy court because
17 Mr. Berman is a defendant and I'm not
18 prepared today to agree to simply consent
19 to that stay relief and to have it take
20 place in state court.

21 We may prefer, Mr. Berman may prefer,
22 that it take place in bankruptcy court,
23 which would have jurisdiction. So I think
24 that that issue of consolidating it or with
25 the receivership sitting here is premature

JEANNIE REPORTING, INC. (305) 577-1705

1 unless and until they seek a stay relief
2 and obtain it to come back to state court.

3 MR. D'LUGO: Okay, your Honor, if I
4 may add that. We have prepared a motion
5 for stay relief to file in the bankruptcy
6 court as part of what I need to do in
7 representing my client and I need to
8 contact and communicate all the attorneys
9 who are involved and whose interests would
10 be advised by that request to see if they
11 agree with it or disagree with it and the
12 majority of the feedback that I received
13 back was that it would be appropriate to
14 pursue it as an adversary proceeding within
15 bankruptcy.

16 I know that the receivership indicated
17 that the receivership would prefer that it
18 remain in your court. So there is sort of
19 a difference of opinion as to what forum it
20 should go to.

21 Our desire is to have the case go
22 forward. We don't have a preference
23 necessarily. I think we might prefer to be
24 in the bankruptcy, but I have to check with
25 my client to confirm that. But we would

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1 seek, with the Court's approval, to move
2 forward with the declaratory action.

3 THE COURT: Anything further before I
4 rule?

5 MR. THROCKMORTON: No, your Honor.

6 THE COURT: Thank you.

7 At this time the Court will allow at
8 this time for the declaratory judgment
9 action to proceed. Now, that's going to be
10 subject, however, to what happens in the
11 bankruptcy court, you know, it's currently
12 a what, a suggestion of bankruptcy that's
13 been filed, is that --

14 MR. THROCKMORTON: In this case, yes.

15 THE COURT: In this case and there's a
16 stay that's been issued. So subject to all
17 that, you know, and depending on what you
18 are able to do, I will allow it to proceed
19 for it or -- allow it to proceed for it.

20 Now, I will not make a decision yet as
21 to whether it should be consolidated before
22 me until such time you clear up this issue
23 of a stay.

24 MR. JOSEPH: May I add just one thing,
25 that if the stay relief is granted we can

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1 move forward. During this time, because I
2 don't think the stay applies to my client,
3 can we do just some preliminary discovery
4 so we can get the ball rolling if that's
5 the case. We'd like to move forward
6 quickly.

7 THE COURT: I know you do, but until
8 there's been a lifting on a stay I'm not
9 going to grant such a request.

10 All right. That's where we are,
11 gentlemen. Thank you. Have a great day, a
12 great weekend. If you decide to remain,
13 you're welcome, if you decide to leave
14 quietly, you may do so.

15 MR. JOSEPH: Thank you, your Honor.

16 MR. THROCKMORTON: Thank you, your
17 Honor.

18 MR. D'LUGO: Thank you, your Honor.

19 THE COURT: All right, now, Mr.
20 Gassenheimer, you may call your next
21 witness.

22 MR. GASSENHEIMER: Thank you, your
23 Honor. Our last witness on the issues is
24 going to be by deposition again. It was
25 going to be a live witness, this was the

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1 president of the association, Mr. Patrick
2 Walter. He just shortly earlier this week
3 let us know he wouldn't be able to attend
4 in person. We took his deposition on
5 Wednesday and we tried to hand-deliver the
6 transcript last night.

7 THE COURT: You did and I got it.

8 MR. GASSENHEIMER: Great.

9 So just an overview, your Honor, we
10 filed the deposition of record and offer
11 the deposition and would highlight the
12 following testimony, if I may proceed.

13 THE COURT: You may.

14 MR. GASSENHEIMER: So on page five we
15 learned that Mr. Walter lives in unit 503
16 at 6035 Sea Ranch Drive, which is the Gulf
17 Island Condominium.

18 At line 7: "Are you currently a
19 member of the board of directors for the
20 association?"

21 ANSWER: "Yes, I am."

22 QUESTION: "How long have you been on
23 the board?"

24 ANSWER: "For four and a half years."

25 QUESTION: "Do you currently serve as

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1 the president of the board?

2 ANSWER: "I do."

3 QUESTION: "How long you been the
4 president?"

5 ANSWER: "Just about three and a half
6 years."

7 I'm going to advance in the deposition
8 to page 7, line 18:

9 QUESTION: "Do you know how many units
10 are currently in the name of Oceanside
11 Acquisitions, LLC?"

12 ANSWER: "There are 16 units within
13 our building, building one."

14 I then advance to page 8, which is
15 asked at line 7:

16 "I'm showing you now what's marked as
17 Exhibit Number 1 and, Mr. Walter, can you
18 please identify this for me?"

19 ANSWER: "This is a detailed breakdown
20 of the individual units. We have a similar
21 sheet for every unit in our building. This
22 is, as I read through it, it appears that
23 they are all the Oceanside Acquisition
24 units."

25 I would proffer that in the deposition

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1 he identifies himself as being one of the
2 people who maintain these records and we
3 would offer this business record of the
4 association into evidence.

5 THE COURT: All right.

6 MR. BAUMGARTEN: Is that the one with
7 the monies that are due?

8 MR. GASSENHEIMER: Yes.

9 MR. BAUMGARTEN: Your Honor, I would
10 just -- the problem with the exhibit, the
11 one problem with the exhibit, is that it
12 accelerates the monies due, I believe -- or
13 is it just through June? I have no
14 objection.

15 THE COURT: All right.

16 MR. BAUMGARTEN: Other than relevance.

17 THE COURT: Overruled. It shall be
18 admitted.

19 MR. GASSENHEIMER: On page 9.

20 THE COURT: I lost the connection with
21 counsel and Mr. Bistricher.

22 THE CLERK: Was it three attorneys?

23 THE COURT: Yes.

24 THE CLERK: All right, let me see if I
25 can get them back.

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1 THE COURT: See if you can get them
2 again. And I want you to hold off, Mr.
3 Gassenheimer, until we get them back.

4 MR. GASSENHEIMER: Yes, your Honor.

5 THE CLERK: Plaintiff's 9 admitted in
6 evidence.

7 (Thereupon, Plaintiff's Exhibit No.
8 9 was admitted into evidence.)

9 THE COURT: Good morning, let's make
10 sure who's present. Would you just
11 announce your presence, please.

12 MR. BASURTO: Judge, this is Mark
13 Basurto again.

14 MR. BISTRICER: Alex Bistricher, your
15 Honor, glad you called us back.

16 THE COURT: All right. And I believe
17 Mr. Linde may have decided to excuse
18 himself. So I stopped whatever I was doing
19 when you all were disconnected, so we're
20 going to resume where we left off before
21 you were disconnected.

22 MR. BASURTO: Thank you, your Honor.

23 THE COURT: All right, Mr.

24 Gassenheimer, you may continue.

25 MR. GASSENHEIMER: Thank you, your

JEANNIE REPORTING, INC. (305) 577-1705

1 Honor.

2 Actually I'm going to advance to page
3 18 in the deposition at line 13 and the
4 questions were:

5 "Is there a ledger for unit 706?"

6 ANSWER: "Yes, there is."

7 QUESTION: "Is unit 706 owned by
8 Oceanside Acquisitions?"

9 ANSWER: "Yes, it is."

10 QUESTION: "What is the balance owed
11 to unit 706?"

12 ANSWER: "\$18,597.71."

13 QUESTION: "And does that amount
14 include the balance of assessments, of
15 acceleration assessments for 2010?"

16 ANSWER: "It does not."

17 I'm going to stop there and advance to
18 page 20, I'm sorry, the question starts at
19 the bottom of page 19, at line 25:

20 "And do you know the current amounts
21 of the total amount that is owed on all
22 Oceanside units to date roughly? We could
23 get out a calculator, but do you know
24 roughly?"

25 ANSWER: "I think without looking at

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1 the acceleration, I believe it's \$318,000
2 and some additional."

3 QUESTION: "Do you know as president
4 of the association what is the total amount
5 of receivables for maintenance assessments
6 that are owed by all the unit owners to the
7 association?"

8 ANSWER: "If we add up the special
9 assessments with the maintenance
10 assessments, I believe we're looking at
11 \$355,000."

12 QUESTION: "So Oceanside is accounting
13 for about \$318,000 of the \$355,000 as owed
14 to the association?"

15 ANSWER: "Yes."

16 QUESTIION: "Okay."

17 ANSWER: "And, again, the only
18 clarification on that \$355,000 does not
19 include acceleration."

20 QUESTION: "And if I've done my math
21 right, if you don't collect assessments
22 from Oceanside units over the course of the
23 next 12 months, what roughly will the
24 association be owed for those units?"

25 ANSWER: "Over the next 12 months I

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1 think it's going to probably be in excess
2 of \$70,000 because it's approximately
3 \$6,000 a month or \$72,000 if we're not paid
4 for the 16 units."

5 I'm going to stop there and skip to
6 page 22 at line 10 and the question is:

7 "If you could tell me from looking
8 through this document what is the total
9 amount of money that the association would
10 need according to this budget for calendar
11 year 2009 to operate?"

12 And there's an objection to form.

13 MR. BAUMGARTEN: Yes, your Honor, and
14 I would like to address the objection.

15 THE COURT: All right, you may.

16 MR. BAUMGARTEN: The objection, your
17 Honor, is, and maybe you'll see later in
18 the transcript, if your Honor needs to, the
19 documents that Mr. Walker was looking at
20 was not the actual budget for 2009, it was
21 not the actual financial statement of 2009.
22 It was a prior projection that only went
23 through, it reflected actual expenditures
24 of nine months, it did not include the
25 whole year that was actually expended, it

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1 was only a projection.

2 And Mr. Walter further testified in
3 his deposition that there are financial
4 statements for that year showing what was
5 actually spent, what actually came in and
6 for whatever reason he didn't have it and
7 it wasn't presented.

8 So I would object to using testimony
9 about a document which was a projection
10 when, in fact, there is a document out
11 there that's the real amount and that
12 wasn't put in.

13 THE COURT: In response.

14 MR. GASSENHEIMER: I'll submit that
15 while the witness has referred to the
16 document, the issue he is answering, as the
17 president, what the annual budget is, it's
18 based on the predicate that he is capable
19 of doing that. Whether he refreshed his
20 memory from this document or any other
21 document is not relevant to the
22 admissibility of his opinion as the
23 president of the association.

24 MR. BASURTO: Your Honor, if I may
25 add, this is Mark Basurto, counsel for the

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1 association. The document that was offered
2 during the deposition was a budget that Mr.
3 Walter testified to that was approved by
4 the association, it is an official record
5 of the association and it includes more
6 information than just the nine months of
7 actual expenditures, it shows the amounts
8 that were actually budgeted for for 2009 as
9 expenses and it also shows prior year
10 budgets and it shows year to date expenses
11 that were actually paid during nine months
12 out of the year.

13 So there's much more information than
14 just what Mr. Baumgarten has offered as
15 part of his objection.

16 The document is, otherwise, admissible
17 as a business record, your Honor, and the
18 issue about what was actually spent goes to
19 the weight of the evidence, not to its
20 admissibility.

21 THE COURT: Thank you.

22 MR. BAUMGARTEN: Your Honor, I would
23 just say that if that is the case, then
24 it's only being admitted for showing what
25 the budget was, it's irrelevant. How is

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1 that relevant to any issue in this
2 proceeding?

3 THE COURT: Thank you. The objection
4 is noted but overruled.

5 And counsel is correct, it will go to
6 the weight that I decide to give it.

7 Just continue, please.

8 MR. GASSENHEIMER: The answer was:

9 "I believe the total amount of funds
10 that would be collected, I believe we're
11 looking at \$400,000 total, in my opinion,
12 it's approximately \$430,000."

13 And then advance in the deposition to
14 page 26 at line 7:

15 QUESTION: "Does the association pay
16 for insurance?"

17 ANSWER: "Yes, we do."

18 QUESTION: What is that that you all
19 insure?"

20 ANSWER: "We insure the building for
21 liability, we insure the building for wind
22 damage, flood damage, if there's any, the
23 directors are insured and pretty much, I
24 guess, that's what we're insuring for."

25 QUESTION: "You also pay for property

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1 manager?"

2 ANSWER: "Yes, we do."

3 Then he's asked: "Are there any units
4 that are owned by Oceanside Acquisitions
5 that you're aware of that are currently in
6 or have been in disrepair that would be
7 inclusive? You can go ahead answer."

8 ANSWER: "All 16 of the Oceanside
9 units have never been inhabited and they
10 are currently in some form of disrepair --

11 MR. BAUMGARTEN: Certainly.

12 MR. GASSENHEIMER: Sorry for the
13 misread. -- certainly in some form of
14 disrepair in that some of the units have
15 had drywall removed, some of the units have
16 had, because of no movement within the
17 units, have had a significant problem with
18 pigeons to the point that the health
19 department has come in and made some
20 demands on the pigeon droppings that are on
21 the balconies. Some of the 16 units have
22 had significant mold-related issues to the
23 point that some of our owners that live in
24 proximity have had some health-related
25 issues."

JEANNIE REPORTING, INC. (305) 577-1705

1 QUESTION: "Let me ask you this, Mr.
2 Walter: What has the association done in
3 response to various complaints or issues
4 associated with the Oceanside units?"

5 ANSWER: "With, for instance, the mold
6 issue, our association because we did have
7 complaints regarding health-related issue,
8 we purchased a fogger and our maintenance
9 individual started the most disrepaired
10 unit, the one with the greatest mold
11 buildup, which was unit 401, and it began a
12 fogging machine in that unit. We had
13 approximately 30 inches or so of mold from
14 the floor coming up the walls in the unit
15 when it began. Our maintenance individual
16 has systematically started at the worst and
17 worked his way through the units and even
18 to the point of burning out the motor on
19 the fogger. We replaced that and he
20 continued with his applications."

21 Most of the units are now under
22 control when it comes to mold that's
23 visibly apparent on the surfaces that are
24 on the interior of the unit. So we have
25 done that for those units where we have had

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1 ownership complaints. We've had to
2 intervene.

3 Some owners have contacted the health
4 department when it comes to pigeon-related
5 issues and we have had to bring people in
6 to take pigeon droppings, to clean those
7 because it was a significant issue,
8 significant period."

9 QUESTION: "Did the association pay
10 for that?"

11 ANSWER: "Yes, we did."

12 And I'll stop there and go next to
13 page 32. I'm sorry, the bottom of 31, line
14 23:

15 QUESTION: "Okay, perfect. Do you
16 live in the community where the subject
17 unit owners are located?"

18 ANSWER: "I have a second home, an
19 investment property there, I use the second
20 home as kind of a weekend getaway."

21 QUESTION: "How often would you say
22 that you see the subject unit? You can
23 answer."

24 ANSWER: "I would say that I see them
25 two to three times a week."

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1 Then go to page 40, I would offer line
2 12: "Are you and the owner still
3 complaining about getting sick because of
4 the mold, are they still complaining about
5 that?"

6 ANSWER: "Sir, this is not a one-shot
7 process. We continually do this and have
8 been doing it now for almost two years.
9 Whenever our maintenance person, as I've
10 said, has attempted to and has treated
11 every Oceanside unit, he goes back to the
12 original ones he did longest ago and will
13 go in and try to retreat those --

14 MR. BAUMGARTEN: Retreat.

15 MR. GASSENHEIMER: I said retreat.

16 MR. BAUMGARTEN: I know it's re-treat,
17 but re dash treat.

18 MR. GASSENHEIMER: -- if anybody
19 complains against anything. So this is an
20 ongoing process, it isn't a one-shot
21 process."

22 MR. BAUMGARTEN: Your Honor, that is a
23 nonresponsive answer to my question, so I
24 object to it.

25 THE COURT: Overruled. Let's move on.

JEANNIE REPORTING, INC. (305) 577-1705

1 MR. GASSENHEIMER: QUESTION: "The
2 pigeon problems, are they under control
3 too?"

4 ANSWER: "No, sir, they are not."

5 And those would be the portions that
6 we would offer.

7 THE COURT: Any cross-designation?

8 MR. BAUMGARTEN: Yes, your Honor.

9 Going back to the last point starting at
10 page 42 about the pigeon problems, 42, line
11 16, QUESTION: "Do the pigeons just like
12 Oceanside units or do they try to land on
13 other units as well?"

14 THE COURT: I can use a little
15 laughing. Go ahead.

16 MR. BAUMGARTEN: This case is for the
17 birds, so --

18 THE COURT: I see. Go ahead.

19 MR. BAUMGARTEN: ANSWER: "The pigeons
20 are an incredible problem on the entire
21 island. The three nine-story buildings
22 seem to be a roost for pigeons in general
23 whether they be on any of the units in our
24 building or units in the other two
25 buildings, they're a continual problem for

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1 even association two, which is our sister
2 association, and we routinely write, as
3 part of their board meetings, that they
4 have a pigeon relocation program underway
5 for the last five years or three years or
6 whatever. They are constantly a problem."

7 And then I said QUESTION: "Has the
8 association ever asked Oceanside to allow
9 them access into the units at any time
10 since you've been on the board to try to
11 clean the balconies from the pigeons or
12 make motions -- not court motions -- to
13 keep them away?"

14 ANSWER: "That has happened."

15 QUESTION: "What's been the response?"

16 ANSWER: "The representatives for
17 Oceanside and Hupta (phonetic) have been
18 cooperative and allowed us to go in there.
19 The last time, and this is awhile back, the
20 last time the Hupta (phonetic) property was
21 in, I believe they were made aware of these
22 results. We have one maintenance person
23 and, again, his job is maintenance and
24 repair of the entire building on the entire
25 property. He doesn't delegate a portion of

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1 his time just for Oceanside; however, he
2 deals with problems from a general
3 standpoint."

4 QUESTION: "Does the association have
5 the keys to the Oceanside units?"

6 ANSWER: "We have, as part of our
7 condo doc, we have keys from every unit
8 owner in a lock box, so, yes, we do have
9 their keys."

10 QUESTION: "And if the associate felt
11 that anything going on in the Oceanside
12 units was an emergency, the association
13 would be free to go there and try to take
14 care of it; is that right?"

15 ANSWER: "Yes, sir, that's part of our
16 documents, yes."

17 And then I said:

18 QUESTION: "Do you know how long the
19 mold problems were present at the Oceanside
20 units had been there?"

21 ANSWER: "I can only speak from my own
22 point of reference, which is June of
23 2005 --

24 THE COURT: Slow down for the court
25 reporter.

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1 MR. BAUMGARTEN: Oh, sorry.
2 -- and they were prevalent then and
3 again and they continue until today. We'll
4 just say in different degrees of a problem,
5 but they've been in existence since I've
6 been associated with the island."

7 And then I asked him:

8 QUESTION: "Do you know, have personal
9 knowledge as to whether, whatever mold
10 problems existed before you bought this
11 fogger and used it, do you know if those
12 problems have gotten any worse since they
13 first existed until the time you became
14 aware of them when you took on the board?"

15 ANSWER: "I don't know that I can
16 address that. I know that they've always
17 been an issue though, I've heard that from
18 previous board members."

19 And then on page 45 and then I'm
20 finished with this section:

21 QUESTION: "And do you know how long
22 the pigeon problems with respect to the
23 Oceanside units have existed?"

24 ANSWER: "1984 -- and that's not a
25 typo, your Honor -- that's when the

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1 building was built."

2 Now, as far as other portions of the
3 transcript, let's start with page 21 where
4 line 6, let me go ahead and rephrase it:

5 QUESTION: "What harm, if any, will
6 come to the association if you don't
7 receive the next 12 months of assessments
8 from the Oceanside units?"

9 ANSWER: "The only harm would be to
10 the individual owners because we'll have no
11 recourse but to have another special
12 assessment to try and recoup the funds that
13 were coming up short on our budget."

14 And then I would like to turn to --
15 I'm trying to do this in order -- pages 27
16 and 28. But I guess Mr. Gassenheimer has
17 already read that, so I don't have to read
18 that again. Let me make sure I'm in order.
19 Okay, yes, so then we'll go to pages 39 and
20 40 starting on page 39, line 13:

21 QUESTION: "Has the association ever
22 consulted with a bankruptcy attorney?"

23 ANSWER: "Never. Excuse me, during my
24 time frame, never and to the best of my
25 knowledge, from 2005 forward, that hasn't

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1 occurred. So I think the answer would be
2 never."

3 QUESTION: "So I take it the fact that
4 the Oceanside -- I'm sorry, the association
5 has not consulted with a bankruptcy
6 attorney since 2005 is because Oceanside
7 has never contemplated seeking bankruptcy
8 protection; is that right?" Then there was
9 an objection and I re-asked it.

10 QUESTION: "Is it fair to say the
11 association at no time since 2005 has felt
12 that it needed bankruptcy protection?"

13 ANSWER: "Yes."

14 And then I asked:

15 QUESTION: "I believe you testified on
16 direct that the mold problems at some of
17 the Oceanside units are now under control."

18 ANSWER: "Mr. Baumgarten, a visual
19 inspection for what can be seen. As you
20 probably know, mold grows on the interior
21 stud walls as well as the exterior. The
22 exterior looks like it's been remediated,
23 but I can't really tell you what's behind
24 the drywall."

25 Then we move to page, let's move to
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1 pages 51 to 52. Page 51, 52, this deals
2 with the amount of money that the
3 association claims are owed on the units.
4 So line 22 on page 51:

5 QUESTION: "Let's turn to Exhibit 1
6 for a moment, let's take a look at the
7 first page. See, there's late fees of
8 \$5.03, sir?"

9 ANSWER: "\$5.03, yes, sir."

10 QUESTION: "What is the late fee based
11 on?"

12 ANSWER: "That's based on the fact
13 that the monthly assessment was not
14 received during that month, but I think
15 that's just a standard fee that we would
16 apply."

17 QUESTION: "Is that based on an
18 interest rate?"

19 ANSWER: "I believe it is, but I'm not
20 sure. I would have to check with the
21 property manager."

22 QUESTION: "Is the interest rate 15
23 percent?"

24 ANSWER: "If it would be an interest
25 rate, it would probably be a percent and a

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1 half a month, but I'm not sure of that."

2 QUESTION: "Now, would that be true
3 for all the units that are referenced in
4 Exhibit 1 that you don't know what the late
5 fees, exactly how the late fees are
6 calculated or whether that includes
7 interest?"

8 ANSWER: "You know, again, I'm not
9 sure how it's calculated. I could find
10 that out for you though."

11 QUESTION: "Do you know what
12 percentage of the total amount that the
13 association claimed are owned by Oceanside
14 as to the late fees or interest as opposed
15 to actual charges?"

16 ANSWER: "I don't know what percentage
17 that would amount to, but I would say it
18 would be rather small."

19 QUESTION: "You haven't made that
20 calculation; is that right?"

21 ANSWER: "I have not, no."

22 And then page 58, I think we're at the
23 end, page 57, line 24:

24 QUESTION: "Putting aside Pasco
25 County, because you're not Pasco County,

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1 how much units would need to be sold to
2 satisfy the association, if you know?"

3 "If the units are sold in excess of a
4 hundred thousand dollars each, that I'm
5 going to speculate it would probably take
6 four to five units, probably five units."

7 "QUESTION: "How does \$500,000 equal
8 -- why does it take \$500,000 to pay off the
9 association?"

10 ANSWER: "Sir, we're at \$318,000 plus
11 acceleration of approximately over 12
12 months, \$70,000 more, that's about \$400,000
13 there. I'm just saying I don't think you
14 can sell partial units. I'm just
15 speculating what would probably be between
16 four and five units."

17 And one more reference, if I find it.
18 I apologize, your Honor.

19 Page 34, line 14:

20 "I think we will be very significantly
21 impacted if we don't receive a portion of
22 the money that we're owed, if not all of
23 it. This has been going on for quite some
24 time."

25 That's all I want to read from that,

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1 your Honor. By doing that, I just want to
2 state for the record though, we don't
3 believe that the testimony, any testimony
4 regarding the fees of the association is
5 relevant to this proceeding because the
6 only motions before the Court, besides the
7 motion to stay, is the motion by the
8 receiver to allow the units to be sold.
9 This is not a motion by the association to
10 lift the stay.

11 THE COURT: All right, we'll get
12 there.

13 Any other witnesses?

14 MR. BASURTO: Your Honor, before they
15 go on to other witnesses, this is Mark
16 Basurto again for the association.

17 Would it be appropriate now for me to
18 add some additional designations that I
19 think are important for the Court?

20 THE COURT: Absolutely.

21 MR. BASURTO: Thank you, your Honor.
22 I would go back to page 6, line 3:

23 QUESTION: "What specifically does the
24 association do; what is their
25 responsibility?"

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1 ANSWER: "We're responsible for the
2 assessment and collection of monthly
3 maintenance assessments. We're responsible
4 for the letting of contracts and for the
5 common property, the building itself, we're
6 responsible for just ensuring the safety
7 and well-being of the people or the owners
8 within our association."

9 QUESTION: "And when you say that
10 you're responsible for the common property,
11 does that include the maintenance and
12 repair of that common property?"

13 ANSWER: "Yes, it does."

14 QUESTION: "How do you pay for the
15 maintenance and repair of the common
16 property?"

17 ANSWER: "We assess each unit owner of
18 monthly maintenance assessments. It's
19 currently \$375 per month. We collect that
20 and manage it, apply it to the special
21 projects when needed or just the overall
22 routine day to day general costs that we
23 incur."

24 QUESTION: "And you said that the
25 current monthly assessment is \$375 per

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1 month per unit?"

2 ANSWER: "That's correct."

3 QUESTION: "All right. Has it always
4 been \$375 per month -- and I'm on page 7
5 now -- per unit since you've been president
6 of the association?"

7 ANSWER: "No, it is not. We, at the
8 board, we decided to increase the
9 assessment to \$375 in 2010. Prior to that,
10 for the prior three years it was \$335 per
11 month per owner."

12 Going down further on page 7, line 13:

13 QUESTION: "Does the association keep
14 records of the assessment that it
15 collects?"

16 ANSWER: "Yes, it does."

17 QUESTION: "Does it also keep records
18 of unpaid assessments?"

19 ANSWER: "Yes, we do."

20 Then going to -- and I believe if I
21 recall correctly, Exhibit 1 has already
22 been admitted; is that correct?

23 THE COURT: That's correct.

24 MR. BASURTO: All right, pages 9
25 through, we begin pages 9 through 19. I'm

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1 not sure that the Court wants me to do
2 this, but I've designated pages 9 through
3 19 and there are some questions that
4 generally get repeated and that is for each
5 of the Oceanside units. We've asked what
6 is the amount that's currently owed by each
7 of those and for the first twelve that
8 we've listed in the deposition it was
9 \$18,337.33, all of them are identified in
10 the exhibit.

11 THE COURT: Yes, that's reflected on
12 page 11 in the deposition.

13 MR. BASURTO: I'm sorry?

14 THE COURT: That amount is reflected
15 on page 11 and 12 and again on page 13 and
16 again on page 14. I perused this quickly,
17 so I see where that's referenced.

18 MR. BASURTO: Pages 15, 16 also has it
19 twice.

20 THE COURT: Yes, I see.

21 MR. BASURTO: And then on page
22 17 units 401 it's designated as having a
23 balance \$18,450.08, pages 18, unit 510 is
24 designated as having a balance of
25 \$18,631.12 and that's unit 510 and also on

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1 page 18, unit 706 the balance is \$18,597.71
2 and on page 19 unit 210 is -- somebody else
3 dropped off. Are you still there?

4 THE COURT: I think we lost Mr.
5 Bistricher.

6 MR. BASURTO: You want me to hang up
7 and call back?

8 THE COURT: Yeah, hang up and call
9 back or Ileana will get you

10 MR. BASURTO: Just hang up?

11 THE COURT: Yes, hang up.

12 Let me find out, this is the last
13 witness that you're presenting, Mr.
14 Gassenheimer?

15 MR. GASSENHEIMER: That's correct,
16 your Honor.

17 THE COURT: And, Mr. Baumgarten, do
18 you have any witnesses or exhibits still?

19 MR. BAUMGARTEN: Exhibits, yes.

20 THE COURT: Ready? All right,
21 counsel, you may.

22 MR. BASURTO: Moving on now, your
23 Honor, to page 21, line 22:

24 QUESTION: "I'm showing you now, Mr.
25 Walter, what I've marked as Exhibit Number

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1 2 to your deposition and I'm going to ask
2 you if you can identify this budget or this
3 document?"

4 ANSWER: "This is the budget that was
5 prepared by our property management and the
6 board of directors and I believe that this
7 was the document that was ultimately
8 presented to the owners for approval."

9 QUESTION: "And I know at the top it
10 says proposed budget. Do you know whether
11 this budget was approved?"

12 ANSWER: "Let me just look at it a
13 moment. I believe this was the final
14 document that was approved by the ownership
15 group."

16 And going to page 23, line 4:

17 QUESTION: "All right. I'm going to
18 show you now what's marked as
19 Exhibit Number 3 and if you can tell me
20 what Exhibit Number 3 is?"

21 ANSWER: "This is our association
22 budget for calendar year 2010."

23 QUESTION: "Now, what are the budget
24 and expenditures for calendar year 2010?"

25 ANSWER: "For just general maintenance

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1 expenditures we're at \$433,000, almost
 2 \$434,000."
 3 On page, I believe it's page 30, line
 4 6:
 5 QUESTION: "And with respect to -- let
 6 me jump back a second to Exhibit Numbers 2
 7 and 3, which were the budgets, are these
 8 budget records maintained by the
 9 association?"
 10 ANSWER: "Yes, they are."
 11 QUESTION: "They're official records
 12 of the association?"
 13 ANSWER: "Yes, they are."
 14 And at this point, your Honor, I would
 15 offer -- I don't think they have Exhibits 2
 16 and 3 from the deposition, offer them into
 17 evidence in this proceeding.
 18 THE COURT: Any objection?
 19 MR. BAUMGARTEN: Yes, your Honor,
 20 again, I object because they are not --
 21 they are projected budgets when actual
 22 expenditures were in place and then,
 23 moreover, it's not relevant to any issue in
 24 this proceeding.
 25 THE COURT: Mr. Gassenheimer, do you

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1 wish to be heard?
 2 MR. GASSENHEIMER: No, your Honor.
 3 THE COURT: All right. It shall be
 4 admitted over objection.
 5 MR. BASURTO: Thank you, your Honor.
 6 (Thereupon, Exhibit No. 10 was
 7 admitted into evidence.)
 8 MR. BASURTO: Thank you, your Honor.
 9 Also the bottom of page 30, line 21:
 10 QUESTION: "All right. How many total
 11 units are under the association? In other
 12 words, how many units are subject to this
 13 particular association of which you are
 14 president of?"
 15 ANSWER: "There are 108 condominium
 16 units in our building."
 17 And then I would jump to, your Honor,
 18 his official designation, page 60, line 11,
 19 or, excuse me, line 8:
 20 QUESTION: "Mr. Walter, how many
 21 special assessments has the association
 22 done this year in calendar year 2010?"
 23 ANSWER: "One."
 24 QUESTION: "For how much?"
 25 ANSWER: "\$2,000 per unit."

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1 QUESTION: "In 2009 how many special
 2 assessments did the association impose?"
 3 ANSWER: "One."
 4 QUESTION: "And for what amount?"
 5 ANSWER: "\$741."
 6 Jump to page 61, line 17:
 7 QUESTION: "And take a look at
 8 Exhibit Number 3, again, go to page 3 under
 9 the column YPD, 9-30-09, at the bottom it
 10 says \$316,457.40. Does that number reflect
 11 the actual year to date expenses in 2009
 12 through September 30th, 2009 for the
 13 association?"
 14 ANSWER: "Yes."
 15 QUESTION: "And how close did the
 16 association get to the annualized 2009
 17 expenditure in the next column in terms of
 18 actual expenses incurred?"
 19 ANSWER: "I think we were at a higher
 20 expenditure rate than we had projected
 21 through the end of 2009."
 22 Those are the additional designations,
 23 your Honor. Thank you.
 24 MR. BAUMGARTEN: I have a couple more
 25 based on Mr. Basurto's additions.

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1 THE COURT: I'll permit it.
 2 MR. BAUMGARTEN: On page 60, starting
 3 with line 20. Sorry, he read that already.
 4 Line 23:
 5 QUESTION: "How many special
 6 assessments did the association impose in
 7 2008?"
 8 ANSWER: "None."
 9 QUESTION: "What about 2007?"
 10 ANSWER: "None."
 11 QUESTION: "Okay. Any in 2006?"
 12 ANSWER: "No."
 13 THE COURT: All right, thank you.
 14 Mr. Gassenheimer, any other witnesses
 15 at this point?
 16 MR. GASSENHEIMER: No, we would rest
 17 at this time.
 18 THE COURT: All right, Mr. Baumgarten,
 19 you have any evidence you wish to present?
 20 MR. BAUMGARTEN: Well, I don't know if
 21 I would call it evidence, maybe your Honor
 22 would call it evidence, but I would like
 23 the Court to consider the testimony that
 24 was given by Howe Gassenheimer at the
 25 hearing before Judge Wilson on July 15th,

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2009, let that testimony be considered by the Court as part of the testimony for this proceeding, as well as the testimony by Ms. Corenblum at the July 15th, 2009 hearing.

THE COURT: Okay. Any objections?

MR. GASSENHEIMER: Your Honor, it was a two-hour hearing, there's lots of testimony and a lot of it was irrelevant to these issues, it's hearsay, so I'm not really sure by designating the entire transcript how to deal with it.

I'm sure the Court can, if he desires to review that transcript, and decide what's relevant or not relevant. I don't want to waste the Court's time.

THE COURT: All right. I will permit you to submit that to the Court for review by the Court and give it what weight I deem it deserves.

MR. BAUMGARTEN: Those were his witnesses, your Honor, not mine.

Also including with that Exhibit A1 to the hearing, which was admitted into evidence, which is a document indicating what the people requested of Oceanside,

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were going to receive in terms of interest, that's part of the transcript.

Also, your Honor, and it's not a lot, even though it's a big one.

THE COURT: You may want to present those things to me because if you don't --

MR. BAUMGARTEN: No, I will. I'll just give them to you right now.

THE COURT: You can put them to the side, just --

MR. BAUMGARTEN: No, I will. I'm not going to leave without giving them to you.

THE COURT: I just want to make sure.

MR. BAUMGARTEN: Also, I want your Honor to consider an order that was entered in this case by Judge Wilson, it was an order entered May 27, 2009 to establish that Judge Wilson did not grant the association's motion to compel the receiver to pay fees and future condominium assessments and that they're still a stay in effect.

THE COURT: I'll consider that since that's part of the court file.

MR. BAUMGARTEN: Right, thank you,

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your Honor.

For purposes of the equities that the Court must consider in granting a stay and so under what conditions I would submit, so I'll give it to your Honor, the transcript of the hearing that took place on September 15th, 2009 before Judge Wilson regarding the circumstances whereby Oceanside and DBKN obtained title of this property and what they knew and how they went into this deal with their eyes open with all these propositions, the ramifications which were facing them.

THE COURT: Was there a ruling on that day by Judge Wilson?

MR. BAUMGARTEN: Yes, he granted their motion for summary judgment.

THE COURT: I'm just asking. Then I'll consider that.

MR. BAUMGARTEN: I have the case, but that's dealing with closing argument, so I'll save that.

