

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BROOKLYN: CIVIL TERM PART 31

- - - - - X

DAVID ARONOV,
Plaintiff, INDEX NO.
500499/2016

- against -

EUGENE KHAVINSON 290 13TH STREET LLC ET AL,
Defendant.

- - - - - X

360 Adams Street
Brooklyn, New York 11201
December 7, 2023

BEFORE:

HONORABLE PATRIA FRIAS-COLON, Justice
(A jury of 6 and 2 alternates.)

APPEARANCES:

THE LAW FIRM OF GRASING & ASSOCIATES, P.C.
Raymond R. Grasing
99 Smithtown Blvd., Suite 6
Smithtown, NY 11787

MESTECHKIN LAW GROUP P.C.
Oleg Mestechkin/Wing K. Chiu
2218 Ocean Avenue
Brooklyn, NY 11229

CASSANDRA JOHNSON
SENIOR COURT REPORTER

DIRECT EXAMINATION -- EUGENE KHAVINSON -- PLAINTIFF COUNSEL

1 THE SUPREME COURT CLERK: Good morning ladies and
2 gentlemen. This is the case of David Aronov verses 290 13th Street
3 et al. Part 31 calendar before the Honorable Judge Frias-Colon.
4 Please come to order.

5 THE COURT: The index number.

6 THE SUPREME COURT CLERK: Index number 500499 of
7 2016. THE COURT OFFICER: All rise jury entering.

8 THE COURT: Good morning everyone you may be
9 seated. Let the record reflect all parties remain the
10 same. Our jury is in the jury box. Mr. Grasing, are you
11 ready to proceed with your next witness?

12 MR. GRASING: Yes. I'd like to call Mr. Eugene
13 Khavinson to the stand please.

14 THE COURT: Mr. Khavinson. Can we swear the
15 witness in.

16 THE SUPREME COURT CLERK: Please raise your
17 right hand. Do you solemnly swear or affirm to the tell
18 the truth, the whole truth, and nothing but the truth.

19 THE WITNESS: I do.

20 THE COURT: Thank you. You may be seated. So
21 Mr. Khavinson, you've been with us observing as a party for
22 a few days so you know the rules. Listen to the question
23 very carefully and answer what is being asked. I'm going
24 to ask you to get comfortable in the chair and speak in to
25 the mic to make sure that we hear everything that you have

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1 to say.

2 THE WITNESS: Okay.

3 THE COURT: Mr. Grasing, the floor is yours.

4 MR. GRASING: Thank you.

5 DIRECT EXAMINATION BY MR. GRASING:

6 Q Good morning, Mr. Khavinson?

7 A Good morning.

8 THE COURT: I'm sorry. It's okay for me if you
9 stay seated but if you are going to stand and walk around
10 I'd like to get you the mic.

11 MR. GRASING: For the most part, if it's okay
12 with the court and the witness, to try to expedite things
13 I'd like to be able to sit during this, because I have two
14 screens open.

15 THE COURT: I don't need an explanation. I
16 just want to make sure that if you are going to stand that
17 I have what you need to make sure we can hear you.

18 MR. GRASING: Thank you.

19 THE COURT: Wonderful if you do stand, we'll
20 make sure to get you the mic.

21 MR. GRASING: Thank you very much.

22 THE COURT: Go ahead Mr. Grasing. You have the
23 floor.

24 DIRECT EXAMINATION BY MR. GRASING:

25 Q Mr. Khavinson, what's your connection with 290 13th

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1 Street LLC?

2 A I was a managing member.

3 Q Who -- withdrawn. When was it formed?

4 A In 2007 I believe, or 2008.

5 Q Does it still exist today?

6 A It does.

7 Q When was the last time it did any substantial
8 business?

9 A 2014.

10 Q What was the purpose of the LLC, and just so it's
11 clear if we call it your LLC or the LLC for short, will you know
12 what it is I'm talking about?

13 A Okay.

14 Q So what was the purpose of the LLC?

15 A The purpose of LLC was to reconstruct the building
16 which we purchased in Brooklyn, New York. And convert it into four
17 apartment buildings and sell those condominium apartments.

18 Q What was the address?

19 A 290 13th Street Brooklyn, New York.

20 Q When was the project completed to the extent that the
21 units were sold?

22 A I believe end of 2013.

23 Q How much in total were they sold for?

24 A A little over \$4,000,000.

25 Q Who were the members or owners of the LLC?

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1 A The members were Vyacheslav Faybyshev, Mikhail
2 Kremerman, Aleksandra Bogoslavski, Artyom Kirzhner, Mikola
3 Wolinski, Vitaly Kochnev, Michael Khavinson.

4 Q Anyone else?

5 A That's all.

6 Q Only because I didn't hear you say the name David
7 Aronov?

8 A Yes, David Aronov the main person.

9 Q Okay. Was there an operating agreement prepared for
10 the LLC at any point?

11 A Yes, it was.

12 Q When?

13 A Probably in 2008.

14 Q By who?

15 A I don't remember right now. But probably by my law
16 firm.

17 Q Did you represent the LLC at any point in a legal
18 capacity?

19 A Only when -- I did not personally represent, but my
20 law firm represent in defending lawsuit against Jerzy Schnapp.

21 Q What's the name of your law firm?

22 A Today it's Khavinson and Matronica P.C. (phonetic.)

23 Q What was it at the time you were referring to when you
24 defended the LLC against the Jerzy Schnapp?

25 A Khavinson & Associates P.C.

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1 Q Briefly, but approximately when did it change?

2 A It changed probably a year ago.

3 Q The members you listed, did they each sign the one
4 operating agreement that you spoke about?

5 A Yes.

6 Q Okay. I'd like to draw your attention to -- I don't
7 have it. It would be the Plaintiff's Exhibit One. It would be the
8 operating agreement for 290 13th Street LLC New York State Limited
9 Liability Company dated the 9th day of February 2008. It's on my
10 screen. If you want to show it to the witness.

11 THE COURT: Mr. Grasing, would you also like
12 that shown to the jury?

13 MR. GRASING: It's in evidence, yes.

14 THE COURT: So let's put Plaintiff's Exhibit
15 One published in all the screens please.

16 Q And just so it's clear, do you have a hard copy of the
17 exhibit in front of you, if not we can get it from the table
18 directly in front of me.

19 A I don't have a hard copy in front of me.

20 THE COURT: Why does he need a hard copy? He
21 has it on the screen.

22 MR. GRASING: Okay. I thought that was a
23 protocol just from yesterday.

24 THE COURT: No, the protocol is if you direct
25 him wherever you need him to be directed, you can. Just

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1 direct him to where you need him to go to answer your
2 question. If you want it the physical in front of him we
3 can do that too.

4 Q I believe I can do it this way. I am directing you to
5 the eighth page of the exhibit where it is typed Eugene Khavinson.
6 There's a signature above that. Is that your signature?

7 A It is my signature.

8 Q Out of the names on this page, these -- are each of
9 these members of the LLC?

10 A Yes, they are.

11 Q Out of the names that you mentioned, Mr. Bogoslavski,
12 Aleksandra Bogoslavski is not written there. Do you know why?

13 A This is a second version of the original operating
14 agreement, because David Aronov joined the company at the later
15 date. And then it was another amendment for that page and
16 everybody signed it. And where Aleksandra Bogoslavski was added to
17 this list of members.

18 Q When was that?

19 A When Aleksandra Bogoslavski joined the company. I
20 don't remember exact date.

21 Q What year?

22 A I don't remember.

23 Q Did anyone -- are you saying everyone including David
24 Aronov signed an amended operating agreement listing Aleksandra
25 Bogoslavski?

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1 A Correct.

2 Q Do you have it?

3 A I don't have it.

4 Q What happened to it?

5 A Somebody took it from my office. When Mr. Aronov left
6 the office I lost a lot of documents. So, I don't know what
7 happened. I did not hold them by hand so I cannot say he took it,
8 but something happened.

9 Q Approximately, what year did Aleksandra Bogoslavski
10 become a member?

11 A I do not remember, but at a later date then this
12 document was signed.

13 Q Well, briefly if this is dated February 9, 2008 and
14 the units were sold, the four condominiums in the project were sold
15 and closed sometime in 2014?

16 A Correct.

17 Q When in there if you can give an approximate date that
18 Aleksandra Bogoslavski become a member to the best of your
19 recollection?

20 A It was before 2014 when construction was still going
21 on. And it was definitely after this agreement was signed in 2008.

22 Q Did you ever take a loan out from Aleksandra
23 Bogoslavski?

24 A Never.

25 Q Okay. Give me one second. I'm going to pull up an

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1 additional version. If we can have the screens shut off for a
2 second so I can scroll through and get it, I would appreciate it.
3 Thank you. Mr. Khavinson, I'd like to direct your attention to
4 Exhibit 4B, Plaintiff's Exhibit 4B, the 2008 corporate return for
5 the LLC. I have it on my screen. You can show it. Now on this
6 page of the exhibit, the partner's schedule K1's begin. We're
7 going to scroll through each of them to try to jog your memory as
8 to when Aleksandra Bogoslavski became an owner. We can go as fast
9 or as slow as you like. The first one is for you. Do you see
10 that?

11 A Yes.

12 Q Do you see in box J, partnership profit, loss and the
13 capital. Profit 13.33 percent. And loss 13.33 percent. Capital
14 13.33 both at the beginning and end of the year.

15 A I don't see it here.

16 Q If you look at box J, it's on the left-hand side.
17 It's what type of entity, is this partner, individual appears
18 directly above it. Do you see where it says J partner share of
19 profit, loss, and capital. It's right on the screen on the
20 left-hand side?

21 A I can see that.

22 Q Is that accurate for that year?

23 A It's accurate.

24 Q The next K1 for 2008 is for Mr. Michael Khavinson,
25 first is that your brother?

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1 A Yes.

2 Q Do you see his share of profit, loss, and capital at
3 the beginning and the end of the year is 13.33 percent, is that
4 accurate?

5 A It's accurate.

6 Q The next one, and I never pronounced the gentleman's
7 first name correctly so forgive me. Is the K1 Vyacheslav
8 Faybyshev. Do you see that?

9 A I do.

10 Q And where it says in the same box profit, loss, and
11 capital at the beginning and the end of the year is 30 percent for
12 each. Do you see that?

13 A Yes I see that.

14 Q All right. Is that accurate?

15 A It would be accurate if Bogoslavski did not join the
16 company.

17 Q Well, this is -- in case I'm not clear and please
18 /TPOT I'm not trying to put any words in your mouth all you have to
19 do is tell me. I'm asking about the particular tax year because my
20 intent is to go through each of the tax years. So, in the calendar
21 year 2008, is this K1 accurate as far as Mr. Faybyshev's ownership
22 share of the LLC?

23 A Most likely, yes.

24 Q Okay. Now you say I believe that you were a managing
25 member of the LLC, is that correct?

DIRECT EXAMINATION -- EUGENE KHAVINSON -- PLAINTIFF COUNSEL

1 A Correct.

2 Q Who else when the LLC was formed was a managing
3 member, if there were any?

4 A Michael Kremerman.

5 Q Did that ever change?

6 A Yes.

7 Q When?

8 A At the later time. Mr. Vyaschelav Faybyshev became
9 managing member and Mr. Kremerman stepped down.

10 Q Why did Mr. Kremerman step down?

11 A He could not function. He had some legal problems.

12 Q What were the legal problems?

13 A He had some problem with health care, a company which
14 he had. Billing company.

15 Q Is it fair to say that Mr. Michael Kremerman was
16 indicted and convicted of insurance fraud by the Federal
17 Government?

18 MR. MESTECHKIN: Objection, relevance.

19 THE COURT: There's an objection as to
20 relevance. Mr. Grasing.

21 MR. GRASING: It goes both to the change when it
22 occurred and the movement of the bank accounts and if you
23 --

24 THE COURT: The objection is sustained.
25 Rephrase your question.

DIRECT EXAMINATION -- EUGENE KHAVINSON -- PLAINTIFF COUNSEL

1 Q Okay. As far as you know was Michael Kremerman
2 convicted of insurance fraud? I thought you asked me to rephrase
3 it.

4 THE COURT: Off the record. Side bar.
5 (Off-the-record discussion.)

6 THE COURT OFFICER: Remain seated. Come to
7 order.

8 THE COURT: Back on the record. We've had a
9 productive off-the-record discussion related to the last
10 question and answer. The objection regarding relevance --
11 the objection is overruled. However, I am going to ask or
12 remind Mr. Grasing that Mr. Eugene Khavinson is his direct
13 witness. And so you may ask your next question based on
14 the discussion we had on the side bar.

15 MR. GRASING: Yes, Your Honor but before I do
16 I'd ask permission for David Aronov, the plaintiff to sit
17 next to me at Counsel table.

18 THE COURT: Sure, you can do that. Mr. Aronov
19 you may come forward since you are the plaintiff. And let
20 the record reflect Mr. David Aronov is present and will be
21 seated next to his attorney. Good morning Mr. Aronov.

22 THE PLAINTIFF: Good morning.

23 THE COURT: Just make sure that all your
24 devices are off. If at any point either of you need to
25 have a side bar please just let the court know and I'll

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1 grant you that request. Same for you Mr. Mestechkin.

2 MR. MESTECHKIN: Noted Your Honor.

3 MR. GRASING: Thank you.

4 THE COURT: You may proceed Mr. Grasing.

5 Q Mr. Khavinson, do you know what Mr. Michael
6 Kremerman's legal troubles were that caused him to step down?

7 A As I testified ten minutes ago that he had problem
8 with some health care law.

9 THE COURT: Mr. Khavinson, remember what I
10 said. Listen to the question and answer what's asked. So
11 the question was do you know what legal issues prompted
12 Mr. Kremerman to step down. I believe your answer is yes,
13 or is it no. Do you know what legal troubles caused
14 Mr. Kremerman to step down as managing partner? That's the
15 question, do you know.

16 THE WITNESS: I do know some.

17 THE COURT: Okay. Next question.

18 Q Can you please tell us what it is you do know?

19 A I know that he had some problems with health care law,
20 and that's all I know.

21 Q Just give me one second. You can close the screen so
22 I can scroll to the appropriate page at least for the jury.

23 THE COURT: Did you turn off the jury screen?
24 Is it off?

25 THE JURORS: Yes.

DIRECT EXAMINATION -- EUGENE KHAVINSON -- PLAINTIFF COUNSEL

1 THE COURT: Thank you. Mr. Aronov it does
2 pivot up, but ask for assistance.

3 THE PLAINTIFF: Thank you very much.

4 Q Okay. With the screen to expedite this because I'm
5 having some technical problems. Was there an operating account
6 when the LLC was opened?

7 A I couldn't hear you.

8 Q Was there an operating account for the LLC when the
9 LLC began business?

10 A Yes, it was opened.

11 Q Where?

12 A At Chase Bank.

13 Q Did that ever change?

14 A Yes.

15 Q When?

16 A At a later date.

17 Q Why?

18 A We had some problem with Chase Bank so we opened an
19 account with Citibank.

20 Q What were the problems with Chase Bank?

21 A Because of little problems of Mr. Kremerman, our
22 account was closed.

23 Q And you went where?

24 A Citibank.

25 Q How long was it in Citibank for?

DIRECT EXAMINATION -- EUGENE KHAVINSON -- PLAINTIFF COUNSEL

1 A How long?

2 Q Yes, sir.

3 A I don't remember how long.

4 Q Did it remain there?

5 A I couldn't hear you.

6 Q Did it remain in Citibank?

7 A What remained in Citibank?

8 Q The operating account?

9 A Yes, it was until a certain date.

10 Q Okay. So did it eventually change from Citibank to
11 some other account?

12 A Yes.

13 Q When?

14 A It happened when the plaintiff attorney, Jerzy
15 Schnapp, put a lien on our property. And in order to save whatever
16 money we have on the account we decided to move that money to
17 Khavinson & Associates in close Citibank account.