THE COURT: Yes, save that.

MR. BAUMGARTEN: Let me see what else.

Oh, yes. This interestingly is, I

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would like to offer into evidence two documents that were part of the -- let me see if it's two documents. Yes, it is. Two documents that were part of the proceedings before Judge Cobb in the underlying case before it was transferred to Judge Wilson, one of them is a motion by Oceanside and DBKN and the other defendants to compel maintenance and repairs being done on these units and this was filed back in October 2005. And it's relevant to the issue of the facts and the hearing on that motion, the transcript of the hearing is relevant to the fact that these issues of mold and pigeons existed long before, many years ago as far --

THE COURT: Was there a ruling on the motion by Judge Cobb?

MR. BAUMGARTEN: There was, your Honor. He ordered Gulf Island Resort to take care of the problem and it went up on appeal at the 2nd DCA, which reversed it, and said that they had no authority to do that, but I would like the Court to take into account Oceanside's admissions that

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1 these problems existed back in 2003 and
2 that they were, in fact, trying to get Gulf
3 Island Resort to take care of these
4 problems.

5 THE COURT: Is that really in dispute
6 here? I mean --

7 MR. BAUMGARTEN: Yes. Sorry.

8 THE COURT: Haven't I heard testimony
9 about it already?

10 MR. BAUMGARTEN: Well, if the receiver
11 is willing to -- Here's the problem, no,
12 your Honor, because one of the problems is
13 Judge Wilson, when he ruled that these
14 units could be sold, he found irreparable
15 harm based on mold, he said it, you'll see
16 it in the transcript and I said, "Your
17 Honor, the mold has been there a long
18 time." And the other side didn't stipulate
19 that, yes, these mold problems have existed
20 since 2003 or earlier.

21 If they're willing to stipulate that
22 the mold problems existed since 2003, the
23 pigeon problems existed since 2003, then
24 yes, I don't need to introduce this.

25 THE COURT: Mr. Gassenheimer, what is

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1 your position on this?

2 MR. GASSENHEIMER: I believe the
3 evidence before the Court that you heard
4 from Ms. Corenblum is that she saw the
5 units in '04 and they had problems and she
6 saw them now and the problems were worse.

7 So we don't dispute that there was
8 mold in 2004, we don't dispute that there's
9 mold now and we don't dispute that the mold
10 has gotten worse and we don't dispute that
11 the association has had to continually try
12 to control the mold because it keeps
13 growing back.

14 THE COURT: I think I've heard
15 credible evidence already that there's a
16 mold problem dating back 2003 forward.

17 MR. BAUMGARTEN: Okay, that's fine.
18 And by the way, your Honor, your Honor has
19 seen Ms. Corenblum's testimony and she
20 never said that the mold problems have
21 gotten worse.

22 THE COURT: Let's not go into
23 argument. I'll review what you've given
24 me, but I'm only addressing this one issue.

25 MR. BAUMGARTEN: That's it, that's

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1 fine and I have nothing further to offer in
2 terms of documents.

3 THE COURT: Then I will review those
4 documents if you provide them to me now and
5 what I want to do is find out if we have
6 any other exhibits in evidence that you
7 want to present at this time?

8 MR. BAUMGARTEN: No, your Honor.

9 THE COURT: Now, does counsel for the
10 association have any witnesses or exhibits
11 other than what has already been presented?

12 MR. BASURTO: No, your Honor, we
13 don't.

14 THE COURT: Then I'm ready to receive
15 closing arguments from the parties.

16 Mr. Gassenheimer, you will go first,
17 please. Then Mr. Baumgarten, you'll go
18 next and then I'll hear from counsel for
19 the association.

20 MR. GASSENHEIMER: Your Honor, may I
21 proceed?

22 THE COURT: Yes, you may.

23 MR. GASSENHEIMER: Thank you.

24 So the issue before the Court is the
25 competing motions of the receiver wanting

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1 to sell these units, to approve the sale of
2 two units to Mr. Linville, who you've heard
3 the testimony is willing to buy them and
4 the competing motion of Mr. Bistricher, as a
5 limited partner of Gulf Island Resort LP,
6 seeking a stay of that motion or a stay of
7 these proceedings pending his appeal of the
8 prior judges in this case findings that my
9 client, Oceanside, owns these units and has
10 the right to sell them.

11 The case law that guides us says the
12 trial court has considerable latitude in
13 controlling circumstances under which
14 proceedings are stayed pending appeal. So
15 that's the backdrop which we come before
16 you.

17 In one of the case cited in our papers
18 is Cerrito vs. Kovitch case, which was a
19 real property case involving a mortgage
20 dispute, the Court describes there what in
21 Florida are the standards of a real
22 property case, that the Court should
23 consider, grant a stay in terms of what
24 should be considered in regards to the
25 issues of the bond. It says that the

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1 factors to be considered are the market
2 value of the property, the existence of the
3 liens against the property, including tax
4 liens, association liens, waste that will
5 occur as a result of delaying a sale,
6 damage that will be occasioned by the
7 delays. So those are the factors that
8 guide the Court.

9 To the extent that you grant his stay
10 and condition upon a bond, the conditions
11 that you place on the bond are also
12 reviewable subject only to an abuse of
13 discretion by the appellate courts. The
14 courts give the trial judge a wide latitude
15 in fashioning an equitable remedy to
16 protect the parties.

17 While the matter is on appeal, the
18 appeal does not invest the trial court of
19 jurisdiction to enforce its final orders.
20 In this case you have jurisdiction to
21 enforce the order authorizing the sale;
22 although I would submit that there's no
23 ability to revisit that order of Judge
24 Wilson, no ability to enforce the order and
25 allow us to sell the property free and

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1 clear of liens with the proceeds to be held
2 in escrow pending appeal.

3 The evidence that I think the Court
4 should consider in making its opinions are
5 the following: Unlike most real property
6 cases where the courts are confronted with
7 the harsh reality that if you sell the
8 property, you're taking somebody's home and
9 that home is unique to that person, they
10 are vested in that property. But the
11 evidence in this case is that Mr. Bistricher
12 has no vested interest in this property,
13 there's nothing unique about this property.

14 In fact, these properties have never
15 been inhabited. These properties are
16 vacant, they're basically just shells,
17 there's no furniture in them, there's no
18 utilities in them, there's no water
19 heaters, no washers/dryers, no countertops,
20 there's nothing, there's nothing special
21 about these units and Mr. Bistricher,
22 there's no evidence that Mr. Bistricher has
23 ever acted in any way that he has some
24 particular attachments to this unit as
25 opposed to any other unit. In fact, I

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1 would submit that the Court can conclude
2 that he'd much rather have a different unit
3 that's fixed up rather than these
4 mold-infested gutted units.

5 And the testimony of Mr. Lanville
6 should be considered, which we have one of
7 the issues the Court was to look at in the
8 stay is the public good, not just Mr.
9 Bistricher, but the general public good. We
10 have units that are in disrepair, we have
11 units that are causing health problems to
12 other members of this community and here we
13 have a gentleman who has the ability, the
14 capital, and the ready and willingness to
15 come in and fix up these units, get rid of
16 the problems, get rid of the mold problems
17 and rent the units and pay condominium
18 association dues and pay taxes. All of
19 those things would be public good. They
20 would help the association, they would help
21 the tax payers of Pasco County and
22 certainly having somebody in those units
23 using them and being part of the community
24 is beneficial to that community.

25 We've also heard the testimony of Ms.

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1 Corenblum on behalf of the receivership
2 estate explaining the receivership estate
3 does not have the funds to fix-up this
4 unit, they've taken over these failed
5 businesses. If the Court can take judicial
6 notice of all the pleadings in this case
7 where the challenge has been to cleanup the
8 companies that came into them. We don't
9 have the capital to fix-up these units.

10 In terms of waste, we have taken
11 judicial notice of the tax certificates
12 that are in the public record of Pasco
13 County accruing interest at eight percent.

14 We've taken the testimony regarding
15 the condominium fees that will continue to
16 increase. We've heard testimony of the
17 president of the association about the mold
18 keeps coming back and they keep having to
19 incur expenses. You've heard the testimony
20 of the association that they need to buy
21 insurance and they're responsible, the
22 association is, for buying insurance,
23 windstorm, flood, we're coming into
24 hurricane season.

25 You've heard the testimony of the

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1 association that it's burdened with, you
2 know, a \$430,000 a year budget based on
3 three years of nonpayment on these units.
4 So it's about 80 percent of one year's
5 annual budget was behind and having special
6 assessments of other unit owners to keep up
7 with the insurance and other expenses.

8 With respect to the price of the units
9 and whether the receiver has done the
10 correct things to determine appropriate
11 price, you've heard the testimony that
12 market research was done, comparable sales
13 were looked at, the opinions of several
14 brokers were sought, that Mr. Lanville had
15 bought another unit that did not need work
16 for \$154,000, that the unit sales range in
17 price from \$150,000 to \$225,000, with fixed
18 up units, obviously being the higher ones
19 with very expensive upgrades, appliances
20 and granite and things like that.

21 And you've heard the testimony that
22 it's going to take at least \$50,000 to
23 fix-up these units. So you have \$120,000
24 sale price, plus \$50,000 of fix-up costs,
25 the price -- there's plenty of evidence for

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1 the Court to conclude that we have obtained
2 a reasonable price, a market price, one
3 that was consistent with the value of the
4 units in their current state of repair. So
5 even if we reject the Florida law on what
6 the Court must consider and look at the
7 cases cited by Mr. Baumgarten on the issues
8 of stay pending appeal and the bankruptcy
9 setting, an appellate seeking a stay
10 pending an appeal must demonstrate the
11 following elements: Likelihood of success
12 on the merits, I don't believe there's been
13 any evidence of likelihood of success on
14 the merits. All you've heard is Mr.
15 Baumgarten's opinion and he thinks he's
16 going to win on appeal, well, I'll tell you
17 I think I'm going to win on appeal too.

18 So irreparable injury if the stay is
19 not granted. I would submit there's
20 actually no evidence of irreparable injury,
21 there's nothing unique about these units.
22 Mr. Bistricher has offered no evidence that
23 he's even ever been to the units or seen
24 the units, we didn't hear the testimony of
25 Mr. Bistricher.

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1 There's no evidence in which the Court
2 can conclude that there's any irreparable
3 injury as a result to Mr. Bistricher, there
4 has been no evidence offered by Mr.
5 Baumgarten on that issue.

6 The next issue is no substantial harm
7 to the adverse party if the stay is issued.
8 Well, I would submit that we've offered
9 mountains of evidence of the adverse harm
10 that will endure to my clients if the stay
11 is granted and no bond is paid. One,
12 waste, these units will continue to
13 deteriorate. Two, damages, the interest on
14 the taxes, interest on the association
15 fees, and the general -- the fact that the
16 Court has to be able to conclude from the
17 evidence that the association is limited in
18 what it can do to maintain the property as
19 a whole when its budget is diminished by as
20 much as -- been diminished in terms of
21 general appearance, upgrades and things
22 like that. And then the fourth issue in
23 the case cited of Mr. Baumgarten is issuing
24 the stay will serve the public interest.

25 Well, I would submit it would harm the

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1 public interest and that the receiver has
2 will help the public interest because we
3 will be dealing with, starting to deal with
4 this problem that infests this community.

5 So we would ask the Court to either
6 allow the sale to go forward or if the
7 Court is inclined to stay, to condition the
8 stay on the payment of a bond equal to
9 \$120,000 per unit, which is the purchase
10 price, and consider that \$18,000 of that
11 money be immediately used to bring the
12 taxes current or whatever the number is,
13 \$18,000-plus, I think there's another
14 \$3,000 for this unit, the association fees
15 for each particular unit paid current
16 because whether Mr. Bistricher, if he's
17 right, he says he's going to appeal those,
18 then those taxes and fees will have to be
19 paid anyway.

20 So the conditions we would ask that
21 \$120,000 for each unit and that immediate
22 payment from those funds of all past taxes
23 and all past association fees and that the
24 balance be held as to be considered by the
25 Court to pay damages in the future when we

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1 prevail on appeal, if we're unable to
2 obtain the same type of price for these
3 units that we're able to obtain today.

4 THE COURT: Okay. Mr. Baumgarten.

5 MR. BAUMGARTEN: Where shall I begin,
6 your Honor. Your Honor, I know this a
7 stale joke, but hearing the arguments of
8 the lenders is an old argument of the guy
9 who murders his parents, then asks for
10 mercy from the Court because he's an
11 orphan. That's exactly what you have here,
12 your Honor.

13 Mr. Gassenheimer represents the
14 receiver who represents the lenders. So
15 I'm going to address the lenders.

16 The lenders have, it's in the
17 testimony of the July 15th, 2009 hearing,
18 and Ms. Corenblum today, the lenders have
19 refused to put a penny into the repair of
20 these units, into paying the fees and the
21 dues, they don't care, all they want to do
22 is have these units sold "as is." So they
23 refuse to put in the fees, refuse to put in
24 the dues, no testimony that they are
25 financially incapable of doing it. The

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1 only testimony is they don't want to do it.
2 So they come here seeking equity and
3 saying, your Honor, we invested in this
4 project in 2003 without bothering to look
5 into whether there were issues of title or
6 what state these units were in or what was
7 going to happen, we wanted our 14 and a
8 half percent interest, which is in the
9 exhibit, and we are lenders and; therefore,
10 we're entitled, but we don't want to spend
11 any more money, so we would like to have
12 these units sold to take care of us and we
13 don't care about anybody else's interest in
14 these properties.

15 What we have here, your Honor, are
16 three groups of creditors; there's Mr.
17 Bistricher, Gulf Island Resort, a
18 representative of Mr. Bistricher, we have
19 lenders who lent money to Oceanside and we
20 have the association which claims it's owed
21 fees and dues. We do not have any interest
22 represented in this case by the Oceanside
23 itself. Oceanside itself is defunct, there
24 is nothing there other than, I guess, the
25 certain properties under the steward of the

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1 receivership. There's no dispute there's
2 not going to be anything left for
3 Oceanside. We just simply here have a
4 battle between three different groups of
5 creditors and I might add, your Honor, that
6 this is bizarre that Mr. Gassenheimer, who
7 represents the lenders, is sitting here
8 arguing for the association. The
9 association doesn't have a pending motion
10 to have a stay lifted to allow them to
11 collect fees and dues. As the May 27th,
12 2009 order of Judge Wilson indicates, the
13 judge does not allow them to collect the
14 fees and dues, there's a stay in effect
15 which was automatic because once a
16 receivership was appointed. So I don't
17 understand how Mr. Gassenheimer, as the
18 attorney for the lenders, is talking about
19 the association. The issue is whether or
20 not the lenders' motion to allow the sale
21 should take place because of irreparable
22 harm to the lenders. You have not heard
23 any irreparable harm to the lenders. You
24 haven't even heard any irreparable harm to
25 the association other than, "we need money,

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1 we want our money." Money is not
2 irreparable harm. What is irreparable
3 harm, as the Raven case indicates, the one
4 from the Southern District of Florida, sets
5 forth the standards of a stay pending
6 appeal is the inability to keep your real
7 property and it's also in the Ninth Circuit
8 case that I gave your Honor in the
9 beginning.

10 The court there says a person has an
11 interest in owning real property. It is
12 given that all real property under Florida
13 law is considered special and specific
14 performance. You don't have to prove why
15 you like this property so much or what you
16 want to do with it. Your Honor will see in
17 that Ninth Circuit case there was no person
18 who was saying, this is my home, it's been
19 in my family for hundreds of years. It has
20 nothing to do with it.

21 Under the law, irreparable harm, as
22 indicated in the Raven case, is from the
23 inability to specific performance to get
24 the property that you own and the Raven
25 case also says, your Honor, and I think we

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1 really should get the law on this issue out
 2 front, there is no requirement under the
 3 Florida rules of appellate procedure, under
 4 any case that there must be a bond pending
 5 stay. The very rule that Mr. Gassenheimer
 6 quoted parts of, which is Florida rule
 7 appellate procedure 9.310A, says expressly:
 8 "The issuance of a stay may be conditioned
 9 on the posting of a good and sufficient
 10 bond." And rule 9.310, which talks about
 11 taking care of fees and other things says,
 12 "If you are going to inquire a bond, these
 13 are the things that the bond must cover."
 14 It doesn't say you must have a bond in case
 15 of real property. It doesn't discuss real
 16 property at all. It simply says, "When you
 17 have a bond, these are the things that you
 18 require." It doesn't say you need a bond
 19 to real property. The only case on point,
 20 which is in Florida, which deals with
 21 whether you need a bond, the issue of
 22 selling real property and getting rid of it
 23 is the Raven case and in the Raven case the
 24 Court specifically held, "I am going to
 25 stay the order allowing real property be

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1 sold pending appeal without a bond." No
 2 bond at all because of the exact situation
 3 of Mr. Bistricher or Gulf Island Resort is
 4 in, which is, we want the property, we want
 5 this property to be around, we want this
 6 property to be able to be rented and then
 7 sold when it's appropriate.
 8 If the lenders do not want to do that,
 9 then I'll tell you what, let them not pay
 10 the fees, let them not pay the dues, let
 11 this property go to a foreclosure sale.
 12 Maybe someone will pick it up or Mr.
 13 Bistricher or Gulf Island Resort will pay
 14 the fees and the dues and they could just
 15 give it up. But for them to sit here and
 16 argue, well, you know, why don't you pay
 17 the fees and dues? Really? Why don't we
 18 pay the fees and dues and not have the
 19 ability to rent the property, why haven't
 20 they have paid the fees and dues and rented
 21 the property like Mr. Linville, he's a
 22 reasonable businessman, that's what he's
 23 going to do. Why haven't the lenders done
 24 that? Why hasn't the trustee done that?
 25 You've heard no testimony about that, but

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1 this is irreparable harm.

2 And the Raven case says, well, you can
 3 come back to me and I may revisit this bond
 4 issue if you can show you that you got a
 5 pending sale, which you're going to lose if
 6 the property isn't sold. The Court would
 7 consider that. Now, what have you here, we
 8 have Mr. Linville. What did Mr. Linville
 9 say, did he say, "oh, you know, I'm
 10 leaving, you better do this right away or
 11 I'm leaving." No. He said, "I'm willing
 12 to buy this property one year, two years,
 13 three years, by which time, even under the
 14 most egregious and drawn-out appeal
 15 process, the issue of who owns the units,
 16 whether there's a final judgment or not,
 17 which there isn't, but that issue will be
 18 resolved with either the court of appeals
 19 saying, "Yes, Oceanside, you own the units
 20 just based on discovery violation or, no,
 21 go back and have your trial."

22 But that will be done and so this is
 23 exactly the case of Raven where you have
 24 somebody is going to lose property and
 25 everybody else just says, "I want money"

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1 and they want money because they don't want
 2 to spend the money even though they're
 3 lenders and lenders know that when you lend
 4 money, there's always a risk that the
 5 borrower is not going to be able to pay,
 6 then they don't care, they want their cake
 7 and eat it too. We want to get our
 8 interest, then stop paying fees and dues
 9 and, you know, if it's not there, fine,
 10 sell the property, I don't care about Mr.
 11 Bistricher.

12 THE COURT: Anything else?

13 MR. BAUMGARTEN: And there is no
 14 showing of irreparable harm here, because
 15 the lenders have not shown any irreparable
 16 harm, there is no ongoing mold problem
 17 that's affecting other units. That was
 18 made up, there is no problem. Mr. Walter
 19 didn't say a word about, "Oh, other unit
 20 owners are getting sick." They're not
 21 here, there's no irreparable harm to the
 22 association, because the association as an
 23 entity, a legal entity, they don't have the
 24 harm, the harm is the unit owners. They're
 25 not here either. So we don't have those

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1 problems. There's no problem with the
2 mold, there's no problem with the pigeons.

3 Now, let's talk about what damages
4 there would be if a stay is granted. None.
5 The purpose of a bond on a stay is to
6 protect the other side for damages that it
7 might incur or likely to incur, is actually
8 the standard, if the stay is granted. Is
9 there any testimony that these two units
10 between now and the time that the appeal
11 runs are going to go from \$120,000 to zero?
12 Absolutely not. And, yet, Mr. Gassenheimer
13 comes along and says, oh, you know, I need
14 \$125,000 bond. We have no testimony about
15 what dollar value any damage to the units
16 will be between now and the time that the
17 appeal is over.

18 So I don't think they've established
19 that they're entitled to any bond. Also,
20 he's talking about paying the fees and dues
21 on other units. The other units are not at
22 issue here. There's two units at issue
23 here.

24 So if you're going to consider a bond,
25 which we don't think your Honor should do,

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1 because there's no basis for it, this case
2 should be stayed and there's no damages,
3 you should just, you know, look at the two
4 units and we have no evidence of what
5 damage will occur, if any, to these two
6 units if the sale isn't allowed to go
7 through pending appeal.

8 And the last point I want to make,
9 your Honor, is, as I said at the beginning
10 of the hearing, Oceanside could have sold
11 these units in 2006. The receiver could
12 have sold the units when they came on
13 board. At that time it was before the real
14 estate crisis hit Florida. There's no
15 explanation of why Oceanside stopped paying
16 the fees and dues in 2006, no explanation
17 if they couldn't make the payments, why
18 they didn't try to sell the units then, why
19 they let this unit just sit there on and on
20 for three years and then come along and say
21 that they need to have the units sold. And
22 legally, your Honor, we don't care. If
23 they want to go and try to sell the units,
24 go ahead, try and sell them, but you can't
25 -- it is unlawful, I think, for any -- it's

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1 against the law for the Court to say, we're
2 going to let you sell the units and not
3 only that, we're going to make sure that
4 the party that claims it's the real owner
5 of the units is never going to get them
6 back even if it wins. There is not a
7 single case that says that.

8 In terms of success on the merits, if
9 your Honor would like, I'll take my brief
10 and I will read to your Honor the 60 pages
11 of why we should succeed on the merits of
12 the claim, that this the property belongs
13 to us. I don't think that your Honor needs
14 me to do that, but for Mr. Gassenheimer --

15 THE COURT: Did you give me a copy of
16 it?

17 MR. BAUMGARTEN: Yes.

18 THE COURT: So I can read.

19 MR. BAUMGARTEN: Right, but Mr.
20 Gassenheimer said there's been no evidence
21 of success on the merits.

22 THE COURT: Let's move. Are you done?

23 MR. BAUMGARTEN: So we believe there
24 is no basis to allow this sale under the
25 law, under the equities and if your Honor

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1 Is -- and there's also no basis for a bond,
2 we have no evidence of the damage caused to
3 these units.

4 THE COURT: Thank you.

5 Counsel for the association wish to be
6 heard?

7 MR. BASURTO: Yes, thank you, your
8 Honor.

9 Just from a procedural perspective
10 with one of these issues that were raised
11 by Mr. Baumgarten during his closing.
12 There was an order about a year ago, your
13 Honor, where we had filed, the association
14 had actually filed a motion to compel the
15 receiver to pay the assessments that were
16 due, and I believe it was the same July
17 hearing that Mr. Baumgarten was referring
18 to earlier during his argument that the
19 association's motion to compel the payment
20 of fees stated pending the sale of these
21 units. So once it was decided that there
22 was going to be a sale of the units, that
23 that was going to be allowed, our motion
24 was abated at that point to allow that to
25 occur.

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1 THE COURT: It was abated for 60 days,
2 as I read the motion on May 27th, 200 --

3 MR. BASURTO: That is correct, your
4 Honor.

5 THE COURT: And for an attempt for the
6 parties to enter in an agreement regarding
7 the sale of the Oceanside units. That's
8 what the order says. Keep going.

9 MR. BASURTO: You're right, I stand
10 corrected, your Honor.

11 THE COURT: All right, go ahead.

12 MR. BASURTO: But I believe it was the
13 July 15th hearing, although I'm not a
14 hundred percent positive that there was
15 testimony presented by the receiver that it
16 had no money to pay the assessment and
17 there was, and I can't remember exactly how
18 much money they had in their account, but
19 it was certainly substantially less than
20 the amount that was needed to pay the
21 association.

22 Now, with respect to actual arguments
23 for the association, let me go back to the
24 rule 9.310, the focus seems to be by the
25 parties who have preceded me on the issue

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1 of whether you should impose a stay and
2 whether you should impose a bond. But you
3 can also impose other conditions. Rule
4 9.310, subsection A states that: "A stay
5 pending review may be conditioned on the
6 posting of a good and sufficient bond other
7 conditions or both." Also, in subsection
8 C, C2, conditions: "The conditions of a
9 bond shall include a condition to pay or
10 comply with the order in full, including
11 cost, interest, fees and damages for delay,
12 use, detention and depreciation of property
13 if the review is dismissed or affirmed and
14 may include such other conditions that may
15 be required by the lower tribunal."

16 Here, your Honor, the harm of the
17 association is substantial. Every year
18 that goes by, while this dispute is worked
19 out between Mr. Bistricher and Mr.
20 Baumgarten's clients and the receiver, is
21 another year that we're out \$72,000 for the
22 association's budget.

23 Now, it is not unprecedented for a
24 Court to authorize or to order as a
25 condition of the bond the payment of fees

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1 that are owed to another party and I know
2 the Court doesn't have it in front of him,
3 and I'm happy to provide it to everyone
4 subsequent to the hearing, but there is a
5 case, Department of Agricultural and
6 Consumer Services versus Mid-Florida
7 Growers, Inc. It's 532 So. 2nd 1294, it
8 was decided by the 2nd DCA in 1988 and in
9 that case a bunch of citrus growers whose
10 stock of citrus was destroyed by the
11 Department of Agricultural filed a lawsuit,
12 an inverse condemnation suit to get
13 compensated for their losses. And the
14 circuit court found the department
15 partially liable and, in fact, there was a
16 second trial as part of that where there
17 was an amount of damages that was awarded
18 to these group of citrus growers.

19 Well, as a condition of posting,
20 excuse me, as a condition of ordering the
21 stay, the trial court required the
22 department to make a partial payment to the
23 citrus growers pending appeal and that was
24 upheld by the 2nd DCA.

25 In another case, Mariner Health Care
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1 of Nashville versus Baker, which is a 739
2 So. 2nd 608 is a first DCA case decided in
3 1999, you can come up with a variety of
4 different contingents relative to a bond.

5 In this case there was a motion for a
6 stay that was asked in connection with the
7 review of a discovery order and what the
8 Court had asked was that on -- the Court
9 advised the parties that prior to granting
10 a stay, that one of the parties was going
11 to be required to submit the documents to
12 the Court under seal and to deposit the
13 funds that had accrued as a result of prior
14 contempt orders and deliver those to the
15 court as a condition of granting the stay.

16 Well, when they didn't deliver the
17 documents, the Court denied the stay and
18 the First DCA upheld that and said it was
19 okay.

20 So what I'm saying, your Honor, is
21 that you're not limited to just having them
22 post a bond, you can require them to meet
23 any other conditions that you think are
24 appropriate under the circumstances and
25 here the problem with just posting a bond

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1 pending a stay or pending a review is that
2 that doesn't the help the association.

3 We continue to be harmed and so what
4 I'm asking for is, as Mr. Baumgarten said,
5 he is confident that he has a substantial
6 likelihood of prevailing on the merits,
7 there's no harm whatsoever to amend in
8 paying the fees that are likely owed to the
9 association as a condition of a stay
10 pending review. If he wins the case, he
11 owes us the money anyway. If he loses,
12 well, then he can collect the money back
13 from the receiver. The association, who's
14 an innocent party in all of this, should
15 not continue to be harmed as a result of
16 the dispute that's ongoing between these
17 parties.

18 Now, just to address a couple of the
19 money issues that was clear to the Court.
20 Remember, that in 2010 to show harm to the
21 association, in January of 2010 the
22 testimony was that a \$2,000 special
23 assessment was imposed on all of the unit
24 owners. Well, the testimony is there are
25 108 units, 16 of which belong to Oceanside.

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1 So the balance of 92 units paying \$2,000
2 each is \$184,000. That's the shortfall
3 that this association needed in order to
4 compensate for the fact that it doesn't
5 have enough money to pay its bills. And
6 that was just for 2010. In 2009 the
7 testimony is that there was a special
8 assessment of \$741 per unit owner. And the
9 for the other 92 units in this community
10 that was in excess of another \$65,000 that
11 the association had a shortfall of in 2009.
12 So there's clearly harm to the association.

13 Couple those issues, Mr. Baumgarten
14 has mentioned the pigeon issue and talks
15 about how it looks. This isn't a problem
16 that is unique to the Oceanside units, it's
17 a problem that all of them had. That's not
18 the point. The point here is, your Honor,
19 that while the other units have owners in
20 them who take care of the pigeon problem,
21 the Oceanside units don't and it's the
22 association that had to go in, spend its
23 own money and its own resources to fix the
24 problem. The same thing with the mold.

25 And, finally, with respect to the

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1 issue about the late fees that I think Mr.
2 Baumgarten was questioning, if you
3 calculate, you take Exhibit 1 and add up
4 all the late fees that he might be
5 challenging, it only accounts for less than
6 \$4,000 of the \$318,000 that's owed to the
7 association.

8 What we ask, your Honor, is that if
9 you're going to impose a stay that Mr.
10 Baumgarten's client be required to pay the
11 assessments that are owed to the tune of
12 \$318,000.

13 Now, if you don't impose a stay, what
14 I say, your Honor, is he has got a right,
15 he's entitled to restitution in the event
16 that the property is sold pending appeal.

17 In the case of Longergan vs. Lippman,
18 which is a First DCA case decided in 1982,
19 it's at 406 So.2d 1124, in that case there
20 was a dispute between the parties over the
21 Sand Piper Hotel in Jacksonville. Well, it
22 ended up happening that pending appeal, the
23 property ended up being sold and the hotel
24 on the property was raised by the city.

25 The Court said, well, hey, there wasn't a

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1 bond posted for a stay pending that appeal
2 -- and I don't even know that a stay was
3 requested in that case, but in that case
4 the Court said very simply, look, the
5 property gets disposed of or destroyed
6 pending appeal, you pay the money and that
7 can be done here.

8 If these two properties are sold and
9 it's ultimately determined that Mr.
10 Baumgarten's client was entitled to the
11 property, the receiver can pay them the
12 value of the property. But in the meantime
13 the association should not be harmed. And
14 that's my argument, your Honor.

15 THE COURT: Thank you.

16 All right, I don't want any rebuttal
17 at this time. I think I've heard enough.

18 MR. BAUMGARTEN: I just wanted to
19 submit a document to the Court, a case
20 between Oceanside and the association,
21 which is relevant to an argument that Mr.
22 Basurto just stated. It was filed in the
23 court of Pasco County and it just opposes
24 Mr. --

25 THE COURT: It's an order?

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MR. BAUMGARTEN: It's a motion.

THE COURT: Was there a ruling on that motion?

MR. BAUMGARTEN: No, because the case was resolved in the meantime.

THE COURT: Then I won't accept it at this time. Thank you.

All right, this is what I'm going to do, gentlemen, ladies and gentlemen, I'm going to consider the evidence today, your arguments, I'm going to have a ruling on this matter on July 12th, that's a Monday, you'll appear here at 8:30 in the morning. That's when I have my motion calendar. I'm just going to call it up when you arrive and I'll make my ruling as to both motions. All right.

So I'll review all the evidence and your arguments considered here today. Thank you.

MR. BAUMGARTEN: Thank you, your Honor.

MR. GASSENHEIMER: Thank you, your Honor.

MR. BASURTO: Thank you, your Honor.

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THE COURT: All right, I'm cutting you gentlemen off. Have a great day and weekend.

MR. BISERTO: Thank you.

MR. BASURTO: Thank you.

(Thereupon, the hearing was concluded at 12:15 a.m.)

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CERTIFICATE OF SHORTHAND REPORTER

STATE OF FLORIDA)

) SS.

COUNTY OF DADE)

I, PAULA PACE, Shorthand Reporter, Notary Public, do hereby certify that I was authorized to and did stenographically report the foregoing proceedings and that the transcript is a true and correct transcription of my stenotype notes of the proceedings

Dated this _____ day of _____, 2010.