18 Q How long did the operating account for the LLC remain
19 in Khavinson & Associates IOLA account?

20 A It remains even to date.

21 Q Could you just briefly explain what an IOLA account
22 is?

23 A IOLA account is a client trust account.

24 Q Maintained by who?

25 A Maintained by a law firm.

DIRECT EXAMINATION -- EUGENE KHAVINSON -- PLAINTIFF COUNSEL

1 Q So that would be an attorney's trust account?

2 A Yes.

3 Q When, if you can be more precise, was Mr. Michael
4 Kremerman, when did he step down as a managing member? How long,
5 even if you can't give a specific date, approximately how long
6 after the LLC began operations?

7 A I don't remember.

8 Q Was it more than a year?

9 A I believe it was more than a year.

10 Q Was it more than two years?

11 A Probably more than two years.

12 Q Okay. It was in operation from 2007 to 2014. So
13 that's approximately seven to eight years. So out of those seven
14 to eight years, approximately how long was Michael Kremerman a
15 managing member?

16 A I don't remember that.

17 Q What was the procedure that Mr. Faybyshev became a
18 managing member when Michael Kremerman stepped down?

19 A I don't remember the exact formal procedure. But
20 everybody, all members were informed of Michael Kremerman stepping
21 down and Mr. Faybyshev stepping into becoming a managing member.
22 And everybody was in agreement.

23 Q How were the members notified?

24 A By telephone, in person. That's the way they were
25 notified.

DIRECT EXAMINATION -- EUGENE KHAVINSON -- PLAINTIFF COUNSEL

1 Q Was any of this ever confirmed in writing?

2 A Pardon me?

3 Q Was any of this, what you just testified to about
4 informing the members of the change in managing member from Michael
5 Kremerman to Mr. Faybyshev, was any of it confirmed in writing?

6 A It was confirmed in writing.

7 Q What?

8 A Michael Kremerman signed the agreement that he is
9 stepping out and Mr. Faybyshev signed an agreement that he's
10 stepping up. I don't remember all the papers.

11 Q Did you ever have any of the members sign them?

12 A I don't remember.

13 Q Did you ever have David Aronov sign anything?

14 A I don't remember.

15 Q Did you ever ask David Aronov whether he consented?

16 A I did definite ask him if he consented.

17 Q When?

18 A I saw him every day. He was working for the firm. So
19 when it was happening, I definitely told him and he definitely
20 consented.

21 Q When was the last day that he worked for you?

22 A Maybe 2014, 13. Fourteen, probably.

23 Q So is it fair to say that Michael Kremerman stepped
24 down, and Mr. Faybyshev became a managing member before Mr. Aronov
25 stopped working for you?

DIRECT EXAMINATION -- EUGENE KHAVINSON -- PLAINTIFF COUNSEL

1 A Correct.

2 Q Was there ever an amended operating agreement?

3 A I cannot tell you for sure, but probably it was.

4 Q Do you have a copy of it?

5 A I don't have any copies. I told you, I don't have any
6 documents. They disappeared from my office.

7 Q The disappearance from your office, did that have
8 anything to do with Super Storm Sandy on October 29, 2012?

9 A My office was not affected by Sandy.

10 Q Were the records of the company affected by Super
11 Storm Sandy?

12 A Records of the company which were in possession, my
13 possession, in my law firm Khavinson & Associates were not affected
14 by Sandy.

15 Q Respectfully sir, that was not the question. If I was
16 unclear I really didn't mean it in the beginning --

17 THE COURT: Mr. Grasing, just ask the question.
18 Please don't engage instructions to this witness. That's
19 my all to do.

20 MR. GRASING: Sure.

21 Q Were any of the LLC's records, no matter where they
22 might have been, or who might have been in possession of them
23 affected by Super Storm Sandy?

24 A Some of LLC documents, and mostly Omnibuild documents
25 related to 290 13th Street LLC which were in possession of

DIRECT EXAMINATION -- EUGENE KHAVINSON -- PLAINTIFF COUNSEL

1 Omnibuild were destroyed by Sandy.

2 Q Were any of the LLC records affected by -- well
3 withdrawn. Were any of the LLC's records taken out of the
4 possession of the LLC because of the legal troubles of Michael
5 Kremerman?

6 A No.

7 Q Were the operating agreements -- was there more than
8 one copy of the, you said there was a second operating agreement.
9 Was there more than one copy kept of that?

10 A It was actually at least three copies, because first
11 operating agreement when the company was just opened, Mr. Aronov
12 was not a member. So therefore, we had an agreement signed. And
13 then Mr. Aronov joined the company and we had first amendment. And
14 then when Mr. Bogoslavski joined the company we had second
15 amendment. So at least two amendments.

16 Q Is it fair to say -- well, who was responsible for the
17 company's day-to-day operations and finances?

18 A I was responsible.

19 Q Was Yana Soskil ever a member of the company?

20 A Never.

21 Q Do you know who Yana Soskil is?

22 A I do know.

23 Q Who?

24 A She is Michael Kremerman's wife.

25 Q Did the company make any payments to Yana Soskil?

DIRECT EXAMINATION -- EUGENE KHAVINSON -- PLAINTIFF COUNSEL

1 A Payments were made at the distribution time. On the,
2 Michael Kremerman ask to pay his portion to his wife.

3 Q Yana Soskil, did she ever purchase any of Michael
4 Kremerman's shares?

5 A Did she? Did he I do not know.

6 Q Did she purchase any of his membership shares?

7 A Never.

8 Q Was she ever issued, as far as you know a K1 showing
9 income from the LLC to her at any point?

10 A I don't know that.

11 MR. GRASING: Judge, I'm going to scroll through
12 some pages. If it's okay I'll just do it. Your Honor, if
13 I may, may I have the witness hold a hard copy of
14 Plaintiff's Exhibit One? I want to refer him to something
15 on it.

16 THE COURT: Do you have it physically?

17 MR. GRASING: Physically.

18 THE COURT: Okay.

19 MR. GRASING: May I walk it up to him?

20 THE COURT: Can I please have Plaintiff's
21 Exhibit One given to the witness.

22 Q I'd like to draw your attention to the bottom of the
23 right-hand side corner. In black there appears to be a base
24 number. It begins I believe KBTF, do you see that?

25 A Yes.

DIRECT EXAMINATION -- EUGENE KHAVINSON -- PLAINTIFF COUNSEL

1 Q Do you know who KBTF is?

2 A No.

3 Q What was the name of your first firm that represented
4 you in this?

5 A Kasowitz (phonetic) and something.

6 Q Is that their initials?

7 A I don't know.

8 Q Did you produce that document previously in this
9 action?

10 A Did I produce, I did.

11 Q Did you produce any other operating agreements in this
12 action?

13 A I don't remember.

14 Q Did you ever notify anyone in this action that there
15 were other operating agreements other than the one you're holding
16 in your hand?

17 A Yes.

18 Q I think you may have said to your attorney with that
19 exception who?

20 A I probably said it to Faybyshev, I said it to
21 Bogoslavski, I said it to other members, Kochnev, Kremerman,
22 Wolinski, Kirzhner. Who else did I forget, that's about it.

23 Q Did you ever mention it in your affidavit in support
24 of your prior motion for summary judgment?

25 A I don't remember.

DIRECT EXAMINATION -- EUGENE KHAVINSON -- PLAINTIFF COUNSEL

1 Q I'd like to draw your attention -- could you stop
2 publishing or stop showing what I have on my screen to the jury.

3 THE COURT: The jury has not been shown
4 anything, that's fine.

5 MR. GRASING: I would like the witness to have
6 it, because this is not yet in evidence.

7 Q I'd like to draw your attention to the affidavit of
8 Eugene Khavinson in support of defendant's motion for summary
9 judgment. I'll give you a date. The date is given by notary that
10 the 13th day of December 2017 in front of you --

11 THE COURT: Mr. Grasing, this is not in
12 evidence. Are you trying to put a document in front of the
13 witness to try and see if the document will help the
14 witness remember something?

15 MR. GRASING: Yes.

16 THE COURT: Then you ask that, but you can't
17 read from a document in evidence.

18 MR. GRASING: I was going to ask the witness
19 whether that was his signature above his name.

20 THE COURT: I think what you want to do is ask
21 the witness is there anything he doesn't remember. He said
22 I don't remember.

23 MR. GRASING: Yes.

24 THE COURT: So maybe you want to ask him, will
25 X document help you remember. If he says yes, then you put

DIRECT EXAMINATION -- EUGENE KHAVINSON -- PLAINTIFF COUNSEL

1 whatever version it doesn't matter whether he signed it or
2 not. You can try to refresh his recollection with
3 anything.

4 Q I ask that the witness review with your affidavit in
5 support of summary judgment affidavit in this case, refresh your
6 recollection as to whether you previously notified anyone in this
7 litigation that there was more than one operating agreement? I
8 have it available on the screen.

9 A Well I have to read the document before I can tell
10 you.

11 THE COURT: Then go ahead and do that. It's
12 right there on the screen. Do you need the actual
13 document, or is there any particular area of the document
14 Mr. Grasing that might move us quicker, because I believe
15 it's a nine page document according to what I'm saying. So
16 if there's a particular page, a particular paragraph. I
17 don't think there's any objection to move this along.

18 MR. MESTECHKIN: Your Honor this is a nine page
19 document. I'm not sure what my client may or may not need
20 to refresh his memory.

21 THE COURT: So that's what I'm asking
22 Mr. Mestechkin is that you don't object to Mr. Grasing
23 directing him to a particular portion that Mr. Grasing may
24 have your client remember.

25 MR. MESTECHKIN: Not at this time, Your Honor.

DIRECT EXAMINATION -- EUGENE KHAVINSON -- PLAINTIFF COUNSEL

1 THE COURT: Mr. Grasing, is there a particular
2 paragraph in this nine page document that you think might
3 help Mr. Khavinson remember?

4 MR. GRASING: Yes, I'll turn to it now.

5 THE COURT: Okay.

6 MR. GRASING: Paragraph 28.

7 THE COURT: Let the record reflect that the
8 witness is reading paragraph 28 to see if that refreshes
9 his recollection.

10 THE WITNESS: I read it.

11 Q Does it refresh your recollection at all as to whether
12 you notified anyone in this lawsuit that there was more than one
13 operating agreement?

14 A This paragraph does not refresh my recollection one
15 way or another.

16 Q If you look at this paragraph, does the fact that it
17 referred to a document with a particular dates, number in front of
18 it, refresh your recollection as to who KBTF is?

19 A As you mentioned it's Kosowitz.

20 Q Your former attorney's?

21 A Correct.

22 Q Plaintiff's Exhibit One, the operating agreement, what
23 -- could you just tell me please what the page range KBTF, what --
24 to what in the lower right-hand side corner you have the hard copy
25 right in front of you?

DIRECT EXAMINATION -- EUGENE KHAVINSON -- PLAINTIFF COUNSEL

1 A Exhibit One.

2 Q Exhibit one, yes, sir.

3 THE COURT: What's your question Mr. Grasing
4 regarding --

5 MR. GRASING: The page range.

6 THE COURT: So if I'm speaking you cannot speak.
7 Regarding Plaintiff's Exhibit one, what is your question to
8 the witness?

9 MR. GRASING: What the KBTF dates, number range,
10 first page to the last page. Is it --

11 A First page 86140861. Last page 40868.

12 Q Okay. I'm just going to scroll to the next
13 appropriate section. Would looking at the 19A statement of
14 undisputed facts in support of defendant's motion for summary
15 judgment in this case jog your memory, refresh your recollection as
16 to whether you previously notified anyone that there was an
17 additional operating agreement in this matter?

18 A This document does not address that. I don't see it
19 here.

20 THE COURT: Mr. Khavinson, when you say this
21 document, which document are you referring to?

22 THE WITNESS: The one in front of me.

23 THE COURT: One on the screen and --

24 THE WITNESS: The one on the screen.

25 THE COURT: So the document you're referencing

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1 is the summary judgement affidavit?

2 MR. GRASING: The document I'm referencing is
3 the statement of undisputed admitted facts admitted by the
4 defendant in particular.

5 Q I'd like to ask you to read paragraph two, it's on the
6 screen in front of you.

7 A It does not address how many amendments on operating
8 agreement there were. All it says on or about February 9, 2008
9 plaintiff executes the operating agreement.

10 Q And what were the dates, number ranges beginning with
11 KBTF for the operating agreement identified here?

12 A This page which I see on the screen is from 861 comma
13 869.

14 Q Does that jog your memory as at all, refresh your
15 recollection as to whether you previously notified anyone that
16 there was more than one operating agreement executed for the LLC?

17 A It does not refresh my recollection. This paragraph
18 does not address this issue. The answer is no, it does not.

19 MR. GRASING: Can I have a brief side bar?

20 THE COURT: Yeah, off the record.

21 (Off-the-record discussion.)

22 THE COURT OFFICER: Remain seated. Come to
23 order.

24 THE COURT: Back on the record. Based on
25 another productive off-the-record conference, the parties

DIRECT EXAMINATION -- EUGENE KHAVINSON -- PLAINTIFF COUNSEL

1 have consented to having another document entered into
2 evidence. It will be marked as Plaintiff's Exhibit, I
3 believe we're up to seven, correct me if I'm wrong
4 Mr. Grasing?

5 MR. GRASING: You are correct.

6 THE COURT: And what will be the title of that
7 document Mr. Grasing?

8 MR. GRASING: It will be the defendant's motion
9 for summary judgment.

10 THE COURT: Remember to keep your voice up.
11 Continue with your questions please.

12 CONTINUED DIRECT EXAMINATION BY MR. GRASING:

13 Q Mr. Khavinson, docket number I'm showing you on the
14 screen Plaintiff's Exhibit 7, docket number 71, paragraph two. Do
15 you agree with that statement?

16 A I don't see it. I see only two pages here. Kosowitz
17 861 and Kosowitz 869. The operating agreements which I have some
18 copy, goes all the way through 868. It doesn't go through 869.

19 THE COURT: Mr. Khavinson the question was very
20 specific. Looking at the screen which is now Plaintiff's
21 Seven in evidence. I believe the question for Mr. Grasing
22 was look at paragraph two of Plaintiff's 7 if that is
23 accurate statement. So you just have to read paragraph two
24 and say whether that statement is accurate. I believe that
25 was the question Mr. Grasing, is that correct?

DIRECT EXAMINATION -- EUGENE KHAVINSON -- PLAINTIFF COUNSEL

1 MR. GRASING: That's correct.

2 THE COURT: So looking at paragraph two just
3 take a moment to read it to yourself. And the question is,
4 is that an accurate statement?

5 THE WITNESS: It is an accurate statement.

6 THE COURT: And since that document is in
7 evidence, Mr. Grasing would you like the jury to also be
8 able to see this?

9 MR. GRASING: Yes, please.

10 THE COURT: Any objection?

11 MR. MESTECHKIN: No, Your Honor.

12 THE COURT: So let's make sure the jury is able
13 to see. Why don't we get this sort of together this is a
14 good time to take a break so let's do that.

15 THE COURT OFFICER: All rise jury exiting.

16 (Off-the-record discussion.)

17 THE COURT: We swore you in Mr. Khavinson. We
18 also need to get your name and address just for the record.
19 Go ahead.

20 THE SUPREME COURT CLERK: Can you state your
21 name and address for the record.

22 THE WITNESS: Eugene Khavinson, 365 Ardsee
23 Street Staten Island, New York 10306.

24 THE SUPREME COURT CLERK: Thank you.

25 THE COURT OFFICER: All rise. Jury entering.

DIRECT EXAMINATION -- EUGENE KHAVINSON -- PLAINTIFF COUNSEL

1 THE COURT: Everyone may be seated. I want to
2 thank the jury for reminding the Court about my bedside
3 manners. We all could have used that break. Are we ready
4 to proceed Mr. Grasing?