PAULA PACE
Shorthand Reporter

JEANNIE REPORTING, INC. (305) 577-1705

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\$110,000 [1] - 98:12 \$120,000 [7] - 41:14, 75:1, 95:13, 157:23, 160:9, 160:21, 169:11 \$125,000 [1] - 169:14 \$150,000 [2] - 41:10, 157:17 \$154,000 [2] - 50:4, 157:16 \$156,000 [1] - 94:18 \$169,900 [1] - 94:18 \$18,000 [1] - 160:10 \$18,337.33 [1] - 138:9 \$18,450.08 [1] - 138:23 \$18,597.71 [2] - 116:12, 139:1 \$18,631.12 [1] - 138:25 \$180,000 [1] - 41:11 \$184,000 [2] - 45:3, 178:2 \$198,000 [1] - 94:14 \$2,000 [4] - 45:2, 142:25, 177:22, 178:1 \$225,000 [3] - 94:9, 97:11, 157:17 \$3,000 [1] - 160:14 \$316,457.40 [1] - 143:10 \$318,000 [6] - 44:15, 117:1, 117:13, 134:10, 179:6, 179:12 \$335 [1] - 137:10 \$350,000 [1] - 42:8 \$355,000 [4] - 44:16, 117:11, 117:13, 117:18 \$375 [4] - 136:19, 136:25, 137:4, 137:9 \$4,000 [1] - 179:6 \$40,000 [1] - 77:12 \$400,000 [2] - 121:11, 134:12 \$430,000 [2] - 121:12, 157:2 \$433,000 [1] - 141:1 \$434,000 [1] - 141:2 \$5.03 [2] - 132:8, 132:9 \$50,000 [5] - 41:12, 50:2, 89:22, 91:3, 157:22 \$50,0000 [1] - 157:24 \$500,000 [2] - 134:7, 134:8	\$6,000 [1] - 118:3 \$65,000 [1] - 178:10 \$70,000 [2] - 118:2, 134:12 \$72,000 [4] - 44:5, 44:20, 118:3, 174:21 \$741 [2] - 143:5, 178:8 \$99,000 [1] - 98:12 '03 [3] - 75:24, 82:6 '04 [2] - 80:19, 150:5 '05 [1] - 80:19 '09 [1] - 103:6 0 07-43672 [3] - 1:4, 4:11, 6:2 08-79168 [1] - 9:23 08-79169 [1] - 18:16 08-7916H [1] - 4:20 0879168 [1] - 15:7 09 [1] - 1:4 1 1 [17] - 3:19, 4:23, 5:22, 9:22, 10:5, 15:10, 48:18, 49:7, 49:8, 49:9, 49:13, 53:24, 113:17, 132:5, 133:4, 137:21, 179:3 10 [4] - 3:24, 48:17, 118:6, 142:6 100 [2] - 2:6, 2:18 1000 [2] - 2:3, 2:9 1001 [1] - 2:14 103 [1] - 90:11 108 [2] - 142:15, 177:25 10:45 [1] - 100:25 10:50 [1] - 100:25 11 [5] - 49:14, 53:8, 138:12, 138:15, 142:18 1100 [1] - 2:21 112 [1] - 3:15 1124 [1] - 179:19 115 [2] - 3:23, 38:20 12 [11] - 48:17, 49:25, 53:9, 53:22, 57:5, 117:23, 117:25, 125:2, 130:7, 134:11, 138:15 126 [1] - 3:16	12785 [1] - 59:9 1294 [1] - 175:7 12:15 [1] - 182:7 12th [1] - 181:12 13 [7] - 50:9, 53:22, 53:24, 116:3, 130:20, 137:12, 138:15 135 [1] - 3:16 14 [8] - 29:4, 29:13, 29:21, 50:13, 77:9, 134:19, 138:16, 162:7 142 [1] - 3:24 15 [5] - 29:14, 29:21, 50:16, 132:22, 138:18 156 [1] - 20:11 15th [8] - 23:18, 81:10, 90:11, 144:25, 145:4, 147:7, 161:17, 173:13 16 [11] - 48:7, 51:21, 74:6, 80:23, 113:12, 118:4, 122:8, 122:21, 126:11, 138:18, 177:25 17 [2] - 138:22, 143:6 18 [7] - 51:24, 53:15, 83:18, 113:8, 116:3, 138:23, 139:1 18,000-plus [1] - 160:13 18th [2] - 93:18, 94:21 19 [8] - 53:15, 53:21, 116:19, 137:25, 138:3, 139:2 1982 [1] - 179:18 1984 [1] - 129:24 1988 [1] - 175:8 1999 [1] - 176:3 1st [1] - 10:13 2 2 [9] - 1:19, 3:20, 50:17, 51:15, 51:17, 51:20, 140:1, 141:6, 141:15 20 [4] - 53:23, 54:6, 116:18, 144:3 200 [3] - 2:2, 3:3, 173:2 2000 [1] - 2:17 2002 [1] - 2:14 2003 [15] - 34:20, 75:25, 76:3, 77:25, 79:20, 79:25, 80:9, 81:1, 81:25, 149:1, 149:20, 149:22, 149:23, 150:16, 162:4	2004 [2] - 79:21, 150:8 2005 [5] - 128:23, 130:25, 131:6, 131:11, 148:11 2006 [4] - 45:7, 144:11, 170:11, 170:16 2007 [1] - 144:9 2008 [2] - 102:13, 144:7 2009 [26] - 4:23, 5:23, 9:22, 10:6, 10:13, 15:10, 81:11, 90:11, 102:24, 118:11, 118:20, 118:21, 120:8, 143:1, 143:11, 143:12, 143:16, 143:21, 145:1, 145:4, 146:17, 147:7, 161:17, 163:12, 178:6, 178:11 2010 [10] - 1:19, 116:15, 137:9, 140:22, 140:24, 142:22, 177:20, 177:21, 178:6, 183:15 21 [3] - 130:3, 139:23, 142:9 210 [1] - 139:2 22 [7] - 54:10, 54:25, 56:19, 57:4, 118:6, 132:4, 139:23 23 [7] - 52:2, 54:6, 54:10, 57:4, 124:14, 140:16, 144:4 24 [4] - 54:7, 54:23, 54:25, 133:23 2400 [1] - 2:20 25 [5] - 53:8, 54:23, 55:6, 56:10, 116:19 2525 [1] - 2:12 25th [1] - 103:15 26 [1] - 121:14 27 [2] - 130:15, 146:17 27th [2] - 163:11, 173:2 28 [3] - 56:18, 56:19, 130:16 29 [2] - 56:18, 57:1 2nd [5] - 2:6, 148:22, 175:7, 175:8, 175:24, 176:2 3 3 [11] - 3:20, 65:14, 65:17, 81:19, 135:22,	140:19, 140:20, 141:7, 141:16, 143:8 30 [3] - 123:13, 141:3, 142:9 30th [4] - 52:4, 54:9, 54:16, 143:12 31 [1] - 124:13 32 [2] - 52:6, 124:13 32801 [1] - 3:4 32802 [1] - 2:10 33131 [3] - 2:3, 2:7, 2:15 33134 [1] - 2:12 33181 [1] - 59:9 33301 [1] - 2:18 33308 [1] - 2:21 33601-3913 [1] - 2:24 34 [1] - 134:19 349-7161 [1] - 14:1 35 [1] - 52:9 39 [2] - 130:19, 130:20 390 [1] - 2:9 3913 [1] - 2:24 4 4 [5] - 3:21, 67:9, 67:10, 67:13, 140:16 40 [2] - 125:1, 130:20 401 [2] - 123:11, 138:22 406 [1] - 179:19 42 [2] - 126:10 4300 [1] - 2:6 45 [1] - 129:19 450 [1] - 3:3 48 [1] - 3:12 49 [1] - 3:19 5 5 [3] - 3:21, 68:8, 68:11 503 [1] - 112:15 504 [2] - 50:4, 50:5 51 [4] - 3:20, 132:1, 132:4 510 [3] - 69:15, 138:23, 138:25 52 [2] - 132:1 53 [1] - 3:13 532 [1] - 175:7 57 [1] - 133:23 58 [2] - 3:14, 133:22

<p>6</p> <p>6 [8] - 3:22, 48:7, 69:7, 69:8, 69:10, 130:4, 135:22, 141:4 60 [4] - 142:18, 144:2, 171:10, 173:1 601 [16] - 49:2, 49:23, 50:5, 60:19, 60:23, 60:24, 61:7, 64:4, 64:5, 67:25, 86:21, 87:20, 88:10, 89:12, 96:8 6035 [1] - 112:16 608 [1] - 176:2 61 [1] - 143:6 62 [1] - 81:19 65 [1] - 3:20 67 [2] - 3:21, 35:7 68 [1] - 3:21 69 [1] - 3:22</p>	<p>115:5, 115:8, 137:24, 137:25, 138:2 9-30-09 [1] - 143:9 9.310 [3] - 165:10, 173:24, 174:4 9.310(b) [1] - 38:24 9.310(b)(1) [1] - 38:18 9.310(c)(2) [1] - 38:24 9.310A [1] - 165:7 90 [1] - 104:6 92 [3] - 74:4, 178:1, 178:9 9th [1] - 2:12</p>	<p>83:20 accurately [1] - 68:21 acquisition [3] - 49:2, 59:14, 113:23 Acquisitions [5] - 4:18, 34:22, 62:14, 62:21, 116:8, 122:4 acquisitions [4] - 5:18, 59:13, 62:19, 113:11 act [1] - 65:23 acted [1] - 154:23 action [33] - 6:2, 6:16, 7:25, 102:4, 102:24, 103:4, 103:12, 103:13, 103:15, 103:17, 103:20, 103:24, 104:1, 104:2, 104:13, 104:21, 104:25, 105:3, 105:5, 105:8, 105:9, 105:17, 105:18, 105:23, 106:4, 106:5, 106:23, 106:25, 107:15, 108:10, 108:12, 110:2, 110:9 active [2] - 72:19, 94:4 actual [9] - 118:20, 118:21, 118:23, 120:7, 133:15, 141:21, 143:11, 143:18, 173:22 add [9] - 41:6, 43:14, 109:4, 110:24, 117:8, 119:25, 135:18, 163:5, 179:3 addendum [2] - 51:1, 51:10 addition [4] - 30:21, 43:20, 43:23, 105:24 additional [5] - 41:23, 43:22, 117:2, 135:18, 143:22 additions [1] - 143:25 address [11] - 9:21, 46:8, 58:8, 59:7, 59:8, 59:25, 101:22, 118:14, 129:16, 161:15, 177:18 addressed [1] - 77:5 addressing [2] - 15:5, 150:24 administered [1] - 58:21 admissibility [2] - 119:22, 120:20</p>	<p>admissible [1] - 120:16 admission [3] - 49:4, 73:13, 86:25 admissions [1] - 148:25 admit [1] - 70:9 admits [1] - 53:17 admitted [37] - 31:1, 31:10, 31:15, 49:7, 49:8, 49:13, 51:14, 51:18, 51:20, 53:16, 65:2, 65:15, 65:17, 67:8, 67:10, 67:13, 68:9, 68:11, 69:6, 69:8, 69:10, 70:7, 70:15, 73:9, 73:18, 73:20, 86:22, 88:22, 92:25, 114:18, 115:5, 115:8, 120:24, 137:22, 142:4, 142:7, 145:23 adopting [1] - 18:7 advance [5] - 113:7, 113:14, 116:2, 116:17, 121:13 adversary [1] - 109:14 adverse [3] - 16:22, 159:7, 159:9 adversely [1] - 96:9 advised [3] - 65:22, 109:10, 176:9 advisory [4] - 11:6, 11:23, 15:12 affecting [2] - 96:9, 168:17 affirmed [1] - 174:13 agent [2] - 11:18, 86:12 ago [4] - 30:24, 125:12, 148:16, 172:12 agree [6] - 31:25, 43:14, 99:16, 108:7, 108:18, 109:11 agreed [2] - 64:4, 97:7 agreement [5] - 35:1, 35:2, 88:15, 107:3, 173:6 agricultural [2] - 175:5, 175:11 ahead [20] - 11:1, 22:14, 22:24, 22:25, 24:17, 29:6, 33:8, 36:7, 63:5, 63:22, 78:5, 79:14, 87:8, 98:9, 122:7, 126:15, 126:18, 130:4,</p>	<p>170:24, 173:11 air [2] - 61:20, 66:19 air-conditioning [2] - 61:20, 66:19 al [1] - 1:14 ALEX [1] - 3:6 Alex [3] - 9:11, 14:22, 115:14 Allan [1] - 7:22 ALLAN [1] - 2:15 alleged [1] - 19:24 allegedly [1] - 92:11 allow [21] - 12:23, 18:10, 22:3, 27:17, 35:21, 43:1, 47:18, 63:3, 73:12, 110:7, 110:18, 110:19, 127:8, 135:8, 153:25, 160:6, 163:10, 163:13, 163:20, 171:24, 172:24 allowed [10] - 23:25, 35:19, 41:16, 46:2, 66:1, 92:11, 106:25, 127:18, 170:6, 172:23 allowing [5] - 11:13, 16:16, 33:16, 107:7, 165:25 allows [5] - 23:11, 24:25, 26:12, 27:23, 55:9 almost [4] - 42:9, 44:16, 125:8, 141:1 alone [1] - 44:14 ALSO [1] - 3:7 amend [1] - 177:7 America [2] - 2:6, 2:9 amount [19] - 39:14, 43:18, 44:12, 71:16, 107:5, 116:13, 116:21, 117:4, 118:9, 119:11, 121:9, 132:2, 133:12, 133:17, 138:6, 138:14, 143:4, 173:20, 175:17 amounts [2] - 116:20, 120:7 analysis [2] - 40:8, 70:19 ANANIA [1] - 2:5 AND [1] - 1:2 announce [1] - 115:11 announced [1] - 15:4 announcing [2] - 4:5, 5:11 annual [3] - 42:10, 119:17, 157:5 annualized [1] - 143:16</p>
<p>7</p> <p>7 [11] - 3:22, 40:3, 48:12, 70:12, 70:15, 112:18, 113:8, 113:15, 121:14, 137:4, 137:12 70 [1] - 3:22 706 [22] - 50:20, 50:21, 51:8, 51:22, 60:19, 60:24, 61:7, 67:19, 68:1, 68:4, 68:14, 68:22, 69:25, 86:21, 88:20, 88:22, 89:12, 96:8, 116:5, 116:7, 116:11, 139:1 73 [2] - 1:18, 3:23 739 [1] - 176:1 7425676 [1] - 94:14 7446518 [1] - 94:9 75 [1] - 3:14</p>	<p>A</p> <p>a.m [4] - 1:19, 100:25, 182:7 A1 [1] - 145:22 abated [3] - 103:12, 172:24, 173:1 ability [5] - 71:11, 153:23, 153:24, 155:13, 166:19 able [11] - 23:3, 23:9, 56:14, 61:6, 79:25, 110:18, 112:3, 159:16, 161:3, 166:6, 168:5 above-entitled [1] - 1:21 Absolutely [1] - 135:20 absolutely [3] - 23:8, 85:23, 169:12 abuse [1] - 153:12 abused [1] - 19:9 accelerates [1] - 114:12 acceleration [4] - 116:15, 117:1, 117:19, 134:11 accept [2] - 23:22, 181:6 accepts [1] - 75:4 access [2] - 61:6, 127:9 according [1] - 118:10 account [2] - 148:25, 173:18 accounting [1] - 117:12 accounts [2] - 91:25, 179:5 accrued [1] - 176:13 accruing [4] - 42:17, 83:17, 83:23, 156:13 accumulating [1] -</p>	<p>83:20 accurately [1] - 68:21 acquisition [3] - 49:2, 59:14, 113:23 Acquisitions [5] - 4:18, 34:22, 62:14, 62:21, 116:8, 122:4 acquisitions [4] - 5:18, 59:13, 62:19, 113:11 act [1] - 65:23 acted [1] - 154:23 action [33] - 6:2, 6:16, 7:25, 102:4, 102:24, 103:4, 103:12, 103:13, 103:15, 103:17, 103:20, 103:24, 104:1, 104:2, 104:13, 104:21, 104:25, 105:3, 105:5, 105:8, 105:9, 105:17, 105:18, 105:23, 106:4, 106:5, 106:23, 106:25, 107:15, 108:10, 108:12, 110:2, 110:9 active [2] - 72:19, 94:4 actual [9] - 118:20, 118:21, 118:23, 120:7, 133:15, 141:21, 143:11, 143:18, 173:22 add [9] - 41:6, 43:14, 109:4, 110:24, 117:8, 119:25, 135:18, 163:5, 179:3 addendum [2] - 51:1, 51:10 addition [4] - 30:21, 43:20, 43:23, 105:24 additional [5] - 41:23, 43:22, 117:2, 135:18, 143:22 additions [1] - 143:25 address [11] - 9:21, 46:8, 58:8, 59:7, 59:8, 59:25, 101:22, 118:14, 129:16, 161:15, 177:18 addressed [1] - 77:5 addressing [2] - 15:5, 150:24 administered [1] - 58:21 admissibility [2] - 119:22, 120:20</p>	<p>admissible [1] - 120:16 admission [3] - 49:4, 73:13, 86:25 admissions [1] - 148:25 admit [1] - 70:9 admits [1] - 53:17 admitted [37] - 31:1, 31:10, 31:15, 49:7, 49:8, 49:13, 51:14, 51:18, 51:20, 53:16, 65:2, 65:15, 65:17, 67:8, 67:10, 67:13, 68:9, 68:11, 69:6, 69:8, 69:10, 70:7, 70:15, 73:9, 73:18, 73:20, 86:22, 88:22, 92:25, 114:18, 115:5, 115:8, 120:24, 137:22, 142:4, 142:7, 145:23 adopting [1] - 18:7 advance [5] - 113:7, 113:14, 116:2, 116:17, 121:13 adversary [1] - 109:14 adverse [3] - 16:22, 159:7, 159:9 adversely [1] - 96:9 advised [3] - 65:22, 109:10, 176:9 advisory [4] - 11:6, 11:23, 15:12 affecting [2] - 96:9, 168:17 affirmed [1] - 174:13 agent [2] - 11:18, 86:12 ago [4] - 30:24, 125:12, 148:16, 172:12 agree [6] - 31:25, 43:14, 99:16, 108:7, 108:18, 109:11 agreed [2] - 64:4, 97:7 agreement [5] - 35:1, 35:2, 88:15, 107:3, 173:6 agricultural [2] - 175:5, 175:11 ahead [20] - 11:1, 22:14, 22:24, 22:25, 24:17, 29:6, 33:8, 36:7, 63:5, 63:22, 78:5, 79:14, 87:8, 98:9, 122:7, 126:15, 126:18, 130:4,</p>	<p>170:24, 173:11 air [2] - 61:20, 66:19 air-conditioning [2] - 61:20, 66:19 al [1] - 1:14 ALEX [1] - 3:6 Alex [3] - 9:11, 14:22, 115:14 Allan [1] - 7:22 ALLAN [1] - 2:15 alleged [1] - 19:24 allegedly [1] - 92:11 allow [21] - 12:23, 18:10, 22:3, 27:17, 35:21, 43:1, 47:18, 63:3, 73:12, 110:7, 110:18, 110:19, 127:8, 135:8, 153:25, 160:6, 163:10, 163:13, 163:20, 171:24, 172:24 allowed [10] - 23:25, 35:19, 41:16, 46:2, 66:1, 92:11, 106:25, 127:18, 170:6, 172:23 allowing [5] - 11:13, 16:16, 33:16, 107:7, 165:25 allows [5] - 23:11, 24:25, 26:12, 27:23, 55:9 almost [4] - 42:9, 44:16, 125:8, 141:1 alone [1] - 44:14 ALSO [1] - 3:7 amend [1] - 177:7 America [2] - 2:6, 2:9 amount [19] - 39:14, 43:18, 44:12, 71:16, 107:5, 116:13, 116:21, 117:4, 118:9, 119:11, 121:9, 132:2, 133:12, 133:17, 138:6, 138:14, 143:4, 173:20, 175:17 amounts [2] - 116:20, 120:7 analysis [2] - 40:8, 70:19 ANANIA [1] - 2:5 AND [1] - 1:2 announce [1] - 115:11 announced [1] - 15:4 announcing [2] - 4:5, 5:11 annual [3] - 42:10, 119:17, 157:5 annualized [1] - 143:16</p>
<p>8</p> <p>8 [7] - 3:23, 48:14, 73:18, 73:20, 113:14, 142:19 80 [1] - 157:4 89 [1] - 44:17 8:30 [1] - 181:13 8:45 [1] - 1:19</p>	<p>9</p> <p>9 [7] - 3:23, 114:19,</p>	<p>83:20 accurately [1] - 68:21 acquisition [3] - 49:2, 59:14, 113:23 Acquisitions [5] - 4:18, 34:22, 62:14, 62:21, 116:8, 122:4 acquisitions [4] - 5:18, 59:13, 62:19, 113:11 act [1] - 65:23 acted [1] - 154:23 action [33] - 6:2, 6:16, 7:25, 102:4, 102:24, 103:4, 103:12, 103:13, 103:15, 103:17, 103:20, 103:24, 104:1, 104:2, 104:13, 104:21, 104:25, 105:3, 105:5, 105:8, 105:9, 105:17, 105:18, 105:23, 106:4, 106:5, 106:23, 106:25, 107:15, 108:10, 108:12, 110:2, 110:9 active [2] - 72:19, 94:4 actual [9] - 118:20, 118:21, 118:23, 120:7, 133:15, 141:21, 143:11, 143:18, 173:22 add [9] - 41:6, 43:14, 109:4, 110:24, 117:8, 119:25, 135:18, 163:5, 179:3 addendum [2] - 51:1, 51:10 addition [4] - 30:21, 43:20, 43:23, 105:24 additional [5] - 41:23, 43:22, 117:2, 135:18, 143:22 additions [1] - 143:25 address [11] - 9:21, 46:8, 58:8, 59:7, 59:8, 59:25, 101:22, 118:14, 129:16, 161:15, 177:18 addressed [1] - 77:5 addressing [2] - 15:5, 150:24 administered [1] - 58:21 admissibility [2] - 119:22, 120:20</p>	<p>admissible [1] - 120:16 admission [3] - 49:4, 73:13, 86:25 admissions [1] - 148:25 admit [1] - 70:9 admits [1] - 53:17 admitted [37] - 31:1, 31:10, 31:15, 49:7, 49:8, 49:13, 51:14, 51:18, 51:20, 53:16, 65:2, 65:15, 65:17, 67:8, 67:10, 67:13, 68:9, 68:11, 69:6, 69:8, 69:10, 70:7, 70:15, 73:9, 73:18, 73:20, 86:22, 88:22, 92:25, 114:18, 115:5, 115:8, 120:24, 137:22, 142:4, 142:7, 145:23 adopting [1] - 18:7 advance [5] - 113:7, 113:14, 116:2, 116:17, 121:13 adversary [1] - 109:14 adverse [3] - 16:22, 159:7, 159:9 adversely [1] - 96:9 advised [3] - 65:22, 109:10, 176:9 advisory [4] - 11:6, 11:23, 15:12 affecting [2] - 96:9, 168:17 affirmed [1] - 174:13 agent [2] - 11:18, 86:12 ago [4] - 30:24, 125:12, 148:16, 172:12 agree [6] - 31:25, 43:14, 99:16, 108:7, 108:18, 109:11 agreed [2] - 64:4, 97:7 agreement [5] - 35:1, 35:2, 88:15, 107:3, 173:6 agricultural [2] - 175:5, 175:11 ahead [20] - 11:1, 22:14, 22:24, 22:25, 24:17, 29:6, 33:8, 36:7, 63:5, 63:22, 78:5, 79:14, 87:8, 98:9, 122:7, 126:15, 126:18, 130:4,</p>	<p>170:24, 173:11 air [2] - 61:20, 66:19 air-conditioning [2] - 61:20, 66:19 al [1] - 1:14 ALEX [1] - 3:6 Alex [3] - 9:11, 14:22, 115:14 Allan [1] - 7:22 ALLAN [1] - 2:15 alleged [1] - 19:24 allegedly [1] - 92:11 allow [21] - 12:23, 18:10, 22:3, 27:17, 35:21, 43:1, 47:18, 63:3, 73:12, 110:7, 110:18, 110:19, 127:8, 135:8, 153:25, 160:6, 163:10, 163:13, 163:20, 171:24, 172:24 allowed [10] - 23:25, 35:19, 41:16, 46:2, 66:1, 92:11, 106:25, 127:18, 170:6, 172:23 allowing [5] - 11:13, 16:16, 33:16, 107:7, 165:25 allows [5] - 23:11, 24:25, 26:12, 27:23, 55:9 almost [4] - 42:9, 44:16, 125:8, 141:1 alone [1] - 44:14 ALSO [1] - 3:7 amend [1] - 177:7 America [2] - 2:6, 2:9 amount [19] - 39:14, 43:18, 44:12, 71:16, 107:5, 116:13, 116:21, 117:4, 118:9, 119:11, 121:9, 132:2, 133:12, 133:17, 138:6, 138:14, 143:4, 173:20, 175:17 amounts [2] - 116:20, 120:7 analysis [2] - 40:8, 70:19 ANANIA [1] - 2:5 AND [1] - 1:2 announce [1] - 115:11 announced [1] - 15:4 announcing [2] - 4:5, 5:11 annual [3] - 42:10, 119:17, 157:5 annualized [1] - 143:16</p>
<p>9</p> <p>9 [7] - 3:23, 114:19,</p>	<p>9</p> <p>9 [7] - 3:23, 114:19,</p>	<p>83:20 accurately [1] - 68:21 acquisition [3] - 49:2, 59:14, 113:23 Acquisitions [5] - 4:18, 34:22, 62:14, 62:21, 116:8, 122:4 acquisitions [4] - 5:18, 59:13, 62:19, 113:11 act [1] - 65:23 acted [1] - 154:23 action [33] - 6:2, 6:16, 7:25, 102:4, 102:24, 103:4, 103:12, 103:13, 103:15, 103:17, 103:20, 103:24, 104:1, 104:2, 104:13, 104:21, 104:25, 105:3, 105:5, 105:8, 105:9, 105:17, 105:18, 105:23, 106:4, 106:5, 106:23, 106:25, 107:15, 108:10, 108:12, 110:2, 110:9 active [2] - 72:19, 94:4 actual [9] - 118:20, 118:21, 118:23, 120:7, 133:15, 141:21, 143:11, 143:18, 173:22 add [9] - 41:6, 43:14, 109:4, 110:24, 117:8, 119:25, 135:18, 163:5, 179:3 addendum [2] - 51:1, 51:10 addition [4] - 30:21, 43:20, 43:23, 105:24 additional [5] - 41:23, 43:22, 117:2, 135:18, 143:22 additions [1] - 143:25 address [11] - 9:21, 46:8, 58:8, 59:7, 59:8, 59:25, 101:22, 118:14, 129:16, 161:15, 177:18 addressed [1] - 77:5 addressing [2] - 15:5, 150:24 administered [1] - 58:21 admissibility [2] - 119:22, 120:20</p>	<p>admissible [1] - 120:16 admission [3] - 49:4, 73:13, 86:25 admissions [1] - 148:25 admit [1] - 70:9 admits [1] - 53:17 admitted [37] - 31:1, 31:10, 31:15, 49:7, 49:8, 49:13, 51:14, 51:18, 51:20, 53:16, 65:2, 65:15, 65:17, 67:8, 67:10, 67:13, 68:9, 68:11, 69:6, 69:8, 69:10, 70:7, 70:15, 73:9, 73:18, 73:20, 86:22, 88:22, 92:25, 114:18, 115:5, 115:8, 120:24, 137:22, 142:4, 142:7, 145:23 adopting [1] - 18:7 advance [5] - 113:7, 113:14, 116:2, 116:17, 121:13 adversary [1] - 109:14 adverse [3] - 16:22, 159:7, 159:9 adversely [1] - 96:9 advised [3] - 65:22, 109:10, 176:9 advisory [4] - 11:6, 11:23, 15:12 affecting [2] - 96:9, 168:17 affirmed [1] - 174:13 agent [2] - 11:18, 86:12 ago [4] - 30:24, 125:12, 148:16, 172:12 agree [6] - 31:25, 43:14, 99:16, 108:7, 108:18, 109:11 agreed [2] - 64:4, 97:7 agreement [5] - 35:1, 35:2, 88:15, 107:3, 173:6 agricultural [2] - 175:5, 175:11 ahead [20] - 11:1, 22:14, 22:24, 22:25, 24:17, 29:6, 33:8, 36:7, 63:5, 63:22, 78:5, 79:14, 87:8, 98:9, 122:7, 126:15, 126:18, 130:4,</p>	<p>170:24, 173:11 air [2] - 61:20, 66:19 air-conditioning [2] - 61:20, 66:19 al [1] - 1:1</p>

ANSWER [79] - 54:17, 54:21, 55:5, 55:13, 55:18, 56:4, 56:16, 56:24, 57:10, 58:2, 81:23, 82:1, 112:21, 112:24, 113:2, 113:5, 113:12, 113:19, 116:9, 116:12, 116:16, 116:25, 117:8, 117:15, 117:17, 117:25, 121:17, 121:20, 122:2, 122:8, 123:5, 124:11, 124:18, 124:24, 125:6, 126:4, 126:19, 127:14, 127:16, 128:6, 128:15, 128:21, 129:15, 129:24, 130:9, 130:23, 131:13, 131:18, 132:9, 132:12, 132:19, 132:24, 133:8, 133:16, 133:21, 134:10, 136:1, 136:13, 136:17, 137:2, 137:7, 137:16, 137:19, 140:4, 140:12, 140:21, 140:25, 141:10, 141:13, 142:15, 142:23, 142:25, 143:3, 143:5, 143:14, 143:19, 144:8, 144:10, 144:12 answer [14] - 39:17, 55:23, 79:10, 79:13, 90:7, 91:9, 97:14, 116:6, 121:8, 122:7, 124:23, 125:23, 131:1 answered [1] - 42:21 answering [1] - 119:16 ANTHONY [1] - 3:12 Anthony [1] - 46:21 anyway [4] - 42:3, 84:1, 160:19, 177:11 Anyway [1] - 18:23 apartments [3] - 61:23, 66:17, 86:25 apologize [4] - 13:16, 70:3, 101:17, 134:18 apparent [1] - 123:23 appeal [66] - 5:23, 9:23, 10:14, 11:24, 15:6, 16:8, 16:18, 19:8, 20:2, 20:4, 20:6, 20:13, 20:14, 20:20, 20:23, 22:2, 22:13, 22:17, 25:21, 27:6, 27:18, 28:1, 34:4, 36:22, 37:18, 37:20, 38:17, 38:21, 39:8, 44:3, 45:14, 148:22, 152:7, 152:14, 153:17, 153:18, 154:2, 158:8, 158:10, 158:16, 158:17, 160:17, 161:1, 164:6, 166:1, 167:14, 169:10, 169:17, 170:7, 175:23, 179:16, 179:22, 180:1, 180:6 appealable [3] - 15:17, 15:21, 15:24 appealed [2] - 11:7, 19:2 appealing [1] - 74:4 appeals [2] - 27:17, 167:18 appear [1] - 181:13 appearance [5] - 6:4, 6:6, 7:16, 8:14, 159:21 APPEARANCES [1] - 2:1 appearances [2] - 3:1, 4:5 APPEARING [2] - 2:23, 3:2 aPPEARING [1] - 3:5 appellate [7] - 34:7, 38:2, 38:3, 153:13, 158:9, 165:3, 165:7 appliances [5] - 40:12, 49:21, 50:6, 62:1, 157:19 applications [1] - 123:20 applies [1] - 111:2 apply [3] - 38:23, 132:16, 136:20 appointed [7] - 6:14, 22:6, 22:7, 36:24, 65:21, 91:25, 163:16 approach [3] - 17:25, 63:7, 81:7 appropriate [15] - 6:19, 16:19, 17:12, 34:13, 36:10, 72:8, 97:24, 106:4, 107:14, 108:13, 109:13, 135:17, 157:10, 166:7, 176:24 appropriateness [1] - 74:25 approval [4] - 11:16, 75:5, 110:1, 140:8 approve [2] - 64:15, 152:1 approved [5] - 11:20, 89:11, 120:3, 140:11, 140:14 approves [1] - 65:6 approving [2] - 4:15, 5:15 area [2] - 71:8, 96:1 argue [3] - 16:3, 16:4, 166:16 argued [1] - 33:20 arguing [1] - 163:8 argument [11] - 33:19, 43:9, 46:3, 46:8, 76:20, 147:21, 150:23, 161:8, 172:18, 180:14, 180:21 arguments [8] - 16:4, 21:18, 37:16, 151:15, 161:7, 173:22, 181:11, 181:19 arrange [1] - 86:12 arrears [2] - 74:7, 84:11 arrive [1] - 181:15 Arzouman [1] - 23:24 aside [1] - 133:24 asserted [1] - 72:24 assess [1] - 136:17 assessment [11] - 31:12, 45:1, 130:12, 132:13, 136:2, 136:25, 137:9, 137:14, 173:16, 177:23, 178:8 assessments [21] - 44:7, 45:11, 45:17, 74:5, 116:14, 116:15, 117:5, 117:9, 117:10, 117:21, 130:7, 136:3, 136:18, 137:18, 142:21, 143:2, 144:6, 146:21, 157:6, 172:15, 179:11 associate [1] - 128:10 associated [2] - 123:4, 129:6 Association [1] - 8:25 association [108] - 24:3, 30:15, 30:21, 30:23, 30:25, 31:1, 31:6, 31:11, 31:14, 31:16, 42:1, 42:7, 42:10, 42:12, 42:18, 43:9, 44:1, 44:4, 44:15, 44:23, 45:9, 45:18, 73:23, 74:21, 85:25, 112:1, 112:20, 114:4, 117:4, 117:7, 117:14, 117:24, 118:9, 119:23, 120:1, 120:4, 120:5, 121:15, 123:2, 123:6, 124:9, 127:1, 127:2, 127:8, 128:4, 128:12, 130:6, 130:21, 131:4, 131:11, 132:3, 133:13, 134:2, 134:9, 135:4, 135:9, 135:16, 135:24, 136:8, 137:6, 137:13, 140:21, 141:9, 141:12, 142:11, 142:13, 142:21, 143:2, 143:13, 143:16, 144:6, 150:11, 151:10, 151:19, 153:4, 155:18, 155:20, 156:17, 156:20, 156:22, 157:1, 159:14, 159:17, 160:14, 160:23, 162:20, 163:8, 163:9, 163:19, 163:25, 168:22, 172:5, 172:13, 173:21, 173:23, 174:17, 177:2, 177:9, 177:13, 177:21, 178:3, 178:11, 178:12, 178:22, 179:7, 180:13, 180:20 association's [3] - 146:19, 172:19, 174:22 assume [2] - 25:3, 56:17 ate [1] - 39:8 Atlanta [1] - 4:10 ATLANTA [1] - 1:14 attach [1] - 34:2 attachments [2] - 10:4, 154:24 attempt [1] - 173:5 attempted [1] - 125:10 attend [1] - 112:3 attention [1] - 18:4 attorney [6] - 32:16, 56:21, 130:22, 131:6, 163:18 attorneys [2] - 109:8, 114:22 aunt [2] - 60:12, 71:5 authority [10] - 19:18, 19:22, 22:3, 24:2, 26:7, 29:10, 32:19, 65:22, 66:4, 148:23 authorization [1] - 46:15 authorize [2] - 15:19, 174:24 authorized [1] - 183:9 authorizing [3] - 33:23, 54:2, 153:21 automatic [1] - 163:15 available [1] - 62:21 Avenue [2] - 2:9, 3:3 awarded [1] - 175:17 aware [15] - 19:21, 28:22, 29:23, 32:9, 32:12, 55:14, 64:10, 79:4, 82:20, 85:24, 89:21, 96:6, 122:5, 127:21, 129:14 awhile [1] - 127:19 axis [2] - 105:4, 105:14 Axis [9] - 5:25, 7:8, 8:5, 102:2, 102:21, 103:4, 103:16, 104:10, 106:20	B backdrop [1] - 152:15 bad [2] - 23:14, 27:2 Bagley [3] - 1:22, 5:1, 14:15 baker [1] - 176:1 balance [11] - 29:25, 30:2, 31:21, 33:3, 116:10, 116:14, 138:23, 138:24, 139:1, 160:24, 178:1 balconies [2] - 122:21, 127:11 ball [1] - 111:4 BANDKLAYDER [1] - 2:5 bank [1] - 2:6 Bank [1] - 2:9 bankers [1] - 35:7 bankruptcy [25] - 7:19, 16:13, 18:1, 18:9, 31:2, 39:6, 39:24, 40:1, 40:3, 44:24, 103:19,
--	--