5 MR. GRASING: Yes.

6 THE COURT: Okay. You have the floor.

7 DIRECT EXAMINATION BY MR. GRASING:

8 Q Mr. Khavinson, you previously mentioned that documents
9 were -- did you mention that documents were --

10 A Documents were what?

11 Q Taken from the LLC?

12 A I don't have them, so they were taken.

13 Q Do you know by whom?

14 MR. MESTECHKIN: Objection.

15 THE COURT: Basis?

16 MR. MESTECHKIN: Mischaracterization. Nothing
17 was taken from the LLC. Witness testified to something
18 else.

19 THE COURT: I'm going to overrule the
20 objection, but I -- technically, he's correct. Taken from
21 the LLC was not the testimony, but it seems like the
22 witness understood what the question was. Just keep that
23 in mind Mr. Grasing. And also, the microphone moves
24 around. So if you want to move it up a little so if you
25 wanted to speak a little louder. Thank you Mr. Grasing.

DIRECT EXAMINATION -- EUGENE KHAVINSON -- PLAINTIFF COUNSEL

1 Next question.

2 Q If you understood the question, well --

3 THE COURT: Just re-ask it.

4 Q What happened to the other versions of the operating
5 agreement?

6 A They disappeared from my office of Khavinson &
7 Associates. That's where they were filed in storage.

8 Q Do you have any idea why?

9 A I have an idea.

10 Q What was it?

11 A I think it was plaintiff.

12 Q Did you ever notify law enforcement?

13 A No.

14 Q Did you ever make that claim in this action?

15 A No.

16 Q Why not?

17 A I didn't. It's not my claim.

18 Q Showing the statement -- I'm showing the statement of
19 material facts, Plaintiff Exhibit Seven. Drawing your attention to
20 paragraph five. It's on the screen right now. Everybody should be
21 able to see it. Do you agree with that statement?

22 THE COURT: Which exhibit is it?

23 MR. GRASING: This is Plaintiff's Exhibit Seven.

24 A Yes.

25 Q Why did you refer to these single operating agreement

DIRECT EXAMINATION -- EUGENE KHAVINSON -- PLAINTIFF COUNSEL

1 and not reference the others that you say are missing?

2 A I did not prepare this document.

3 Q Is it fair to say it was submitted on your behalf by
4 your first set of attorney's in support of your motion for summary
5 judgment in this action?

6 A Yes.

7 Q And it was entitled Rule 19A statement of undisputed
8 facts in support of defendant's motion for summary judgment?

9 A Yes.

10 Q Did you review this document at all before it was
11 submitted on your behalf?

12 A Yes, I did.

13 Q So besides the fact that you did not personally
14 prepare it, were there any reasons why you didn't reference any
15 other operating agreement?

16 A In paragraph two it spells out the operating agreement
17 of 2008, February 9, 2008. And then you refer to paragraph five.
18 They're taking this agreement. They're not taking any amended
19 agreement. They're taking 2008 agreement where plaintiff executed.
20 It does not talk about any other amended agreements. It only talks
21 about the agreement signed on February 9, 2008 where plaintiff
22 executed that agreement. There were no other amended agreements at
23 that time. The amended agreements came later.

24 Q Same document. The date on this document I'm showing
25 it to you now after paragraph 19, December 13, 2017. Do you see

DIRECT EXAMINATION -- EUGENE KHAVINSON -- PLAINTIFF COUNSEL

1 that? Did the amended agreements come before or after that date?

2 A December 13, 2017, yes. The answer is yes.

3 Q Well there is a question, did they come before or
4 after that date?

5 A Before.

6 Q And Joshua A. Siegel from Kosowitz, Benson, & Torres
7 LLP he was your attorney at the time this was submitted in this
8 action, right?

9 A Yes.

10 Q Now drawing your attention to paragraph six where it
11 says "other members of the company and their respective ownership
12 interest are as follows, E. Khavinson for 13.23 percent." That's
13 you, right?

14 A Correct.

15 Q Is that an inaccurate ownership as of the date this
16 document was submitted, right?

17 A Yes.

18 Q Mikhail Kremerman, 30 percent, was that accurate at
19 that time?

20 A At that time, accurate.

21 Q M. Khavinson, 13.33 percent. First, is that your
22 brother Michael?

23 A Yes.

24 Q And second, is that an accurate percentage as of this
25 date?

DIRECT EXAMINATION -- EUGENE KHAVINSON -- PLAINTIFF COUNSEL

1 A Yes it is.

2 Q V. Faybyshev, 30 percent. First, is that

3 Mr. Vyacheslav Faybyshev?

4 A Yes.

5 Q Again, there is nothing personal with that I will try

6 to get that right. And then was his ownership percentage of 30

7 percent accurate as of that date?

8 A Correct.

9 Q The next one is A. Kirzhner. First, is that Artyom

10 Kirzhner?

11 A Artyom Kirzhner.

12 Q And he was a member, right?

13 A Correct.

14 Q And that says 3.5 percent. Is that accurate, that was

15 his ownership share as of that date?

16 A Correct.

17 Q And the next one is V. Kochnev. Is that Vitaly

18 Kochnev?

19 A Vitaly Kochnev.

20 Q And was he member at that time?

21 A Yes.

22 Q And is that three percent ownership share accurate?

23 A Accurate.

24 Q Then M. Wolinski at 3.5 percent. First, who is that?

25 A Mikola Wolinski.

DIRECT EXAMINATION -- EUGENE KHAVINSON -- PLAINTIFF COUNSEL

1 Q Was he a member?

2 A He is a member.

3 Q And is that an accurate percentage of his ownership?

4 A Yes it is.

5 Q And then plaintiff in this action is David Aronov,
6 3.33 percent. Is that accurate?

7 A It is accurate.

8 Q Is there any reason that you're aware of that
9 Aleksandra Bogoslavksi is not listed here?

10 A This paragraph refers to 2008 agreement.

11 Q Okay. And how is that relevant to where -- what's
12 your understanding as to why Mr. Aleksandra Bogoslavski was not
13 listed as an owner?

14 MR. MESTECHKIN: Objection.

15 THE COURT: Basis?

16 MR. MESTECHKIN: I think --

17 THE COURT: What's the basis for the objection
18 for that question?

19 MR. MESTECHKIN: You know what Your Honor, I
20 withdraw.

21 THE COURT: You may answer Mr. Khavinson.

22 THE WITNESS: Can you repeat the question?

23 MR. GRASING: Can I have it read back, please.
24 (Court Reporter did a read back.)

25 A This document addresses operating agreement of 2008.

DIRECT EXAMINATION -- EUGENE KHAVINSON -- PLAINTIFF COUNSEL

1 At that time Mr. Bogoslavski was not a member of the LLC.
2 Paragraph six repeats and spells out who owns what according to
3 that operating the agreement of 2008. Why my lawyer did he what he
4 did I cannot answer.

5 Q He did it in your name; isn't that correct?

6 A It is correct. But what's written here is accurate.

7 Q Which operating agreement governed the LLC at the time
8 the condominium units were sold, you said in 2014?

9 A The operating agreement which had another member by
10 the name of Aleksandra Bogoslavski, percentage of Faybyshev shares
11 and Kremerman shares were reduced each by two and a half percent so
12 they became 27 and a half. And Mr. Bogoslavski took five percent
13 for \$150,000 which were deposited into operating agreement of LLC.
14 So two members, Kremerman and Faybyshev did not benefit financially
15 from that transaction.

16 Q Did anyone ever ask David Aronov whether it was okay
17 to perform that transaction?

18 A Yes.

19 Q Who?

20 A I.

21 Q When?

22 A When, before it happened.

23 Q Could you be anymore specific?

24 A What date it was? I don't see the dates here. I
25 don't remember the date.

DIRECT EXAMINATION -- EUGENE KHAVINSON -- PLAINTIFF COUNSEL

1 Q An approximate time, day, month, year anything?

2 A I don't remember.

3 Q Did you ever confirm that in writing?

4 A Yes, it was amended page with new signatures and new
5 percentages. And everybody had it and everybody signed it. And it
6 disappeared.

7 Q Did you make an electronic copy of it?

8 A I did not make an electronic copy.

9 Q Why not?

10 A Maybe I did, I can't find it.

11 Q So what's -- which is the answer?

12 A I don't know.

13 Q Have you searched?

14 A I did not.

15 Q Does any other member have a copy of the amended
16 agreement?

17 A I don't know I don't think so.

18 Q Did you ever ask?

19 A Yes I did.

20 Q Start with who?

21 A Pardon me.

22 Q Well start with who?

23 A Who did I ask?

24 Q Yes, sir.

25 A Faybyshev, Kremerman.

DIRECT EXAMINATION -- EUGENE KHAVINSON -- PLAINTIFF COUNSEL

1 Q Well can we take it one at a time and it would be the
2 same series of questions. So who did you ask first?

3 A Faybyshev.

4 Q When?

5 A At that time.

6 Q Could you be anymore specific then at that time?

7 A I cannot be more specific.

8 Q Are you referring to the time that the motion, your
9 defendant's motion for summary judgment was submitted in this
10 action or at some other time?

11 A At the time when Bogoslavski became a member with five
12 percent interest in LLC.

13 Q Did Mr. Faybyshev tell you he had a copy of it?

14 A He did not have a copy. All signed copies was filed
15 in my office, in safe.

16 Q Who had access to the safe?

17 A I know at least Mr. Aronov's wife had access to the
18 safe. And I don't know if Mr. Aronov had access to the safe. I
19 did not give it to him.

20 Q Was it a key, or was a it a combination to open the
21 safe?

22 A Pardon me?

23 Q How did you open the safe at that time, when you put
24 the amended operating agreement, or agreements in?

25 A By putting the code in and open the door of the safe,

DIRECT EXAMINATION -- EUGENE KHAVINSON -- PLAINTIFF COUNSEL

1 and put it, filing the documents in a safe. Storing the documents
2 in a safe.

3 Q So what was the name of Mr. Aronov's wife at that
4 time?

5 A Svetlana Aronov.

6 Q Did she know the code?

7 A She did know the code.

8 Q Do you have any understanding as to -- well, did you
9 take them?

10 A Pardon me?

11 Q Did she take them?

12 A I did not see her taking anything.

13 Q As far as you know, did she?

14 A The documents disappeared.

15 Q Did she work for you at that time?

16 A She did work for me at that time.

17 Q Did you ever ask her whether she took them?

18 A We did not speak after she left.

19 Q Do you mean when she stopped working for you?

20 A Pardon me?

21 Q Do you mean when she stopped working for you?

22 A Yes.

23 Q When did she stop working for you?

24 A Don't remember. Probably '14.

25 Q 2014?

DIRECT EXAMINATION -- EUGENE KHAVINSON -- PLAINTIFF COUNSEL

1 A 2014, yes.

2 Q Before she left in 2014, did you ask her?

3 A No, I did not ask her.

4 Q When did you first realize they were missing?

5 A When I opened the safe and looking for all documents
6 which were related to LLC, which was stored in a safe.

7 Q Was that before or after she stopped working for you?

8 A After.

9 Q Was it at any time -- was it before or after this
10 lawsuit was started?

11 A Before or during, I don't remember.

12 Q Were there any other witness's, anyone else with you
13 at that time when you opened the safe and discovered they weren't
14 there?

15 A I don't remember.

16 Q Did you ever notify law enforcement that things had
17 been taken from you?

18 A I did not.

19 Q Why not?

20 A Pardon me?

21 Q Why not?

22 A Because I did not.

23 Q Do you have any understanding as to why statement six
24 other members of the company and their respective ownership
25 interest are as follows: Why it stays they are, rather than refer

DIRECT EXAMINATION -- EUGENE KHAVINSON -- PLAINTIFF COUNSEL

1 to any particular time period before this document? It's in
2 paragraph six. It's the first and second line it's on the screen.

3 A Paragraph six refers to paragraph two, operating
4 agreement of 2008. And it is accurate as to the agreement in front
5 of me. That operating agreement of 2008.

6 Q When you submitted this motion for summary judgment,
7 what did you refer to as to the operating agreement that controlled
8 the LLC?

9 A I did not prepare this agreement. I trusted my lawyer
10 to prepare this agreement correctly and he did. He refers to this
11 operating agreement. He probably got it from the opposite side,
12 because I did not submit it to him. I didn't have that document
13 signed. So therefore, it had to be given by somebody from
14 plaintiff's side. And therefore, whatever they got, that's what
15 they referred to.

16 THE COURT: I just want the record to reflect
17 that the witness is referencing this operating agreement
18 which is the physical copy of Plaintiff's Exhibit One. Is
19 that accurate Counsel?

20 MR. MESTECHKIN: That's correct, Your Honor.

21 MR. GRASING: Yes.

22 THE COURT: Anything else?

23 MR. GRASING: Yes.

24 Q Drawing your attention to the same document, paragraph
25 nine where it states the operating agreement provides that net

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1 profits and net losses of the company shall be allocated to the
2 members in the same proportions that they share in distributions of
3 cash flow which is allocated among the members according to their
4 interest in the company. And it references an affidavit from
5 Mr. Siegel and a KBTF-0000865 base number. First, do you agree
6 with that statement?

7 A I agree with that statement.

8 Q Does the statement say anywhere in there that refers
9 to a prior operating agreement that was not governing the
10 transactions at the time the money was distributed?

11 A My understanding of paragraph nine it refers to the
12 same paragraph of operating agreement which is in my hands, of
13 2008.

14 Q I'd like to draw your attention to paragraph ten of
15 the same document. The condo's were sold over the course of 2014
16 for a total of \$4,185,000. Do you agree with that statement?

17 A Probably, yes.

18 Q Do you have any reason to doubt it?

19 A I don't have any reason to doubt \$4,185,000 probably
20 accurate, as well.

21 Q The next paragraph, paragraph 11. "Proceeds of the
22 condo sales were distributed to company members pursuant to the
23 operating agreement in or around September 14th," citing Mr.
24 Siegel's Exhibit Three and Exhibit Four, and Khavinson affidavit at
25 paragraph 31. First, do you agree with that statement?

DIRECT EXAMINATION -- EUGENE KHAVINSON -- PLAINTIFF COUNSEL

1 A Agree.

2 Q Do you have any understanding as to why it referred to
3 the single operating agreement rather than that you said was no
4 longer in effect at that time?

5 A I don't know why. Perhaps, because that's the only
6 agreement was in possession of my attorney's.

7 Q Now you previously testified about Schnapp, Jerzy
8 Schnapp I believe you said?

9 A Correct.

10 Q Who is Mr. Jerzy Schnapp?

11 A Mr. Jerzy Schnapp was a subcontractor of Scone
12 Preparation, operating room track. And he was plaintiff when he
13 filed a lawsuit against everybody for his injuries.

14 Q Was he injured on the project for 290 13th Street LLC?

15 A He was injured, allegedly he was injured on the
16 property. I wasn't there, of 290 13th Street LLC. At 290 13th
17 Street.

18 Q Did he sue anyone because of what he claimed were the
19 injuries?

20 A He did.

21 Q Who did he sue?

22 A He sued everybody. He sued owner of the property, he
23 sued the LLC, he sued general contractor. I don't remember who
24 else.

25 Q Did he sue you individually?

DIRECT EXAMINATION -- EUGENE KHAVINSON -- PLAINTIFF COUNSEL

1 A He sued me as an owner of the property.

2 Q Did he sue the LLC?

3 A He sued the LLC.

4 Q In what capacity?

5 A In the capacity of LLC. I don't remember exactly what
6 it said in his complaint.

7 Q Was that eventually settled?

8 A It was eventually settled.

9 Q What were the terms of the settlement?

10 A The terms of the settlement was Zone's Preparation
11 Insurance paid \$1,000,000 to Mr. Schnapp. And LLC and general
12 contractor or Omnibuild paid \$749,800. Eugene Khavinson paid \$100,
13 LLC paid \$100.