<p>104:23, 108:12, 108:16, 108:22, 109:5, 109:15, 109:24, 110:11, 110:12, 130:22, 131:5, 131:7, 131:12, 158:8</p> <p>bare [1] - 45:10</p> <p>base [1] - 55:21</p> <p>baseboards [1] - 62:5</p> <p>based [12] - 19:15, 36:8, 69:5, 74:20, 119:18, 132:10, 132:12, 132:17, 143:25, 149:15, 157:2, 167:20</p> <p>bashful [1] - 9:17</p> <p>basis [4] - 25:25, 170:1, 171:24, 172:1</p> <p>BASURTO [32] - 2:25, 5:5, 8:22, 10:20, 13:1, 13:13, 13:22, 14:12, 14:18, 43:6, 43:13, 115:12, 115:22, 119:24, 135:14, 135:21, 137:24, 138:13, 138:18, 138:21, 139:6, 139:10, 139:22, 142:5, 142:8, 151:12, 172:7, 173:3, 173:9, 173:12, 181:25, 182:5</p> <p>Basurto [10] - 3:16, 5:6, 8:23, 13:1, 14:19, 43:7, 115:13, 119:25, 135:16, 180:22</p> <p>Basurto's [1] - 143:25</p> <p>bathroom [1] - 62:4</p> <p>battle [1] - 163:4</p> <p>Baumgarten [20] - 3:13, 3:14, 3:16, 6:25, 33:20, 34:3, 37:19, 44:21, 45:12, 45:25, 52:19, 70:5, 73:7, 75:12, 97:12, 120:14, 131:18, 139:17, 144:18, 151:17, 158:7, 159:5, 159:23, 161:4, 172:11, 172:17, 177:4, 178:13, 179:2</p> <p>BAUMGARTEN [98] - 2:5, 2:7, 6:25, 9:8, 9:11, 10:17, 11:2, 11:12, 15:15, 16:1, 16:12, 19:7, 23:23, 29:25, 35:15, 45:24,</p>	<p>47:15, 49:3, 50:24, 51:5, 51:9, 51:12, 52:20, 60:25, 62:16, 62:24, 63:19, 64:19, 65:5, 65:9, 66:25, 68:7, 69:3, 70:6, 71:22, 73:8, 74:14, 75:13, 76:7, 77:23, 78:14, 80:6, 81:9, 83:6, 87:12, 90:22, 91:1, 92:9, 92:24, 93:24, 95:5, 96:12, 98:3, 98:7, 98:17, 104:15, 114:6, 114:9, 114:16, 118:13, 118:16, 120:22, 122:11, 125:14, 125:16, 125:22, 126:8, 126:16, 126:19, 129:1, 139:19, 141:19, 143:24, 144:2, 144:20, 145:20, 146:7, 146:11, 146:14, 146:25, 147:16, 147:20, 147:24, 148:19, 149:7, 149:10, 150:17, 150:25, 151:8, 161:5, 168:13, 171:17, 171:19, 171:23, 180:18, 181:1, 181:4, 181:21</p> <p>BAUMGARTEN [10] - 10:9, 75:16, 76:25, 77:17, 78:6, 79:16, 84:2, 87:18, 90:9, 91:10</p> <p>Baumgarten's [4] - 158:15, 174:20, 179:10, 180:10</p> <p>Bay [1] - 2:14</p> <p>Beach [1] - 43:8</p> <p>beach [1] - 8:24</p> <p>beautiful [1] - 77:6</p> <p>became [3] - 67:5, 103:6, 129:13</p> <p>become [4] - 75:18, 75:21, 76:2, 77:1</p> <p>becomes [3] - 20:12, 20:19, 28:13</p> <p>bedroom [1] - 49:23</p> <p>began [3] - 5:11, 123:11, 123:15</p> <p>begin [4] - 6:4, 9:20, 137:25, 161:5</p> <p>beginning [3] - 57:4, 164:9, 170:9</p> <p>behalf [19] - 8:5, 37:19, 50:12, 59:24,</p>	<p>64:14, 64:19, 64:23, 65:3, 65:23, 66:5, 70:17, 78:8, 78:10, 103:1, 103:2, 105:16, 105:22, 106:20, 156:1</p> <p>behind [2] - 131:23, 157:5</p> <p>believes [1] - 6:18</p> <p>belong [3] - 21:22, 27:15, 177:25</p> <p>belongs [6] - 17:24, 19:1, 20:8, 20:25, 26:9, 171:12</p> <p>below [2] - 26:22, 27:4</p> <p>bench [1] - 103:7</p> <p>beneficial [1] - 155:24</p> <p>Berger [1] - 6:11</p> <p>BERGER [1] - 2:2</p> <p>BERMAN [2] - 1:9, 1:10</p> <p>Berman [18] - 4:8, 4:9, 7:25, 28:24, 29:1, 32:12, 36:23, 59:12, 102:15, 103:18, 104:24, 108:7, 108:17, 108:21</p> <p>Berman's [1] - 7:18</p> <p>best [8] - 37:6, 61:17, 61:18, 83:24, 89:15, 91:19, 106:15, 130:24</p> <p>better [6] - 26:4, 32:7, 32:20, 53:14, 83:24, 167:10</p> <p>between [11] - 32:15, 35:12, 41:10, 134:15, 163:4, 169:10, 169:16, 174:19, 177:16, 179:20, 180:20</p> <p>beyond [4] - 48:4, 76:5, 90:5, 98:4</p> <p>big [2] - 24:4, 146:4</p> <p>bill [1] - 178:5</p> <p>binder [7] - 48:18, 50:18, 50:23, 63:18, 66:8, 69:13, 97:19</p> <p>binders [1] - 69:23</p> <p>birds [1] - 126:17</p> <p>Biscayne [1] - 2:2</p> <p>BISERTO [1] - 182:4</p> <p>Bistricer [27] - 4:21, 5:21, 7:2, 9:8, 14:23, 35:14, 39:21, 40:18, 42:2, 42:4, 114:21, 115:14, 139:5, 152:4, 154:11, 154:21, 154:22, 155:9,</p>	<p>158:22, 158:25, 159:3, 160:16, 162:17, 162:18, 166:13, 168:11, 174:19</p> <p>BISTRICER [8] - 3:6, 4:21, 5:3, 9:14, 14:22, 115:14</p> <p>bistricer [2] - 34:24, 166:3</p> <p>Bistricer's [1] - 36:11</p> <p>bizarre [1] - 163:6</p> <p>BLACKWELL [1] - 2:5</p> <p>blank [1] - 104:14</p> <p>Blvd [2] - 2:2, 2:20</p> <p>board [10] - 112:19, 112:23, 113:1, 127:3, 127:10, 129:14, 129:18, 137:8, 140:6, 170:13</p> <p>bond [49] - 6:20, 22:12, 34:13, 38:10, 38:12, 38:24, 39:1, 39:14, 41:22, 41:23, 41:25, 42:20, 43:18, 43:24, 43:25, 44:1, 44:7, 44:11, 45:16, 76:8, 152:25, 153:10, 153:11, 159:11, 160:8, 165:4, 165:10, 165:12, 165:13, 165:14, 165:17, 165:18, 165:21, 166:1, 166:2, 167:3, 169:5, 169:14, 169:19, 169:24, 172:1, 174:2, 174:6, 174:9, 174:25, 176:4, 176:22, 176:25, 180:1</p> <p>book [1] - 93:6</p> <p>booming [1] - 71:10</p> <p>borrowed [1] - 28:24</p> <p>borrower [1] - 168:5</p> <p>bothering [2] - 76:15, 162:4</p> <p>bottom [10] - 18:6, 27:4, 54:6, 56:9, 94:7, 116:19, 124:13, 142:9, 143:9</p> <p>bought [7] - 32:14, 33:8, 34:22, 52:12, 86:3, 129:10, 157:15</p> <p>Boulevard [1] - 2:18</p> <p>bound [1] - 34:6</p> <p>box [1] - 128:8</p> <p>Box [1] - 2:24</p> <p>boxes [2] - 35:7, 61:22</p>	<p>break [4] - 21:12, 61:4, 100:22, 101:25</p> <p>breakdown [1] - 113:19</p> <p>Brickell [1] - 2:14</p> <p>brief [7] - 19:5, 20:15, 37:21, 43:9, 96:15, 102:10, 171:9</p> <p>briefs [1] - 19:3</p> <p>bring [2] - 124:5, 160:11</p> <p>Bristricer [1] - 9:7</p> <p>broken [3] - 49:22, 62:13, 62:15</p> <p>broker [8] - 48:10, 48:13, 86:21, 88:1, 88:9, 88:24, 89:11, 97:24</p> <p>broker's [1] - 98:11</p> <p>brokers [1] - 157:14</p> <p>brought [4] - 37:14, 96:23, 102:25, 107:9</p> <p>Broward [1] - 2:18</p> <p>budget [18] - 42:10, 118:10, 118:20, 119:17, 120:2, 120:25, 130:13, 140:2, 140:4, 140:10, 140:11, 140:22, 140:23, 141:8, 157:2, 157:5, 159:19, 174:22</p> <p>budgeted [1] - 120:8</p> <p>budgets [3] - 120:10, 141:7, 141:21</p> <p>building [15] - 72:9, 72:10, 72:21, 74:5, 74:11, 113:13, 113:21, 121:20, 121:21, 126:24, 127:24, 130:1, 136:5, 142:16</p> <p>buildings [2] - 126:21, 126:25</p> <p>buildup [1] - 123:11</p> <p>built [1] - 130:1</p> <p>bunch [1] - 175:9</p> <p>burden [3] - 42:11, 45:8, 74:10</p> <p>burdened [1] - 157:1</p> <p>burning [1] - 123:18</p> <p>Burr [1] - 14:21</p> <p>BURR [1] - 3:2</p> <p>Bush [1] - 5:6</p> <p>bush [3] - 2:23, 8:23, 14:19</p> <p>business [3] - 71:10, 114:3, 120:17</p> <p>businesses [1] - 156:5</p> <p>businessman [1] -</p>
--	--	---	---	--

<p>166:22 butcher [1] - 9:16 buy [11] - 17:14, 22:20, 29:6, 41:2, 54:18, 57:2, 57:16, 57:25, 152:3, 156:20, 167:12 buyer [4] - 17:11, 17:13, 40:14, 40:24 buyers [1] - 33:24 buying [5] - 28:9, 28:10, 28:11, 54:14, 156:22 buys [1] - 40:14 BY [29] - 2:4, 2:7, 2:10, 59:4, 61:3, 62:18, 63:10, 63:24, 65:11, 66:12, 67:14, 69:11, 70:16, 72:2, 73:21, 74:19, 75:16, 76:25, 77:17, 78:14, 79:16, 80:6, 84:2, 87:18, 90:9, 91:10, 93:24, 96:18, 98:10</p>	<p>CASE [1] - 1:4 case [89] - 4:4, 11:21, 11:24, 12:8, 15:5, 16:9, 16:12, 16:17, 17:17, 18:1, 18:14, 18:15, 18:16, 18:18, 18:20, 19:8, 20:8, 20:9, 20:16, 23:8, 23:9, 23:16, 23:23, 23:25, 24:4, 24:11, 24:25, 26:16, 31:9, 36:22, 37:18, 38:12, 38:14, 38:21, 40:1, 40:3, 58:5, 76:12, 86:22, 92:12, 92:19, 107:16, 109:21, 110:14, 110:15, 111:5, 120:23, 126:16, 146:16, 147:20, 148:6, 152:8, 152:11, 152:17, 152:18, 152:19, 152:22, 153:20, 154:11, 156:6, 159:23, 162:22, 164:3, 164:8, 164:17, 164:22, 164:25, 165:4, 165:14, 165:19, 165:23, 167:2, 167:23, 170:1, 171:7, 175:5, 175:9, 175:25, 176:2, 176:5, 177:10, 179:17, 179:18, 179:19, 180:3, 180:19, 181:4 Case [5] - 4:10, 4:20, 6:2, 9:23, 18:16 caselaw [3] - 17:21, 20:3, 107:9 cases [5] - 5:12, 37:9, 39:24, 154:6, 158:7 cash [2] - 34:2, 38:18 caused [1] - 172:2 causing [2] - 30:8, 155:11 ceilings [2] - 61:19, 66:18 Center [2] - 2:9, 2:17 centers [1] - 71:9 Cerrito [2] - 38:13, 152:18 certain [10] - 21:10, 46:25, 59:24, 65:22, 66:14, 69:21, 73:15, 82:16, 102:14, 162:25 certainly [4] - 122:11, 122:13, 155:22, 173:19</p>	<p>certificate [1] - 42:15 CERTIFICATE [1] - 183:1 certificates [4] - 12:11, 83:19, 99:24, 156:11 certify [1] - 183:8 chair [2] - 63:1, 65:20 chairperson [2] - 60:6, 72:5 chairs [1] - 65:3 challenge [1] - 156:7 challenging [1] - 179:5 chance [1] - 61:9 change [2] - 38:5, 100:3 chapter [1] - 40:2 charge [1] - 52:11 charges [1] - 133:15 CHARLES [1] - 2:13 cheap [2] - 29:7, 29:9 cheat [1] - 7:15 Cheat [1] - 7:17 check [2] - 109:24, 132:20 choose [1] - 84:25 Chris [3] - 12:5, 14:20, 99:7 CHRISTOPHER [1] - 3:4 Chuck [1] - 7:19 chuck [1] - 108:3 circuit [3] - 26:16, 61:22, 175:14 Circuit [7] - 18:2, 18:9, 26:24, 37:12, 37:13, 164:7, 164:17 CIRCUIT [2] - 1:1, 1:1 circumstance [1] - 40:17 circumstances [7] - 25:1, 38:16, 58:1, 107:13, 147:8, 152:13, 176:24 cite [1] - 40:1 cited [6] - 23:10, 38:13, 62:14, 152:17, 158:7, 159:23 citrus [4] - 175:9, 175:10, 175:18, 175:23 city [1] - 179:24 claim [10] - 11:25, 19:8, 21:2, 25:22, 25:23, 25:24, 27:25, 33:1, 33:9, 171:12</p>	<p>claimed [3] - 31:17, 32:4, 133:13 claiming [4] - 24:9, 24:19, 32:13, 37:24 claims [11] - 17:15, 21:16, 23:14, 24:22, 32:6, 36:21, 37:16, 39:21, 132:3, 162:20, 171:4 clarification [2] - 61:1, 117:18 class [8] - 7:24, 102:24, 103:13, 103:24, 104:1, 105:3, 105:9, 105:18 Claudia [8] - 48:10, 48:12, 64:9, 68:18, 86:8, 86:11, 87:2, 87:21 clean [9] - 52:1, 52:5, 53:23, 54:4, 55:24, 56:6, 57:15, 124:6, 127:11 cleanup [3] - 50:7, 66:19, 156:7 clear [19] - 17:14, 17:23, 27:24, 53:20, 54:14, 54:17, 57:7, 57:9, 59:21, 65:12, 71:12, 72:3, 83:15, 86:18, 89:16, 96:19, 110:22, 154:1, 177:19 clearly [2] - 32:23, 178:12 CLERK [18] - 12:7, 12:16, 12:19, 13:11, 14:2, 14:8, 49:8, 51:17, 65:14, 67:9, 68:8, 69:7, 70:2, 70:12, 73:17, 114:22, 114:24, 115:5 clerk [1] - 48:20 client [11] - 37:19, 44:22, 45:13, 96:24, 99:24, 109:7, 109:25, 111:2, 152:9, 179:10, 180:10 clients [5] - 34:13, 105:6, 105:17, 159:10, 174:20 climate [1] - 26:20 close [5] - 51:25, 53:23, 60:13, 64:5, 143:15 closed [3] - 72:20, 94:5, 94:6 closing [4] - 52:3, 147:21, 151:15, 172:11 club [2] - 8:24, 43:8</p>	<p>Coastal [9] - 4:22, 86:20, 88:2, 88:23, 89:1, 89:4, 89:9, 89:10, 92:18 Cobb [11] - 18:15, 18:24, 19:9, 22:8, 25:5, 25:17, 35:21, 36:9, 37:11, 148:5, 148:18 Cobb's [2] - 20:2, 20:24 COHEN [2] - 2:19, 8:8 Cohen [1] - 8:9 colleague [1] - 6:12 collect [6] - 29:16, 117:21, 136:19, 163:11, 163:13, 177:12 collected [1] - 121:10 collection [1] - 136:2 collects [1] - 137:15 column [3] - 18:6, 143:9, 143:17 coming [4] - 123:14, 130:13, 156:18, 156:23 commence [1] - 6:5 commercial [1] - 2:20 commission [1] - 97:5 commitment [6] - 53:18, 55:3, 55:12, 55:17, 56:3, 56:15 committee [30] - 59:18, 59:19, 59:20, 59:23, 59:25, 60:7, 63:2, 65:1, 65:3, 65:20, 70:18, 72:5, 73:1, 73:15, 78:9, 79:17, 79:18, 79:19, 79:24, 80:1, 80:7, 80:11, 82:10, 84:3, 85:11, 85:15, 91:15, 92:1, 94:24, 96:20 committees [1] - 60:5 common [4] - 136:5, 136:10, 136:12, 136:15 communicate [1] - 109:8 community [6] - 124:16, 155:12, 155:23, 155:24, 160:4, 178:9 companies [3] - 37:1, 102:20, 156:8</p>
<p>C</p> <p>C2 [1] - 174:8 CA [1] - 1:4 cabinetry [1] - 62:5 cake [1] - 168:6 calculate [1] - 179:3 calculated [2] - 133:6, 133:9 calculation [1] - 133:20 calculator [1] - 116:23 calendar [5] - 118:10, 140:22, 140:24, 142:22, 181:14 cannot [2] - 32:19, 45:9 capability [2] - 12:20, 12:22 capable [1] - 119:18 capital [4] - 41:3, 41:18, 155:14, 156:9 care [12] - 128:14, 148:21, 149:3, 161:21, 162:12, 162:13, 165:11, 168:6, 168:10, 170:22, 175:25, 178:20 caring [1] - 76:14 carried [1] - 74:10 CARSON [1] - 2:17</p>				

<p>Company [3] - 1:14, 6:1, 8:6</p> <p>company [13] - 24:6, 24:9, 33:6, 34:23, 50:11, 53:19, 55:8, 55:11, 55:15, 55:25, 102:3, 102:21, 103:4</p> <p>comparable [1] - 157:12</p> <p>compared [1] - 59:16</p> <p>compel [4] - 146:19, 148:9, 172:14, 172:19</p> <p>compensate [1] - 178:4</p> <p>compensated [1] - 175:13</p> <p>competing [2] - 151:25, 152:4</p> <p>complaining [3] - 96:7, 125:3, 125:4</p> <p>complains [1] - 125:19</p> <p>complaint [1] - 103:3</p> <p>complaints [3] - 123:3, 123:7, 124:1</p> <p>complete [2] - 34:14, 42:22</p> <p>completely [1] - 97:16</p> <p>comply [2] - 39:2, 174:10</p> <p>component [1] - 41:23</p> <p>composite [2] - 67:9, 69:8</p> <p>computer [1] - 71:1</p> <p>conclude [4] - 155:1, 158:1, 159:2, 159:16</p> <p>concluded [1] - 182:7</p> <p>condemnation [1] - 175:12</p> <p>condition [20] - 6:18, 6:19, 34:12, 39:2, 42:20, 44:9, 44:11, 45:15, 49:17, 51:23, 81:20, 98:13, 153:10, 160:7, 174:9, 174:25, 175:19, 175:20, 176:15, 177:9</p> <p>conditioned [5] - 38:10, 38:25, 40:6, 165:8, 174:5</p> <p>conditioning [2] - 61:20, 66:19</p> <p>conditions [18] - 39:1, 43:23, 67:4, 71:24, 74:23, 83:2, 96:8, 147:4, 153:10, 160:20, 174:3, 174:7,</p>	<p>174:8, 174:14, 176:23</p> <p>condo [2] - 52:14, 128:7</p> <p>condominium [13] - 4:16, 5:17, 6:17, 25:11, 25:12, 40:2, 42:17, 99:20, 112:17, 142:15, 146:20, 155:17, 156:15</p> <p>Condominium [2] - 8:25, 43:8</p> <p>conduct [1] - 106:10</p> <p>conducted [1] - 102:17</p> <p>conference [2] - 13:4, 13:11</p> <p>confident [2] - 45:13, 177:5</p> <p>confirm [1] - 109:25</p> <p>confronted [1] - 154:6</p> <p>confusion [1] - 18:23</p> <p>conglomerate [1] - 37:1</p> <p>connected [2] - 12:15, 12:24</p> <p>connection [6] - 10:25, 88:9, 89:11, 91:5, 114:20, 176:6</p> <p>consent [1] - 108:18</p> <p>consider [19] - 19:16, 36:5, 48:1, 52:3, 54:13, 76:10, 106:6, 144:23, 146:15, 146:23, 147:3, 147:19, 152:23, 154:4, 158:6, 160:10, 167:7, 169:24, 181:10</p> <p>considerable [2] - 38:15, 152:12</p> <p>consideration [1] - 106:14</p> <p>considerations [1] - 39:10</p> <p>considered [9] - 72:15, 101:18, 145:1, 152:24, 153:1, 155:6, 160:24, 164:13, 181:19</p> <p>considering [3] - 31:2, 52:22, 53:3</p> <p>consistent [1] - 158:3</p> <p>consolidated [3] - 18:19, 106:7, 110:21</p> <p>consolidating [3] - 107:22, 107:25, 108:24</p> <p>constantly [1] -</p>	<p>127:6</p> <p>constitutes [1] - 73:11</p> <p>construction [1] - 80:14</p> <p>consulted [2] - 130:22, 131:5</p> <p>consumer [1] - 175:6</p> <p>CONT [1] - 3:1</p> <p>contact [3] - 87:2, 100:19, 109:8</p> <p>contacted [1] - 124:3</p> <p>contains [1] - 50:14</p> <p>contemplated [2] - 44:23, 131:7</p> <p>contemplating [1] - 95:1</p> <p>contempt [1] - 176:14</p> <p>contends [1] - 34:24</p> <p>contingents [1] - 176:4</p> <p>continual [1] - 126:25</p> <p>continually [2] - 125:7, 150:11</p> <p>continue [8] - 15:8, 15:13, 115:24, 121:7, 129:3, 156:15, 159:12, 177:3, 177:15</p> <p>continued [2] - 101:1, 123:20</p> <p>continues [2] - 54:7, 57:1</p> <p>continuing [2] - 54:23, 56:9</p> <p>contract [19] - 4:16, 5:16, 48:25, 50:10, 50:14, 50:20, 50:22, 51:7, 56:21, 64:2, 64:3, 64:11, 67:19, 67:23, 68:1, 86:13, 87:19, 87:24, 88:21</p> <p>contracts [5] - 56:22, 75:5, 86:22, 87:1, 136:4</p> <p>contributed [1] - 82:15</p> <p>control [4] - 123:22, 126:2, 131:17, 150:12</p> <p>controlling [2] - 38:15, 152:13</p> <p>cooperative [1] - 127:18</p> <p>copies [1] - 66:10</p> <p>copy [4] - 11:10, 18:21, 47:4, 171:15</p> <p>Corenblum [20] - 3:8, 58:16, 59:8, 70:17, 71:23, 73:14,</p>	<p>73:22, 74:20, 75:17, 78:7, 78:11, 78:16, 82:24, 85:7, 85:19, 85:24, 145:4, 150:4, 156:1, 161:18</p> <p>CORENBLUM [2] - 3:13, 58:23</p> <p>Corenblum's [1] - 150:19</p> <p>Corporate [1] - 2:17</p> <p>corporate [1] - 82:17</p> <p>CORPORATION [1] - 1:9</p> <p>Corporation [1] - 102:16</p> <p>corporation [3] - 1:9, 1:10, 4:8</p> <p>correct [28] - 38:4, 51:11, 55:1, 57:24, 58:2, 60:8, 77:10, 83:2, 85:5, 85:6, 86:6, 89:5, 89:6, 89:7, 89:8, 94:15, 94:18, 94:19, 94:23, 97:8, 121:5, 137:2, 137:22, 137:23, 139:15, 157:10, 173:3, 183:11</p> <p>corrected [1] - 173:10</p> <p>correcting [1] - 9:17</p> <p>correctly [3] - 34:9, 57:20, 137:21</p> <p>correspondence [1] - 32:15</p> <p>cost [2] - 52:7, 174:11</p> <p>costs [8] - 39:3, 52:15, 82:16, 83:20, 83:22, 84:1, 136:22, 157:24</p> <p>Counsel [4] - 11:1, 29:22, 35:18, 43:12</p> <p>counsel [19] - 6:24, 7:19, 7:21, 7:23, 7:24, 9:24, 15:8, 35:21, 47:12, 47:20, 58:8, 91:4, 114:21, 119:25, 121:5, 139:21, 151:9, 151:18, 172:5</p> <p>counsel's [1] - 36:14</p> <p>countertops [1] - 154:19</p> <p>country [1] - 26:21</p> <p>county [2] - 69:22, 155:21</p> <p>COUNTY [2] - 1:2, 183:5</p> <p>County [8] - 1:17, 36:9, 37:12, 71:24, 133:25, 156:13,</p>	<p>180:23</p> <p>couple [7] - 48:14, 72:20, 87:1, 95:18, 143:24, 177:18, 178:13</p> <p>course [2] - 27:21, 117:22</p> <p>court [148] - 5:10, 5:12, 6:14, 6:18, 9:20, 11:16, 11:18, 13:23, 15:1, 16:13, 16:25, 18:2, 18:9, 21:4, 21:7, 23:25, 24:16, 27:1, 27:17, 27:22, 33:21, 34:5, 34:7, 34:10, 34:11, 34:17, 34:18, 35:9, 37:5, 38:3, 38:7, 38:14, 39:10, 39:18, 40:6, 41:1, 41:15, 41:20, 42:20, 43:4, 44:2, 46:8, 46:24, 47:5, 47:24, 47:25, 48:3, 51:25, 52:4, 52:17, 53:2, 53:6, 54:1, 55:9, 55:18, 55:24, 56:5, 57:17, 59:6, 59:21, 60:21, 61:5, 61:15, 65:21, 66:13, 68:20, 69:21, 70:8, 70:23, 72:17, 82:25, 83:3, 89:10, 102:1, 103:5, 103:17, 103:20, 104:23, 106:5, 106:8, 106:9, 106:13, 106:14, 106:21, 107:7, 107:17, 107:23, 108:12, 108:15, 108:16, 108:20, 108:22, 109:2, 109:6, 109:18, 110:7, 110:11, 127:12, 128:24, 135:6, 135:19, 138:1, 144:23, 145:2, 145:12, 145:17, 145:18, 146:24, 147:3, 148:24, 151:24, 152:12, 152:20, 152:22, 153:8, 153:18, 154:3, 155:1, 155:7, 156:5, 158:1, 158:6, 159:1, 159:16, 160:5, 160:7, 160:25, 164:10, 165:24, 167:6, 167:18, 171:1, 174:24, 175:2, 175:14, 175:21, 176:8, 176:12, 176:15, 176:17,</p>
--	--	---	--	---

177:19, 179:25, 180:4, 180:19, 180:23 COURT [198] - 1:1, 4:3, 4:25, 5:9, 6:23, 7:4, 7:10, 7:13, 7:21, 8:2, 8:7, 8:12, 8:18, 9:4, 9:9, 9:12, 9:15, 10:2, 10:15, 10:18, 10:22, 11:11, 12:4, 12:13, 12:18, 12:21, 13:7, 13:15, 13:24, 14:4, 14:9, 14:13, 14:24, 15:4, 15:23, 16:11, 19:6, 23:21, 29:22, 33:11, 35:18, 36:2, 39:14, 43:1, 43:11, 45:22, 45:25, 46:17, 47:2, 47:9, 47:16, 48:21, 49:6, 49:10, 51:6, 51:11, 51:14, 52:18, 58:7, 58:13, 58:18, 59:1, 62:17, 63:1, 63:9, 63:16, 63:22, 64:25, 65:7, 65:13, 65:18, 66:11, 66:24, 67:7, 68:6, 69:2, 69:5, 70:1, 70:4, 70:7, 72:1, 73:6, 73:12, 74:17, 75:11, 76:6, 76:19, 77:16, 77:22, 78:2, 79:9, 79:12, 79:23, 80:5, 81:8, 83:11, 87:14, 90:7, 90:19, 90:25, 91:8, 92:6, 92:23, 93:19, 96:14, 98:5, 98:8, 98:19, 98:22, 99:3, 99:6, 99:14, 100:6, 100:9, 100:12, 101:2, 101:7, 101:16, 102:8, 102:11, 106:16, 107:19, 108:3, 110:3, 110:6, 110:15, 111:7, 111:19, 112:7, 112:13, 114:5, 114:15, 114:17, 114:20, 114:23, 115:1, 115:9, 115:16, 115:23, 118:15, 119:13, 120:21, 121:3, 125:25, 126:7, 126:14, 126:18, 128:24, 135:11, 135:20, 137:23, 138:11, 138:14, 138:20, 139:4, 139:8, 139:11, 139:17, 139:20, 141:18, 141:25, 142:3, 144:1, 144:13, 144:18,	145:5, 145:16, 146:5, 146:9, 146:13, 146:23, 147:14, 147:18, 147:23, 148:17, 149:5, 149:8, 149:25, 150:14, 150:22, 151:3, 151:9, 151:14, 151:22, 161:4, 168:12, 171:15, 171:18, 171:22, 172:4, 173:1, 173:5, 173:11, 180:15, 180:25, 181:2, 181:6, 182:1 Court [12] - 5:24, 23:4, 37:12, 48:5, 54:3, 55:15, 56:12, 69:20, 76:10, 106:3, 150:3, 161:10 court's [2] - 42:21, 75:5 Court's [3] - 42:24, 110:1, 145:15 Courthouse [1] - 1:17 courtroom [2] - 8:16, 58:17 courts [3] - 153:13, 153:14, 154:6 cover [2] - 93:11, 165:13 coverage [1] - 102:14 Craig [1] - 89:7 credible [1] - 150:15 creditor [8] - 24:7, 30:4, 64:22, 75:18, 75:19, 75:21, 76:2, 77:2 creditors [6] - 28:20, 30:3, 30:6, 30:7, 162:16, 163:5 crisis [1] - 170:14 criteria [1] - 40:17 cross [8] - 47:13, 47:18, 47:19, 52:18, 75:12, 75:15, 98:6, 126:7 cross-designation [1] - 126:7 cross-examine [1] - 75:12 current [7] - 42:6, 74:5, 116:20, 136:25, 158:4, 160:12, 160:15 cut [3] - 87:7, 96:4, 97:12 cutting [1] - 182:1	D d'LUGO [1] - 109:3 D'LUGO [4] - 2:10, 8:3, 106:17, 111:18 D'Lugo [2] - 8:4, 106:20 DADE [2] - 1:2, 183:5 Dade [1] - 1:17 damage [8] - 121:22, 153:6, 169:15, 170:5, 172:2 damages [9] - 39:4, 107:16, 159:13, 160:25, 169:3, 169:6, 170:2, 174:11, 175:17 damaging [1] - 40:21 Dana [9] - 4:9, 7:12, 7:25, 28:24, 29:1, 32:11, 102:15, 103:18, 104:24 DANA [2] - 1:10, 2:22 dash [1] - 125:17 date [3] - 116:22, 120:10, 143:11 Dated [1] - 183:14 dated [3] - 4:23, 5:22, 9:22 dates [1] - 34:20 dating [1] - 150:16 DAVID [1] - 2:14 days [3] - 30:24, 104:6, 173:1 DB [2] - 1:14, 4:10 DBKN [21] - 12:1, 18:17, 19:11, 20:25, 21:14, 21:22, 28:23, 29:5, 30:4, 31:24, 32:1, 32:8, 32:9, 32:21, 59:14, 75:22, 76:3, 77:20, 78:18, 147:9, 148:8 DBKN's [1] - 32:15 DBNK [1] - 75:19 DCA [9] - 19:3, 23:24, 37:22, 148:22, 175:8, 175:24, 176:2, 176:18, 179:18 de [1] - 2:12 deal [4] - 32:17, 145:11, 147:11, 160:3 dealing [3] - 11:8, 147:21, 160:3 deals [3] - 128:2, 132:1, 165:20 dec [17] - 103:4, 103:12, 103:15, 103:17, 103:20, 104:2, 104:13,	104:21, 104:25, 105:5, 105:8, 105:17, 105:23, 106:4, 108:10, 108:12 decide [8] - 19:20, 37:9, 38:8, 77:1, 111:12, 111:13, 121:6, 145:13 decided [6] - 115:17, 137:8, 172:21, 175:8, 176:2, 179:18 decision [9] - 19:15, 36:15, 36:16, 66:3, 73:4, 86:3, 98:15, 105:16, 110:20 decisions [2] - 65:25, 66:1 declaratory [7] - 6:1, 102:3, 106:22, 106:24, 107:14, 110:2, 110:8 deed [1] - 7:18 deeds [1] - 34:24 deem [2] - 28:21, 145:18 deems [1] - 106:3 defendant [6] - 4:17, 5:18, 24:6, 92:18, 103:19, 108:17 Defendants [3] - 1:12, 1:15, 4:9 defendants [5] - 6:15, 12:1, 103:25, 148:8 defer [1] - 106:15 deferred [1] - 104:18 defunct [1] - 162:23 degree [1] - 86:7 degrees [1] - 129:4 delay [3] - 39:4, 39:11, 174:11 delaying [1] - 153:5 delays [1] - 153:7 delegate [1] - 127:25 delinquencies [1] - 44:18 delinquent [1] - 69:24 deliver [3] - 112:5, 176:14, 176:16 demands [2] - 102:18, 122:20 demonstrate [1] - 158:10 denied [2] - 21:7, 176:17 depart [1] - 33:21 department [7] - 62:14, 122:19, 124:4, 175:5, 175:11,	175:14, 175:22 depict [2] - 66:15, 68:21 deposit [1] - 176:12 deposition [25] - 28:8, 46:20, 46:22, 47:3, 47:24, 47:25, 48:1, 48:7, 50:17, 52:17, 52:23, 111:24, 112:4, 112:10, 112:11, 113:7, 113:25, 116:3, 119:3, 120:2, 121:13, 138:8, 138:12, 140:1, 141:16 depreciation [2] - 39:5, 174:12 deprive [1] - 13:17 describe [7] - 60:21, 61:5, 61:15, 66:13, 67:17, 70:23, 72:17 described [4] - 15:11, 54:15, 79:18, 94:2 describes [1] - 152:20 deserves [1] - 145:19 designate [2] - 47:11, 59:24 designated [7] - 52:24, 53:2, 53:3, 54:24, 138:2, 138:22, 138:24 designating [1] - 145:10 designation [2] - 126:7, 142:18 designations [5] - 47:13, 47:19, 52:19, 135:18, 143:22 designed [1] - 18:7 desire [2] - 101:9, 109:21 desires [1] - 145:12 destroyed [2] - 175:10, 180:5 detailed [1] - 113:19 detention [2] - 39:4, 174:12 deteriorate [1] - 159:13 deteriorated [2] - 80:8, 83:2 deteriorating [1] - 40:13 deterioration [2] - 39:12, 41:7 determination [2] - 104:2, 106:22 determine [5] - 5:25,
---	---	---	---	--

<p>84:24, 85:16, 102:2, 157:10</p> <p>determined [3] - 95:13, 103:14, 180:9</p> <p>determining [3] - 16:18, 18:12, 19:10</p> <p>DETERM [1] - 2:20</p> <p>dialog [1] - 102:19</p> <p>difference [2] - 24:4, 109:19</p> <p>different [5] - 72:21, 129:4, 155:2, 163:4, 176:4</p> <p>difficulty [1] - 10:24</p> <p>diligence [5] - 72:25, 73:4, 73:10, 73:11, 93:1</p> <p>diminished [2] - 159:19, 159:20</p> <p>direct [6] - 18:3, 46:24, 59:3, 75:10, 98:4, 131:16</p> <p>directors [3] - 112:19, 121:23, 140:6</p> <p>disagree [1] - 109:11</p> <p>discard [1] - 36:4</p> <p>disconnected [2] - 115:19, 115:21</p> <p>discourage [1] - 18:8</p> <p>discovered [1] - 35:7</p> <p>discovery [5] - 19:24, 21:3, 111:3, 167:20, 176:7</p> <p>discretion [2] - 19:9, 153:13</p> <p>discuss [1] - 165:15</p> <p>discussed [2] - 95:15, 106:1</p> <p>discusses [1] - 40:2</p> <p>discussing [1] - 35:16</p> <p>discussion [1] - 97:10</p> <p>discussions [1] - 74:21</p> <p>dismiss [4] - 100:6, 103:23, 104:12, 104:18</p> <p>dismissed [5] - 21:17, 99:13, 100:5, 103:14, 174:13</p> <p>disposed [1] - 180:5</p> <p>dispute [13] - 17:19, 26:8, 34:20, 149:5, 150:7, 150:8, 150:9, 150:10, 152:20, 163:1, 174:18, 177:16, 179:20</p> <p>disrepair [4] - 122:6, 122:10, 122:14,</p>	<p>155:10</p> <p>disrepaired [1] - 123:9</p> <p>district [3] - 16:14, 40:7, 164:4</p> <p>DIVISION [1] - 1:3</p> <p>doc [1] - 128:7</p> <p>document [21] - 49:5, 63:13, 63:14, 64:3, 64:18, 72:23, 73:11, 94:1, 118:8, 119:9, 119:10, 119:16, 119:20, 119:21, 120:1, 120:16, 140:3, 140:7, 140:14, 145:24, 180:19</p> <p>documents [21] - 21:4, 21:8, 21:10, 21:13, 35:8, 35:11, 35:13, 36:10, 70:24, 72:14, 84:20, 118:19, 128:16, 148:2, 148:3, 148:4, 151:2, 151:4, 176:11, 176:17</p> <p>dollar [1] - 169:15</p> <p>dollars [1] - 134:4</p> <p>done [24] - 11:21, 28:17, 40:19, 52:7, 71:18, 72:25, 73:14, 74:24, 75:6, 89:14, 93:17, 117:20, 123:2, 123:25, 142:22, 148:10, 157:9, 157:12, 166:23, 166:24, 167:22, 171:22, 180:7</p> <p>door [2] - 98:6, 98:7</p> <p>DOUGLAS [1] - 2:19</p> <p>Douglas [1] - 8:9</p> <p>down [7] - 37:5, 41:19, 61:4, 61:20, 99:1, 128:24, 137:12</p> <p>dozen [1] - 62:9</p> <p>drawing [1] - 104:14</p> <p>drawn [1] - 167:14</p> <p>drawn-out [1] - 167:14</p> <p>Drive [1] - 2:14</p> <p>drive [1] - 112:16</p> <p>dropped [1] - 139:3</p> <p>droppings [2] - 122:20, 124:6</p> <p>drywall [2] - 122:15, 131:24</p> <p>ductwork [1] - 61:20</p> <p>due [11] - 42:14, 44:17, 45:17, 72:25, 73:3, 73:9, 73:11, 93:1, 114:7, 114:12,</p>	<p>172:16</p> <p>dues [18] - 25:13, 30:16, 42:1, 74:6, 155:18, 161:21, 161:24, 162:21, 163:11, 163:14, 166:10, 166:14, 166:17, 166:18, 166:20, 168:8, 169:20, 170:16</p> <p>duly [2] - 58:24, 70:13</p> <p>during [9] - 44:2, 92:11, 111:1, 120:2, 120:11, 130:23, 132:14, 172:11, 172:18</p> <p style="text-align: center;">E</p> <p>e-mail [2] - 97:21, 98:11</p> <p>early [1] - 75:24</p> <p>earn [3] - 29:4, 29:13, 29:14</p> <p>earned [1] - 84:11</p> <p>easier [1] - 14:5</p> <p>East [1] - 2:18</p> <p>eat [1] - 168:7</p> <p>educate [1] - 70:25</p> <p>effect [3] - 30:18, 146:22, 163:14</p> <p>efforts [1] - 85:25</p> <p>egregious [1] - 167:14</p> <p>eight [5] - 93:23, 94:11, 94:15, 100:14, 156:13</p> <p>eighty [1] - 42:9</p> <p>either [9] - 20:5, 44:8, 76:13, 98:6, 105:20, 107:20, 160:5, 167:18, 168:25</p> <p>Elaine [1] - 59:8</p> <p>elderly [1] - 60:12</p> <p>electrical [2] - 61:22, 66:17</p> <p>elements [3] - 16:17, 27:20, 158:11</p> <p>Eleventh [1] - 37:13</p> <p>ELEVENTH [1] - 1:1</p> <p>eluded [1] - 44:21</p> <p>emergency [1] - 128:12</p> <p>encumbrances [1] - 17:15</p> <p>end [3] - 9:9, 133:23, 143:21</p> <p>ended [2] - 179:22,</p>	<p>179:23</p> <p>endure [1] - 159:10</p> <p>enforce [3] - 153:19, 153:21, 153:24</p> <p>enjoyment [1] - 40:23</p> <p>ensuring [1] - 136:6</p> <p>enter [3] - 66:5, 107:7, 173:6</p> <p>entered [9] - 10:13, 30:19, 33:22, 34:8, 34:9, 36:16, 36:19, 146:15, 146:17</p> <p>entire [4] - 126:20, 127:24, 145:10</p> <p>entities [1] - 36:23</p> <p>entitled [7] - 1:21, 42:16, 88:13, 162:10, 169:19, 179:15, 180:10</p> <p>entitlement [1] - 36:18</p> <p>entity [4] - 6:16, 24:16, 168:23</p> <p>equal [2] - 134:7, 160:8</p> <p>equitable [2] - 34:16, 153:15</p> <p>equities [3] - 76:9, 147:2, 171:25</p> <p>equity [3] - 34:17, 34:18, 162:2</p> <p>escrow [1] - 154:2</p> <p>especially [1] - 26:11</p> <p>ESQ [10] - 2:4, 2:7, 2:10, 2:13, 2:15, 2:19, 2:22, 2:25, 2:25, 3:4</p> <p>Esquiroz [1] - 104:14</p> <p>establish [4] - 67:3, 76:11, 77:24, 146:17</p> <p>established [1] - 169:18</p> <p>estate [15] - 11:18, 18:11, 20:9, 26:19, 26:21, 27:1, 28:6, 85:8, 85:12, 85:16, 86:12, 86:20, 156:2, 170:14</p> <p>Estate [5] - 86:20, 88:23, 89:5, 89:9, 89:11</p> <p>estimate [1] - 52:7</p> <p>estimates [1] - 41:11</p> <p>et [1] - 1:14</p> <p>event [3] - 11:22, 16:3, 179:15</p> <p>eventually [2] - 35:5, 83:25</p> <p>everywhere [1] - 61:23</p>	<p>evidence [78] - 3:19, 3:20, 3:20, 3:21, 3:21, 3:22, 3:22, 3:23, 3:23, 3:24, 6:21, 32:10, 40:25, 41:8, 42:7, 42:13, 42:23, 43:5, 43:10, 44:13, 45:5, 48:24, 49:13, 50:22, 50:23, 51:18, 51:20, 63:13, 64:18, 65:8, 65:15, 65:17, 66:23, 67:11, 67:13, 67:21, 68:5, 68:9, 68:11, 69:1, 69:8, 69:10, 70:10, 70:15, 72:23, 73:18, 73:20, 88:22, 114:4, 115:6, 115:8, 120:19, 141:17, 142:7, 144:19, 144:21, 144:22, 145:24, 148:1, 150:3, 150:15, 151:6, 154:3, 154:11, 154:22, 157:25, 158:13, 158:20, 158:22, 159:1, 159:4, 159:9, 159:17, 170:4, 171:20, 172:2, 181:10, 181:18</p> <p>evidenced [1] - 86:21</p> <p>evidentiary [8] - 4:12, 8:17, 45:20, 46:5, 46:12, 58:5, 101:24, 106:19</p> <p>exact [1] - 166:2</p> <p>exactly [6] - 12:18, 87:13, 133:5, 161:11, 167:23, 173:17</p> <p>EXAMINATION [3] - 59:3, 75:15, 96:17</p> <p>examine [2] - 75:12, 77:18</p> <p>examined [1] - 58:25</p> <p>except [2] - 24:5, 24:15</p> <p>excess [3] - 118:1, 134:3, 178:10</p> <p>excuse [5] - 4:25, 100:7, 115:17, 142:19, 175:20</p> <p>Excuse [1] - 130:23</p> <p>excused [1] - 100:9</p> <p>executed [2] - 35:2, 49:1</p> <p>execution [2] - 4:15, 5:15</p> <p>exhibit [21] - 48:20, 48:25, 50:17, 50:18, 50:23, 50:24, 50:25,</p>
--	---	--	---	--

63:8, 65:14, 67:10, 69:8, 69:23, 70:10, 73:16, 73:18, 114:10, 114:11, 138:10, 145:22, 162:9 Exhibit [38] - 3:19, 3:20, 3:20, 3:21, 3:21, 3:22, 3:22, 3:23, 3:23, 3:24, 48:18, 48:19, 49:7, 49:9, 49:12, 51:15, 51:19, 65:16, 67:9, 67:12, 68:10, 69:7, 69:9, 70:14, 73:19, 93:2, 113:17, 115:7, 132:5, 133:4, 137:21, 139:25, 140:19, 140:20, 141:6, 142:6, 143:8, 179:3 exhibits [4] - 139:18, 139:19, 151:6, 151:10 Exhibits [1] - 141:15 exist [1] - 67:4 existed [9] - 33:8, 129:10, 129:13, 129:23, 148:15, 149:1, 149:19, 149:22, 149:23 existence [2] - 129:5, 153:2 expect [1] - 19:4 expended [1] - 118:25 expenditure [2] - 143:17, 143:20 expenditures [5] - 118:23, 120:7, 140:24, 141:1, 141:22 expense [1] - 106:11 expenses [7] - 71:16, 120:9, 120:10, 143:11, 143:18, 156:19, 157:7 expensive [1] - 157:19 expert [2] - 71:25, 85:15 expiration [1] - 20:13 expiring [1] - 64:11 explain [5] - 38:11, 60:17, 83:10, 83:12, 86:19 explained [1] - 27:22 explaining [1] - 156:2 explains [3] - 48:8, 48:16, 50:9 explanation [3] - 92:15, 170:15, 170:16 explore [1] - 102:13	exposed [1] - 61:20 expressly [1] - 165:7 extend [1] - 64:4 extension [10] - 64:2, 64:3, 64:8, 64:13, 64:15, 66:5, 67:22, 67:25, 68:1, 68:4 extent [4] - 6:18, 77:4, 106:3, 153:9 exterior [2] - 131:21, 131:22 extra [1] - 47:4 extraordinary [1] - 76:17 extremely [1] - 45:8 eyes [1] - 147:11 F facing [1] - 147:13 fact [26] - 17:20, 18:12, 19:1, 19:2, 21:25, 22:16, 22:23, 28:7, 31:7, 31:9, 40:11, 40:19, 45:5, 56:17, 84:24, 103:11, 119:10, 131:3, 132:12, 148:14, 149:2, 154:14, 154:25, 159:15, 175:15, 178:4 factors [2] - 153:1, 153:7 facts [4] - 22:19, 34:19, 39:19, 148:12 factually [1] - 35:19 failed [2] - 36:23, 156:4 fair [4] - 85:19, 95:13, 95:23, 131:10 falling [1] - 61:19 familiar [4] - 11:25, 13:5, 52:15, 60:18 familiarity [1] - 106:9 family [1] - 164:19 far [5] - 27:20, 80:25, 88:17, 130:2, 148:16 fashioning [1] - 153:15 favor [6] - 24:20, 36:17, 36:20, 37:17, 37:25, 107:25 favor [1] - 30:8 favors [1] - 33:3 February [3] - 103:16, 103:18, 103:21 federal [2] - 103:5,	103:7 fee [5] - 88:3, 88:8, 89:1, 132:10, 132:15 feedback [1] - 109:12 fees [43] - 25:12, 25:14, 30:16, 39:4, 42:18, 44:10, 91:4, 91:18, 91:23, 92:2, 99:20, 132:7, 133:5, 133:14, 135:4, 146:20, 156:15, 159:15, 160:14, 160:18, 160:23, 161:20, 161:23, 162:21, 163:11, 163:14, 165:11, 166:10, 166:14, 166:17, 166:18, 166:20, 168:8, 169:20, 170:16, 172:20, 174:11, 174:25, 177:8, 179:1, 179:4 felt [3] - 72:6, 128:10, 131:11 few [2] - 48:2, 103:16 figure [1] - 104:19 file [6] - 37:20, 47:6, 87:15, 108:11, 109:5, 146:24 filed [25] - 4:19, 10:11, 11:23, 15:6, 19:3, 20:15, 31:8, 34:3, 37:21, 46:21, 47:3, 47:24, 69:19, 102:24, 103:4, 103:17, 103:19, 103:20, 110:13, 112:10, 148:10, 172:13, 172:14, 175:11, 180:22 filing [2] - 31:2, 44:24 final [14] - 18:24, 18:25, 20:6, 20:7, 20:12, 20:18, 20:19, 36:19, 46:8, 76:20, 140:13, 153:19, 167:16 finally [3] - 37:17, 37:20, 178:25 FINANCIAL [1] - 1:6 Financial [1] - 4:7 financial [5] - 84:21, 85:3, 118:21, 119:3 financially [1] - 161:25 finder [1] - 48:20 finders [1] - 63:8	findings [1] - 152:8 fine [6] - 24:17, 47:2, 50:7, 150:17, 151:1, 168:9 finish [2] - 84:23, 88:6 finished [3] - 47:17, 96:2, 129:20 fire [2] - 62:13, 62:15 firm [2] - 12:10, 12:12 first [27] - 6:4, 9:20, 17:16, 18:11, 20:21, 21:20, 46:17, 46:19, 53:8, 58:24, 60:15, 60:16, 67:5, 75:17, 75:21, 86:8, 87:16, 102:4, 107:1, 108:8, 108:15, 129:13, 132:7, 138:7, 151:16, 176:2, 179:18 First [3] - 52:21, 61:5, 176:18 five [11] - 15:2, 31:19, 60:14, 100:16, 100:21, 100:23, 112:14, 127:5, 134:6, 134:16 five-minute [1] - 100:16 fix [19] - 28:12, 41:4, 41:12, 41:19, 50:1, 50:2, 52:7, 53:10, 53:12, 62:21, 76:15, 85:25, 156:15, 156:3, 156:9, 157:23, 157:24, 178:23 fix-up [6] - 50:1, 62:21, 156:3, 156:9, 157:23, 157:24 fixed [7] - 41:9, 52:10, 77:7, 82:6, 84:4, 155:3, 157:17 fixes [1] - 40:15 fixtures [2] - 62:4, 66:18 FL [7] - 2:7, 2:12, 2:15, 2:18, 2:21, 2:24, 3:4 Flagler [1] - 1:18 flood [2] - 121:22, 156:23 floor [2] - 49:22, 123:14 Floor [1] - 2:12 floors [2] - 40:12, 97:17 FLORIDA [3] - 1:2, 1:5, 183:3 Florida [27] - 1:9,	1:10, 1:14, 1:18, 1:24, 2:3, 2:10, 4:7, 16:14, 20:3, 20:11, 26:20, 36:24, 40:7, 48:4, 59:9, 71:8, 71:10, 152:21, 158:5, 164:4, 164:12, 165:3, 165:6, 165:20, 170:14, 175:6 focus [2] - 72:4, 173:24 fogger [3] - 123:8, 123:19, 129:11 fogging [3] - 86:3, 86:4, 123:12 follow [1] - 19:10 following [6] - 4:1, 38:25, 81:19, 112:12, 154:5, 158:11 follows [2] - 58:25, 101:1 FOR [1] - 1:2 force [1] - 25:19 FORD [1] - 2:8 foreclosed [1] - 30:14 foreclosure [1] - 166:11 foregoing [1] - 183:10 Foreman [1] - 99:8 forever [1] - 104:17 form [4] - 46:25, 118:12, 122:10, 122:13 Forman [1] - 14:21 FORMAN [1] - 3:2 Fort [2] - 2:18, 2:21 forth [4] - 16:8, 17:25, 20:1, 164:5 forty [1] - 37:1 forum [2] - 108:13, 109:19 forward [21] - 58:19, 103:5, 103:22, 103:23, 105:4, 105:7, 105:8, 105:10, 105:18, 105:19, 106:23, 106:25, 107:6, 109:22, 110:2, 111:1, 111:5, 130:25, 150:16, 160:6 foundation [3] - 52:25, 62:25, 92:5 four [11] - 16:17, 35:5, 40:17, 60:14, 94:4, 94:5, 94:7, 94:20, 112:24, 134:6, 134:16 Fourth [1] - 23:24 fourth [1] - 159:22
---	---	---	--	--

<p>frame [1] - 130:24 frankly [2] - 13:4, 45:12 Fred [1] - 86:24 free [4] - 17:14, 27:23, 128:13, 153:25 Friday [1] - 1:19 front [4] - 36:2, 36:3, 165:2, 175:2 fugitive [1] - 7:24 full [5] - 39:3, 40:13, 53:16, 59:6, 174:10 functionality [1] - 13:5 funds [8] - 23:7, 25:21, 62:21, 121:9, 130:12, 156:3, 160:22, 176:13 furnished [2] - 80:14, 97:16 furnishings [1] - 66:18 furniture [1] - 154:17 future [2] - 146:20, 160:25</p>	<p>125:15, 125:18, 126:1, 139:15, 142:2, 144:16, 145:6, 150:2, 151:20, 151:23, 181:23 Gassenheimer [35] - 3:7, 3:12, 3:14, 3:15, 6:5, 6:11, 18:21, 46:13, 47:17, 53:1, 53:4, 54:8, 58:10, 63:17, 76:9, 90:13, 90:21, 105:22, 111:20, 115:3, 115:24, 130:16, 139:14, 141:25, 144:14, 144:24, 149:25, 151:16, 161:13, 163:6, 163:17, 165:5, 169:12, 171:14, 171:20 gassenheimer [1] - 33:12 Gassenheimer's [1] - 107:21 GENERAL [1] - 1:3 general [7] - 126:22, 128:2, 136:22, 140:25, 155:9, 159:15, 159:21 generally [2] - 11:13, 138:4 generated [2] - 89:23, 91:23 gentleman [3] - 40:9, 41:11, 155:13 gentlemen [10] - 7:14, 8:19, 10:18, 12:21, 14:14, 100:13, 111:11, 181:9, 182:2 getaway [1] - 124:20 given [12] - 21:14, 21:24, 22:16, 22:18, 22:22, 55:7, 55:10, 65:22, 106:9, 144:24, 150:23, 164:12 glad [1] - 115:15 go-around [1] - 56:6 Goldberg [8] - 6:13, 36:25, 65:21, 105:22, 105:23, 105:25, 106:2, 106:13 gordon [1] - 105:12 Gordon [2] - 104:15, 104:17 Gould [2] - 86:24, 89:7 granite [2] - 97:17, 157:20 grant [9] - 34:11,</p>	<p>38:8, 38:9, 39:15, 52:1, 111:9, 146:18, 152:23, 153:9 granted [7] - 16:21, 110:25, 147:16, 158:19, 159:11, 169:4, 169:8 granting [4] - 15:24, 147:3, 176:9, 176:15 great [4] - 29:12, 111:11, 111:12, 182:2 Great [1] - 112:8 greatest [1] - 123:10 ground [1] - 67:1 group [2] - 140:15, 175:18 groups [2] - 162:16, 163:4 Growers [1] - 175:7 growers [3] - 175:9, 175:18, 175:23 growing [1] - 150:13 grows [1] - 131:20 guess [8] - 25:9, 29:15, 75:23, 82:3, 99:8, 121:24, 130:16, 162:24 guessing [1] - 101:14 guide [1] - 153:8 guides [2] - 39:9, 152:11 gulf [16] - 8:24, 18:16, 19:16, 21:9, 22:5, 22:12, 23:5, 24:10, 24:21, 27:24, 27:25, 30:9, 59:14, 60:11, 149:2, 152:5 Gulf [24] - 7:1, 7:2, 22:13, 25:19, 26:12, 28:2, 28:3, 28:4, 30:4, 30:8, 32:5, 32:12, 32:16, 32:25, 33:3, 33:9, 43:7, 48:16, 92:19, 112:16, 148:20, 162:17, 166:3, 166:13 guttled [3] - 49:16, 61:19, 155:4 gutting [1] - 66:17 guy [2] - 29:7, 161:8 guys [4] - 54:4, 54:17, 57:11, 57:17</p>	<p>162:8 hand [2] - 18:6, 112:5 hand-deliver [1] - 112:5 handled [1] - 37:11 hands [1] - 92:14 hang [7] - 13:13, 13:20, 14:9, 139:6, 139:8, 139:10, 139:11 hanging [1] - 61:21 happy [5] - 105:7, 105:8, 105:20, 107:11, 175:3 harm [35] - 16:21, 17:2, 27:21, 30:1, 30:2, 30:11, 31:5, 31:10, 31:14, 31:21, 32:25, 33:3, 130:5, 130:9, 149:15, 159:6, 159:9, 159:25, 163:22, 163:23, 163:24, 164:2, 164:3, 164:21, 167:1, 168:14, 168:16, 168:21, 168:24, 174:16, 177:7, 177:20, 178:12 harmed [3] - 177:3, 177:15, 180:13 harold [1] - 3:7 Harold [1] - 90:13 harsh [1] - 154:7 heading [1] - 59:18 health [7] - 96:9, 122:18, 122:24, 123:7, 124:3, 155:11, 175:25 health-related [2] - 122:24, 123:7 hear [14] - 9:24, 10:7, 10:19, 10:20, 10:21, 15:8, 33:12, 44:13, 46:1, 99:9, 102:4, 106:8, 151:18, 158:24 heard [25] - 13:18, 33:17, 37:15, 43:3, 100:2, 104:13, 104:17, 129:17, 142:1, 149:8, 150:3, 150:14, 152:2, 155:25, 156:16, 156:19, 156:25, 157:11, 157:21, 158:14, 163:22, 163:24, 166:25, 172:6, 180:17 hearing [45] - 1:22, 4:12, 8:17, 9:10, 10:23, 10:24, 12:25,</p>	<p>23:18, 23:19, 45:21, 46:6, 46:12, 49:11, 51:16, 54:12, 64:12, 80:25, 81:7, 81:10, 81:12, 81:15, 90:11, 99:11, 99:13, 99:21, 100:15, 100:25, 101:24, 103:9, 104:12, 106:19, 144:25, 145:4, 145:7, 145:23, 147:6, 148:12, 148:13, 161:7, 161:17, 170:10, 172:17, 173:13, 175:4, 182:6 hearsay [5] - 52:24, 62:16, 92:22, 98:18, 145:9 heart [1] - 76:22 heater [1] - 49:21 heaters [3] - 61:21, 66:19, 154:19 heavy [1] - 45:8 held [9] - 4:2, 44:2, 56:4, 60:3, 81:7, 81:10, 154:1, 160:24, 165:24 help [8] - 43:25, 74:4, 155:20, 160:2, 177:2 hereby [1] - 183:8 high [1] - 83:23 higher [2] - 143:19, 157:18 highlight [3] - 48:2, 52:17, 112:11 himself [2] - 114:1, 115:18 hired [2] - 11:19, 102:12 history [1] - 102:10 hit [1] - 170:14 HOA [1] - 83:20 hold [5] - 26:24, 28:3, 46:7, 59:15, 115:2 holder [1] - 38:1 holders [2] - 12:10, 42:15 holds [1] - 99:25 home [7] - 40:5, 59:7, 124:18, 124:20, 154:8, 154:9, 164:18 homeowners [3] - 24:2, 71:19, 74:11 homes [1] - 52:10 Honor [161] - 5:4, 5:6, 6:9, 6:10, 7:1, 7:12, 7:18, 8:3, 8:8, 8:22, 10:1, 10:10,</p>
<p>G</p> <p>Gail [2] - 58:16, 59:8 gail [1] - 3:8 GAIL [2] - 3:13, 58:23 GASSENHEIMER [83] - 2:4, 6:8, 8:15, 9:25, 12:9, 33:14, 35:25, 36:8, 39:17, 46:16, 46:19, 47:7, 47:21, 48:22, 49:14, 51:3, 51:21, 58:12, 58:15, 59:4, 61:3, 62:18, 63:6, 63:10, 63:20, 63:24, 64:17, 65:11, 65:19, 66:12, 66:22, 67:14, 68:3, 68:12, 68:24, 69:11, 69:19, 70:3, 70:11, 70:16, 72:2, 72:22, 73:21, 74:19, 75:8, 76:4, 77:14, 77:21, 79:7, 87:10, 90:2, 90:5, 90:15, 91:6, 92:4, 92:22, 95:2, 96:15, 96:18, 98:10, 98:20, 105:21, 111:22, 112:8, 112:14, 114:8, 114:19, 115:4, 115:25, 119:14, 121:8, 122:12,</p>	<p>H</p> <p>haggling [1] - 57:18 half [5] - 71:5, 112:24, 113:5, 133:1,</p>			

<p>11:2, 11:9, 11:10, 11:25, 14:18, 14:22, 15:16, 15:17, 16:7, 17:8, 18:1, 19:2, 19:4, 19:12, 20:9, 21:17, 22:5, 23:1, 23:19, 25:2, 26:11, 26:12, 28:7, 28:19, 28:21, 30:1, 30:17, 32:9, 32:24, 33:15, 35:15, 36:1, 43:6, 43:13, 43:16, 43:21, 45:14, 46:16, 47:15, 47:22, 49:3, 49:15, 52:20, 52:22, 58:4, 58:12, 60:25, 63:6, 64:20, 66:25, 68:7, 69:20, 70:6, 74:14, 75:8, 75:14, 76:11, 77:23, 87:12, 90:16, 96:16, 98:3, 99:5, 99:13, 102:9, 103:5, 105:21, 106:8, 106:15, 106:17, 109:3, 110:5, 111:15, 111:17, 111:18, 111:23, 112:9, 114:9, 115:4, 115:15, 115:22, 116:1, 118:13, 118:17, 118:18, 119:24, 120:17, 120:22, 125:22, 126:8, 129:25, 134:18, 135:1, 135:14, 135:21, 139:16, 139:23, 141:14, 141:19, 142:2, 142:5, 142:8, 142:17, 143:23, 144:21, 145:6, 145:21, 146:3, 146:15, 147:1, 147:5, 148:20, 149:12, 149:17, 150:18, 151:8, 151:12, 151:20, 161:6, 161:12, 162:3, 162:15, 163:5, 164:8, 164:16, 164:25, 169:25, 170:9, 170:22, 171:9, 171:10, 171:13, 171:25, 172:8, 172:13, 173:4, 173:10, 174:16, 176:20, 178:18, 179:8, 179:14, 180:14, 181:22, 181:24, 181:25</p> <p>Honor's [1] - 18:4 Honorable [1] - 1:22</p>	<p>hoping [1] - 83:11 horizon [1] - 31:5 hot [1] - 49:21 hotel [2] - 179:21, 179:23 hour [1] - 145:7 houses [2] - 52:13, 52:14 Howe [2] - 90:20, 144:24 Hudson [3] - 71:8, 71:10, 71:24 hundred [2] - 134:4, 173:14 hundreds [1] - 164:19 Hupta [2] - 127:17, 127:20 Hurr [1] - 99:8 hurricane [1] - 156:24</p> <p>I</p> <p>idea [2] - 71:16, 77:24 identified [3] - 63:12, 94:13, 138:9 identifies [4] - 48:17, 48:22, 50:16, 114:1 identify [2] - 113:18, 140:2 identifying [1] - 61:16 idiot [1] - 28:10 Ileana [2] - 13:24, 139:9 immediate [1] - 160:21 immediately [2] - 21:14, 160:11 impacted [2] - 40:20, 134:21 impeachment [1] - 90:16 important [4] - 22:4, 39:23, 54:12, 135:19 impose [13] - 31:11, 31:12, 43:16, 44:25, 45:10, 45:15, 143:2, 144:6, 174:1, 174:2, 174:3, 179:9, 179:13 imposed [4] - 43:18, 43:21, 43:23, 177:23 imposes [1] - 44:9 improper [1] - 90:15 improved [3] - 80:18, 80:21, 80:23 IN [2] - 1:1, 1:1</p>	<p>inability [2] - 164:6, 164:23 Inc [3] - 50:11, 50:12, 175:7 incapable [1] - 161:25 inches [1] - 123:13 inclined [1] - 160:7 include [9] - 39:2, 53:6, 99:24, 116:14, 117:19, 118:24, 136:11, 174:9, 174:14 includes [2] - 120:5, 133:6 including [4] - 39:3, 145:22, 153:3, 174:10 inclusive [1] - 122:7 incomplete [1] - 50:25 Inconsistencies [1] - 35:12 Incorporated [1] - 4:9 INCORPORATED [1] - 1:10 increase [2] - 137:8, 156:16 incredible [1] - 126:20 incur [4] - 136:23, 156:19, 169:7 incurred [1] - 143:18 indicate [3] - 9:19, 88:3, 88:8 indicated [4] - 5:13, 103:10, 109:16, 164:22 indicates [4] - 20:17, 26:17, 163:12, 164:3 indicating [1] - 145:24 indication [1] - 24:13 individual [4] - 113:20, 123:9, 123:15, 130:10 individuals [1] - 29:1 indulgence [1] - 42:24 infested [1] - 155:4 infests [1] - 160:4 information [5] - 73:2, 87:3, 91:12, 120:6, 120:13 inhabited [2] - 122:9, 154:15 initial [1] - 75:23 injury [4] - 16:20, 158:18, 158:20, 159:3 innocent [1] - 177:14 inquire [1] - 165:12</p>	<p>inside [4] - 61:2, 61:9, 68:21, 79:1 insides [1] - 60:23 inspection [1] - 131:19 instance [3] - 20:10, 70:19, 123:5 instances [1] - 22:11 instead [1] - 83:3 insurance [13] - 22:16, 55:2, 77:5, 82:16, 82:17, 102:2, 102:14, 102:19, 103:3, 121:16, 156:21, 156:22, 157:7 Insurance [3] - 5:25, 8:5, 102:21 insure [3] - 121:19, 121:20, 121:21 insured [4] - 102:15, 102:16, 108:9, 121:23 insuring [1] - 121:24 intends [2] - 88:4, 88:8 intent [1] - 86:13 interest [37] - 9:1, 12:8, 16:24, 23:5, 23:7, 29:4, 29:13, 29:14, 29:21, 39:3, 42:16, 59:11, 60:3, 77:7, 77:9, 77:13, 84:10, 85:20, 132:18, 132:22, 132:24, 133:7, 133:14, 146:1, 154:12, 156:13, 159:13, 159:14, 159:24, 160:1, 160:2, 162:8, 162:13, 162:21, 164:11, 168:8, 174:11 interestingly [1] - 147:25 interests [1] - 109:9 interfering [1] - 40:22 interior [3] - 61:25, 123:24, 131:20 interrelate [1] - 37:8 intervene [1] - 124:2 introduce [2] - 59:5, 149:24 invalid [1] - 88:12 inverse [1] - 175:12 invest [2] - 83:16, 153:18 invested [10] - 59:12, 59:13, 77:19, 78:18, 78:22, 79:1, 79:5, 81:22, 82:18, 162:3 investigation [1] -</p>	<p>102:18 investing [1] - 67:6 investment [3] - 77:13, 85:21, 124:19 investors [4] - 95:15, 95:20, 95:21, 95:22 involved [9] - 7:5, 36:21, 48:11, 59:20, 64:7, 67:5, 70:18, 103:6, 109:9 involving [4] - 35:20, 38:22, 107:16, 152:19 irrelevant [2] - 120:25, 145:8 irreparable [21] - 16:20, 17:2, 27:21, 30:11, 31:10, 31:14, 32:24, 149:14, 158:18, 158:20, 159:2, 163:21, 163:23, 163:24, 164:2, 164:21, 167:1, 168:14, 168:15, 168:21 Irvin [1] - 20:16 Island [27] - 7:1, 7:3, 18:17, 22:13, 24:11, 24:21, 25:19, 26:13, 27:24, 28:2, 28:3, 28:4, 30:4, 30:8, 30:9, 32:5, 32:12, 32:16, 32:25, 33:3, 33:10, 43:8, 48:16, 92:19, 148:20, 149:3, 166:13 island [14] - 8:24, 19:16, 21:9, 22:5, 22:12, 23:5, 27:25, 60:11, 112:17, 126:21, 129:6, 152:5, 162:17, 166:3 issuance [1] - 165:8 issue [54] - 11:4, 17:13, 17:22, 20:10, 22:1, 24:17, 27:13, 27:15, 29:23, 30:1, 31:19, 31:22, 33:19, 34:10, 35:4, 36:17, 37:23, 38:6, 39:25, 43:15, 73:9, 76:8, 78:17, 80:21, 83:14, 87:17, 93:1, 108:24, 110:22, 119:16, 120:18, 121:1, 123:6, 123:7, 124:7, 129:17, 141:23, 148:12, 150:24, 151:24, 159:5, 159:6, 159:22, 163:19, 165:1, 165:21, 167:4, 167:15, 167:17,</p>
--	--	---	---	---