14 Q Zom or Zone?

15 A Zom, it's a subcontractor who did masonry work for LLC
16 construction.

17 Q Did the LLC ever supply Omnibuild with any portion of
18 their share of the settlement?

19 A Can you repeat please.

20 Q Well first, I'll break it down. Who is Omnibuild?

21 A Omnibuild is a general contractor for 290 13th Street
22 LLC Construction.

23 Q For this particular project?

24 A For this particular project.

25 Q Who owned it at the time?

DIRECT EXAMINATION -- EUGENE KHAVINSON -- PLAINTIFF COUNSEL

1 A Who?

2 Q Who owned it at the time?

3 A Vyacheslav Faybyshev.

4 Q By the time the lawsuit, the Jerzy Schanpp lawsuit was
5 settled, was Mr. Faybyshev a managing member of the LLC?

6 A Yes, he was.

7 Q The LLC -- did the LLC supply Omnibuild with money to
8 pay their share of the Jerzy Schnapp settlement?

9 A LLC lent money to Omnibuild to settle the lawsuit by
10 Jerzy Schnapp.

11 Q How much?

12 A \$749,800.

13 Q Has it ever -- okay. What were the terms of the loan?

14 A The terms of the loan was that Mr. -- Omnibuild will
15 file a lawsuit against the broker who sells insurance.

16 Q Could you give me the name if you know it please?

17 A I don't know the name.

18 Q If I said the name Dinver Associates would that jog
19 your memory?

20 A What's the name?

21 Q Dinver, D-I-N-V-E-R?

22 A Sounds familiar. Dinver, yes, D-I-N-V-E-R Associates,
23 correct. And whatever the proceeds are going to be as a result of
24 this lawsuit, it is going to be immediately repaid to LLC?

25 Q Was there a time limit?

DIRECT EXAMINATION -- EUGENE KHAVINSON -- PLAINTIFF COUNSEL

1 A There's no time limit. It was extended. It was one
2 year promissory note, but then it was extended to another year.

3 Q What were the terms, if any in addition to the
4 original one year term that you said was extended?

5 A I do not remember the terms. That was nine years ago
6 and my memory is not that good.

7 Q Was there any interest charged?

8 A I don't remember interest being charged. But it's
9 possible.

10 Q Why did the LLC lend Omnibuild that money?

11 A In order to settle the case and lift the lien from the
12 property. So the company does not broke and all shareholders would
13 lose all their investments period. So in order to get an
14 agreement, to settle this case, LLC and Omnibuild came up to an
15 agreement, and certain strategy to recover as much money as
16 possible for LLC. And that's how we settled the agreement and a
17 lien was immediately lifted. And we got access to all the money.
18 We already had the buyers, and the buyers obviously made
19 settlements when settlement was agreed on. But before the money
20 was distributed. So money was going for each sold apartment to
21 independent attorney Soskowitz.

22 Q And what was their role?

23 A Their role was to hold proceeds of sale of the
24 apartments.

25 Q Were they the escrow agent?

DIRECT EXAMINATION -- EUGENE KHAVINSON -- PLAINTIFF COUNSEL

1 A Escrow agent, correct.

2 Q Can you just clarify what you mean by the lien of the
3 property?

4 A The plaintiff, Jerzy Schnapp put a lien on the
5 property. So that property could not be sold. They cannot be --
6 nothing can be done with that property.

7 Q What did Omnibuild do with the money that the LLC gave
8 to them, the \$749,800?

9 A Paid to Jerzy Schnapp to settle the case.

10 Q Did they pay it to anyone else?

11 A No, they did not pay to anyone else.

12 Q Who is, if you know, West 35th Street LLC?

13 A What's the name?

14 Q I'm sorry. 35 West End Avenue LLC?

15 A 35 West End Avenue LLC is LLC which constructed the
16 building on the address of 35 West End Avenue Brooklyn, New York.

17 Q Who was the general contractor on that job?

18 A Omnibuild.

19 Q At the time Omnibuild was the contractor on that job,
20 who owned Omnibuild?

21 A Vyacheslav Faybyshev.

22 Q Was that at the same time that Mr. Faybyshev or one of
23 the two managing members of our LLC?

24 A Repeat please.

25 Q At the time he built that project, was he a managing

DIRECT EXAMINATION -- EUGENE KHAVINSON -- PLAINTIFF COUNSEL

1 member of this LLC?

2 A Of 35 West End Avenue LLC, I don't think so. I don't
3 know.

4 Q No, actually the question was, this LLC that's the
5 term we would agreed would refer the one we're here about today?

6 A He was a managing member of this LLC.

7 Q At the time Omnibuild which he controlled built that
8 project, am I right?

9 MR. MESTECHKIN: Objection.

10 A Omnibuild was a general contractor for 35 West End
11 Avenue LLC to my knowledge.

12 THE COURT: Hold on there was an objection. I
13 believe it was withdrawn.

14 MR. MESTECHKIN: It's withdrawn. The witness
15 answered.

16 THE COURT: Because the witness did clarify
17 which LLC, which project Omnibuild was addressing. Thank
18 you Mr. Khavinson. Anything else?

19 MR. GRASING: Yes.

20 Q Did Omnibuild receive any money from 35 West End
21 Avenue \$749,800 immediately before this LLC lent them the same
22 amount of money?

23 A Omnibuild and Mr. Faybyshev did not receive any money
24 from 35 West End Avenue LLC at the time when this LLC as you call
25 it, gave them a loan of \$749,800 to pay for settlement with

DIRECT EXAMINATION -- EUGENE KHAVINSON -- PLAINTIFF COUNSEL

1 Mr. Schnapp.

2 Q Are you aware, do you know whether Omnibuild any time
3 within 30 days of -- we'll use that as a baseline, within 30 days
4 of the date the loan took place from this LLC to Omnibuild, did
5 Omnibuild receive \$749,800 or \$750,000 from 35 West End Avenue LLC?

6 A The answer is no.

7 Q Mr. Khavinson, has that loan ever been paid back in
8 whole or in part?

9 A In part, yes.

10 Q How much?

11 A \$468,000.

12 Q Has that ever been distributed to any of the members?

13 A No.

14 Q Why not?

15 A Because of litigation expenses.

16 Q When did you receive that money?

17 A I don't remember.

18 Q What was the reason you received that money, as you
19 understand it?

20 A Mr. Faybyshev on behalf of Omnibuild settled the case
21 with Dinver, and received money from Dinver. And immediately wrote
22 a check, deposited money to his account. Wrote a check to LLC and
23 I deposited the money in LLC.

24 Q Who did he pay the litigation cost to?

25 A The litigation cost I paid to our first attorney,

DIRECT EXAMINATION -- EUGENE KHAVINSON -- PLAINTIFF COUNSEL

1 Kosowitz and whatever. And then litigation cost also continued
2 with Mr. Mestechkin.

3 Q Why did you pay -- well, withdrawn. The first
4 attorney how much did you pay them?

5 A I paid them \$216,000, \$220,000, something to that
6 extent.

7 MR. GRASING: Can I have a brief side bar?

8 THE COURT: Sure. Off the record.

9 (Off-the-record discussion.)

10 THE COURT OFFICER: Remain seated. Come to
11 order.

12 THE COURT: Back on the record. Mr. Grasing
13 you have the floor.

14 Q How much of that settlement which I believe you said
15 was for \$468,000 that you received back on that loan, how much was
16 paid to your current attorney?

17 A I don't remember how much I paid to my current
18 attorney.

19 Q Is there any portion of it still in your operating
20 account?

21 A Yes it is.

22 Q How much?

23 A I don't remember this second. I don't look at it
24 every day.

25 Q Has it been spent on anything else?

DIRECT EXAMINATION -- EUGENE KHAVINSON -- PLAINTIFF COUNSEL

1 A It's not an operating account. It's an IOLA account.
2 It was not spent on anything else.

3 Q So how much of the \$468,000 partial loan repaid from
4 Omnibuild was -- do you still have it?

5 A I don't remember.

6 MR. MESTECHKIN: Objection.

7 THE COURT: Hold on. There's an objection.

8 MR. MESTECHKIN: Asked and answered.

9 THE COURT: Overruled. The answer will stand.

10 Next question.

11 Q How was that \$468,000 paid to you?

12 A By check.

13 Q Was there any particular -- what's your understanding
14 -- well withdrawn. The part of the \$468,000 settlement that you
15 received back as partial payment for the loan, why hasn't that been
16 distributed to the members?

17 A Because members agreed to Eugene Khavinson and
18 Vyacheslav Faybyshev to advance the money for legal representation
19 of everybody in LLC. Therefore, I advanced the money, 200 whatever
20 thousand dollars. Faybyshev advanced over \$70,000, and Kremerman
21 advanced around \$20,000 dollars. And then we also advanced money
22 to our new attorney Mr. Mestechkin, I don't know details, but I can
23 certainly find out details.

24 Q Yes I'd ask that you do. And the question stands
25 about how much of that money, that loan repayment you still have?

DIRECT EXAMINATION -- EUGENE KHAVINSON -- PLAINTIFF COUNSEL

1 A I don't know.

2 Q Is there anything you can do to find out?

3 A Yes. I have to look into my IOLA account and find out
4 what the balance is.

5 Q Is the IOLA account that you're referring to, are
6 there funds from any other matter in there other than for this LLC?

7 A Only for this LLC at the moment.

8 Q From the time you received the partial repayment, have
9 there been any other monies from any other matter coming in there?

10 A The answer is no.

11 Q From the time you started using your IOLA account as
12 an operating account for this LLC, has there ever been money from
13 any other matter, or client in that account?

14 A In the beginning it was.

15 Q Until when?

16 A Until those monies were paid on behalf of those
17 clients. It was insignificant amount of money.

18 Q Approximately, how much?

19 A I don't remember, but small amount.

20 Q Can you be anymore specific as to what you mean by
21 small?

22 A I don't remember. Well, less than \$50,000 probably.

23 Q Has the LLC filed any corporate tax returns since
24 2014?

25 A 2014?

DIRECT EXAMINATION -- EUGENE KHAVINSON -- PLAINTIFF COUNSEL

1 Q After 2014, yes, sir.

2 A I don't think so.

3 Q What's your understanding as to why not?

4 A Because there's no any action with that corporation,
5 that LLC. That LLC is not doing anything. It's dormant.

6 Q You just testified, I believe that you received
7 \$468,000 as a partial loan repayments since that time is that
8 correct?

9 A That's correct. And that money is sitting in the
10 account minus legal fees.

11 Q Do you have the documents for the legal fees that you
12 paid, the bills that you paid?

13 A I probably do.

14 Q How did you pay those legal fees?

15 A I'm sure by either wire or check.

16 Q Do you have the records of each such transfer?

17 A I don't know. I have to check.

18 Q Did you pay any other legal fees besides to your first
19 attorney's in this case?

20 A And second attorney.

21 Q Anyone else?

22 A Pardon me?

23 Q Did you pay any other attorney's at any time with the
24 LLC's funds?

25 A After two attorney's, no.

DIRECT EXAMINATION -- EUGENE KHAVINSON -- PLAINTIFF COUNSEL

1 Q Did you ever represent the LLC in any capacity?

2 A Yes, I did.

3 Q Did you ever pay your legal fees?

4 A I did it for free.

5 Q So the answer is what, no you did not?

6 A I did not get any money for representing the LLC in
7 the case against Jerzy Schnapp.

8 Q That was not the question. The question is, did you
9 ever pay the LLC's funds to you or your law firm for legal services
10 rendered at any time, regarding any matter?

11 A Never for legal services.

12 Q Okay. Did you pay them for any other reasons?

13 A Yes, for administrative services.

14 Q And could you be any more specific?

15 A I got paid the law firm of Khavinson & Associates, the
16 first year performed a lot of services in connection with soft
17 cost. Condominium book, marketing with the brokerage firms, tax
18 abatements, and also bookkeeping. So for that, the law firm
19 received \$2,000 a month for ten months, a total of \$20,500.

20 Q By the way -- well withdrawn. Did Mr. David Aronov
21 ever agree to allow you to pay the litigation cost related to this
22 action?

23 A First I didn't ask his permission. I don't need to
24 ask his permission. So the answer is I don't remember. I'm
25 confused in terms of what money you're talking about. Which

DIRECT EXAMINATION -- EUGENE KHAVINSON -- PLAINTIFF COUNSEL

1 litigation, there are a lot of litigations.

2 Q Did you ever use -- did the LLC -- first, what I was
3 referring to -- well, withdrawn. What were you referring to when I
4 believe you testified that the other members consented to paying
5 the litigation cost for the legal fees for this litigation?

6 A When did I say that? When we received the complaint,
7 we were served the complaint from Mr. Aronov. We had to hire an
8 attorney. At that time, we did not have any money. So we ask all
9 members except for Mr. Aronov if they'd like to hire their own
10 attorney's, because they all were sued, or they would like us to
11 cover the cost and hire one attorney. Everybody said if you pay
12 the necessary money, we don't need lawyer's for each individual
13 member. We trust you. Whatever you're going to be doing so one
14 attorney for everybody will be sufficient. So I did ask and I did
15 get the answer. And I advanced the money, Faybyshev advanced the
16 money, Kremerman advanced the money, but in different proportions.

17 Q Who paid the legal fees for Omnibuild in the Dinver
18 action against the broker?

19 A Who paid legal fees?

20 Q Yes.

21 A Legal fees consisted of two parts. One part was
22 \$50,000. And the second part was small percentage after \$250 or
23 \$300,000 which was the contingent fee agreement. So the settlement
24 was \$500,000 and expenses were \$32,000, legal fees I guess. So the
25 net fee was \$468 which was transferred by check to my IOLA account

DIRECT EXAMINATION -- EUGENE KHAVINSON -- PLAINTIFF COUNSEL

1 which holds money for a lawsuit.

2 Q Where did the \$50,000 that you referred to as the
3 first part of the legal fees for Omnibuild, in that Dinver action,
4 who paid that?

5 A The LLC paid that.

6 Q Why?

7 A Because Omnibuild didn't have any money. And we were
8 derivative plaintiff in that action. We were interested in that
9 money. All that money belonged to LLC. So we had direct interest
10 to make that lawsuit happen, and to get some funds, as much as
11 possible to LLC.

12 Q Is that a term in the loan agreement between the LLC
13 and Omnibuild?

14 A It was not in a loan agreement. It was a message
15 within a loan agreement.

16 Q Why was that paid -- withdrawn. What's your
17 understanding as to why that was paid directly by the LLC rather
18 than in any other form such as a loan?

19 A It was paid directly by LLC. Deposit LLC and I repeat
20 again had direct interest in settling for getting funds from Dinver
21 company, whatever it is. In order to compensate Omnibuild for
22 losses with selling that Northfield Insurance to them with hidden
23 exception for secondary subcontractors. So LLC had direct
24 interest. That money would not belong to Omnibuild at anymore.
25 Maybe only at the time when they deposit check, and immediately

DIRECT EXAMINATION -- EUGENE KHAVINSON -- PLAINTIFF COUNSEL

1 wrote new check to LLC. So therefore I made a decision to pay with
2 that \$50,000 in order for that lawsuit to happen, because Omnibuild
3 didn't have any money at that time.

4 Q Did you ever receive the consent of any of the other
5 members?

6 A I received consent of all members.

7 Q Is David Aronov still a member of the LLC today?

8 A He's still a member of the LLC today.

9 Q Did you ever notify him that you were paying
10 Omnibuild's legal fees in the Dinver action?

11 A At that time definitely yes. He was still employed
12 there.

13 Q When did the Dinver action start?

14 A Did it start?

15 Q When was it started, yes, sir?

16 A It started probably 2014.

17 Q And I'm talking about, well the action that was
18 settled in the court that it was settled?

19 A That action started in 2014 most likely. I don't know
20 the date of 2014.

21 Q The action Omnibuild against Dinver & Associates, was
22 the LLC a party to it?

23 A No, it was not.

24 Q What court was that in?

25 A It probably was in Brooklyn Supreme.

DIRECT EXAMINATION -- EUGENE KHAVINSON -- PLAINTIFF COUNSEL

1 MR. GRASING: I just need to pull up something
2 else on the screen. If I can have the screen shut off
3 while I get it. These will be things not in evidence.

4 THE COURT: Okay. Let's knock off the jury
5 screen and the witness screen.

6 Q Mr. Khavinson if I showed you the summons and
7 complaint bearing the index number for the Omnibuild action against
8 Dinver & Associates would that jog your memory as to when that case
9 was started?

10 A Probably would.

11 MR. GRASING: I ask, because it's not in
12 evidence that I show that it just be put on the witness's
13 screen. It's obtained directly off the NYCEF docket.

14 THE COURT: Let's get the witness's screen back
15 up. And we're putting this in front of the witness to see
16 if it refreshes his recollection regarding what?

17 Q When Omnibuild commenced the Dinver action?

18 A May 5, 2016.

19 Q Was David Aronov working for you at that time?

20 A No.

21 Q I showed you the correspondence to the court from the
22 attorney from one of the parties in the Dinver action notifying
23 them of the settlement, would that jog your memory as to when that
24 settlement occurred?

25 A I want to see heading.

DIRECT EXAMINATION -- EUGENE KHAVINSON -- PLAINTIFF COUNSEL

1 Q Hold on I hit the wrong one.

2 A Okay.

3 MR. GRASING: Again, this should only be on the
4 witness's screen, it is not in evidence.

5 Q I'd like you to take a look of the October 2013 letter
6 to the Honorable Scott Quires the Supreme Court Kings County
7 regarding the Omnibuild Inc. Against Dinver & Associates from an
8 Allen L Frank. When you're done reading it just please tell me
9 whether that jogs your memory as to when the case settled?

10 A Yes it does.

11 Q Does it jog your memory that it settled on or about
12 the date of this letter which is October 13, 2021?

13 A October 13, 2021.

14 Q When was that case discontinued?

15 A I don't remember, soon after.

16 Q If I showed you the filed stipulation of
17 discontinuance in Omnibuild against Dinver & Associates index
18 number 507368 of 2016 with a NYCEF time stamp showing it was filed
19 with the Kings County clerk on 12/09/21 at 9:59 a.m. signed by
20 Allen L Frank Associate for the plaintiff and Kaufman, Dull, Rich
21 LLP for the defendant's.

22 THE COURT: So right now Mr. Grasing can we
23 just put the document in front of him and have him read it.
24 You don't have to read anything. We've identified it. I
25 don't think it matters all these other details in terms of

DIRECT EXAMINATION -- EUGENE KHAVINSON -- PLAINTIFF COUNSEL

1 question. I will not be done with the witness by 1:00.

2 THE COURT: Is there another area that you can
3 cover within the next few minutes?

4 MR. GRASING: Give me one second and I'll tell
5 you. Yes.

6 THE COURT: Okay. Let's continue then.

7 MR. GRASING: I have to put another document on
8 the screen. Can you shut off the screen for a second so
9 the witness can't see it and the Defense Counsel can't see
10 it.

11 THE COURT: Only have up Mr. Grasing's screen
12 please.

13 MR. GRASING: Just bare with me one second. Can
14 I have one second to ask a question of Defense Counsel off
15 the record that my extent, and I can get fifteen minutes
16 worth of quick questions in.

17 THE COURT: Off the record.

18 (Off-the-record discussion.)

19 THE COURT: All right. Come back Counsel this
20 is going to be a good time to break. You all get
21 yourselves together and then we'll deal with these
22 administrative issues before the jury comes back and ready
23 to go promptly at 2:30.

24 MR. GRASING: Yes.

25 THE COURT OFFICER: All rise jury exiting.

DIRECT EXAMINATION -- EUGENE KHAVINSON -- PLAINTIFF COUNSEL

1 (Off-the-record discussion.)

2 THE COURT OFFICER: All rise, jury entering.

3 THE COURT: Thank you. Everyone may be seated.

4 Mr. Grasing, are you ready to proceed?

5 MR. GRASING: Yes.

6 THE COURT: Mr. Khavinson, again, I remind you
7 that you're still under oath.

8 MR. GRASING: Can I have my screen shown to the
9 jury, as well. This is Defendant's Exhibit A, the Chase
10 Bank records.

11 THE COURT: And a reminder Mr. Grasing to please
12 speak clearly in to the mic as loudly as you can to make
13 sure everyone can hear you.

14 MR. GRASING: Yes.

15 THE COURT: Thank you. Let's have the screen
16 shared, Defendant's Exhibit A to the jury and Counsel's
17 screens, as well as the Court, and the witness thank you.
18 I believe that's already been done?

19 THE SUPREME COURT CLERK: Yes.

20 CONTINUED DIRECT EXAMINATION BY MR. GRASING:

21 Q Mr. Khavinson I'd like to direct your attention to
22 page 159 of the exhibit. It's a check made payable to 290 13th
23 Street LLC. It's check number 1166 dated 8/16 of '10 to 2546 East
24 17th Street Realty LLC in the amount of \$20,000. Do you recognize
25 that check?

DIRECT EXAMINATION -- EUGENE KHAVINSON -- PLAINTIFF COUNSEL

1 A Yes.

2 Q What was that check for?

3 A It was a small loan to 290 13th Street LLC from a
4 company which was controlled by Faybyshev for a short term loan to
5 buy material before our shareholders had put additional funds to
6 the company not to slow down the construction.

7 Q Was that ever approved by all of the members?

8 A It was approved by all members multiple times, because
9 everybody agreed that nobody wanted to put another dollar in to the
10 company. So therefore, everybody was glad that the funds are
11 available for short term so the construction doesn't slow down.

12 Q When was David Aronov asked if he consented?

13 A I saw Aronov every day in my office. And it was his
14 office at that time. He worked there. So we had conversations on
15 different subjects all the time. So it was not a secret.

16 Q Could you be any -- well, my question was when did you
17 ask him for his consent can you be anymore specific?

18 A On 8/16 whatever the year is, '21. I can't see.
19 August 16th, I can't see the year.

20 THE COURT: Can you amplify that since you're
21 the one managing this exhibit, thank you. Is that a little
22 bit Mr. Khavinson?

23 THE WITNESS: August 16th. It's simply not
24 written.

25 MR. MESTECHKIN: Your Honor may I?

DIRECT EXAMINATION -- EUGENE KHAVINSON -- PLAINTIFF COUNSEL

1 THE WITNESS: So I cannot say what year it is.

2 I see it's 8/16.

3 Q Whose handwriting is that?

4 A Faybyshev, probably.

5 Q Whose signature is on the check?

6 A Vyacheslav Faybyshev.

7 Q Was there any construction, or ongoing operations by
8 the LLC in 2020?

9 A Not in 2020, no.

10 Q Were there any ongoing operations from the LLC in
11 2010?

12 A 2010, yes.

13 Q Did you -- what did David Aronov tell you when you
14 asked him for his consent as to whether the LLC could take on this
15 loan?

16 A He agreed with short term loans, no interest. It's a
17 no brainer. Instead of him putting in money and other shareholders
18 putting in money. So we had placed that Faybyshev put the money
19 basically.

20 Q Did you ask him for this particular loan, or was it
21 something different?

22 A I do not remember what happened 13 years ago exactly.

23 Q Did you confirm it in writing that he didn't?

24 A I did not confirm in writing. It wasn't necessary. I
25 would be confirming everything in writing I would still be writing.

DIRECT EXAMINATION -- EUGENE KHAVINSON -- PLAINTIFF COUNSEL

1 Q Did they have access to the e-mail at that time?

2 A We don't need e-mail when I saw him face to face.

3 Q Did you send him an e-mail confirming his consent?

4 A I did not send him an e-mail. I did not send anybody
5 an e-mail. Not any other shareholders.

6 Q Did you ever ask David Aronov to contribute any
7 additional funds instead of obtaining the loan from 25 46 East 96th
8 Street LLC?

9 A I asked every shareholder about that, and everybody
10 agreed that the alternative method of borrowing the money from
11 Faybyshev is much better.

12 Q Why didn't you confirm it in writing?

13 A Because I don't need to confirm it in writing.
14 Everybody agreed to that. That's not a major loan. And that loan
15 was repaid many times over.

16 Q When was it repaid?

17 A Soon after, when we got funds.

18 Q Do you have a record of when it was repaid?

19 A It probably was a record I'm sure.

20 Q Who wrote the operating agreement for the company, was
21 that you or somebody else?

22 A I don't remember.

23 Q Does the operating agreement the way you understand it
24 -- no, withdrawn. Let me pull up Exhibit A. If you can shut the
25 screen for a second please. I'm sorry, Plaintiff's Exhibit One

DIRECT EXAMINATION -- EUGENE KHAVINSON -- PLAINTIFF COUNSEL

1 just so it's not published to the jury please. I'm going through
2 the access right now.

3 THE COURT: So let's stop publishing
4 Defendant's A to the jury. Thank you.

5 Q You can go back. Plaintiff's Exhibit One the
6 operating agreement dated February 9, 2008 is on my screen.

7 THE COURT: Are you asking that you're ready for
8 this to be published to the jury on screen?

9 MR. GRASING: Yes.

10 THE COURT: They have it. Since we're using a
11 lot of screen time and documents through the screens
12 thankfully, the protocol I'm going to put in place if you
13 want something published to the jury you should ask me.
14 And I will let our clerk know where and to who, because if
15 I don't agree to do that it won't be done. If you want
16 something you request permission of the court and the court
17 will direct accordingly. Okay.

18 MR. GRASING: Yes.

19 THE COURT: You may continue.

20 Q I'd like to draw your attention to article four of the
21 agreement management, in particular paragraph C, subparagraph I.

22 THE COURT: And what we're publishing right now
23 is Plaintiff's Exhibit One?

24 MR. GRASING: Yes.

25 Q In light of this section of the agreement that says

DIRECT EXAMINATION -- EUGENE KHAVINSON -- PLAINTIFF COUNSEL

1 Eugene Khavinson and Mikhail Kremerman may not make any of the
2 following management decisions without obtaining unanimous consent
3 of all members, in particular to create any indebtedness to borrow
4 money whether or not secured. Why didn't you confirm every members
5 consent in writing?

6 A Because nowhere in this agreement said I had to
7 confirm in writing. Oral confirmation was sufficient. This was
8 not a major loan for this size of corporation or LLC.

9 Q Was the permission or the consent of all the members
10 for the \$750,000 loan to Omnibuild to pay the Jerzy Schnapp
11 settlement confirmed in writing?

12 A That's not an indebtedness. I was allowed to make
13 loans. I wasn't allowed to take loans, accept loans. But I was
14 allowed to make loans.

15 Q Okay. So are you saying in your opinion subparagraph
16 five that we just read allows you to give out that loan without any
17 other members consent?

18 A Correct.

19 Q Now continuing down that same section subparagraph
20 four things that Eugene Khavinson and Mikhail Kremerman are not
21 allowed to do. In light of the fact that it says to do any act
22 that make it impossible to carry on the ordinary business of the
23 company, why didn't you confirm everyone's consent in writing to
24 that \$750,000 loan?

25 A In order to do what, to make it impossible to carry

DIRECT EXAMINATION -- EUGENE KHAVINSON -- PLAINTIFF COUNSEL

1 that loan. That loan did not make it impossible to carry on
2 ordinary business of the company.

3 Q How much did you have in working capitol for the LLC
4 at that time?

5 A I cannot tell you.

6 Q You don't remember?

7 A I don't remember.

8 Q First, do you remember being deposed and providing
9 sworn testimony in the Dinver action entitled Omnibuild plaintiff
10 against Dinver and associates Inc. Reliable General Agency Date
11 Inc. And the date was August 23, 2019 at 10:15 a.m.?

12 A I did give testimony.

13 Q Now in particular first I'm looking at, and this
14 should not be published to the jury because this is not in
15 evidence. Page 105?

16 MR. MESTECHKIN: Your Honor, side bar before
17 Mr. Grasing proceeds?

18 THE COURT: Okay. Off the record.

19 (Off-the-record discussion.)

20 THE COURT OFFICER: Remain seated come to
21 order.

22 THE COURT: Back on the record. Given the
23 off-the-record discussion Mr. Grasing are you ready to
24 continue?

25 MR. GRASING: Yes.

DIRECT EXAMINATION -- EUGENE KHAVINSON -- PLAINTIFF COUNSEL

1 THE COURT: Hold on. Let's take a short
2 recess.

3 (Off-the-record discussion.)

4 THE COURT: All rise. Jury exiting.

5 THE COURT OFFICER: All rise jury entering.

6 THE COURT: Everyone may be seated. You may
7 continue Mr. Grasing.

8 MR. GRASING: All right Mr. Khavinson.

9 THE COURT: Turn on your mic.

10 Q Mr. Khavinson, we're talking about the same deposition
11 in the Omnibuild against Dinver Associates that you said you gave
12 at 10:15 a.m. beginning August 23, 2019. Do you recall being asked
13 the following question, beginning actually it's on page four to
14 give a reference to what you were talking about page 104, line two:

15 Question, where was the money before it was
16 released?

17 Answer, it was sitting in Mark Kran's escrow
18 account.

19 Question, after it was released it went into an
20 LLC bank account?

21 Answer, it went into Khavinson & Associates IOLA
22 account on behalf of LLC. LLC had no account at that time.
23 Then there was back and forth between the attorney and the
24 witness.

25 THE COURT: So Mr. Grasing all your doing is

DIRECT EXAMINATION -- EUGENE KHAVINSON -- PLAINTIFF COUNSEL

1 asking the witness do you recall being asked this question
2 and giving this answer.

3 Q Do you recall being asked that question and giving
4 that answer?

5 A I don't recall. I'm reading it, but I don't recall
6 independently.

7 Q Do you recall being asked this question beginning on
8 page 104 of the same deposition.

9 A I don't see page 104. Okay.

10 Q Do you recall being asked the question beginning on
11 page 104 line 20:

12 Question, that number was distributed within 30
13 days of the settlement agreement?

14 Answer, no I'm not sure about 30 days talking
15 distribution.

16 Question, to the Plata firm?

17 Answer, that's not how it went.

18 Q Do you recall being asked those two questions and
19 giving those answers?

20 A I independently do not recall if I was asked those
21 questions and given those answers.

22 Q Next on page 105 on the of the same deposition
23 beginning on line two. Do you recall being asked the question:

24 And tell me how it went?

25 Answer, when we give the settlement in order for

DIRECT EXAMINATION -- EUGENE KHAVINSON -- PLAINTIFF COUNSEL

1 Platta Law Firm to allow Mark Kranz to release funds he
2 wanted to get paid first. Zom Insurance, Northfield's
3 million dollar policy.

4 Q Do you recall being asked that question and giving
5 that answer?

6 A Not independently, but I'm reading transcript so I did
7 give that answer.

8 Q Are you talking about the Jerzy Schnapp settlement?

9 A I guess it's the Jerzy Schnapp settlement, yes.

10 Q Do you recall being asked the following question
11 beginning on page 105 at line 8:

12 Question, Zom paid a million dollars?

13 Answer, paid million dollars.

14 Question, then Omnibuild borrowed \$750,000 or
15 thereabouts from 35 West End Avenue LLC as a short loan.
16 Paid \$749,800 to Platta firm on behalf of Jerzy Schnapp.
17 Eugene Khavinson & LLC paid \$200. The funds from the
18 escrow account were released immediately and went to IOLA
19 account of Khavinson & Associates. And Khavinson &
20 Associates immediately on behalf of LLC issued check in the
21 amount of \$749,800 to Omnibuild in return for promissory
22 note which Omnibuild president Vyacheslav Faybyshev signed.
23 And immediately after Omnibuild repaid the loan to 35 West
24 End Avenue ND.

25 Q And it continues on the next page, page 106 beginning

DIRECT EXAMINATION -- EUGENE KHAVINSON -- PLAINTIFF COUNSEL

1 at line two. I'll turn the screen to it.