169:22, 173:25, 178:14, 179:1 issued [7] - 10:6, 16:22, 18:24, 25:5, 33:18, 110:16, 159:7 issues [26] - 19:21, 19:23, 21:1, 37:8, 37:21, 40:16, 60:1, 63:4, 86:1, 92:14, 95:9, 106:10, 111:23, 122:22, 122:25, 123:3, 124:5, 145:9, 148:14, 152:25, 155:7, 158:7, 162:5, 172:10, 177:19, 178:13 issuing [2] - 16:23, 159:23 items [1] - 48:2 itself [9] - 11:6, 23:6, 24:6, 26:5, 32:8, 32:21, 136:5, 162:23	23:2, 23:10, 23:17, 25:17, 25:18, 30:12, 30:19, 30:20, 32:10, 33:18, 36:13, 37:6, 37:14, 37:15, 38:4, 40:6, 59:10, 80:25, 81:11, 103:7, 103:11, 103:14, 104:3, 104:13, 105:12, 115:12, 146:16, 146:18, 147:7, 147:15, 148:7, 149:13, 153:14, 163:12, 163:13 judges [1] - 152:8 judgment [17] - 6:1, 18:25, 20:6, 20:7, 20:12, 20:18, 22:8, 36:19, 37:16, 37:24, 38:21, 102:4, 106:25, 107:15, 110:8, 147:17, 167:16 JUDICIAL [1] - 1:1 Judicial [1] - 37:13 judicial [5] - 69:21, 70:9, 106:10, 156:5, 156:11 July [11] - 1:19, 23:18, 81:7, 81:10, 90:11, 144:25, 145:4, 161:17, 172:16, 173:13, 181:12 jump [3] - 141:6, 142:17, 143:6 June [5] - 52:4, 54:9, 54:16, 114:13, 128:22 jurisdiction [5] - 34:5, 48:5, 108:23, 153:19, 153:20 JURISDICTION [1] - 1:3 juror [1] - 20:11 jury [3] - 21:13, 36:3, 46:23	kidney [1] - 95:16 kind [3] - 55:2, 71:11, 124:20 kitchens [2] - 61:19, 97:17 knowing [3] - 33:9, 76:12, 76:13 knowledge [8] - 37:7, 55:23, 60:10, 89:13, 89:15, 91:19, 129:9, 130:25 known [1] - 9:16 knows [3] - 52:11, 79:24, 92:6 Kovitch [2] - 38:13, 152:18 KOZYAK [1] - 2:11 Kronshagen [1] - 8:10	lays [2] - 48:23, 50:20 lead [2] - 4:17, 5:17 learned [1] - 112:15 least [6] - 20:22, 52:10, 77:9, 84:19, 100:16, 157:22 leave [3] - 101:15, 111:13, 146:12 leaving [2] - 167:10, 167:11 ledger [1] - 116:5 leeway [1] - 76:21 left [7] - 15:9, 18:6, 31:23, 32:1, 87:2, 115:20, 163:2 left-hand [1] - 18:6 legal [5] - 17:7, 17:9, 27:13, 91:4, 168:23 legally [1] - 170:22 lend [3] - 29:5, 29:17, 168:3 lender [6] - 59:12, 77:18, 79:4, 82:20, 83:1, 103:2 lenders [41] - 27:5, 28:19, 28:20, 28:21, 28:25, 29:12, 29:17, 30:2, 32:3, 32:7, 32:19, 59:16, 59:20, 59:24, 67:5, 76:12, 78:11, 84:14, 84:21, 85:2, 92:10, 103:1, 103:2, 105:25, 161:8, 161:14, 161:15, 161:16, 161:18, 162:9, 162:19, 163:7, 163:18, 163:22, 163:23, 166:8, 166:23, 168:3, 168:15 lenders' [1] - 163:20 lent [2] - 32:3, 162:19 Leon [1] - 2:12 less [2] - 173:19, 179:5 letting [2] - 83:22, 136:4 Liability [1] - 1:14 liability [1] - 121:21 liable [2] - 40:18, 175:15 liens [6] - 17:14, 24:1, 34:1, 34:2, 153:3, 153:4, 154:1 lift [2] - 104:23, 135:10 lifted [4] - 30:20, 30:22, 30:24, 163:10 lifting [1] - 111:8	light [1] - 75:5 likelihood [9] - 16:19, 20:22, 21:20, 21:23, 27:11, 27:16, 158:11, 158:13, 177:6 likely [4] - 17:4, 85:16, 169:7, 177:8 limited [9] - 7:2, 34:25, 35:3, 60:4, 99:10, 99:14, 152:5, 159:17, 176:21 Limited [1] - 1:14 LINDE [8] - 3:4, 14:20, 15:3, 99:5, 99:7, 99:15, 100:8, 100:11 Linde [5] - 12:5, 14:20, 14:25, 99:7, 115:17 line [44] - 5:2, 5:8, 9:13, 12:15, 12:17, 12:24, 13:21, 14:10, 14:17, 48:7, 48:14, 48:17, 53:8, 54:10, 56:19, 57:4, 81:19, 112:18, 113:8, 113:15, 116:3, 116:19, 118:6, 121:14, 124:13, 125:1, 126:10, 130:4, 130:20, 132:4, 133:23, 134:19, 135:22, 137:12, 139:23, 140:16, 141:3, 142:9, 142:18, 142:19, 143:6, 144:3, 144:4 lines [5] - 46:24, 46:25, 53:9, 53:22, 53:24 Linville [18] - 11:22, 15:20, 53:9, 53:17, 54:10, 58:6, 58:11, 64:4, 86:14, 94:25, 96:24, 97:2, 97:6, 152:2, 166:21, 167:8 LINVILLE [1] - 3:12 Linville's [1] - 28:8 Lippman [1] - 179:17 list [5] - 92:25, 93:3, 94:2, 94:25, 96:20 listed [8] - 71:2, 86:20, 88:24, 95:4, 95:6, 138:8 listing [4] - 11:20, 88:1, 88:14, 88:24 listings [4] - 72:10, 72:19, 72:20, 94:4 litigated [1] - 35:5 litigation [5] - 18:8,
J Jacksonville [1] - 179:21 JAMES [1] - 2:4 James [2] - 6:10, 105:21 January [1] - 177:21 Jerald [1] - 1:22 job [2] - 40:14, 127:23 join [1] - 12:6 joined [1] - 106:21 joke [1] - 161:7 JOSEPH [10] - 2:14, 2:15, 101:6, 102:6, 102:9, 102:12, 104:16, 107:24, 110:24, 111:15 joseph [3] - 7:22, 101:11, 102:5 Joseph [3] - 7:23, 101:5, 107:4 Judge [21] - 5:1, 8:15, 14:15, 18:15, 18:24, 19:9, 20:24, 22:8, 25:5, 25:17, 33:22, 34:8, 35:21, 36:8, 37:11, 104:3, 104:17, 144:25, 148:5, 148:18, 153:23 judge [49] - 7:7, 10:6, 10:12, 11:4, 11:8, 15:10, 15:22, 17:10, 17:17, 18:18, 19:16, 20:2, 21:24, 22:2,	JUDICIAL [1] - 1:1 Judicial [1] - 37:13 judicial [5] - 69:21, 70:9, 106:10, 156:5, 156:11 July [11] - 1:19, 23:18, 81:7, 81:10, 90:11, 144:25, 145:4, 161:17, 172:16, 173:13, 181:12 jump [3] - 141:6, 142:17, 143:6 June [5] - 52:4, 54:9, 54:16, 114:13, 128:22 jurisdiction [5] - 34:5, 48:5, 108:23, 153:19, 153:20 JURISDICTION [1] - 1:3 juror [1] - 20:11 jury [3] - 21:13, 36:3, 46:23	L labelled [1] - 20:18 labor [1] - 52:7 ladies [3] - 14:14, 100:13, 181:9 laid [1] - 84:12 land [1] - 126:12 LANTAFF [1] - 2:16 Lantaff [1] - 8:9 Lanville [7] - 46:21, 48:3, 48:8, 48:15, 49:1, 155:5, 157:14 Large [1] - 1:24 last [20] - 53:8, 64:12, 73:24, 80:15, 86:23, 93:22, 94:11, 94:14, 94:17, 99:11, 99:23, 100:2, 111:23, 112:6, 126:9, 127:5, 127:19, 127:20, 139:12, 170:8 late [8] - 52:3, 132:7, 132:10, 133:4, 133:5, 133:14, 179:1, 179:4 latitude [3] - 38:15, 152:12, 153:14 Lauderdale [2] - 2:18, 2:21 laughing [1] - 126:15 law [13] - 12:9, 12:12, 19:10, 20:9, 38:1, 48:15, 152:11, 158:5, 164:13, 164:21, 165:1, 171:1, 171:25 lawford [1] - 73:25 lawsuit [3] - 102:24, 102:25, 175:11	lays [2] - 48:23, 50:20 lead [2] - 4:17, 5:17 learned [1] - 112:15 least [6] - 20:22, 52:10, 77:9, 84:19, 100:16, 157:22 leave [3] - 101:15, 111:13, 146:12 leaving [2] - 167:10, 167:11 ledger [1] - 116:5 leeway [1] - 76:21 left [7] - 15:9, 18:6, 31:23, 32:1, 87:2, 115:20, 163:2 left-hand [1] - 18:6 legal [5] - 17:7, 17:9, 27:13, 91:4, 168:23 legally [1] - 170:22 lend [3] - 29:5, 29:17, 168:3 lender [6] - 59:12, 77:18, 79:4, 82:20, 83:1, 103:2 lenders [41] - 27:5, 28:19, 28:20, 28:21, 28:25, 29:12, 29:17, 30:2, 32:3, 32:7, 32:19, 59:16, 59:20, 59:24, 67:5, 76:12, 78:11, 84:14, 84:21, 85:2, 92:10, 103:1, 103:2, 105:25, 161:8, 161:14, 161:15, 161:16, 161:18, 162:9, 162:19, 163:7, 163:18, 163:22, 163:23, 166:8, 166:23, 168:3, 168:15 lenders' [1] - 163:20 lent [2] - 32:3, 162:19 Leon [1] - 2:12 less [2] - 173:19, 179:5 letting [2] - 83:22, 136:4 Liability [1] - 1:14 liability [1] - 121:21 liable [2] - 40:18, 175:15 liens [6] - 17:14, 24:1, 34:1, 34:2, 153:3, 153:4, 154:1 lift [2] - 104:23, 135:10 lifted [4] - 30:20, 30:22, 30:24, 163:10 lifting [1] - 111:8	light [1] - 75:5 likelihood [9] - 16:19, 20:22, 21:20, 21:23, 27:11, 27:16, 158:11, 158:13, 177:6 likely [4] - 17:4, 85:16, 169:7, 177:8 limited [9] - 7:2, 34:25, 35:3, 60:4, 99:10, 99:14, 152:5, 159:17, 176:21 Limited [1] - 1:14 LINDE [8] - 3:4, 14:20, 15:3, 99:5, 99:7, 99:15, 100:8, 100:11 Linde [5] - 12:5, 14:20, 14:25, 99:7, 115:17 line [44] - 5:2, 5:8, 9:13, 12:15, 12:17, 12:24, 13:21, 14:10, 14:17, 48:7, 48:14, 48:17, 53:8, 54:10, 56:19, 57:4, 81:19, 112:18, 113:8, 113:15, 116:3, 116:19, 118:6, 121:14, 124:13, 125:1, 126:10, 130:4, 130:20, 132:4, 133:23, 134:19, 135:22, 137:12, 139:23, 140:16, 141:3, 142:9, 142:18, 142:19, 143:6, 144:3, 144:4 lines [5] - 46:24, 46:25, 53:9, 53:22, 53:24 Linville [18] - 11:22, 15:20, 53:9, 53:17, 54:10, 58:6, 58:11, 64:4, 86:14, 94:25, 96:24, 97:2, 97:6, 152:2, 166:21, 167:8 LINVILLE [1] - 3:12 Linville's [1] - 28:8 Lippman [1] - 179:17 list [5] - 92:25, 93:3, 94:2, 94:25, 96:20 listed [8] - 71:2, 86:20, 88:24, 95:4, 95:6, 138:8 listing [4] - 11:20, 88:1, 88:14, 88:24 listings [4] - 72:10, 72:19, 72:20, 94:4 litigated [1] - 35:5 litigation [5] - 18:8,
K Kahn [1] - 18:2 Kaplan [2] - 3:8, 95:16 Keep [1] - 173:8 keep [9] - 25:6, 57:7, 83:23, 127:13, 137:13, 137:17, 156:18, 157:6, 164:6 keeps [2] - 150:12, 156:18 keys [3] - 128:5, 128:7, 128:9	Kahn [1] - 18:2 Kaplan [2] - 3:8, 95:16 Keep [1] - 173:8 keep [9] - 25:6, 57:7, 83:23, 127:13, 137:13, 137:17, 156:18, 157:6, 164:6 keeps [2] - 150:12, 156:18 keys [3] - 128:5, 128:7, 128:9	kidney [1] - 95:16 kind [3] - 55:2, 71:11, 124:20 kitchens [2] - 61:19, 97:17 knowing [3] - 33:9, 76:12, 76:13 knowledge [8] - 37:7, 55:23, 60:10, 89:13, 89:15, 91:19, 129:9, 130:25 known [1] - 9:16 knows [3] - 52:11, 79:24, 92:6 Kovitch [2] - 38:13, 152:18 KOZYAK [1] - 2:11 Kronshagen [1] - 8:10	lays [2] - 48:23, 50:20 lead [2] - 4:17, 5:17 learned [1] - 112:15 least [6] - 20:22, 52:10, 77:9, 84:19, 100:16, 157:22 leave [3] - 101:15, 111:13, 146:12 leaving [2] - 167:10, 167:11 ledger [1] - 116:5 leeway [1] - 76:21 left [7] - 15:9, 18:6, 31:23, 32:1, 87:2, 115:20, 163:2 left-hand [1] - 18:6 legal [5] - 17:7, 17:9, 27:13, 91:4, 168:23 legally [1] - 170:22 lend [3] - 29:5, 29:17, 168:3 lender [6] - 59:12, 77:18, 79:4, 82:20, 83:1, 103:2 lenders [41] - 27:5, 28:19, 28:20, 28:21, 28:25, 29:12, 29:17, 30:2, 32:3, 32:7, 32:19, 59:16, 59:20, 59:24, 67:5, 76:12, 78:11, 84:14, 84:21, 85:2, 92:10, 103:1, 103:2, 105:25, 161:8, 161:14, 161:15, 161:16, 161:18, 162:9, 162:19, 163:7, 163:18, 163:22, 163:23, 166:8, 166:23, 168:3, 168:15 lenders' [1] - 163:20 lent [2] - 32:3, 162:19 Leon [1] - 2:12 less [2] - 173:19, 179:5 letting [2] - 83:22, 136:4 Liability [1] - 1:14 liability [1] - 121:21 liable [2] - 40:18, 175:15 liens [6] - 17:14, 24:1, 34:1, 34:2, 153:3, 153:4, 154:1 lift [2] - 104:23, 135:10 lifted [4] - 30:20, 30:22, 30:24, 163:10 lifting [1] - 111:8	light [1] - 75:5 likelihood [9] - 16:19, 20:22, 21:20, 21:23, 27:11, 27:16, 158:11, 158:13, 177:6 likely [4] - 17:4, 85:16, 169:7, 177:8 limited [9] - 7:2, 34:25, 35:3, 60:4, 99:10, 99:14, 152:5, 159:17, 176:21 Limited [1] - 1:14 LINDE [8] - 3:4, 14:20, 15:3, 99:5, 99:7, 99:15, 100:8, 100:11 Linde [5] - 12:5, 14:20, 14:25, 99:7, 115:17 line [44] - 5:2, 5:8, 9:13, 12:15, 12:17, 12:24, 13:21, 14:10, 14:17, 48:7, 48:14, 48:17, 53:8, 54:10, 56:19, 57:4, 81:19, 112:18, 113:8, 113:15, 116:3, 116:19, 118:6, 121:14, 124:13, 125:1, 126:10, 130:4, 130:20, 132:4, 133:23, 134:19, 135:22, 137:12, 139:23, 140:16, 141:3, 142:9, 142:18, 142:19, 143:6, 144:3, 144:4 lines [5] - 46:24, 46:25, 53:9, 53:22, 53:24 Linville [18] - 11:22, 15:20, 53:9, 53:17, 54:10, 58:6, 58:11, 64:4, 86:14, 94:25, 96:24, 97:2, 97:6, 152:2, 166:21, 167:8 LINVILLE [1] - 3:12 Linville's [1] - 28:8 Lippman [1] - 179:17 list [5] - 92:25, 93:3, 94:2, 94:25, 96:20 listed [8] - 71:2, 86:20, 88:24, 95:4, 95:6, 138:8 listing [4] - 11:20, 88:1, 88:14, 88:24 listings [4] - 72:10, 72:19, 72:20, 94:4 litigated [1] - 35:5 litigation [5] - 18:8,

37:4, 71:14, 92:13, 107:16 live [4] - 58:16, 111:25, 122:23, 124:16 lived [1] - 40:4 lives [5] - 48:3, 48:15, 60:12, 71:5, 112:15 LLC [4] - 1:14, 4:10, 4:18, 113:11 LLP [1] - 2:17 loan [3] - 29:2, 59:23, 59:25 loaned [1] - 82:16 loans [1] - 59:17 located [1] - 124:17 lock [1] - 128:8 Longergan [1] - 179:17 longest [1] - 125:12 look [20] - 25:2, 56:21, 61:9, 62:9, 63:21, 68:19, 78:16, 78:25, 84:20, 87:24, 93:12, 93:14, 132:6, 140:12, 143:7, 155:7, 158:6, 162:4, 170:3, 180:4 looked [9] - 31:3, 35:11, 71:1, 72:4, 72:9, 72:15, 72:18, 79:5, 157:13 looking [11] - 36:15, 48:9, 63:25, 87:4, 93:21, 93:25, 116:25, 117:10, 118:7, 118:19, 121:11 looks [2] - 131:22, 178:15 lose [5] - 26:13, 27:7, 30:9, 167:5, 167:24 loses [3] - 39:22, 42:4, 177:11 losses [1] - 175:13 lost [3] - 27:7, 114:20, 139:4 louder [1] - 10:16 lower [1] - 174:15 LP [4] - 7:1, 7:3, 23:5, 152:5	98:11 main [2] - 12:7, 29:23 maintain [3] - 82:21, 114:2, 159:18 maintained [1] - 141:8 maintenance [15] - 25:13, 91:18, 117:5, 117:9, 123:8, 123:15, 125:9, 127:22, 127:23, 136:3, 136:11, 136:15, 136:18, 140:25, 148:9 majority [1] - 109:12 MAMC [1] - 4:9 manage [1] - 136:20 management [1] - 140:5 manager [2] - 122:1, 132:21 Managing [1] - 1:11 Maple [1] - 59:9 marble [1] - 97:17 March [3] - 93:18, 94:5, 94:21 Mariner [1] - 175:25 Mark [2] - 5:6, 13:1 mark [7] - 8:22, 14:18, 40:6, 43:7, 115:12, 119:25, 135:15 MARK [1] - 2:25 marked [5] - 48:25, 69:23, 113:16, 139:25, 140:18 market [11] - 11:19, 33:23, 41:8, 53:13, 70:19, 70:25, 71:24, 74:23, 153:1, 157:12, 158:2 marks [1] - 50:16 Marvin [1] - 3:8 math [1] - 117:20 matter [25] - 4:6, 4:13, 5:12, 5:21, 7:8, 7:9, 8:11, 13:18, 15:7, 15:13, 31:25, 35:20, 38:1, 43:4, 58:9, 63:2, 72:24, 81:11, 101:7, 102:1, 106:1, 106:7, 107:22, 153:17, 181:12 matters [3] - 37:10, 46:9, 106:6 maURICE [1] - 2:7 Maurice [1] - 6:25 McCOY [1] - 2:8 McElroy [3] - 2:22, 7:11, 7:12	mean [6] - 12:16, 15:16, 54:1, 57:8, 96:4, 149:6 meaningless [1] - 27:25 means [1] - 44:16 meantime [3] - 28:6, 180:12, 181:5 meet [2] - 86:8, 176:22 meetings [1] - 127:3 MEGAN [1] - 2:25 Megan [2] - 5:7, 9:3 member [3] - 64:25, 73:15, 112:19 Member [1] - 1:11 members [3] - 80:1, 129:18, 155:12 memory [2] - 62:10, 119:20 mentioned [5] - 7:9, 78:5, 84:10, 99:18, 178:14 mercy [1] - 161:10 merits [16] - 16:20, 17:4, 19:15, 20:23, 21:21, 21:24, 27:11, 32:24, 35:16, 158:12, 158:14, 171:8, 171:11, 171:21, 177:6 met [4] - 32:23, 48:9, 73:22, 73:24 Miami [6] - 1:18, 2:3, 2:7, 2:12, 2:15, 59:9 MICHAEL [1] - 2:10 Michael [6] - 6:13, 8:4, 36:24, 65:21, 105:22, 105:23, 105:25, 106:20 Michelle [1] - 97:21 mid [1] - 175:6 mid-Florida [1] - 175:6 middle [4] - 21:12, 35:6, 58:19, 106:18 might [6] - 47:1, 99:17, 109:23, 163:5, 169:7, 179:4 mile [1] - 71:5 miles [1] - 3:9 Miles [1] - 7:7 mind [1] - 22:18 mine [4] - 57:16, 68:17, 93:14, 145:21 minimize [1] - 106:11 minimum [1] - 41:21 minute [1] - 100:16 minutes [4] - 15:2, 100:21, 100:23,	101:12 misread [1] - 122:13 missing [3] - 51:2, 51:3, 62:11 misspoke [1] - 65:10 Mitch [1] - 7:25 MLS [3] - 72:19, 94:8, 94:13 mold [32] - 40:13, 41:5, 49:22, 61:23, 86:1, 122:22, 123:5, 123:10, 123:13, 123:22, 125:4, 128:19, 129:9, 131:16, 131:20, 148:15, 149:15, 149:17, 149:19, 149:22, 150:8, 150:9, 150:12, 150:16, 150:20, 155:4, 155:16, 156:17, 168:16, 169:2, 178:24 mold-infested [1] - 155:4 mold-related [1] - 122:22 molded [1] - 62:6 moment [5] - 12:4, 14:13, 65:13, 132:6, 140:13 Monday [1] - 181:12 money [58] - 23:16, 25:10, 25:15, 25:24, 26:15, 26:18, 27:5, 28:25, 29:5, 29:17, 30:15, 31:17, 32:3, 32:4, 33:5, 38:19, 38:20, 42:6, 44:13, 76:15, 77:20, 78:18, 78:22, 79:2, 79:6, 82:10, 82:13, 82:15, 82:19, 82:21, 83:1, 84:6, 84:17, 84:25, 85:4, 88:17, 118:9, 132:2, 134:22, 160:11, 162:11, 162:19, 163:25, 164:1, 167:25, 168:1, 168:2, 168:4, 173:16, 173:18, 177:11, 177:12, 177:19, 178:5, 178:23, 180:6 Monica [1] - 6:12 monies [4] - 84:10, 84:11, 114:7, 114:12 month [10] - 32:17, 104:5, 104:11, 118:3, 132:14, 133:1, 136:19, 137:1, 137:4, 137:11	monthly [4] - 132:13, 136:2, 136:18, 136:25 months [13] - 57:23, 87:1, 93:23, 94:11, 94:15, 103:16, 117:23, 117:25, 118:24, 120:6, 120:11, 130:7, 134:12 moreover [1] - 141:23 Morgan [2] - 8:1, 32:18 morning [13] - 5:1, 5:3, 5:5, 6:10, 7:22, 8:3, 8:8, 14:15, 33:15, 33:16, 59:5, 115:9, 181:13 Mortgage [2] - 28:24, 102:16 mortgage [2] - 4:8, 152:19 MORTGAGE [1] - 1:9 most [7] - 23:15, 31:18, 60:15, 123:9, 123:21, 154:5, 167:14 mother [1] - 48:15 mother-in-law [1] - 48:15 motion [48] - 4:14, 4:19, 4:22, 5:14, 5:22, 5:24, 9:21, 10:11, 10:12, 15:6, 15:25, 18:22, 19:14, 21:6, 36:6, 46:14, 89:9, 99:16, 101:11, 101:19, 101:22, 102:1, 103:22, 104:8, 104:12, 104:18, 106:21, 109:4, 135:7, 135:9, 146:19, 147:17, 148:7, 148:13, 148:18, 152:4, 152:6, 163:9, 163:20, 172:14, 172:19, 172:23, 173:2, 176:5, 181:1, 181:3, 181:14 motions [7] - 9:1, 10:4, 127:12, 135:6, 151:25, 181:16 motor [1] - 123:18 mountains [1] - 159:9 move [23] - 48:24, 58:13, 64:17, 66:22, 68:4, 69:16, 71:22, 87:10, 89:17, 90:8, 105:4, 105:6, 105:9, 105:18, 105:19, 108:1, 110:1, 111:1,
M				
M.A.M.C [3] - 1:9, 36:23, 84:11 machine [2] - 86:3, 123:12 mail [2] - 97:21,				

<p>111:5, 125:25, 131:25, 171:22 moved [2] - 104:1, 105:2 movement [1] - 122:16 moving [6] - 103:5, 103:22, 103:23, 104:9, 104:10, 139:22 MR [179] - 5:3, 6:8, 7:7, 7:17, 7:22, 8:15, 9:8, 9:11, 10:9, 10:17, 10:20, 11:12, 12:9, 13:1, 13:13, 13:22, 14:18, 14:20, 15:15, 16:1, 16:12, 19:7, 23:23, 29:25, 33:14, 35:25, 36:8, 39:17, 43:6, 43:13, 45:24, 46:16, 46:19, 47:15, 47:21, 48:22, 49:3, 49:14, 50:24, 51:3, 51:5, 51:9, 51:21, 58:12, 58:15, 59:4, 60:25, 61:3, 62:16, 62:18, 63:6, 63:10, 63:24, 65:5, 65:9, 65:11, 65:19, 66:12, 67:14, 68:12, 69:3, 69:11, 70:3, 70:6, 70:16, 71:22, 72:2, 73:8, 73:21, 74:14, 74:19, 75:16, 76:4, 76:7, 76:25, 77:14, 77:17, 77:23, 78:6, 78:14, 79:7, 79:16, 80:6, 81:9, 84:2, 87:12, 87:18, 90:2, 90:9, 90:15, 91:1, 91:6, 91:10, 92:4, 92:9, 92:22, 92:24, 93:24, 95:2, 95:5, 96:15, 96:18, 98:7, 98:10, 99:5, 99:15, 101:6, 101:11, 102:6, 102:9, 102:12, 104:16, 105:21, 107:24, 109:3, 110:5, 110:24, 111:22, 112:8, 112:14, 114:6, 114:8, 114:9, 114:16, 114:19, 115:14, 115:25, 118:13, 118:16, 119:14, 120:22, 121:8, 125:18, 125:22, 126:1, 126:8, 126:16, 126:19, 135:14, 135:21, 137:24, 139:15, 139:19, 139:22, 141:19,</p>	<p>142:2, 142:5, 143:24, 144:2, 144:16, 144:20, 145:6, 145:20, 146:7, 146:14, 146:25, 147:16, 147:20, 147:24, 148:19, 149:10, 150:2, 150:17, 150:25, 151:8, 151:12, 151:20, 151:23, 161:5, 168:13, 171:17, 171:19, 171:23, 172:7, 180:18, 181:1, 181:4, 181:21, 181:23 multiple [1] - 35:9 murders [1] - 161:9 must [9] - 11:15, 36:13, 36:14, 147:3, 158:6, 158:10, 165:4, 165:13, 165:14</p>	<p>28:16, 28:17, 39:21, 40:10, 55:1, 86:15, 95:4, 95:6, 122:9, 130:23, 130:24, 131:2, 131:7, 150:20, 154:14, 171:5 new [3] - 66:17, 66:18 next [31] - 43:5, 55:6, 56:6, 58:14, 58:15, 66:7, 67:15, 67:21, 67:22, 68:13, 69:12, 69:14, 69:17, 70:10, 72:11, 73:16, 79:14, 80:5, 94:8, 94:13, 100:21, 101:4, 104:11, 111:20, 117:23, 117:25, 124:12, 130:7, 143:17, 151:18, 159:6 night [1] - 112:6 nine [6] - 18:4, 118:24, 120:6, 120:11, 126:21 nine-story [1] - 126:21 Ninth [5] - 18:2, 18:9, 26:24, 164:7, 164:17 ninth [1] - 26:16 NO [1] - 1:4 nobody [2] - 22:18, 24:5 non [3] - 21:13, 35:1, 35:2 non-executed [1] - 35:2 non-jury [1] - 21:13 non-produced [1] - 35:1 none [3] - 144:8, 144:10, 169:4 nonpayment [1] - 157:3 nonresponsive [2] - 87:11, 125:23 normal [1] - 57:15 normally [1] - 46:4 North [2] - 2:9, 59:9 Notary [2] - 1:24, 183:8 note [1] - 48:3 noted [3] - 70:13, 73:7, 121:4 notes [3] - 16:25, 48:15, 183:12 nothing [14] - 13:10, 31:23, 32:2, 49:19, 57:12, 71:12, 71:13, 151:1, 154:13, 154:20, 158:21,</p>	<p>162:24, 164:20 notice [4] - 69:21, 70:9, 156:6, 156:11 notices [1] - 69:18 November [3] - 45:7, 103:6, 103:15 number [6] - 13:25, 14:2, 20:23, 60:4, 143:10, 160:12 Number [6] - 51:15, 113:17, 139:25, 140:19, 140:20, 143:8 Numbers [1] - 141:6 numbers [1] - 14:7</p>	<p>occasioned [1] - 153:6 occasions [2] - 60:14, 84:19 occupied [2] - 39:21, 40:11 occur [4] - 99:17, 153:5, 170:5, 172:25 occurred [2] - 41:7, 131:1 occurring [1] - 42:19 Oceanside [120] - 4:18, 5:18, 12:1, 18:17, 19:1, 19:11, 19:20, 20:25, 21:14, 21:22, 22:7, 22:8, 22:21, 25:6, 25:7, 26:2, 26:4, 27:5, 27:16, 28:17, 28:23, 29:5, 30:4, 31:23, 32:1, 32:8, 32:9, 32:15, 32:20, 34:22, 36:17, 36:20, 37:2, 37:25, 44:6, 44:14, 44:18, 45:5, 45:7, 59:13, 59:17, 59:19, 60:7, 60:10, 62:14, 62:19, 62:20, 63:2, 64:14, 64:20, 64:21, 64:22, 64:24, 65:4, 65:20, 65:23, 66:5, 67:6, 75:18, 75:19, 75:22, 76:3, 77:19, 77:20, 78:17, 78:18, 79:2, 79:6, 82:11, 82:14, 82:21, 87:5, 89:23, 91:3, 91:5, 91:16, 92:3, 96:21, 113:10, 113:23, 116:8, 116:22, 117:12, 117:22, 122:4, 122:8, 123:4, 125:11, 126:12, 127:8, 127:17, 128:1, 128:5, 128:11, 128:19, 129:23, 130:8, 131:4, 131:6, 131:17, 133:13, 138:5, 145:25, 147:8, 148:8, 152:9, 162:19, 162:22, 162:23, 163:3, 167:19, 170:10, 170:15, 173:7, 177:25, 178:16, 178:21, 180:20 Oceanside's [3] - 37:17, 91:25, 148:25 October [1] - 148:11 OF [6] - 1:1, 1:5,</p>
O				
<p>o'clock [1] - 100:14 O'HARA [1] - 2:8 O'Neil [2] - 5:7, 9:3 O'NEIL [1] - 2:25 oath [2] - 35:14, 58:21 object [13] - 24:24, 35:15, 52:21, 53:1, 53:2, 64:20, 67:1, 73:8, 74:14, 87:12, 119:8, 125:24, 141:20 objected [1] - 24:5 objection [26] - 49:4, 51:12, 62:24, 65:2, 66:24, 68:6, 69:2, 73:6, 76:4, 77:14, 77:21, 79:7, 90:2, 91:6, 92:4, 92:22, 98:17, 114:14, 118:12, 118:14, 118:16, 120:15, 121:3, 131:9, 141:18, 142:4 Objection [2] - 62:16, 95:2 objections [6] - 23:12, 26:10, 70:4, 99:23, 100:2, 145:5 obligations [2] - 73:16, 83:17 observations [4] - 60:17, 60:22, 74:22 observer [1] - 7:8 observers [1] - 7:6 obtain [8] - 33:24, 89:16, 92:21, 109:2, 161:2, 161:3 obtained [2] - 147:9, 158:1 obtaining [1] - 16:7 obviously [3] - 57:2, 107:3, 157:18</p>				

<p>183:1, 183:3, 183:5 offer [13] - 31:8, 50:22, 68:25, 72:22, 75:1, 112:10, 114:3, 125:1, 126:6, 141:15, 141:16, 148:1, 151:1 offered [6] - 29:21, 120:1, 120:14, 158:22, 159:4, 159:8 offering [1] - 77:3 Office [1] - 2:24 office [3] - 4:7, 12:20, 13:8 OFFICE [1] - 1:5 officers [1] - 102:17 official [3] - 120:4, 141:11, 142:18 often [1] - 124:21 old [1] - 161:8 once [4] - 32:25, 47:16, 163:15, 172:21 one [54] - 12:4, 12:14, 12:22, 20:23, 28:15, 37:1, 40:1, 40:16, 42:9, 45:9, 50:25, 52:14, 56:11, 60:16, 63:7, 63:13, 65:13, 71:3, 72:14, 83:15, 84:6, 84:13, 93:5, 94:8, 102:20, 104:7, 105:16, 107:20, 110:24, 113:13, 114:1, 114:6, 114:11, 123:10, 125:6, 125:20, 127:22, 134:17, 142:23, 143:3, 146:4, 148:7, 149:12, 150:24, 152:17, 155:6, 157:4, 158:2, 159:11, 164:3, 167:12, 172:10, 176:10 one-page [1] - 63:13 one-shot [2] - 125:6, 125:20 ones [3] - 80:21, 125:12, 157:18 ongoing [3] - 125:20, 168:16, 177:16 online [1] - 71:1 open [1] - 147:11 opened [2] - 98:6, 98:7 opening [2] - 42:22, 46:2 openings [1] - 46:4 operate [1] - 118:11 opinion [10] - 11:6,</p>	<p>11:23, 15:12, 17:10, 18:5, 98:12, 109:19, 119:22, 121:11, 158:15 opinions [2] - 154:4, 157:13 opportunity [4] - 35:22, 38:11, 60:23, 61:12 opposed [2] - 133:14, 154:25 opposes [1] - 180:23 oppositions [1] - 104:7 Orange [2] - 2:9, 3:3 order [58] - 4:14, 4:22, 5:15, 5:22, 9:22, 10:6, 10:12, 11:4, 11:9, 11:22, 15:10, 15:16, 15:21, 15:24, 16:5, 16:15, 17:10, 18:15, 18:23, 19:14, 20:2, 20:4, 20:17, 21:4, 21:6, 33:18, 33:22, 34:4, 34:6, 34:7, 34:8, 34:12, 34:18, 36:16, 39:3, 54:1, 54:3, 70:19, 99:18, 107:7, 108:10, 130:15, 130:18, 146:15, 146:17, 153:21, 153:23, 153:24, 163:12, 165:25, 172:12, 173:8, 174:10, 174:24, 176:7, 178:3, 180:25 ordered [2] - 21:7, 148:20 ordering [1] - 175:20 orders [3] - 35:9, 153:19, 176:14 original [3] - 24:7, 64:11, 125:12 Orlando [3] - 2:10, 3:4, 8:4 orphan [1] - 161:11 otherwise [1] - 120:16 outside [2] - 60:24, 61:2 outstanding [1] - 99:19 overall [1] - 136:21 overdue [2] - 91:17, 91:18 overrule [4] - 65:1, 79:13, 87:14, 98:5 overruled [9] - 35:18, 63:1, 67:7,</p>	<p>90:7, 92:6, 98:19, 114:17, 121:4, 125:25 overview [1] - 112:9 owe [1] - 57:13 owed [20] - 30:16, 31:18, 32:4, 42:8, 44:10, 44:12, 44:14, 116:10, 116:21, 117:6, 117:13, 117:24, 132:3, 134:22, 138:6, 162:20, 175:1, 177:8, 179:6, 179:11 owes [1] - 177:11 own [12] - 12:2, 18:12, 19:11, 19:17, 33:10, 52:13, 86:2, 128:21, 164:24, 167:19, 178:23 owned [8] - 4:17, 5:17, 32:13, 89:23, 96:21, 116:7, 122:4, 133:13 owner [13] - 23:13, 23:15, 24:8, 24:19, 24:22, 26:11, 26:23, 125:2, 128:8, 136:17, 137:11, 171:4, 178:8 Owner [1] - 1:10 owners [16] - 31:13, 40:23, 45:1, 96:7, 117:6, 122:23, 124:3, 124:17, 130:10, 136:7, 140:8, 157:6, 168:20, 168:24, 177:24, 178:19 ownership [8] - 22:1, 24:18, 26:13, 27:24, 34:21, 83:13, 124:1, 140:14 owning [1] - 164:11 owns [5] - 17:20, 32:6, 57:18, 152:9, 167:15</p>	<p>54:6, 54:10, 54:23, 54:25, 55:6, 56:10, 56:19, 57:1, 63:13, 66:9, 81:19, 87:25, 90:11, 112:14, 113:8, 113:14, 114:19, 116:2, 116:18, 116:19, 118:6, 121:14, 124:13, 125:1, 126:10, 129:19, 130:3, 130:20, 131:25, 132:1, 132:4, 132:7, 133:22, 133:23, 134:19, 135:22, 137:4, 137:12, 138:12, 138:15, 138:16, 138:21, 139:1, 139:2, 139:23, 140:16, 141:3, 142:9, 142:18, 143:6, 143:8, 144:2 Page [2] - 51:21, 51:24 pages [14] - 53:15, 53:16, 54:6, 56:18, 57:4, 130:15, 130:19, 132:1, 137:24, 137:25, 138:2, 138:18, 138:23, 171:10 paid [18] - 25:11, 25:12, 25:13, 25:14, 29:19, 42:5, 42:16, 45:4, 45:6, 50:3, 99:19, 118:3, 120:11, 159:11, 160:15, 160:19, 166:20 paint [1] - 50:8 painting [1] - 74:12 paltry [1] - 27:8 papers [2] - 103:25, 152:17 parents [1] - 161:9 parker [1] - 95:16 part [18] - 21:23, 54:7, 56:8, 57:4, 58:4, 85:21, 109:6, 120:15, 127:3, 128:6, 128:15, 145:2, 146:2, 146:24, 148:2, 148:4, 155:23, 175:16 partial [3] - 36:19, 134:14, 175:22 partially [1] - 175:15 participating [1] - 13:18 particular [3] - 142:13, 154:24, 160:15</p>	<p>particularly [3] - 26:19, 29:20, 54:11 parties [18] - 12:15, 12:17, 16:14, 17:1, 33:4, 43:2, 98:23, 108:11, 151:15, 153:16, 173:6, 173:25, 176:9, 176:10, 177:17, 179:20 partner [4] - 7:2, 19:17, 34:25, 152:5 partner's [1] - 19:22 partners [1] - 35:3 partnership [2] - 35:1, 35:2 parts [3] - 53:3, 58:3, 165:6 party [13] - 12:7, 16:22, 17:3, 17:6, 23:14, 24:10, 52:24, 53:5, 104:25, 159:7, 171:4, 175:1, 177:14 Pasco [8] - 36:9, 37:12, 69:22, 133:24, 133:25, 155:21, 156:12, 180:23 passed [1] - 107:5 past [4] - 45:17, 86:10, 160:22, 160:23 Pat [1] - 30:25 pATRICK [1] - 3:15 Patrick [1] - 112:1 PAULA [2] - 183:7, 183:22 Paula [1] - 1:23 pay [30] - 17:12, 39:2, 41:25, 42:3, 45:16, 84:1, 91:4, 121:15, 121:25, 124:9, 134:8, 136:14, 146:20, 155:17, 155:18, 160:25, 166:9, 166:10, 166:13, 166:16, 166:18, 168:5, 172:15, 173:16, 173:20, 174:9, 178:5, 179:10, 180:6, 180:11 payers [1] - 155:21 paying [8] - 44:6, 91:17, 161:20, 168:8, 169:20, 170:15, 177:8, 178:1 payment [7] - 38:19, 44:10, 160:8, 160:22, 172:19, 174:25, 175:22 payments [2] - 77:8, 170:17</p>
---	--	---	---	--