2 Question, the amount \$750,000 and that's the end
3 of story very simple.

4 Q Do you recall being asked those questions and giving
5 those answers?

6 A I recall being asked those questions. I probably gave
7 those answers.

8 Q As you sit here today, is that what happened?

9 A Pardon me?

10 Q Is that what happened what you testified to at that
11 deposition?

12 A I think it wasn't exactly what happened. My
13 recollection is the 35 West End Avenue LLC lend our LLC \$750,000.
14 LLC in turn, lent \$749,800 to Omnibuild so Omnibuild can settle the
15 case with Schapp, which it did. Then the funds were released. And
16 as soon as the funds were released, LLC repaid the loan of \$750,000
17 to 35 West End Avenue LLC. That's exactly how it happened. Maybe
18 I wasn't that accurate.

19 Q Okay. Give me one second. I'll turn off the screen
20 from my end and go to the appropriate exhibit. I'd like to draw
21 your attention to Plaintiff's Exhibit 4H, the LLC's 2014 corporate
22 income tax return. First, could you take a look please, I direct
23 your attention to the page of the exhibit that is the Federal
24 statements. The first one on the page that's referenced is the
25 statement one, other deductions. In particular, I draw your

DIRECT EXAMINATION -- EUGENE KHAVINSON -- PLAINTIFF COUNSEL

1 attention to statement four, form 1065, schedule L, line 17 under
2 current liabilities.

3 A Yes.

4 Q If you look at the first one it says loan, 2546 East
5 17th Street \$88,000, do you see that?

6 A Yeah I see that.

7 Q And there's nothing at the end of the year, what do
8 you understand that to mean?

9 A That it was paid off.

10 Q Next there's listed here a loan to a A. Bogoslavski
11 for \$250,000 at the beginning of the year. And then there's a
12 blank for the end of the year liabilities, do you see that?

13 A I see that.

14 Q What's your understanding of that?

15 A My understanding if that were the correct number that
16 Bogoslavski lent \$250,000 to LLC. And at the end of the year, LLC
17 paid him \$250,000 which is completely incorrect. Bogoslavski never
18 lent \$250,000, \$100,000, or \$1 to LLC. And therefore this second
19 line is incorrect.

20 Q Did you review this tax return before it was filed for
21 the LLC?

22 A I wasn't reviewing that particular statement, because
23 it really didn't make any difference for purposes of LLC. LLC has
24 profit and loss statement where it has accurate representations.
25 So I ordered my bank statements and therefore that would be up to

DIRECT EXAMINATION -- EUGENE KHAVINSON -- PLAINTIFF COUNSEL

1 Bogoslavski to talk to his accountant, having to be Mr. Rosenberg
2 and say that it's incorrect.

3 Q So Mr. Rosenberg was -- Serge Rosenberg is that who
4 you're talking about?

5 A Correct.

6 Q And Serge Rosenberg you understand to be
7 Mr. Bogoslavski's personal accountant?

8 A Yes, my understanding.

9 Q Is that the same Mr. Serge Rosenberg who is the LLC's
10 accountant?

11 A Same Mr. Rosenberg.

12 Q Who prepared this tax return?

13 A Yes.

14 Q Was he the only accountant for the LLC from 2007
15 through at least 2014?

16 A The only tax preparer, correct. He's not an
17 accountant.

18 Q Did you, because I don't believe -- well, withdrawn.
19 Did you review any part of this tax return before it was filed?

20 A I reviewed K1 forms. And I had some comments for
21 Mr. Rosenberg. He had to reduce certain things whatever I caught.
22 So that's it.

23 Q Did you ever ask Mr. Rosenberg about this particular
24 schedule?

25 A I never did, because I never looked at that statement

DIRECT EXAMINATION -- EUGENE KHAVINSON -- PLAINTIFF COUNSEL

1 regarding Mr. Bogoslavski.

2 Q Well, was the first entry correct that belonged to
3 2546 East 17th Street that had a liability of \$88,000 at the
4 beginning of the calendar year of 2014 and no liability at the ends
5 of the year, is that correct?

6 A I'm not sure if the number is correct, but 2546 17th
7 Street did lend money. And you just showed me the check five
8 minutes ago to our LLC. So it might be correct, might be incorrect
9 in terms of the number. But in terms of lender it's correct.

10 Q Is it correct to say that the LLC paid it off in 2014?

11 A Yes.

12 Q Then there's a loan listed here from an A Gorlicht?

13 A Correct.

14 Q In the amount of \$48,000?

15 A I see that.

16 Q First, who is he?

17 A He is Faybyshev's friend, my understanding.

18 Q When was the loan taken out?

19 A I don't remember, but it was Mr. Gorlicht did lend
20 money to LLC for construction to continue. I'm not sure about
21 \$48,000 if that's a correct number. It might \$40,000. I'm not
22 going to argue. It is what it is here. I will look at bank
23 statements and I will know if it's correct or not correct. But in
24 principal Mr. Gorlicht did lend money to LLC.

25 Q Did you ever ask any of the members whether they

DIRECT EXAMINATION -- EUGENE KHAVINSON -- PLAINTIFF COUNSEL

1 consented to you taking that loan from Mr. Gorlicht?

2 A We already discussed it with you on previous
3 questions. That we continued to discuss those type of loans to all
4 LLC members and everybody consent.

5 THE COURT: Mr. Khavinson, you will be asked a
6 question and you can probably expect that that question is
7 going to be asked numerous times in different ways. It's
8 part of the process. So please avoid the extrinsic
9 comments and simply answer the question, without
10 instructions back to the attorney who is asking you the
11 questions.

12 THE WITNESS: Okay.

13 THE COURT: Next question.

14 Q The next entry down in the same schedule is an I.
15 Michellin, do you see that?

16 A I see that.

17 Q Who is that?

18 A It's Faybyshev's friend.

19 Q Is it accurate where it says at the end of the
20 calendar year 2014, the LLC had a liability to them of \$13,000?

21 A Yes.

22 Q Is it accurate where it says at the end of the year
23 there was no liability to them?

24 A Correct.

25 Q And does that mean that the LLC paid it off?

DIRECT EXAMINATION -- EUGENE KHAVINSON -- PLAINTIFF COUNSEL

1 A Yes.

2 Q When was this loan taken out?

3 A I don't know.

4 Q What were the terms of the loan?

5 A I don't remember.

6 Q Did the LLC have to pay any interest?

7 A No interest on any of these loans.

8 Q Did the LLC sign a promissory note?

9 A No.

10 Q Did the LLC sign a promissory note for Mr. Gorlicht's
11 loan?

12 A No.

13 Q Was there any interest paid on that?

14 A No.

15 Q What was the funds from Mr. Gorlicht's loan used for?

16 A For construction.

17 Q Any particular part?

18 A Don't remember.

19 THE COURT: Mr. Grasing, do you want this
20 exhibit to be published to the jury at this point I just
21 want to make sure that it's not.

22 MR. GRASING: I thought it was. I lost track so
23 the answer is yes.

24 THE COURT: Can we have Plaintiff's Exhibit 4H
25 published to the jury please so that they can follow along.

DIRECT EXAMINATION -- EUGENE KHAVINSON -- PLAINTIFF COUNSEL

1 Does the jury have it up. Okay. I'm going to direct you
2 to statement four, other current liabilities. That is
3 where the testimony is coming from right now. Next
4 question Mr. Grasing.

5 Q Underneath the one to I. Michellin, it says loan OBT
6 \$2,650. First, who is OBT?

7 A I don't know.

8 Q Next one is a loan to 561 -- I'm sorry, 561 11th
9 Street in the amount, the liability in the beginning of the
10 calendar year of 2014 was \$47,000. First, who is 561 11th Street?

11 A One of the Faybyshev's construction sites.

12 Q When was the loan taken out?

13 A I don't remember.

14 Q Did you ask the members whether they consented to take
15 on that loan?

16 A I did.

17 Q When?

18 A Before we took the loan.

19 Q When did you take out the loan, how long before 2014?

20 A I don't remember.

21 Q Did you sign a promissory note?

22 A No.

23 Q Did you sign a loan agreement?

24 A No.

25 Q Was there any interest paid on this?

DIRECT EXAMINATION -- EUGENE KHAVINSON -- PLAINTIFF COUNSEL

1 A No.

2 THE COURT: Mr. Grasing, there's already been
3 testimony that there was no interest on any of these loans.
4 So you do not need to ask this witness that question again.
5 Next question.

6 Q Was that loan paid off during the calendar year of
7 2014?

8 A Yes.

9 Q The next entry is loan Celinchuck with a liability at
10 the beginning of the year of \$30,000. First, who is or what is
11 Celinchuck?

12 A Mr. Celinchuck is also associated with Faybyshev,
13 either his friend. Most likely his friend.

14 Q When did the LLC take out the \$30,000 loan?

15 A I don't remember.

16 Q Did the LLC pay it back in the calendar year of 2014?

17 A Yes.

18 Q Was there a promissory note signed?

19 A No.

20 Q Was there a loan agreement signed?

21 A No.

22 THE COURT: Anything else?

23 MR. GRASING: Yes.

24 Q Do you have any understanding as to why there is no
25 loan listed here from 35 West End Avenue to the LLC?

DIRECT EXAMINATION -- EUGENE KHAVINSON -- PLAINTIFF COUNSEL

1 A I don't have any understanding.

2 Q Didn't you just testify that 35 West End Avenue LLC
3 lent the LLC \$750,000?

4 A I did.

5 Q And didn't you just testify that the LLC then lent
6 that money to Omnibuild?

7 A Yes, I did.

8 Q What year was that?

9 A 2014, probably. End of 2000 -- 2014.

10 Q Do you have any understanding as to why that loan is
11 not listed here?

12 MR. MESTECHKIN: Objection, asked and answered.

13 THE COURT: Overruled. You may answer

14 Mr. Khavinson.

15 A I don't remember why its not listed here, but it was
16 very short term loan.

17 MR. GRASING: I'm just going to turn to the next
18 exhibit that should be published. It's already in
19 evidence.

20 THE COURT: Which exhibit is that?

21 MR. GRASING: The general ledger from 2014.

22 THE COURT: I just need the exhibit number to
23 make sure our record is clear.

24 MR. GRASING: Two.

25 THE COURT: Go ahead. Can we get Plaintiff's

DIRECT EXAMINATION -- EUGENE KHAVINSON -- PLAINTIFF COUNSEL

1 Exhibit Two up on the screen for everyone.

2 MR. GRASING: Yes, I'm pulling it up now.

3 THE COURT: While you get to your location I do
4 want to indicate that there is a Artyom Kirzhner trying to
5 get into the lobby and we've been trying to accept this
6 person. A-R-T-Y-O-M, K-I-R-Z-H-N-E-R. If that person is
7 listening they can call in to the number.

8 MR. MESTECHKIN: Noted Your Honor. It looks
9 like they're in now. They might be trying to get in
10 through a different device.

11 MR. GRASING: Your Honor I have Plaintiff's
12 Exhibit Two, the 2014 accounting ledger for the LLC on my
13 screen. I'd like it published to the jury please.

14 THE COURT: You may do so. I believe you have
15 the capacity to do that, as well. Let us know if you need
16 our assistance.

17 MR. GRASING: It's on my screen and the display.

18 THE COURT: I see that from the jury that it is
19 being published on their respective screens. You may
20 continue, next question.

21 Q I'd like to direct your attention to page one,
22 transaction last year 1/1/2014 through 12/31/2014 that's
23 Plaintiff's Exhibit Two. First, I'm directing your attention to
24 capital it says capital A. Bogoslavski 9/10/2014 in the amount of
25 \$112,844. What was that for, if you know?

DIRECT EXAMINATION -- EUGENE KHAVINSON -- PLAINTIFF COUNSEL

1 A It's a return on Mr. Bogoslavski's investment of
2 \$150,000.

3 Q Did Mr. Bogoslavski invest any other money other than
4 the \$150,000?

5 A Mr. Bogoslavski invested \$150,000. And he received at
6 the end \$112,844.

7 Q Did he loan any other money to the LLC?

8 A He did not loan any money to the LLC.

9 Q Do you have any understanding as to where the \$250,000
10 listed on the 2014 Federal statement that we were just looking at
11 --

12 A He purchased five percent stock in LLC for \$150,000.

13 Q Where did he purchase it from?

14 A He purchased if from, two and a half percent from
15 Vyacheslav Faybyshev and two and a half percent from Michael
16 Kremerman. But the money were not paid to Mr. Kremerman and
17 Mr. Faybyshev. The money was invested into LLC.

18 Q When did that transaction occur?

19 A That I cannot tell you. Before 2014.

20 Q Did it happen while Mr. Faybyshev was a managing
21 member of the LLC?

22 A I don't remember that.

23 Q Did it happen when Mr. Kremerman was a managing member
24 of the LLC?

25 A Either/or, yes.

DIRECT EXAMINATION -- EUGENE KHAVINSON -- PLAINTIFF COUNSEL

1 Q Did you notify any of the other members of the sale of
2 any of those membership shares?

3 A It was not sale, because there was no consideration
4 for Mr. Faybyshev or Mr. Kremerman.

5 Q What do you mean by that?

6 A Mr. Faybyshev and Mr. Kremerman did not receive one
7 penny from that transaction. That \$150,000 was deposited in to
8 attorney account with LLC.

9 Q Why was Mr. Bogoslavski transferred five percent of
10 the shares for \$150,000 rather than any other amount?

11 A Mr. Bogoslavski was offered to buy five percent shares
12 for \$150,000 which should be deposited into LLC. And he liked the
13 idea.

14 Q Who determined the amount of the investment the cost
15 of the five percent of the membership?

16 A He was offered it by Faybyshev and Kremerman.

17 Q Did they offer it to the company, meaning the LLC?

18 A They did not offer it to LLC. They offered it to
19 Mr. Bogoslavski.

20 Q How was the \$150,000 determined?

21 A It was determined by Mr. Faybyshev and Mr. Kremerman.
22 And Mr. Bogoslavski agreed to that number.

23 Q Why didn't the LLC attempt to buy five percent
24 membership back for \$150 ,000?

25 A Because LLC would have to pay \$150,000. And it would

DIRECT EXAMINATION -- EUGENE KHAVINSON -- PLAINTIFF COUNSEL

1 be less on the operating account of LLC. And it wasn't the terms
2 of Mr. Faybyshev and Mr. Kremerman. Their intent was to bring
3 \$150,000 to that written agreement of LLC. So they gave up five
4 percent of their shares.

5 Q I believe you recently testified that David Aronov
6 paid \$150,000 or 3.3 percent interest in the LLC; is that correct?

7 A That's correct.

8 Q So is it fair to say that the unit price was less for
9 Mr. Bogoslavski's shares?

10 A Yes, it was.

11 Q Do you have any understanding as to why?

12 A It's a market. You can sell your shares at any price
13 you want.

14 Q According to who?

15 A According to the seller.

16 Q Is that what the operating agreement says?

17 A The operating agreement does not say anything to that.
18 That is the shareholder can give up his shares in return for an
19 amount of money deposited in to the LLC.

20 Q I'd like to direct the witness's attention to exhibit
21 A. I'll pull it up on my screen momentarily. I'm going to
22 disconnect for a second. It's back on. I believe it's been
23 published to both the witness and the jury. This is the operating
24 agreement. This is Plaintiff's Exhibit One. In particular I'd
25 like to draw your attention to article six, withdrawal of a member.

DIRECT EXAMINATION -- EUGENE KHAVINSON -- PLAINTIFF COUNSEL

1 I draw your attention to paragraph A, in particular the portion
2 where it states if a member dies or desires to sell, transfer, or
3 otherwise dispose of all or any part of his interest in the
4 company. Such members and/or his heirs, selling member, must offer
5 to sell and convey such interest to the company at a fair market
6 value. For the purpose of this agreement fair market value shall
7 be determined by the parties but by unanimously better bargain. If
8 the parties cannot agree within fifteen days from the selling
9 members offer, any member in petition of the American Arbitration
10 Commission will appoint or this determination of FMV shall be
11 binding on all parties within 30 days after F and V determination,
12 the company shall deliver to the selling member a written notice
13 either accepting or rejecting the offer. In light of that
14 provision, why -- well, was that provision followed with the
15 transfer of the shares that Mr. Bogoslavski purchased?

16 A Mr. Bogoslavski purchased five percent shares for
17 \$150,000. But \$150,000 was not paid to giving up shareholders.
18 Shareholders actually gave gift to the LLC of \$150,000 giving up
19 five percent of their shares. They did not even one penny they
20 just gave this donation to the corporation. And get less debt and
21 can finish the project. And at that point no shareholder was
22 interested in buying any shares from anybody for any amount of
23 money.

24 Q When did you ask David Aronov whether he was
25 interested?

DIRECT EXAMINATION -- EUGENE KHAVINSON -- PLAINTIFF COUNSEL

1 A I asked him at the same time.

2 Q How much money did you say it would cost?

3 A \$150,000.

4 Q What was done to determine that was fair market value?

5 A It wasn't fair market value. The company, at that
6 time had debt and it wasn't doing that great. So the lawsuit was
7 there. So therefore, the company needed more funds. And that was
8 the way for two major shareholders; such as, Faybyshev and
9 Kremerman to bring another \$150,000 to LLC. And they did so.

10 Q I'd like to draw your attention to the operating
11 agreement Plaintiff's Exhibit One, article six subparagraph C where
12 it says: "The members agree to sign such additional documents as
13 may be required in order to sell and admit additional interest to
14 the company in pursuance of article 6A, 6B, as well as among other
15 things, to provide for the division of documents profits, losses,
16 and the cash flows among the members." Were any such documents
17 executed by the members for the transfer of these shares from
18 Mr. Kremerman and Mr. Faybyshev and Mr. Bogosalvski?

19 A All members signed an amendment where Mr. Bogoslavski
20 was listed at five percent shareholder. Mr. Faybyshev was listed
21 to have 27 and a half percent shares. And Mr. Kremerman also had
22 27 and a half percent shares. And everybody else was the same
23 amount.

24 THE COURT: Anything else Mr. Grasing?

25 MR. GRASING: Yes, I'm just looking to pull it

DIRECT EXAMINATION -- EUGENE KHAVINSON -- PLAINTIFF COUNSEL

1 up on my screen the exact portion. We're going back to the
2 general ledger for the LLC.

3 THE COURT: That would be Plaintiff's Exhibit
4 Two, correct?

5 MR. GRASING: Yes.

6 THE COURT: Let's go. Next question.

7 Q In particular I'd like to draw your attention to the
8 entries for Yana Soskil for this is on page entitled transaction
9 last year 1/1/2014 through 12/31/2014. There's a payment listed on
10 9/10/2014 from Khavinson ampersand to Dennis Nayberg (phonetic) in
11 the amount of \$38,870. What was that for?

12 A What line is that?

13 Q If you look and see where it says Yana Soskil on line
14 20?

15 A What does it say?

16 Q Khavinson with a shorthand for the word and.

17 THE COURT: Mr. Grasing maybe what you can do
18 is take that cursor that you have available to you and
19 direct the witness with the cursor. It's now almost 4:00
20 and you had this witness from 2:30. Let's try and get it
21 done. Are you able to do that?

22 MR. GRASING: No, it doesn't appear that way on
23 my screen. The Adobe program that I have I can't do it
24 with the cursor or my finger.

25 THE COURT: So just get up and come approach the

DIRECT EXAMINATION -- EUGENE KHAVINSON -- PLAINTIFF COUNSEL

1 witness and use your finger then.

2 MR. GRASING: Sure.

3 Q You see right there?

4 A Yes, I see it.

5 THE COURT: Ask your question.

6 Q What was that entry for?

7 A Dennis Naiberg is Michael Kremerman's son-in-law. So
8 Michael Kremerman had also proceeds from his investment. And he
9 used those proceeds to pay for certain things; such as he paid to
10 his son-in-law \$38,870. And Khavinson and that means Khavinson &
11 Associates trust account.

12 Q What were the services he was paid for?

13 A He didn't pay for any services. It's Michael
14 Kremerman's money. He just directed LLC to pay his money instead
15 of to him to his son-in-law.

16 Q Do you have any understanding as to why?

17 A That's how he wanted. It doesn't matter why. It's
18 his money he can do whatever he wants to do.

19 Q Respectfully, that didn't answer the question. Do you
20 know?

21 A Do I know why?

22 Q Yes.

23 A Because that's the way he want it. He told me can you
24 please send a portion of my money in the amount of -- to Dennis
25 Naiberg who I know very well. I said yes we can do that. And we

DIRECT EXAMINATION -- EUGENE KHAVINSON -- PLAINTIFF COUNSEL

1 deducted it from total of Michael Kremerman's money.

2 Q Is Dennis Naiberg an attorney?

3 A He is not an attorney.

4 Q Directly above that there's a payment to Yana Soskil
5 in the amount of \$12,000?

6 A Yana Soskil is Michael Kremerman's wife. So he asked
7 me to send \$12,000 of his money to his wife.

8 Q On June 16, 2014 there's a payment to Braitheman and
9 Associates (phonetic.) It says for M. Kremerman in the amount of
10 \$50,000. What was that for?

11 A \$50,000 Michael Kremerman asked me to send money to
12 his attorney in the amount of \$50,000 as an advance to distribution
13 right before three months -- three and a half months before
14 distribution. We already had the funds. So it was his money, but
15 we didn't do distribution so he asked for an exception to send that
16 advance which was deducted from his total sum, as well.

17 Q Did his attorney represent him for any action he took
18 on behalf of the LLC?

19 A No.

20 Q The entry directly above that on April 5, 2014 it list
21 a Citibank account wired out to S-O-L-S-T in the amount of \$24,644.
22 What was that for?

23 A Solst is Michael Kremerman company. And he ask me to
24 wire his money to that company Solst.

25 Q Next, turn to the next page. Direct your attention to

DIRECT EXAMINATION -- EUGENE KHAVINSON -- PLAINTIFF COUNSEL

1 where it says legal fees an entry of 2/27/14 to Khavinson and A-S-S
2 legal in the amount of \$7,500. What was that for?

3 A Let me find it first. There's a lot of legals here.

4 MR. GRASING: May I approach the witness?

5 THE COURT: You may.

6 MR. GRASING: I'm going to look over your
7 shoulder again.

8 Q What was that entry for?

9 A That entry for Khavinson and Associates as a receiver
10 of \$7,500 for legal services. And I don't know exactly what this
11 for. Most likely to paid Khavinson and Associates already paid to
12 Susklovich fee. Most likely that's what it was. And it got
13 reimbursed when the money came in. It got reimbursed of \$7,500.

14 Q The next page of the same exhibit banking summary last
15 year 1/1/2013 to 12/31/2013 it says loan to Gregory Celinchuck for
16 \$30,000. Is that the same loan or a different loan from the
17 \$40,000 that we're looking at?

18 A If it's return of the money, I don't understand this
19 page. So it's either Celinchuck lend this money, or did he receive
20 the payment. I don't know.

21 Q If you look further down the same page underneath in
22 bold and in capitals expenses it says legal fees in the amount of
23 \$14,265.21 cents. Do you see that?

24 A In expenses \$14,265.21, yeah I see that.

25 Q What was that for?

DIRECT EXAMINATION -- EUGENE KHAVINSON -- PLAINTIFF COUNSEL

1 A I don't know what it's for. It could be for different
2 legal fees. It could have been legal fees for representing the
3 company against Schnapp where we hired attorney's who were
4 specializing in --

5 THE COURT: Well Mr. Khavinson, if you know you
6 know. If you don't know I don't want you to make up what
7 legal fees were distributed.

8 THE WITNESS: I don't know. I'm not going to
9 speculate.

10 THE COURT: I don't want you to make up what
11 legal fees this is attributed to.

12 Q Were any of your legal fees paid to your law firm?

13 A No legal feels were paid to me or my law firm.

14 THE COURT: Anything else Mr. Grasing?

15 MR. GRASING: No. I'm going to turn to the bank
16 records now.

17 Q I wanted to draw your attention to Defendant's Exhibit
18 A, check number 1188 dated 9/22. It appears to be from 2546 East
19 17th Street to 290 13th Street LLC in the amount of \$15,000. What
20 was that for?

21 A I don't remember.

22 Q I'd like to direct your attention to the same exhibit,
23 check number 10110 from 2546 East 17th Street Realty LLC. It's
24 check number 1191 payable to 290 13th Street LLC in the amount of
25 \$13,000. What was that for?

DIRECT EXAMINATION -- EUGENE KHAVINSON -- PLAINTIFF COUNSEL

1 A I don't remember.

2 Q I'd like to direct your attention to the same exhibit
3 Defendant's Exhibit A. It is check number 1202 dated 12/6 of '10
4 from 2546 East 17th this Street Realty LLC made payable to 290 13th
5 Street LLC in the amount of \$20,000. What was that for?

6 A I don't remember.

7 Q I'd like you to look at Defendant's Exhibit A on page
8 268 I believe, and it is check number 1399 dated February 1, 2011
9 to 290 13th Street LLC. It is made payable to Alpha Omega Coverage
10 Corp. In the amount of \$722, it appears to be 80 cents. What was
11 this for?

12 A It says in the memo, liability insurance.

13 Q Did you have liability insurance?

14 A I did.

15 Q Is that on the construction project?

16 A Yes.

17 Q Did you ever make a claim for it when Jerzy Schnapp
18 was injured?

19 A Yes.

20 Q Was it in effect at that time?

21 A It was. Maybe it wasn't liability insurance. I don't
22 believe it's liability insurance.

23 Q What was it for, if not liability insurance?

24 A Liability insurance, I don't know what it's for. It
25 says something which I cannot read the last letter. I can't

DIRECT EXAMINATION -- EUGENE KHAVINSON -- PLAINTIFF COUNSEL

1 understand what it says. So I don't. I know it's for liability
2 insurance.

3 Q The LLC, did it have liability insurance on a
4 construction project in effect at the time Jerzy Schnapp --

5 A It was written for 290 13th Street LLC.

6 THE COURT: Mr. Khavinson you have to wait
7 until the question is completely asked. So please don't
8 cut Mr. -- don't cut him off. Okay. Next question.

9 Q I'd like to direct you're attention to the same
10 exhibit page 297 check number 1393 dated 3/22 of '11 from New Park
11 Slope Realty LLC made payable to 290 13th Street LLC in the amount
12 of \$13,000. What was this for?

13 A I don't remember.

14 Q Do you know what --

15 A I don't know.

16 Q Do you know what New Park Slope Realty LLC is?

17 A No.

18 Q Do you know any of the owners of New Park Slope Realty
19 LLC?

20 A I see signature of Vyacheslav Faybyshev so I assume
21 he's one of the owners.

22 Q Was this a loan issued by New Park Slope Realty LLC to
23 290 13th Street LLC?

24 A I don't know.

25 Q I'd like to direct your attention to the same exhibit.

DIRECT EXAMINATION -- EUGENE KHAVINSON -- PLAINTIFF COUNSEL

1 It is page 323. It is check number 1436 from 290 13th Street LLC
2 to Shimmons Paint Finishes LLC in the amount of \$150. What was
3 this for?

4 A For water damage touch up.

5 Q Was there water damage to the project?

6 A To the property, yes.

7 Q What did the water damage consist of?

8 A I don't remember.

9 Q Did you make the claim to recover for it under any
10 insurance policy?

11 A No, we did not.

12 Q What was the reason?

13 A Because insurance policies are much more deductible
14 than \$150.

15 Q Was there any other damage other than water damage
16 touch up?

17 A I don't know any other damage to the project.

18 Q I'd like to direct your attention to page 358 of the
19 exhibit check number 1327 in the amount of \$43,000 issued by 561
20 11th Street Realty LLC made payable to 290 13th Street LLC. What
21 was this for?

22 A It's a short term loan to LLC to continue
23 construction.

24 Q Which signature appears on this check?

25 A Vyacheslav Faybyshev.

DIRECT EXAMINATION -- EUGENE KHAVINSON -- PLAINTIFF COUNSEL

1 Q Was this at the same time when Mr. Faybyshev was a
2 managing member of 290 13th Street LLC?

3 A I don't remember that.

4 Q The Jerzy Schnapp settlement, was that a voluntary
5 settlement?

6 A It was a voluntary settlement, yes.

7 Q What was the reason that Omnibuild agreed to pay
8 \$749,800 rather than any other portion of that?

9 A The reason was so that Omnibuild could go and sue the
10 brokerage firm Dinver to try and recover the maximum damages, which
11 is \$750,000.

12 Q Have you made any attempts to recover the balance?

13 A Yes, we did make attempts to recover the balance. But
14 there's no place to recover balance from.

15 Q Is Omnibuild Inc. Still in business?

16 A Omnibuild Inc. Still in business?

17 Q Not just existing, but are they doing projects at this
18 time?

19 A I don't know what they're doing.

20 Q What were your attempts to recover the remaining
21 balance of the \$750,000 loan?

22 A I didn't make any attempts.

23 MR. GRASING: All right, thank you. I have
24 nothing further.

25 THE COURT: Mr. Mestechkin, are you ready to

CROSS EXAMINATION -- EUGENE KHAVINSON -- DEFENSE COUNSEL

1 proceed with your cross-examination of this witness?

2 MR. MESTECHKIN: Your Honor, if I may five
3 minutes just to collect my thoughts.

4 THE COURT: You may. While he does that let's
5 give the jury an opportunity to stretch their legs if they
6 like.

7 MR. MESTECHKIN: Thank you.

8 THE COURT OFFICER: All rise, jury exiting.

9 THE COURT: You may be seated. Off the record.
10 (Off-the-record discussion.)

11 THE COURT OFFICER: All rise. Jury entering.

12 THE COURT: Everyone may be seated.

13 Mr. Mestechkin, are you ready to proceed with your
14 questions?

15 MR. MESTECHKIN: Yes, Your Honor.

16 THE COURT: You may proceed.

17 CROSS EXAMINATION MR. MESTECHKIN:

18 Q Good afternoon Mr. Khavinson.

19 A Good afternoon.

20 Q Do you remember in what year you purchased the
21 property located at 290 13th Street in Brooklyn?

22 A 2007.

23 Q If I were to show you a picture of the property, would
24 you be able to state whether it's fair and accurate representation
25 of the property the way you purchased it?

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1 A Yes I would.

2 MR. MESTECHKIN: Your Honor with your
3 permission, may I show witness image?

4 THE COURT: Yes, you may.

5 MR. MESTECHKIN: Thank you.

6 Q Mr. Khavinson, the picture that you're holding in your
7 hands, is it fair and accurate depiction of the property that was
8 purchased by you and your brother in 2007?

9 A There are actually three properties here. The one in
10 the middle.

11 Q So the one in the middle is the property that was
12 purchased?

13 A Yes.

14 Q And is that the address 290 13th Street in Brooklyn?

15 A Yes.

16 MR. MESTECHKIN: Your Honor may we enter this
17 picture in evidence as Defendant's B1?

18 THE COURT: Yes, but I just want the record to
19 reflect what the witness is actually holding in his hand is
20 an eight and a half by eleven color copy of a photograph.
21 It is not the actual photograph. It's a color copy of a
22 photograph, correct?

23 MR. MESTECHKIN: Your absolutely correct Your
24 Honor. I have to be more specific.

25 THE COURT: Is that an accurate reflection

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1 Mr. Grasing?

2 MR. GRASING: Yes.

3 THE COURT: And that will be marked into
4 evidence, any objections, to that being marked into
5 evidence as Defendant's B, as in boy point one?

6 MR. GRASING: No.

7 THE COURT: It's in evidence.

8 MR. MESTECHKIN: Thank you, Your Honor.

9 Q Mr. Khavinson, to the best of your recollection, how
10 long did the construction take overall?

11 A Actually, longer than we predicted. From 2008 I don't
12 remember exactly maybe four five years. Maybe four.

13 Q During this time of construction, on how many
14 occasions did you visit a job site?

15 A Maybe once a month, or two.

16 Q For the entire duration of the construction?

17 A Yes.

18 Q Did you hear testimony of Mr. Aronov who said that he
19 visited job site a dozen or more times?

20 A Yes.

21 Q Did Mr. Aronov ever accompany you to the job site when
22 you were travelling there?

23 A I believe maybe two times, maybe three times we went
24 together.

25 Q And if I will show you a picture of a job site where

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1 it was taken during the construction, would you be able to attest
2 whether it's fair and accurate representation of what construction
3 site looked like during the construction?