P

P.A [2] - 2:8, 2:23
PACE [2] - 183:7,
183:22
Pace [1] - 1:23
packet [1] - 50:25
page [77] - 18:4,
46:23, 46:25, 48:7,
48:12, 48:14, 48:17,
49:14, 49:25, 50:9,
50:13, 50:16, 51:1,
52:2, 52:6, 52:9, 53:8,
53:9, 53:21, 53:23,

<p>pending [31] - 5:23, 9:22, 10:13, 15:6, 16:8, 16:18, 22:13, 38:17, 57:12, 104:1, 152:7, 152:14, 154:2, 158:8, 158:10, 163:9, 164:5, 165:4, 166:1, 167:5, 170:7, 172:20, 174:5, 175:23, 177:1, 177:10, 179:16, 179:22, 180:1, 180:6</p> <p>penny [1] - 161:19</p> <p>people [9] - 8:16, 10:23, 52:11, 95:19, 95:20, 114:2, 124:5, 136:7, 145:25</p> <p>per [10] - 136:19, 136:25, 137:1, 137:4, 137:5, 137:10, 137:11, 142:25, 160:9, 178:8</p> <p>percent [19] - 29:4, 29:13, 29:14, 29:21, 38:20, 42:9, 44:17, 77:9, 83:18, 88:5, 88:11, 88:13, 89:3, 132:23, 132:25, 156:13, 157:4, 162:8, 173:14</p> <p>percentage [3] - 83:18, 133:12, 133:16</p> <p>percentages [1] - 83:23</p> <p>perfect [1] - 124:15</p> <p>performance [2] - 164:14, 164:23</p> <p>performed [1] - 73:4</p> <p>perhaps [2] - 31:12, 72:3</p> <p>period [3] - 93:10, 93:20, 124:8</p> <p>Perkins [1] - 97:21</p> <p>permanently [1] - 30:9</p> <p>permission [4] - 42:21, 91:23, 92:2, 108:16</p> <p>permit [4] - 15:18, 43:11, 144:1, 145:16</p> <p>permits [1] - 17:18</p> <p>permitted [2] - 46:7, 47:14</p> <p>person [10] - 14:3, 40:4, 95:11, 95:12, 112:4, 125:9, 127:22, 154:9, 164:10, 164:17</p> <p>personal [5] - 40:3, 60:9, 60:22, 86:2, 129:8</p> <p>personally [2] -</p>	<p>80:13, 96:10</p> <p>perspective [1] - 172:9</p> <p>perused [1] - 138:16</p> <p>petition [1] - 87:15</p> <p>phone [10] - 4:24, 9:2, 9:6, 10:19, 12:21, 13:3, 13:6, 100:18</p> <p>PHONE [3] - 2:23, 3:2, 3:5</p> <p>phonetic [3] - 23:24, 127:17, 127:20</p> <p>photocopies [1] - 66:14</p> <p>photograph [1] - 61:13</p> <p>photographs [9] - 66:10, 66:14, 66:20, 68:13, 68:16, 68:20, 68:25, 69:14, 78:25</p> <p>phrase [1] - 99:23</p> <p>physical [1] - 96:9</p> <p>pick [1] - 166:12</p> <p>pictures [4] - 62:10, 94:12, 97:11, 97:15</p> <p>piece [1] - 77:6</p> <p>piecemeal [1] - 18:8</p> <p>pigeon [12] - 74:12, 74:15, 122:20, 124:4, 124:6, 126:2, 126:10, 127:4, 129:22, 149:23, 178:14, 178:20</p> <p>pigeon-related [1] - 124:4</p> <p>pigeons [7] - 122:18, 126:11, 126:19, 126:22, 127:11, 148:15, 169:2</p> <p>piper [1] - 179:21</p> <p>place [8] - 29:24, 35:20, 108:20, 108:22, 141:22, 147:6, 153:11, 163:21</p> <p>placed [1] - 87:25</p> <p>places [3] - 62:5, 62:6, 101:21</p> <p>Plaintiff [2] - 1:7, 4:8</p> <p>plaintiff [3] - 4:20, 9:5, 15:7</p> <p>Plaintiff's [22] - 3:19, 3:20, 3:20, 3:21, 3:21, 3:22, 3:22, 3:23, 3:23, 3:24, 49:7, 49:12, 51:19, 65:14, 65:16, 67:12, 68:8, 68:10, 69:9, 70:14, 73:19, 115:7</p> <p>plaintiff's [9] - 4:22, 5:21, 9:21, 51:17,</p>	<p>67:10, 69:7, 70:12, 73:17, 115:5</p> <p>plaintiffs [1] - 49:8</p> <p>plan [1] - 53:10</p> <p>plans [1] - 49:25</p> <p>pleadings [4] - 19:13, 19:25, 36:11, 156:6</p> <p>plenty [1] - 157:25</p> <p>plus [3] - 52:14, 134:10, 157:24</p> <p>podium [1] - 102:6</p> <p>point [19] - 22:4, 99:10, 99:12, 99:14, 99:22, 100:4, 105:6, 122:18, 122:23, 123:18, 126:9, 128:22, 141:14, 144:15, 165:19, 170:8, 172:24, 178:18</p> <p>policy [1] - 40:16</p> <p>Ponce [1] - 2:12</p> <p>portion [8] - 41:24, 45:20, 46:6, 52:22, 127:25, 134:21</p> <p>portions [3] - 47:11, 126:5, 130:2</p> <p>position [28] - 6:22, 11:3, 15:21, 16:2, 17:5, 17:8, 22:5, 22:14, 22:21, 26:4, 32:8, 32:20, 59:15, 70:20, 72:6, 82:25, 83:4, 84:6, 84:13, 85:3, 85:4, 86:17, 107:21, 107:24, 150:1</p> <p>positive [1] - 173:14</p> <p>possibility [1] - 57:22</p> <p>possible [2] - 107:2, 108:2</p> <p>post [3] - 2:24, 22:12, 176:22</p> <p>posted [2] - 41:22, 180:1</p> <p>posting [7] - 6:20, 43:23, 43:25, 165:9, 174:6, 175:19, 176:25</p> <p>postponed [1] - 64:12</p> <p>potential [2] - 11:20, 86:13</p> <p>preceded [1] - 173:25</p> <p>predicate [6] - 50:21, 79:8, 91:7, 92:5, 95:3, 119:18</p> <p>predicates [1] - 48:23</p> <p>prefer [4] - 108:21,</p>	<p>109:17, 109:23</p> <p>preference [2] - 106:2, 109:22</p> <p>preliminary [1] - 111:3</p> <p>premature [1] - 108:25</p> <p>preparation [1] - 93:18</p> <p>prepared [7] - 6:20, 45:19, 51:25, 105:19, 108:18, 109:4, 140:5</p> <p>presence [1] - 115:11</p> <p>present [21] - 5:10, 6:21, 9:6, 16:10, 17:17, 31:7, 35:19, 40:25, 42:23, 46:13, 46:20, 75:9, 81:12, 90:12, 107:11, 107:17, 115:10, 128:19, 144:19, 146:5, 151:7</p> <p>PRESENT [1] - 3:7</p> <p>presentation [2] - 35:24, 50:19</p> <p>presented [9] - 23:11, 29:2, 30:12, 32:10, 53:18, 119:7, 140:8, 151:11, 173:15</p> <p>presenting [1] - 139:13</p> <p>president [12] - 30:25, 34:23, 74:21, 112:1, 113:1, 113:4, 117:3, 119:17, 119:23, 137:5, 142:14, 156:17</p> <p>press [1] - 107:6</p> <p>presume [1] - 36:4</p> <p>pretty [2] - 52:15, 121:23</p> <p>prevail [3] - 40:18, 45:14, 161:1</p> <p>prevailing [1] - 177:6</p> <p>prevalent [1] - 129:2</p> <p>previewed [1] - 39:19</p> <p>previous [2] - 99:17, 129:18</p> <p>previously [4] - 37:11, 80:24, 84:9, 99:21</p> <p>price [23] - 17:12, 41:13, 41:21, 54:19, 70:21, 73:1, 73:5, 83:21, 94:24, 95:13, 95:23, 97:10, 97:25, 98:12, 157:8, 157:11, 157:17, 157:24,</p>	<p>157:25, 158:2, 160:10, 161:2</p> <p>prices [9] - 26:22, 27:1, 27:4, 28:6, 85:8, 85:12, 85:16, 94:1, 94:3</p> <p>pricing [1] - 72:8</p> <p>pride [1] - 40:23</p> <p>print [2] - 93:3, 93:9</p> <p>printed [1] - 93:17</p> <p>probable [1] - 17:5</p> <p>problem [24] - 17:16, 20:21, 22:25, 29:15, 114:10, 114:11, 122:17, 126:20, 126:25, 127:6, 129:4, 148:21, 149:11, 150:16, 160:4, 168:16, 168:18, 169:1, 169:2, 176:25, 178:15, 178:17, 178:20, 178:24</p> <p>problems [28] - 54:5, 74:12, 74:15, 76:13, 76:14, 76:16, 77:4, 126:2, 126:10, 128:2, 128:19, 129:10, 129:12, 129:22, 131:16, 149:1, 149:4, 149:12, 149:19, 149:22, 149:23, 150:5, 150:6, 150:20, 155:11, 155:16, 169:1</p> <p>procedural [1] - 172:9</p> <p>procedure [4] - 38:23, 39:9, 165:3, 165:7</p> <p>proceed [17] - 33:16, 33:25, 37:22, 41:16, 42:23, 45:20, 46:11, 102:3, 104:20, 106:5, 107:15, 108:10, 110:9, 110:18, 110:19, 112:12, 151:21</p> <p>proceeding [8] - 15:18, 89:16, 109:14, 121:2, 135:5, 141:17, 141:24, 145:3</p> <p>proceedings [13] - 4:2, 21:25, 38:16, 39:7, 48:19, 59:11, 92:12, 101:10, 148:5, 152:7, 152:14, 183:10, 183:12</p> <p>proceeds [9] - 19:19, 24:3, 27:9, 34:1, 89:22, 91:3, 91:16, 99:18, 154:1</p>
---	--	--	---	---

<p>process [7] - 20:4, 20:20, 22:17, 125:7, 125:20, 125:21, 167:15</p> <p>produce [1] - 21:4</p> <p>produced [6] - 21:8, 21:9, 21:11, 35:1, 35:8, 35:10</p> <p>production [1] - 21:6</p> <p>Professional [1] - 1:23</p> <p>proffer [4] - 47:1, 47:23, 68:3, 113:25</p> <p>program [1] - 127:4</p> <p>project [1] - 162:4</p> <p>projected [2] - 141:21, 143:20</p> <p>projection [3] - 118:22, 119:1, 119:9</p> <p>projects [1] - 136:21</p> <p>promptly [1] - 100:20</p> <p>properties [14] - 38:2, 40:24, 60:2, 60:4, 60:11, 60:14, 60:18, 71:2, 84:12, 154:14, 154:15, 162:14, 162:25, 180:8</p> <p>property [146] - 12:2, 12:11, 16:16, 17:19, 17:21, 17:23, 17:24, 18:10, 18:11, 18:13, 18:25, 19:12, 19:17, 20:8, 20:25, 21:21, 22:1, 22:3, 22:15, 22:20, 22:22, 22:23, 22:25, 23:4, 23:6, 23:12, 23:13, 23:15, 24:1, 24:8, 24:12, 24:13, 24:14, 24:18, 24:23, 25:1, 25:6, 25:8, 25:10, 25:18, 25:20, 25:23, 26:8, 26:14, 26:16, 26:18, 26:23, 26:25, 27:7, 27:15, 27:18, 27:23, 28:1, 28:3, 28:4, 28:5, 28:9, 28:10, 28:12, 28:18, 29:6, 30:6, 30:10, 32:6, 32:13, 32:14, 33:1, 33:2, 33:9, 33:10, 33:24, 33:25, 34:3, 38:22, 39:5, 39:12, 39:23, 40:9, 42:15, 48:9, 48:11, 48:13, 57:3, 59:19, 71:6, 74:3, 74:9, 77:4, 77:6, 78:20, 78:23, 82:17, 82:19, 86:23, 99:25,</p>	<p>121:25, 124:19, 127:20, 127:25, 132:21, 136:5, 136:10, 136:12, 136:16, 140:5, 147:9, 152:19, 152:22, 153:2, 153:3, 153:25, 154:5, 154:8, 154:10, 154:12, 154:13, 159:18, 164:7, 164:11, 164:12, 164:15, 164:24, 165:15, 165:16, 165:19, 165:22, 165:25, 166:4, 166:5, 166:6, 166:11, 166:19, 166:21, 167:6, 167:12, 167:24, 168:10, 171:12, 174:12, 179:16, 179:23, 179:24, 180:5, 180:11, 180:12</p> <p>proposed [1] - 140:10</p> <p>proposition [1] - 107:12</p> <p>propositions [1] - 147:12</p> <p>prorated [1] - 28:23</p> <p>protect [3] - 34:13, 153:16, 169:6</p> <p>protection [2] - 131:8, 131:12</p> <p>protective [1] - 21:6</p> <p>prove [1] - 164:14</p> <p>provide [3] - 94:1, 151:4, 175:3</p> <p>provided [6] - 13:25, 23:17, 40:7, 54:15, 56:2, 68:18</p> <p>proximity [2] - 60:13, 122:24</p> <p>Public [2] - 1:24, 183:8</p> <p>public [11] - 16:23, 40:16, 40:19, 69:22, 155:8, 155:9, 155:19, 156:12, 159:24, 160:1, 160:2</p> <p>purchase [6] - 41:13, 41:21, 51:7, 55:3, 75:23, 160:9</p> <p>purchased [1] - 123:8</p> <p>purchasing [1] - 95:1</p> <p>purpose [4] - 73:7, 74:1, 108:1, 169:5</p> <p>purposes [6] - 36:5,</p>	<p>49:10, 51:15, 73:13, 147:2</p> <p>pursue [1] - 109:14</p> <p>put [9] - 70:20, 74:8, 84:6, 119:12, 146:9, 161:19, 161:23</p> <p>putting [2] - 42:11, 133:24</p> <p>Q</p> <p>qualified [1] - 71:25</p> <p>QUESTION [1] - 117:16</p> <p>QUESTION [72] - 54:20, 55:1, 55:14, 55:21, 56:11, 56:20, 56:25, 57:6, 57:19, 81:20, 81:25, 112:22, 112:25, 113:3, 113:9, 116:10, 116:13, 117:3, 117:12, 117:20, 121:18, 121:25, 123:1, 124:9, 124:15, 124:21, 126:1, 126:11, 127:7, 127:15, 128:4, 128:10, 128:18, 129:8, 129:21, 130:5, 130:21, 131:3, 131:10, 131:15, 132:5, 132:10, 132:17, 132:22, 133:2, 133:11, 133:19, 133:24, 134:7, 135:23, 136:9, 136:14, 136:24, 137:3, 137:13, 137:17, 139:24, 140:9, 140:17, 140:23, 141:5, 141:11, 142:10, 142:20, 142:24, 143:1, 143:4, 143:7, 143:15, 144:5, 144:9, 144:11</p> <p>questioning [1] - 179:2</p> <p>questions [10] - 17:9, 67:25, 75:9, 78:3, 87:16, 96:13, 98:21, 98:24, 116:4, 138:3</p> <p>quick [1] - 104:9</p> <p>quickly [6] - 101:8, 104:10, 107:2, 108:2, 111:6, 138:16</p> <p>quietly [1] - 111:14</p> <p>quite [1] - 134:23</p> <p>quote [1] - 20:11</p>	<p>quoted [2] - 54:8, 165:6</p> <p>R</p> <p>raised [2] - 172:10, 179:24</p> <p>ramifications [1] - 147:12</p> <p>Ranch [1] - 112:16</p> <p>range [1] - 157:16</p> <p>rarely [1] - 36:12</p> <p>rate [4] - 132:18, 132:22, 132:25, 143:20</p> <p>rather [10] - 34:2, 46:23, 83:1, 83:22, 101:21, 101:22, 105:13, 133:18, 155:2, 155:3</p> <p>Raven [8] - 16:9, 164:3, 164:22, 164:24, 165:23, 167:2, 167:23</p> <p>re [3] - 125:16, 125:17, 131:9</p> <p>Re [2] - 16:9, 18:2</p> <p>re-asked [1] - 131:9</p> <p>re-treat [1] - 125:16</p> <p>read [20] - 3:12, 3:15, 10:3, 10:5, 19:5, 21:18, 47:12, 82:7, 83:6, 83:8, 90:1, 102:10, 113:22, 130:17, 134:25, 144:3, 171:10, 171:18, 173:2</p> <p>reading [1] - 46:23</p> <p>ready [4] - 40:25, 55:19, 151:14, 155:14</p> <p>Ready [1] - 139:20</p> <p>real [28] - 11:18, 16:16, 26:19, 26:21, 27:1, 28:6, 38:22, 40:9, 85:7, 85:12, 85:16, 86:11, 86:20, 119:11, 152:19, 152:21, 154:5, 164:6, 164:11, 164:12, 165:15, 165:19, 165:22, 165:25, 170:13, 171:4</p> <p>Real [4] - 88:23, 89:5, 89:9, 89:10</p> <p>reality [1] - 154:7</p> <p>really [13] - 7:8, 24:19, 25:9, 29:7, 32:6, 56:7, 79:3, 105:2, 131:23,</p>	<p>145:10, 149:5, 165:1, 166:17</p> <p>realtor [4] - 64:10, 71:3, 86:15, 95:25</p> <p>realtors [1] - 71:4</p> <p>Realty [2] - 88:2, 92:18</p> <p>rearguing [1] - 33:17</p> <p>reason [8] - 16:6, 27:10, 29:9, 30:7, 42:2, 43:24, 76:17, 119:6</p> <p>reasonable [4] - 83:22, 98:13, 158:2, 166:22</p> <p>reasons [3] - 20:1, 26:17, 33:21</p> <p>rebuttal [1] - 180:16</p> <p>receivables [3] - 44:15, 44:17, 117:5</p> <p>receive [8] - 6:1, 18:21, 77:7, 88:9, 130:7, 134:21, 146:1, 151:14</p> <p>received [5] - 55:2, 77:12, 102:22, 109:12, 132:14</p> <p>receiver [69] - 6:14, 7:23, 11:13, 12:3, 17:11, 17:16, 17:18, 17:20, 17:22, 17:24, 22:6, 22:7, 22:24, 23:1, 23:10, 23:11, 23:17, 23:25, 24:12, 24:25, 25:3, 26:1, 26:3, 26:7, 28:16, 33:23, 36:25, 43:15, 44:11, 55:9, 55:16, 56:13, 59:20, 59:23, 65:6, 65:21, 72:7, 73:2, 74:25, 75:4, 84:4, 89:24, 90:23, 91:2, 91:14, 91:20, 91:22, 91:24, 92:1, 94:25, 95:12, 96:19, 102:25, 105:24, 106:1, 135:8, 146:19, 149:10, 151:25, 157:9, 160:1, 161:14, 170:11, 172:15, 173:15, 174:20, 177:13, 180:11</p> <p>receiver's [4] - 4:14, 4:15, 5:14, 5:15</p> <p>receivership [23] - 18:20, 24:6, 24:9, 24:16, 26:10, 33:6, 34:16, 37:3, 37:6, 59:11, 60:3, 62:20, 75:4, 91:21, 106:8,</p>
--	--	---	---	---

106:12, 108:25, 109:16, 109:17, 156:1, 156:2, 163:1, 163:16 receives [1] - 43:4 receiving [1] - 12:23 recent [1] - 71:2 recently [2] - 60:15, 74:8 recess [2] - 100:16, 100:24 recognize [1] - 63:14 recollect [1] - 79:3 recollection [1] - 90:23 recommend [2] - 73:5, 84:4 recommendation [4] - 70:20, 72:7, 74:24, 75:3 recommending [2] - 39:15, 73:1 reconstructed [1] - 61:24 record [13] - 4:4, 32:11, 46:22, 53:7, 58:5, 88:7, 100:4, 112:10, 114:3, 120:4, 120:17, 135:2, 156:12 records [6] - 69:22, 114:2, 137:14, 137:17, 141:8, 141:11 recoup [1] - 130:12 recourse [1] - 130:11 recovery [1] - 24:8 redirect [2] - 96:14, 96:15 REDIRECT [1] - 96:17 redo [1] - 52:13 reference [3] - 105:13, 128:22, 134:17 referenced [2] - 133:3, 138:17 referred [1] - 119:15 referring [4] - 56:21, 84:14, 98:1, 172:17 reflect [1] - 143:10 reflected [3] - 118:23, 138:11, 138:14 refresh [2] - 62:10, 90:22 refreshed [1] - 119:19 refurbishing [1] - 80:14 refuse [2] - 161:23 refused [2] - 84:17, 161:19 regard [3] - 30:11, 74:25, 107:4 regarding [11] - 17:10, 19:21, 21:1, 22:19, 78:3, 92:25, 123:7, 135:4, 147:7, 156:14, 173:6 regards [1] - 152:24 Registered [1] - 1:23 Regulation [1] - 4:7 REGULATION [1] - 1:6 reject [1] - 158:5 related [6] - 8:10, 92:3, 122:22, 122:24, 123:7, 124:4 relates [1] - 107:22 relating [1] - 4:13 relative [1] - 176:4 relax [1] - 14:13 relevance [8] - 52:25, 67:1, 76:5, 76:6, 77:15, 90:3, 91:7, 114:16 relevancy [1] - 69:3 relevant [10] - 39:25, 119:21, 121:1, 135:5, 141:23, 145:14, 148:11, 148:14, 180:21 relied [1] - 98:14 Relief [1] - 1:15 relief [12] - 6:15, 6:17, 12:1, 104:22, 105:15, 108:9, 108:13, 108:19, 109:1, 109:5, 110:25 relocation [1] - 127:4 remain [4] - 100:18, 101:12, 109:18, 111:12 remaining [2] - 46:9, 101:9 remarking [1] - 5:19 remediated [1] - 131:22 remedy [1] - 153:15 remember [3] - 12:12, 173:17, 177:20 remind [1] - 39:18 remodeling [1] - 49:18 remove [1] - 50:21 removed [3] - 61:23, 62:6, 122:15 rent [8] - 28:5, 28:12, 41:5, 50:1, 53:12, 85:5, 155:17, 166:19 rented [3] - 84:5, 166:6, 166:20 rents [1] - 40:15 repair [10] - 81:24, 82:11, 82:13, 82:22, 85:4, 127:24, 136:12, 136:15, 158:4, 161:19 repairs [2] - 81:1, 148:9 repeat [3] - 76:23, 83:5, 89:25 repeated [1] - 138:4 rephrase [1] - 130:4 replaced [1] - 123:19 report [2] - 104:5, 183:9 REPORTER [1] - 183:1 reporter [2] - 5:10, 128:25 Reporter [3] - 1:23, 183:7, 183:23 reports [1] - 82:18 represent [8] - 6:13, 8:10, 8:21, 8:23, 64:21, 105:25, 108:6 representation [1] - 23:22 representative [2] - 102:19, 162:18 representatives [2] - 43:3, 127:16 represented [1] - 162:22 representing [4] - 24:15, 97:2, 97:5, 109:7 represents [8] - 12:10, 38:20, 39:23, 42:9, 43:7, 161:13, 161:14, 163:7 request [7] - 21:5, 43:22, 69:20, 106:13, 106:24, 109:10, 111:9 requested [3] - 84:9, 145:25, 180:3 require [3] - 38:9, 165:18, 176:22 required [9] - 29:3, 35:3, 38:12, 38:18, 45:16, 174:15, 175:21, 176:11, 179:10 requirement [1] - 165:2 requires [1] - 66:1 research [5] - 11:3, 70:19, 74:23, 75:6, 157:12 resides [1] - 13:8 resolve [1] - 92:13 resolved [5] - 27:19, 53:25, 83:14, 167:18, 181:5 resort [8] - 19:17, 21:10, 22:12, 24:11, 60:11, 85:9, 85:13, 166:3 Resort [26] - 7:1, 7:3, 18:17, 23:5, 24:21, 25:19, 26:13, 27:25, 28:2, 28:3, 28:4, 30:5, 30:8, 30:9, 32:5, 32:12, 32:17, 32:25, 33:4, 33:10, 92:19, 148:20, 149:3, 152:5, 162:17, 166:13 Resort's [2] - 22:14, 27:24 resorts [1] - 22:5 resources [1] - 178:23 respect [11] - 36:14, 55:3, 59:16, 61:7, 70:21, 97:9, 129:22, 141:5, 157:8, 173:22, 178:25 respectfully [2] - 36:14, 106:24 respond [1] - 35:22 response [5] - 35:23, 89:19, 119:13, 123:3, 127:15 responsibility [1] - 135:25 responsible [5] - 136:1, 136:3, 136:6, 136:10, 156:21 responsive [1] - 87:13 rest [1] - 144:16 restate [1] - 8:20 restitution [1] - 179:15 result [8] - 39:11, 44:5, 153:5, 159:3, 176:13, 177:15 results [2] - 86:5, 127:22 resume [6] - 100:20, 100:23, 101:4, 101:23, 115:20 retain [2] - 74:9, 96:20 retained [4] - 31:4, 85:15, 86:12, 86:15 retreat [2] - 125:13, 125:15 Retreat [1] - 125:14 reverse [2] - 38:3, 41:6 reversed [1] - 148:22 reverses [1] - 34:7 review [12] - 36:9, 66:2, 145:13, 145:17, 150:23, 151:3, 174:5, 174:13, 176:7, 177:1, 177:10, 181:18 reviewable [1] - 153:12 reviewed [2] - 66:3, 73:3 revisit [3] - 34:6, 153:23, 167:3 rid [5] - 28:18, 41:5, 155:15, 155:16, 165:22 rider [1] - 50:15 rights [1] - 27:6 ringing [1] - 4:24 risk [4] - 29:16, 29:18, 33:7, 168:4 road [1] - 41:19 Road [1] - 59:9 rock [2] - 27:3, 27:4 rolling [1] - 111:4 room [1] - 13:4 roost [1] - 126:22 Ross [3] - 5:7, 8:23, 14:19 ROSS [1] - 2:23 Rossbach [1] - 6:12 roughly [3] - 116:22, 116:24, 117:23 routine [1] - 136:22 routinely [1] - 127:2 rule [10] - 18:7, 23:4, 38:23, 39:8, 99:15, 110:4, 165:5, 165:6, 165:10, 173:24 Rule [1] - 174:3 ruled [5] - 18:9, 37:17, 103:11, 104:3, 149:13 rules [2] - 38:23, 165:3 ruling [8] - 20:24, 21:2, 25:5, 147:14, 148:17, 181:2, 181:11, 181:16 rulings [1] - 38:4 run [1] - 20:5 runs [1] - 169:11 rushed [1] - 97:10				
S				
sabotage [1] - 63:17 safety [1] - 136:6 sale [48] - 4:16, 5:16,				

11:9, 11:16, 11:21, 15:18, 15:19, 16:16, 18:10, 24:5, 24:14, 24:20, 24:24, 33:25, 34:1, 51:7, 54:2, 56:23, 57:15, 71:3, 76:17, 86:13, 86:14, 87:19, 88:9, 88:17, 89:12, 91:3, 91:5, 91:16, 94:1, 97:11, 99:16, 99:19, 152:1, 153:5, 153:21, 157:24, 160:6, 163:20, 166:11, 167:5, 170:6, 171:24, 172:20, 172:22, 173:7 sales [17] - 4:15, 35:4, 41:17, 48:24, 50:20, 70:21, 71:2, 72:9, 89:22, 91:20, 91:24, 93:7, 93:10, 93:20, 157:12, 157:16 Salud [1] - 23:24 sanction [1] - 36:12 sand [1] - 179:21 satisfy [1] - 134:2 save [3] - 47:1, 147:22, 147:23 saw [7] - 68:21, 79:22, 80:13, 94:12, 97:11, 150:4, 150:6 SCHROEDER [1] - 2:16 scope [2] - 76:5, 90:6 SE [1] - 2:6 Sea [1] - 112:16 seal [1] - 176:12 season [1] - 156:24 seat [4] - 7:17, 58:20, 59:2, 101:2 seats [1] - 7:15 seawall [1] - 74:9 second [8] - 21:23, 40:14, 43:17, 103:17, 124:18, 124:19, 141:6, 175:16 section [1] - 129:20 Section [1] - 20:11 sEDGWICK [1] - 2:20 see [22] - 23:20, 23:21, 28:7, 60:23, 61:7, 64:22, 71:7, 87:22, 109:10, 114:24, 115:1, 118:17, 124:22, 124:24, 126:18, 132:7, 138:17, 138:20, 147:24, 148:3, 149:15, 164:16 seek [2] - 109:1, 110:1 seeking [9] - 6:16, 16:15, 17:1, 24:8, 92:19, 131:7, 152:6, 158:9, 162:2 seem [1] - 126:22 Seitz [3] - 103:7, 103:11, 103:14 sell [45] - 6:17, 11:14, 11:15, 12:3, 17:18, 17:23, 22:10, 22:15, 22:22, 22:24, 23:3, 23:12, 24:1, 24:25, 25:8, 25:10, 25:18, 26:8, 28:11, 28:13, 29:11, 30:13, 31:16, 31:18, 46:15, 53:11, 53:13, 55:9, 55:16, 55:19, 56:13, 57:12, 71:12, 86:18, 134:14, 152:1, 152:10, 153:25, 154:7, 168:10, 170:18, 170:23, 170:24, 171:2 seller [1] - 56:2 selling [2] - 29:7, 165:22 sells [1] - 48:10 sent [2] - 82:10, 102:18 separately [1] - 61:16 September [8] - 4:23, 5:22, 9:22, 10:5, 10:13, 15:10, 143:12, 147:6 serious [4] - 17:7, 17:9, 21:1, 27:13 serve [4] - 16:23, 104:24, 112:25, 159:24 Services [1] - 175:6 serving [1] - 60:4 set [4] - 4:12, 16:8, 17:25, 20:1 sets [1] - 164:4 setting [1] - 158:9 settle [1] - 31:24 seven [1] - 71:15 several [4] - 17:9, 25:4, 52:12, 157:13 shall [9] - 39:1, 65:2, 67:7, 69:6, 70:7, 114:17, 142:3, 161:5, 174:9 SHAPIRO [1] - 7:7 Shapiro [2] - 3:9, 7:7	sheet [2] - 29:2, 113:21 sheets [1] - 29:2 shells [1] - 154:16 shopping [1] - 71:9 short [3] - 100:24, 104:11, 130:13 shortfall [2] - 178:2, 178:11 SHORTHAND [1] - 183:1 Shorthand [2] - 183:7, 183:23 shortly [3] - 64:11, 78:21, 112:2 shot [2] - 125:6, 125:20 show [17] - 17:1, 17:4, 17:6, 45:6, 57:10, 69:24, 72:25, 73:3, 81:6, 87:4, 87:19, 88:21, 90:10, 90:20, 140:18, 167:4, 177:20 showed [2] - 74:9, 97:15 showing [7] - 73:13, 90:17, 113:16, 119:4, 120:24, 139:24, 168:14 shown [1] - 168:15 shows [4] - 54:4, 120:7, 120:9, 120:10 sick [2] - 125:3, 168:20 side [5] - 21:15, 31:9, 146:10, 149:18, 169:6 Siegler [2] - 104:3 sign [2] - 35:3, 57:16 signature [1] - 87:25 signed [2] - 34:23, 50:11 significant [4] - 122:17, 122:22, 124:7, 124:8 significantly [1] - 134:20 similar [1] - 113:20 simply [12] - 17:6, 19:23, 21:5, 28:20, 30:3, 31:4, 84:16, 85:20, 108:18, 163:3, 165:16, 180:4 SINGERMAN [1] - 2:2 Singerman [1] - 6:11 single [2] - 17:17, 171:7 sister [1] - 127:1 sit [5] - 96:6, 101:9, 104:21, 166:15, 170:19 sitting [3] - 105:1, 108:25, 163:7 situation [3] - 33:6, 38:19, 166:2 Six [1] - 88:5 six [8] - 57:22, 88:11, 88:13, 89:3, 93:23, 94:11, 94:14, 104:5 six-month [1] - 104:5 sixteen [1] - 31:19 skip [2] - 69:16, 118:5 skipped [1] - 57:3 sleepy [1] - 71:8 Slow [1] - 128:24 small [2] - 59:20, 133:18 Smith [1] - 8:4 SMITH [1] - 2:8 So.2d [1] - 179:19 sold [32] - 19:18, 22:4, 24:12, 24:13, 27:3, 27:18, 27:23, 33:1, 42:5, 83:4, 84:5, 85:20, 94:9, 94:14, 94:17, 94:20, 94:21, 134:1, 134:3, 135:8, 149:14, 161:22, 162:12, 166:1, 166:7, 167:6, 170:10, 170:12, 170:21, 179:16, 179:23, 180:8 someone [6] - 12:5, 12:23, 26:17, 55:20, 57:20, 166:12 sometimes [1] - 13:8 somewhere [1] - 41:10 sorry [24] - 38:24, 47:7, 50:18, 74:18, 75:18, 76:24, 81:4, 84:23, 88:6, 88:20, 89:25, 93:13, 94:1, 95:11, 96:4, 108:4, 116:18, 122:12, 124:13, 129:1, 131:4, 138:13, 144:3, 149:7 Sorry [2] - 10:17, 57:3 sort [3] - 74:3, 74:4, 109:18 sought [2] - 104:22, 157:14 southern [2] - 16:13, 164:4 Southern [1] - 40:7 southwood [1] - 20:16	speaking [3] - 15:9, 78:8, 78:13 special [15] - 7:23, 31:12, 45:10, 59:15, 117:8, 130:11, 136:20, 142:21, 143:1, 144:5, 154:20, 157:5, 164:13, 177:22, 178:7 specific [7] - 11:9, 38:22, 53:7, 62:8, 91:12, 164:13, 164:23 specifically [7] - 4:13, 5:13, 39:9, 53:21, 80:22, 135:23, 165:24 speculate [1] - 134:5 speculating [1] - 134:15 spend [5] - 76:15, 83:1, 162:10, 168:2, 178:22 spent [6] - 82:13, 82:21, 85:4, 91:2, 119:5, 120:18 SS [1] - 183:4 stale [1] - 161:7 stand [2] - 14:9, 173:9 standard [3] - 39:8, 132:15, 169:8 standards [4] - 16:7, 32:22, 152:21, 164:5 standpoint [1] - 128:3 stands [1] - 107:12 standstill [1] - 105:10 stapled [1] - 47:8 start [3] - 4:5, 36:22, 130:3 started [4] - 15:1, 100:15, 123:9, 123:16 starting [8] - 54:9, 54:24, 55:6, 56:18, 126:9, 130:20, 144:2, 160:3 starts [1] - 116:18 State [1] - 1:24 state [14] - 4:3, 4:6, 6:3, 36:24, 37:4, 62:20, 103:17, 103:20, 108:14, 108:20, 109:2, 135:2, 158:4, 162:6 STATE [2] - 1:5, 183:3 statement [2] - 46:2, 118:21 statements [2] -
---	--	--

<p>84:21, 119:4 states [1] - 174:4 stating [2] - 6:6, 61:1 status [7] - 21:25, 22:19, 77:25, 79:18, 79:19, 79:24, 80:8 stay [95] - 4:22, 5:22, 6:19, 9:21, 10:12, 15:6, 16:8, 16:15, 16:18, 16:20, 16:22, 16:23, 17:1, 18:22, 19:14, 27:21, 30:18, 30:20, 30:22, 30:23, 32:23, 33:19, 34:11, 34:12, 38:8, 38:9, 38:18, 39:16, 43:16, 43:18, 43:20, 43:24, 44:7, 44:9, 45:15, 76:8, 104:1, 104:4, 104:5, 104:8, 104:23, 108:8, 108:9, 108:12, 108:19, 109:1, 109:5, 110:16, 110:23, 110:25, 111:2, 111:8, 135:7, 135:10, 146:21, 147:3, 152:6, 152:23, 153:9, 155:8, 158:8, 158:9, 158:18, 159:7, 159:10, 159:24, 160:7, 160:8, 163:10, 163:14, 164:5, 165:5, 165:8, 165:25, 169:4, 169:5, 169:8, 174:1, 174:4, 175:21, 176:6, 176:10, 176:15, 176:17, 177:1, 177:9, 179:9, 179:13, 180:1, 180:2 stayed [4] - 16:6, 38:17, 152:14, 170:2 STEIN [1] - 2:5 stenographically [1] - 183:9 stereotype [1] - 183:11 step [2] - 43:5, 98:25 Steven [1] - 8:10 steward [1] - 162:25 stick [2] - 29:23, 71:20 still [11] - 9:13, 22:21, 52:3, 52:13, 54:13, 57:17, 125:2, 125:4, 139:3, 139:18, 146:21 stipulate [2] - 149:18, 149:21 stock [1] - 175:10 stole [1] - 19:18</p>	<p>stolen [1] - 24:10 stop [4] - 116:17, 118:5, 124:12, 168:8 stopped [2] - 115:18, 170:15 story [3] - 34:14, 104:11, 126:21 Street [2] - 1:18, 2:6 strike [3] - 36:11, 71:22, 87:10 stud [1] - 131:21 style [3] - 4:4, 5:11, 15:5 styled [1] - 9:23 subject [10] - 19:11, 35:9, 99:25, 106:14, 110:10, 110:16, 124:16, 124:22, 142:12, 153:12 submit [14] - 38:6, 39:25, 41:15, 41:20, 119:14, 145:17, 147:4, 153:22, 155:1, 158:19, 159:8, 159:25, 176:11, 180:19 subpoena [1] - 48:5 subsection [2] - 174:4, 174:7 subsequent [2] - 36:18, 175:4 substantial [3] - 16:21, 17:2, 35:12, 38:12, 44:12, 159:6, 174:17, 177:5 substantially [1] - 173:19 succeed [1] - 171:11 success [12] - 16:19, 17:4, 20:22, 21:20, 21:23, 27:11, 32:24, 102:22, 158:11, 158:13, 171:8, 171:21 successful [3] - 22:11, 86:6, 102:20 sued [1] - 105:24 sufficient [2] - 165:9, 174:6 suggestion [1] - 110:12 suit [2] - 103:19, 175:12 Suite [7] - 2:3, 2:6, 2:9, 2:14, 2:17, 2:21, 3:3 summarize [1] - 41:1 summary [2] - 37:15, 147:17 Sunwest [2] - 50:10, 50:12</p>	<p>support [1] - 6:21 supposed [1] - 76:16 surfaces [1] - 123:23 Surplus [3] - 5:25, 8:5, 102:2 surrounding [1] - 40:22 sustain [1] - 79:12 sustained [8] - 62:17, 72:1, 74:17, 77:16, 77:22, 79:9, 90:25, 92:23 sworn [1] - 58:25 systematically [1] - 123:16</p> <p style="text-align: center;">T</p> <p>tab [12] - 63:12, 66:7, 66:11, 67:15, 67:21, 67:22, 68:13, 69:13, 69:14, 69:17, 72:12 talks [2] - 165:10, 178:14 Tampa [1] - 2:24 tax [7] - 12:10, 42:15, 69:18, 99:24, 153:3, 155:21, 156:11 taxes [15] - 25:15, 42:1, 42:14, 42:18, 57:13, 69:24, 83:17, 91:18, 99:20, 99:23, 155:18, 159:14, 160:12, 160:18, 160:22 taxing [1] - 24:2 teenager [1] - 13:7 telephone [1] - 8:20 temporary [1] - 104:4 ten [1] - 101:12 tenancy [1] - 44:2 tennis [1] - 8:24 Tennis [1] - 43:8 terms [13] - 28:1, 30:16, 31:5, 31:21, 40:16, 96:8, 143:17, 146:1, 151:2, 152:23, 156:10, 159:20, 171:8 terrible [3] - 21:15, 49:17, 51:22 testified [11] - 31:7, 35:14, 41:2, 48:12, 51:22, 58:25, 80:24, 81:15, 119:2, 120:3, 131:15 testifies [11] - 49:15, 49:23, 49:25, 50:2, 50:3, 50:9, 50:13, 51:24, 52:2, 52:6, 52:9 testify [4] - 63:3, 64:23, 78:10, 80:1 testimony [51] - 28:8, 30:24, 41:13, 44:22, 46:20, 67:24, 68:24, 69:8, 71:23, 74:15, 75:10, 82:2, 82:7, 84:16, 90:10, 90:12, 90:17, 90:18, 90:20, 98:18, 112:12, 119:8, 135:3, 144:23, 145:1, 145:2, 145:3, 145:8, 149:8, 150:19, 152:3, 155:5, 155:25, 156:14, 156:16, 156:19, 156:25, 157:11, 157:21, 158:24, 161:17, 161:24, 162:1, 166:25, 169:9, 169:14, 173:15, 177:22, 177:24, 178:7 THE [172] - 1:1, 4:3, 5:9, 7:4, 7:13, 8:12, 8:18, 9:4, 9:12, 9:15, 10:2, 10:15, 10:22, 11:11, 12:4, 12:13, 12:18, 12:21, 13:7, 13:11, 13:15, 13:24, 14:2, 14:4, 14:13, 14:24, 15:4, 15:23, 16:11, 19:6, 23:21, 29:22, 33:11, 35:18, 39:14, 43:1, 43:11, 45:22, 46:17, 47:2, 47:9, 47:16, 48:21, 49:8, 49:10, 51:6, 51:14, 52:18, 58:7, 58:13, 58:18, 59:1, 62:17, 63:1, 63:9, 63:16, 63:22, 65:7, 66:11, 66:24, 67:7, 67:9, 68:6, 69:2, 69:5, 69:7, 70:1, 70:4, 72:1, 73:6, 73:12, 74:17, 74:18, 75:11, 76:6, 76:19, 76:23, 77:16, 77:22, 78:2, 79:9, 83:9, 83:11, 83:13, 87:14, 90:7, 90:19, 90:25, 91:8, 92:6, 92:8, 92:23, 95:4, 98:5, 98:19, 99:14, 100:6, 101:2, 101:16, 102:8, 102:11, 106:16, 107:19, 108:3, 110:3, 110:6, 110:15, 111:7, 112:7, 112:13, 114:5, 114:15, 114:17, 114:20, 114:22, 114:23, 114:24, 115:1, 115:9, 115:16, 118:15, 119:13, 120:21, 125:25, 126:7, 126:14, 128:24, 135:11, 137:23, 138:11, 139:4, 139:8, 139:11, 139:17, 139:20, 141:18, 141:25, 142:3, 144:1, 144:13, 144:18, 145:5, 145:16, 146:5, 146:9, 146:13, 146:23, 147:14, 147:18, 147:23, 148:17, 149:5, 149:8, 149:25, 150:14, 150:22, 151:3, 151:9, 151:14, 151:22, 161:4, 171:15, 171:18, 171:22, 172:4, 173:1, 180:15, 180:25, 181:2, 181:6, 182:1 there'd [1] - 20:22 therefore [3] - 21:16, 42:19, 162:9 Thereupon [16] - 4:1, 49:12, 51:19, 58:22, 65:16, 67:12, 68:10, 69:9, 70:14, 73:19, 83:8, 90:1, 100:24, 115:7, 142:6, 182:6 they've [6] - 25:7, 74:8, 129:5, 129:16, 156:4, 169:18 thinks [1] - 158:15 third [2] - 7:9, 37:22 Third [1] - 19:3 this _____ day [1] - 183:14 thoughts [1] - 103:8 thousand [1] - 134:4 three [20] - 15:2, 42:14, 52:10, 52:14, 53:9, 54:22, 71:4, 83:19, 84:19, 113:5, 114:22, 124:25, 126:21, 127:5, 137:10, 157:3, 162:16, 163:4, 167:13, 170:20 THROCKMORTON [5] - 2:11, 2:13, 110:5, 110:14, 111:16 throckmorton [2] - 7:17, 108:5 Throckmorton [4] -</p>
---	---	---

7:20, 101:13, 101:14, 108:3 throwing [1] - 19:25 tied [1] - 92:14 tile [3] - 49:22, 50:6, 54:14 title [37] - 22:16, 36:19, 37:24, 38:1, 52:1, 52:5, 53:18, 53:19, 53:20, 53:23, 54:4, 54:18, 55:2, 55:8, 55:11, 55:12, 55:15, 55:17, 55:25, 56:3, 56:14, 57:7, 57:9, 57:11, 57:13, 57:20, 57:24, 71:12, 77:5, 83:15, 86:18, 87:6, 89:16, 92:21, 95:9, 147:9, 162:5 titles [1] - 56:5 today [16] - 4:13, 9:1, 34:10, 34:15, 36:3, 38:7, 41:1, 80:9, 96:6, 108:7, 108:18, 129:3, 161:3, 161:18, 181:10, 181:19 today's [1] - 50:19 toilets [1] - 40:12 tomorrow [3] - 55:10, 56:12, 57:21 took [7] - 5:19, 29:24, 35:20, 66:20, 112:4, 129:14, 147:6 top [3] - 18:5, 140:9 TORRICELLA [1] - 2:5 tort [2] - 36:21, 37:16 total [8] - 45:2, 116:21, 117:4, 118:8, 121:9, 121:11, 133:12, 142:10 totally [1] - 61:24 touch [1] - 64:9 touchup [1] - 50:8 toward [1] - 73:9 Tower [1] - 2:6 transcript [14] - 3:12, 3:15, 23:19, 81:6, 112:6, 118:18, 130:3, 145:11, 145:13, 146:2, 147:5, 148:13, 149:16, 183:10 transcription [1] - 183:11 transferred [6] - 18:18, 23:7, 24:3, 37:5, 37:12, 148:6 transferring [2] - 25:21, 25:22 trashed [2] - 49:19,	61:18 Traywick [8] - 48:10, 64:10, 86:9, 86:11, 89:4, 92:17, 96:20, 96:23 treat [2] - 125:16, 125:17 treated [1] - 125:10 tremendous [3] - 42:11, 74:11, 97:17 trial [12] - 21:7, 21:13, 35:6, 38:4, 38:14, 152:12, 153:14, 153:18, 167:21, 175:16, 175:21 tribunal [1] - 174:15 tried [3] - 22:10, 25:7, 112:5 TROPIN [1] - 2:11 true [9] - 23:13, 23:14, 24:22, 34:19, 44:24, 82:4, 82:8, 133:2, 183:11 trustee [1] - 166:24 truth [1] - 72:24 try [14] - 11:14, 22:14, 22:15, 71:11, 89:16, 125:13, 126:12, 127:10, 128:13, 130:12, 150:11, 170:18, 170:23, 170:24 trying [8] - 12:3, 76:11, 90:16, 90:19, 105:3, 105:4, 130:15, 149:2 tune [1] - 179:11 turn [7] - 28:11, 63:11, 66:7, 67:15, 97:19, 130:14, 132:5 twelve [1] - 138:7 twice [1] - 138:19 two [33] - 4:16, 5:16, 6:17, 29:2, 30:24, 49:23, 54:21, 55:4, 56:22, 61:7, 86:14, 94:17, 94:25, 95:14, 95:24, 102:19, 124:25, 125:8, 126:24, 127:1, 145:7, 148:1, 148:3, 148:4, 152:2, 159:13, 167:12, 169:9, 169:22, 170:3, 170:5, 180:8 two-bedroom [1] - 49:23 two-hour [1] - 145:7 type [8] - 41:9,	52:12, 70:24, 72:4, 73:2, 161:2 types [1] - 52:15 typo [1] - 129:25 U ultimate [3] - 33:18, 36:12, 37:23 ultimately [2] - 140:7, 180:9 unable [1] - 161:1 unknownst [1] - 21:9 under [27] - 6:2, 25:1, 35:14, 38:16, 38:17, 57:25, 63:12, 72:12, 80:13, 107:13, 123:21, 126:2, 131:17, 142:11, 143:8, 147:4, 152:13, 162:25, 164:12, 164:21, 165:2, 165:3, 167:13, 171:24, 171:25, 176:12, 176:24 underlying [4] - 11:24, 92:18, 103:13, 148:6 underway [1] - 127:4 unfortunately [1] - 34:4 unique [5] - 46:3, 154:9, 154:13, 158:21, 178:16 unit [89] - 11:15, 11:16, 11:19, 17:14, 25:16, 31:13, 40:2, 40:4, 40:23, 41:14, 44:18, 45:1, 49:2, 49:15, 49:23, 49:24, 50:3, 50:4, 51:7, 52:8, 53:11, 54:14, 56:13, 57:21, 60:23, 61:16, 64:4, 64:5, 67:19, 68:14, 68:22, 69:14, 69:15, 69:24, 81:23, 83:2, 85:20, 86:21, 87:20, 88:10, 88:22, 89:12, 94:8, 94:13, 96:7, 96:8, 97:10, 97:16, 112:15, 113:21, 116:5, 116:7, 116:11, 117:6, 123:10, 123:11, 123:12, 123:14, 123:24, 124:17, 124:22, 125:11, 128:7, 136:17, 137:1, 137:5, 138:23,	138:25, 139:1, 139:2, 142:25, 154:24, 154:25, 155:2, 156:4, 157:6, 157:15, 157:16, 160:9, 160:14, 160:15, 160:21, 168:19, 168:24, 170:19, 177:23, 178:8 units [207] - 4:17, 5:17, 6:17, 11:14, 15:19, 17:13, 22:10, 30:14, 31:19, 34:21, 34:22, 36:18, 39:20, 39:22, 40:10, 40:11, 40:15, 40:21, 40:22, 41:3, 41:9, 41:12, 41:20, 41:22, 42:5, 42:8, 44:6, 44:14, 45:5, 45:11, 46:15, 48:9, 49:18, 50:1, 55:4, 55:10, 55:16, 56:22, 57:25, 60:18, 60:24, 61:7, 61:8, 61:10, 61:13, 61:18, 62:8, 62:9, 62:11, 62:22, 70:21, 71:13, 71:14, 71:21, 72:21, 74:4, 74:6, 74:13, 74:22, 74:23, 75:1, 77:19, 77:25, 78:17, 79:1, 79:5, 79:19, 80:8, 80:13, 80:14, 80:17, 80:20, 80:21, 80:23, 81:1, 81:21, 82:5, 82:11, 82:14, 82:21, 83:3, 83:15, 83:16, 84:4, 85:4, 86:1, 86:4, 86:14, 87:4, 87:5, 87:23, 89:17, 89:22, 91:4, 91:5, 91:16, 92:11, 92:21, 94:2, 94:6, 94:25, 95:14, 95:24, 96:21, 97:25, 98:13, 113:9, 113:12, 113:20, 113:24, 116:22, 117:22, 117:24, 118:4, 122:3, 122:9, 122:14, 122:15, 122:17, 122:21, 123:4, 123:17, 123:21, 123:25, 126:12, 126:13, 126:23, 126:24, 127:9, 128:5, 128:12, 128:20, 129:23, 130:8, 131:17, 132:3, 133:3, 134:1, 134:3, 134:6, 134:14, 134:16,	135:8, 138:5, 138:22, 142:11, 142:12, 142:16, 148:10, 149:14, 150:5, 152:1, 152:2, 152:9, 154:21, 155:4, 155:10, 155:11, 155:15, 155:17, 155:22, 156:9, 157:3, 157:8, 157:18, 157:23, 158:4, 158:21, 158:23, 158:24, 159:12, 161:3, 161:20, 161:22, 162:6, 162:12, 167:15, 167:19, 168:17, 169:9, 169:15, 169:21, 169:22, 170:4, 170:6, 170:11, 170:12, 170:18, 170:21, 170:23, 171:2, 171:5, 172:3, 172:21, 172:22, 173:7, 177:25, 178:1, 178:9, 178:16, 178:19, 178:21 Units [1] - 45:7 unlawful [1] - 170:25 unless [4] - 34:7, 67:1, 100:18, 109:1 unlike [2] - 39:6, 154:5 unpaid [1] - 137:18 unprecedented [1] - 174:23 up [57] - 10:15, 13:13, 13:20, 14:9, 25:19, 25:20, 27:1, 28:7, 28:12, 28:16, 40:15, 41:4, 41:10, 41:12, 41:19, 50:1, 50:2, 52:8, 52:10, 53:10, 53:12, 56:4, 62:21, 71:3, 74:8, 77:7, 82:6, 84:5, 101:8, 101:18, 101:25, 110:22, 117:8, 123:14, 130:13, 139:6, 139:8, 139:10, 139:11, 148:21, 155:3, 155:15, 156:3, 156:9, 157:6, 157:18, 157:23, 157:24, 166:12, 166:15, 168:18, 176:3, 179:3, 179:22, 179:23, 181:15 upgrades [3] - 97:18,
--	--	---	--	---

157:19, 159:21 upheld [2] - 175:24, 176:18 utilities [1] - 154:18	154:19 waste [7] - 39:12, 42:19, 92:11, 145:15, 153:4, 156:10, 159:12 water [4] - 49:21, 61:21, 66:19, 154:18 Wednesday [1] - 112:5 week [3] - 60:15, 112:2, 124:25 weekend [3] - 111:12, 124:20, 182:3 weigh [1] - 19:7 weight [4] - 65:8, 120:19, 121:6, 145:18 welcome [1] - 111:13 well-being [1] - 136:7 West [1] - 1:18 whatsoever [1] - 177:7 whereby [1] - 147:8 wherewithal [2] - 41:3, 41:19 whole [4] - 47:25, 48:1, 118:25, 159:19 WICKER [1] - 2:8 Wicker [1] - 8:4 wide [1] - 153:14 willing [10] - 17:12, 53:19, 53:22, 54:8, 54:18, 57:11, 149:11, 149:21, 152:3, 167:11 willingness [1] - 155:14 wilson [1] - 37:14 Wilson [31] - 10:6, 10:12, 11:8, 15:11, 15:22, 17:18, 18:18, 21:24, 22:2, 23:2, 23:10, 23:17, 30:12, 30:19, 30:20, 32:11, 33:18, 33:22, 34:8, 37:15, 80:25, 81:11, 144:25, 146:16, 146:18, 147:7, 147:15, 148:7, 149:13, 153:24, 163:12 wilson's [2] - 11:4, 17:10 win [3] - 27:14, 158:16, 158:17 wind [1] - 121:21 windows [4] - 62:7, 62:12, 62:13, 62:15 windstorm [1] - 156:23 wins [3] - 42:2, 171:6, 177:10	wiring [1] - 61:22 wish [8] - 8:13, 43:3, 46:13, 47:12, 98:23, 142:1, 144:19, 172:5 wishes [2] - 47:13, 58:8 witness [24] - 46:18, 49:15, 51:22, 51:24, 58:9, 58:14, 58:16, 58:24, 63:8, 64:23, 67:2, 67:3, 73:14, 77:24, 81:7, 90:18, 98:24, 101:5, 111:21, 111:23, 111:25, 119:15, 139:13 WITNESS [12] - 74:18, 76:23, 78:13, 79:11, 80:3, 83:9, 83:13, 90:4, 92:8, 93:21, 95:4, 99:2 witnesses [8] - 8:16, 46:14, 135:13, 135:15, 139:18, 144:14, 145:21, 151:10 woodwork [1] - 66:18 word [1] - 168:19 words [3] - 49:16, 49:20, 142:12 works [2] - 13:9, 89:4 worse [5] - 78:1, 129:12, 150:6, 150:10, 150:21 worst [1] - 123:16 write [1] - 127:2	148:16, 157:3, 164:19, 167:12, 167:13, 170:20 yourself [5] - 59:6, 70:25, 78:12, 95:10, 95:11 YPD [1] - 143:9
V		Z	
vacant [3] - 71:9, 74:13, 154:16 value [4] - 153:2, 158:3, 169:15, 180:12 variety [1] - 176:3 various [1] - 123:3 versus [2] - 175:6, 176:1 vested [2] - 154:10, 154:12 VIA [3] - 2:23, 3:2, 3:5 violation [3] - 19:24, 21:3, 167:20 visibly [1] - 123:23 visit [4] - 73:24, 74:2, 78:20, 80:15 visited [7] - 36:13, 60:13, 61:8, 62:9, 78:23, 79:21, 86:23 visits [2] - 71:7, 71:17 visual [1] - 131:18 volumes [1] - 47:5 vs [10] - 1:8, 4:8, 4:21, 18:3, 18:17, 20:16, 23:24, 38:13, 152:18, 179:17		Zephyrhills [1] - 48:4 zero [1] - 169:11 Zimmerman [1] - 18:3	
W		Y	
wait [4] - 26:25, 54:9, 99:8, 105:14 walker [1] - 118:19 walls [3] - 49:21, 123:14, 131:21 WALTER [1] - 3:15 Walter [9] - 31:1, 44:22, 86:2, 112:2, 112:15, 113:17, 119:2, 142:20, 168:18 walter [3] - 120:3, 123:2, 139:25 Walton [1] - 8:9 WALTON [1] - 2:16 wants [9] - 9:20, 12:6, 22:24, 23:1, 23:20, 28:2, 28:3, 28:5, 138:1 washer/dryer [2] - 50:6, 62:3 washers/dryers [1] -		year [34] - 37:20, 42:10, 44:4, 44:19, 44:25, 54:9, 54:20, 54:21, 57:23, 83:18, 85:8, 85:12, 85:17, 86:10, 86:23, 102:23, 103:25, 105:1, 118:11, 118:25, 119:4, 120:9, 120:10, 120:12, 140:22, 140:24, 142:22, 143:11, 157:2, 167:12, 172:12, 174:17, 174:21 year's [1] - 157:4 years [20] - 25:5, 35:5, 42:14, 48:14, 54:21, 54:22, 71:15, 83:19, 112:24, 113:6, 125:8, 127:5, 137:10,	

1 IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL
2 CIRCUIT IN AND FOR MIAMI-DADE COUNTY, FLORIDA
3 CIRCUIT CIVIL DIVISION
4 CASE NO: 07-43672 CA 09

5 STATE OF FLORIDA, OFFICE OF
6 FINANCIAL REGULATION,

7 Plaintiff,

ORIGINAL

8 vs.

9 BERMAN MORTGAGE CORPORATION, a
10 Florida corporation, M.A.M.C.
11 INCORPORATED, a Florida corporation,
12 DANA J. BERMAN, as Owner and Managing
13 Member,

14 Defendants,

15 and

16 DB ATLANTA, LLC, a Florida Limited
17 Liability Company, et al.,

18 Relief Defendants.

19
20 Miami-Dade County Courthouse
21 73 West Flagler Street
22 Miami, Florida
23 Monday, 8:34 to 8:44 a.m.
24 July 12, 2010
25

26 This cause came on for hearing before the
27 Honorable Jerald Bagley, Circuit Court Judge,
28 pursuant to notice.

1 APPEARANCES:

2 ATTORNEYS FOR RECEIVER

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9

10 ATTORNEYS FOR GULF ISLAND RESORT, L.P.
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partner of Gulf Island Resort, L.P.

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15 BY: MAURICE J. BAUMGARTEN, ESQUIRE
16
17
18
19

20 E X H I B I T S

21
22 (No Exhibits Marked During This Hearing)
23
24
25

1 Thereupon:

2 THE COURT: All right. Is everyone here
3 on the Berman matter?

4 MR. GASSENHEIMER: Yes.

5 MR. BAUMGARTEN: Yes.

6 THE COURT: All right. We're here on the
7 matter of State of Florida, Office of Financial
8 Regulation, Plaintiff, versus Berman Mortgage
9 Corporation, M.A.M.C., Incorporated, Dana
10 Berman, Defendants, and DB Atlanta, LLC, Relief
11 Defendants, and there are many others. It is
12 Case Number 07-43672.

13 Specifically, though, we're here on the
14 Receiver's motion for an order approving the
15 Receiver's execution of sales contract for the
16 sale of two condominium units, specifically
17 units 706 and 601, owned by Relief Defendant
18 Oceanside Acquisitions, LLC, and Plaintiff's
19 Motion to Stay Order Dated September 1, 2009
20 pending appeal, and that would be in the case of
21 08-79169, styled Bistricher versus Coastal.

22 Let me have everyone please state your
23 appearance, if you would.

24 MR. GASSENHEIMER: Good morning, Your
25 Honor. James Gassenheimer of Berger Singerman

1 on behalf of the Receiver, Michael Goldberg.

2 MR. BAUMGARTEN: Maurice Baumgarten, on
3 behalf of Gulf Island Resort, L.P. and Alex
4 Bistricher, as limited partner of Gulf Island
5 Resort, L.P.

6 THE COURT: All right, very good. Thank
7 you.

8 The parties were before the Court on
9 July 2nd of this year for an evidentiary hearing
10 on the Receiver's motion for an order approving
11 the Receiver's execution of sales contracts for
12 the sale of the two condominium units that I
13 have just mentioned owned by Relief Defendant,
14 Oceanside Acquisitions.

15 The Court has reviewed that motion.

16 You should also know that I have reviewed
17 the evidence that was presented at the
18 evidentiary hearing. I have considered your
19 arguments raised at the time of the hearing.

20 I also have taken an opportunity to
21 review the cases submitted for the Court's
22 review, the case law.

23 I reviewed the transcript of the
24 September 15, 2009 hearing that was conducted by
25 Judge Thomas Wilson. That related to, I

1 believe, Oceanside and also -- was it DK -- that
2 would be DBKN's motion for summary judgment.

3 Also, I reviewed the July 15, 2009
4 transcript, which related to an evidentiary
5 hearing. Again, that was conducted by Judge
6 Wilson, relating to the Receiver's motion to
7 seek approval to sell certain assets free and
8 clear of liens.

9 I have also looked at the initial brief
10 filed by the Appellants, that being Alex
11 Bistricher, as limited partner of Gulf Island
12 Resort, L.P. and Gulf Island Resort, L.P. as
13 appellants in the case, the lower case number
14 being 08-79169, along with, as I mentioned, all
15 the other evidence.

16 At this time the Court will grant the
17 Receiver's motion for an order approving the
18 receiver's execution of sales contract for the
19 sale of the two condominium units, 706 and 601,
20 owned by the Relief Defendant, Oceanside
21 Acquisitions, LLC.

22 I have noted in my review of the evidence
23 that the testimony I heard back on July 2nd was
24 similar to the testimony that was offered back
25 on July 15, by almost identical witnesses, with

1 the exception of perhaps Mr. Gassenheimer, I
2 believe first name --

3 Is it Adam, your brother?

4 MR. GASSENHEIMER: Harold Gassenheimer.

5 THE COURT: -- Harold, who testified at
6 that hearing. He did not testify on July 2nd.

7 Clearly, Judge Wilson made certain
8 findings, and made a ruling that the Receiver,
9 in fact, could go forward and sell the 17 units.

10 Here we're only talking about two units
11 that the Court is approving the sale of.

12 I do make a finding, based on the
13 testimony that was presented at the evidentiary
14 hearing on July 2nd that the properties have
15 continued to deteriorate.

16 There has been more specific evidence
17 presented as well regarding conditions at the
18 property, that being mold, that being that the
19 property is in a state of disrepair, and that it
20 appears that the valuation of the property is
21 not what the parties had expected or intended.,

22 I also wish to make very clear that in
23 reviewing this motion, it is not the Court's
24 position to relitigate matters previously
25 decided by Judge Wilson, nor do I sit today as

1 an appellate court. Because there was
2 perhaps -- I don't know if intentionally, but
3 there seems to be an intent to have this Court
4 sort of review what Judge Wilson has done, in
5 essence, and that is whether or not legal
6 ownership is, in fact, in the hands of Oceanside
7 Acquisitions.

8 I know that the plaintiff -- that being
9 Mr. Bistricher, along with Gulf Island Resort,
10 asserts that there is no legal ownership or
11 title in the hands of Oceanside. That's pretty
12 much your argument. But that has already been
13 decided by Judge Wilson, and that's a matter you
14 have already taken up on appeal. You filed your
15 appeal.

16 So it would be inappropriate for this
17 Court to somehow reverse that decision made by
18 Judge Wilson, and I have no intentions of doing
19 that. That will be reviewed by the appellate
20 court, I'm sure.

21 So I am granting the Receiver's motion.

22 As it relates to the Plaintiff's motion
23 to stay the September 1, 2009 order, that is
24 denied.

25 That is my ruling.

1 Have a great day.

2 MR. BAUMGARTEN: Your Honor, may we get a
3 clarification?

4 First of all, on the sale of the two
5 units, 706 and 601, the issue was can they be
6 sold without regard to the ownership claims of
7 Oceanside and DBKN.

8 In other words, fine, the sale goes
9 through. But if sometime down the road
10 Oceanside -- sorry, not Oceanside, sorry --
11 without regard to the claims of G.I.R.

12 If Gulf Island Resort prevails on appeal
13 down the road, will these sales be subject to
14 those claims?

15 THE COURT: Well, I'm sure the appellate
16 court will address that issue, I would imagine,
17 and certainly I will be in a position to
18 readdress that as well. Absolutely.

19 MR. BAUMGARTEN: Okay. Well, then, Your
20 Honor, I would also ask that we --

21 As Your Honor knows, when you seek a stay
22 pending appeal, you first have to ask the lower
23 court, and then if the lower court says no, then
24 you go to the appellate court.

25 THE COURT: Yes. And you have asked me

1 and I denied it.

2 MR. BAUMGARTEN: Right.

3 So the question is will Your Honor agree
4 to stay Your Honor's order, at least just until
5 we ask the appellate court to stay this?

6 THE COURT: I will grant you that relief.

7 MR. BAUMGARTEN: Thank you, Your Honor.

8 THE COURT: How much time do you think
9 you will need to accomplish that?

10 MR. BAUMGARTEN: I think we have to file
11 the appeal within 30 days, I believe. I haven't
12 looked at it. Because it is an interlocutory --

13 MR. GASSENHEIMER: Well --

14 MR. BAUMGARTEN: I don't know if it is an
15 interlocutory order or it is combined with the
16 appeal. Because Your Honor said it's in the
17 other case and --

18 THE COURT: Well, this is what I'm going
19 to do, because I know that time is of the
20 essence regarding this sale.

21 There is an August 10th --

22 MR. BAUMGARTEN: August 30th. August
23 30th.

24 THE COURT: No, no.

25 There is an August 10th date regarding

1 the prospective buyer.

2 MR. GASSENHEIMER: There is a contract
3 extension.

4 THE COURT: If I'm not mistaken.

5 MR. GASSENHEIMER: Correct.

6 THE COURT: So what I will do is I will
7 give you up until --

8 You know, today's date is July 12th.

9 MR. BAUMGARTEN: The 12th.

10 THE COURT: I will give you to August 1st
11 as a stay to file your Notice of Appeal
12 regarding my denial on your motion to stay.

13 All right?

14 MR. BAUMGARTEN: Okay. Thank you, Your
15 Honor.

16 MR. GASSENHEIMER: Let me just ask, just
17 to clarify in my mind what was just said on the
18 record.

19 One, the denial of the motion to stay
20 does not give a right to appeal, it gives
21 Mr. Baumgarten the right to seek a stay --

22 THE COURT: A stay.

23 MR. GASSENHEIMER: -- to file a motion to
24 stay before the Third District.

25 THE COURT: That's correct.

1 MR. GASSENHEIMER: Which I believe he has
2 to file within ten days under the rules.

3 MR. BAUMGARTEN: I don't know.

4 THE COURT: That's what I thought, but --

5 MR. BAUMGARTEN: I don't know, Your
6 Honor.

7 MR. GASSENHEIMER: It's not an appeal.

8 THE COURT: All right.

9 MR. GASSENHEIMER: Then as to --

10 THE COURT: Whatever the time line is
11 that he has, he has that.

12 MR. GASSENHEIMER: And you are not
13 modifying that?

14 THE COURT: I'm not modifying that. But
15 in an abundance of caution, I have given him to
16 August 1.

17 I believe it's only -- that he has ten
18 days but, you know, I don't do appellate work
19 today. So, you know, I don't look at those
20 rules quite regularly. But if it is ten days,
21 that's what it is.

22 MR. GASSENHEIMER: Understood.

23 THE COURT: If he doesn't and he goes
24 beyond that, he waives it. He knows that.

25 I'm sure that he is going to look at it

1 right away.

2 MR. GASSENHEIMER: No problem.

3 THE COURT: All right?

4 Thank you, gentlemen.

5 MR. BAUMGARTEN: Thank you.

6 THE COURT: Prepare the order, if you
7 would.

8 MR. BAUMGARTEN: Yes, I will.

9 THE COURT: All right. Thank you.

10 (Thereupon, the hearing was concluded at

11 8:44 a.m.)

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