4 A Yes I would.

5 MR. MESTECHKIN: Your Honor with your
6 permission, I would like to show image, that is a color
7 reproduction of the picture seven by eleven?

8 THE COURT: You may.

9 MR. GRASING: Can I just take a quick look at it
10 before you hand it to the witness? Thank you.

11 Q Mr. Khavinson, the image that you hold in your hands,
12 it roughly seven by eleven color representation of the photograph.
13 Does it represent a fair and accurate representation of the image
14 of the construction site at 290 13th Street?

15 A Yes.

16 MR. MESTECHKIN: Your Honor, I would like to
17 enter this image -- reproduction, color reproduction of the
18 image as Defendant's Exhibit B2.

19 THE COURT: Any objection?

20 MR. GRASING: No.

21 THE COURT: B2 is entered into evidence.

22 Q Mr. Khavinson, the entire purpose of 290 13th Street
23 LLC was to develop this property, correct?

24 A Correct.

25 Q Was it developed?

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1 A Yes, it was.

2 Q Do you remember the year when construction was
3 completed and properties were ready to be sold?

4 A I believe 2011.

5 Q And did you see the project when it was completely
6 completed and ready to be sold?

7 A Yes I did.

8 Q And if I show you picture of that property you'll be
9 able to attest whether it's fair and accurate representation of
10 reconstructed property?

11 A Yes I would.

12 MR. MESTECHKIN: Your Honor, with your
13 permission and the subject to my opposing counsel review, I
14 would like to show the witness the color representation of
15 the picture.

16 THE COURT: You may.

17 MR. MESTECHKIN: Thank you.

18 THE COURT: Before you continue with your next
19 question I don't know why my screen is black. You may
20 proceed.

21 Q Mr. Khavinson, what you hold in your hand right now is
22 a color representation about seven to eleven color reproduction of
23 the picture depicting of the property. Can you attest whether it's
24 a fair and accurate depiction of the property the way it's actually
25 developed now?

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1 A Yes.

2 MR. MESTECHKIN: Your Honor, with your
3 permission I would like to enter into evidence as
4 Defendant's B3.

5 THE COURT: Any objection?

6 MR. MESTECHKIN: No.

7 THE COURT: It is entered into evidence as B3,
8 Defendant's B3.

9 MR. MESTECHKIN: Your Honor, with your
10 permission may I show to the jury an enlarged images of
11 what I just showed to the witness.

12 THE COURT: You can, but that's why we have
13 that camera because with that large image you need a
14 tripod. And I don't think we need to obstruct anyone. If
15 you don't know how to use that you can use your large
16 image.

17 MR. MESTECHKIN: Or we can actually broadcast.

18 THE COURT: Please, let's do that.

19 MR. MESTECHKIN: Would you be able to process,
20 thank you.

21 THE COURT: I would just ask that while it is
22 being published to the jury by way of the screens in front
23 of them that you indicate which exhibit is being published.

24 MR. MESTECHKIN: For the record, what is on the
25 screen right now is Exhibit Defendant's B1 that shows the

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1 property the way it was purchased by the Khavinson Brothers
2 in 2007 before it was developed.

3 THE COURT: And of all the properties that I
4 see in that picture, it is the property I believe it's in
5 the middle.

6 MR. MESTECHKIN: My apologies Your Honor for
7 interrupting. It's a three story light colored building in
8 the middle of the picture.

9 THE COURT: Did everyone in the jury have a
10 chance to see Defendant's B1? I'm seeing yes. You may
11 move on to the next image that you'd like to publish to the
12 jury.

13 MR. MESTECHKIN: For the record, Mr. Chiu will
14 assist me in broad casting for the jury image that is
15 marked as Defendant's Exhibit B2 which represents the job
16 site at 290 13th Street in Brooklyn when 290 13th LLC was
17 developed. Can anyone see this picture?

18 THE JURORS: Yes.

19 MR. MESTECHKIN: Now I would like to show you
20 the third image which is Defendant's Exhibit B3. And that
21 represents the finally developed property that is currently
22 at 290 13th Street in Brooklyn.

23 Q Mr. Khavinson, all this -- well, I withdraw. The
24 property that is currently on the screen before you and shown to
25 the jury, how many units is in this property?

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1 A Four.

2 Q And all four units were sold, correct?

3 A Correct.

4 Q And upon sale of all these four units, all available
5 cash was distributed to the members of the LLC, correct?

6 A Can you repeat please.

7 Q Upon the sale of the property and the closing, all
8 available cash that represented the net was distributed to the
9 members of the LLC?

10 A No it wasn't. It was sitting in escrow account of
11 Suslovich and Klein.

12 Q What had to happen in order for this cash to be freed
13 up to be distributed?

14 A The lien suppose by plaintiff Jerzy Schnapp was
15 suppose to be removed from that property in order to receive access
16 of all that cash and from Suslovich and Klein.

17 Q And the following of -- I withdraw. That became
18 possible when the settlement with Jerzy Schnapp took place,
19 correct?

20 A Correct.

21 Q During the construction, what was the frequency during
22 which you communicated with the members of the LLC with respect to
23 day-to-day operations and construction questions?

24 A We would only access and reach the shareholders when
25 we had certain questions for them except for maybe Mr. Aronov who I

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1 saw every day. I didn't see other members every day. I spoke with
2 Faybyshev a lot. I spoke with Kremerman a lot. And then I spoke
3 with Vitaly Kochnev a lot with the assistance of Faybyshev. But
4 the other shareholders I did not speak every day.

5 Q Who would be a first person to know that LLC required
6 additional money for the construction?

7 A Faybyshev would make a demand for a certain amount of
8 money, and I would tell him what balance do I have so he would know
9 what the story is.

10 Q And if there was not enough money, what were your next
11 steps?

12 A My next step would be to ask him if he can send or
13 deposit some money which he still owes to the LLC. I would ask as
14 a shareholder the same question, or he would ask those
15 shareholders. And when nobody had the funds immediately available
16 he would find a way to get a short loan so we don't have to stop
17 construction. And we don't have to force our shareholders to get
18 out of their way to go get that necessary funds for immediately
19 tomorrow.

20 Q Prior to accepting checks from those third parties,
21 did you obtain consent from the members of the LLC?

22 A Yes.

23 Q What would happen if you did not secure those funds
24 through third parties?

25 A We would have to stop and wait until we can bring more

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1 funds, meaning either we have to, if everybody already paid their
2 share, we would have to ask everybody to bring a additional funds.

3 Q And if you could not do that, what would happen then?

4 A The construction would stop.

5 Q Did the property have a mortgage?

6 A The property had almost a million dollar mortgage,
7 yes.

8 Q Do you remember what were the monthly payments on that
9 mortgage?

10 A Close to \$6,000.

11 Q So during this five years, or four years of
12 construction, mortgage was being paid, correct?

13 A Correct.

14 Q Were there any other lien holders besides the bank on
15 the property?

16 A No.

17 Q Would it be fair to say that if you did not secure
18 funds, what would happen then?

19 A They would stop construction and we would have to
20 either sell it as is to try to satisfy the mortgage and close the
21 project.

22 Q Do you remember obtaining consent from all members to
23 secure those I would say not so small, but nonetheless smaller
24 amounts?

25 A Yes.

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1 Q With respect to accepting a new member in to LLC and
2 I'm talking about Mr. Bogoslavski?

3 A Yes.

4 Q Did the share of Mr. Aronov in LLC change?

5 A No.

6 Q Did your share, membership share in LLC change?

7 A No.

8 Q Did Mr. Faybyshev's share change?

9 A Yes.

10 Q Did Mr. Kremerman's share change?

11 A Yes.

12 Q What was the reason why LLC required \$150,000?

13 A To raise capital for construction.

14 Q Was there any other way to secure funds for the LLC?

15 A To ask shareholders to bring additional funds.

16 Q Did you try to do that?

17 A Yes we did.

18 Q And what was the outcome?

19 A They said they preferred option number one for
20 Bogoslavski to bring \$150,000.

21 Q And did Mr. Bogoslavski provide a payment in the
22 amount of \$150,000 to the LLC?

23 A Yes he did.

24 Q And did the ownership share of Mr. Kremerman and Mr.
25 Faybyshev change on the K1's of the LLC?

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1 A It should have been, yes.

2 Q With respect to your understanding of the operating
3 agreement and your powers under it, did you have authority to make
4 financial decisions on behalf of the company?

5 A Yes.

6 Q And did you require a consent from Mr. Aronov for
7 example to make a loan to a third party?

8 A No.

9 Q Going back to Mr. Bogoslavski, the \$150,000 was in
10 exchange for what percentage?

11 A Five percent.

12 Q That would make the 100 percent about \$3,000,000 for
13 the entire project?

14 A Yes.

15 Q Would you say it's a responsible fair market value for
16 the project at the time?

17 A Yes.

18 Q The decision making process on your part on behalf of
19 the LLC, what was the reason behind it? You know what, I withdraw.
20 You're an attorney, correct?

21 A Correct.

22 Q You also served as a managing member of the LLC,
23 correct?

24 A Correct.

25 Q Did you know that you had fiduciary duty to the

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1 members of the LLC to conduct yourself responsibly?

2 A Correct, I did know.

3 Q With respect to financial decisions that you have made
4 between 2008 and 2014, were there any decisions that you would deem
5 to be in violation of your fiduciary duty to the LLC?

6 A None.

7 Q Do you think you exercised some judgment when you made
8 decisions?

9 A Of course, yes.

10 Q What would happen if you did not make those decisions?

11 MR. GRASING: Objection.

12 THE COURT: Basis Mr. Grasing?

13 MR. GRASING: Ask for an opinion and a
14 hypothetical.

15 THE COURT: Overruled. You may answer that.

16 A At different times sometimes the decision had to be
17 made more critical decisions. And some decisions in other times
18 would be less critical. The most critical decision was to set up
19 the lawsuit with Mr. Schnapp so that we can liberate our property
20 and we can first so we can sell because we had buyers and those
21 buyers could not make settlement. Then we made a first step and we
22 made an agreement. First we filed a lawsuit against Schnapp to
23 lift the lien. The decision wasn't made speedy and basically we
24 came up with the conclusion that Judge was trying to push us into
25 settlement. And we did. An we settled with Jerzy Schnapp that we

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1 would be allowed to go to closing one by one and the proceeds would
2 go into escrow account of law firm of Suslovich and Klein. And we
3 did that. So the properties were sold. People moved in, but we
4 still had a lien. So then we understood that they want the only
5 solution is to make a settlement with Mr. Schnapp and therefore to
6 liberate those funds so we can finally deal. We would not have to
7 go under. And we would give maximum funds and return maximum funds
8 back to investors and pay the mortgage off.

9 Q Thank you. Distribution that was made to Yana Soskil,
10 was it made after you spoke with Mr. Kremerman or -- you know what,
11 I withdraw. From whom did you receive instructions to make
12 distributions on Michael Kremerman's behalf?

13 A From Michael Kremerman.

14 Q Michael Kremerman was one of the initial managing
15 members of the LLC, correct?

16 A Correct.

17 Q And since him stepping down from this role, did he
18 participate in any aspect of this LLC life?

19 A No.

20 Q Did he communicate with you with respect to expenses?

21 A Yes, occasionally.

22 Q Did you send him any money before 2014 from the LLC?

23 A I don't believe before 2014. I'm sorry not before
24 2014, in 2000 14.

25 Q Did you issue any checks from the Khavinson and

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1 Associates account that was dedicated for the LLC?

2 A Cash, no.

3 Q Did you make any personal purchases from the account
4 that was used for funds for LLC?

5 A No.

6 Q Did you maintain a checkbook which is used to record
7 and memorialize all the expenses that were issued on behalf of the
8 LLC?

9 A Yes.

10 MR. MESTECHKIN: Your Honor, with your
11 permission may I show the witness voluminous Exhibit Five,
12 Plaintiff's Five?

13 THE COURT: You may. Before you continue
14 Mr. Mestechkin, do you still need the exhibit that's being
15 published to the jury, the photograph being published to
16 the jury to continue being published?

17 MR. MESTECHKIN: No Your Honor.

18 THE COURT: You have the power to take it off.

19 THE SUPREME COURT CLERK: I just turned it off.

20 MR. MESTECHKIN: Thank you.

21 THE COURT: Is there a question?

22 MR. MESTECHKIN: I was just waiting for the
23 witness to peruse through.

24 THE COURT: That's three voluminous packs of
25 documents. I think you need to direct him to something.

CROSS EXAMINATION -- EUGENE KHAVINSON -- DEFENSE COUNSEL

1 Q Mr. Khavinson, do you recognize the first page of that
2 document which you have before you?

3 A Yes.

4 Q Can you describe it for the jury, what is it?

5 A I believe it's a register whatever it can be called
6 for Chase Bank account for LLC Chase Bank account.

7 Q And for how long have you been maintaining such
8 records?

9 A Until the accounts was closed.

10 Q And since what date?

11 A Pardon me?

12 Q Since when did you maintain it? When did you start
13 maintaining it?

14 A From the beginning of LLC and opening that account.
15 From day one.

16 Q Is that the records that you provided to the
17 accountant, for the accountant to prepare tax returns?

18 A Yes.

19 Q Nonetheless as Mr. Grasing showed to you one of the
20 tax returns indicated a supposed loan for \$250,000 supposedly
21 attributed to Mr. Bogoslavski?

22 A Correct.

23 Q Did the LLC take a loan from Mr. Bogoslavski in the
24 amount of \$250,000?

25 A No.

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1 Q Does it appear to be an error in the tax return?

2 A Correct.

3 Q Whose handwriting is it on the exhibit that you just
4 reviewed?

5 A I believe mostly mine.

6 Q So all these copies of the checks and paystubs, all of
7 it was conducted by you, correct?

8 A Correct, and my -- one of my paralegals.

9 Q That includes the payments for utilities, correct?

10 A Correct.

11 Q Does it include payment for mortgage?

12 A Yes.

13 Q Does it include payment for real estate taxes?

14 A Yes.

15 Q Does it include fees for Department of Building?

16 A Yes.

17 Q Does it include payment to architects?

18 A Yes.

19 Q Does it include a report of payment of contributions
20 received from the members?

21 A Yes.

22 Q So pretty much this is ledger of the LLC with respect
23 to all debits and credits, correct?

24 A Correct.

25 Q Did you ever delegate this duty to any one else

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1 outside of the LLC?

2 A No.

3 Q Do you remember how much was the fee for the real
4 estate broker on the closing sold for all four units?

5 A Five percent.

6 Q Five percent of what?

7 A Five percent of total sale price.

8 Q So it would be five percent of \$1,125,000?

9 A Yes.

10 Q Do you remember the amount of mortgage when the
11 closing took place?

12 A I believe \$1,375,000.

13 Q Did you ensure that all costs and liabilities are
14 deducted from the LLC's proffers before distributions were made to
15 the members?

16 A Yes.

17 Q Did you receive money back in the same amount as you
18 invested for the LLC?

19 A No, I did not.

20 Q Did you lose money?

21 A Yes, I did.

22 Q Did Mr. Faybyshev recoup the entire investment that
23 he invested in the LLC?

24 A No he did not.

25 Q Did he lose money?

CROSS EXAMINATION -- EUGENE KHAVINSON -- DEFENSE COUNSEL

1 A Yes he did.

2 Q Did Mr. Bogoslavski lose money on his investment?

3 A Yes he did.

4 Q So he did not receive \$150,000 back?

5 A No he did not.

6 Q Did Mr. Kremerman receive the entire amount of
7 investment at the time of distribution?

8 A No he did not.

9 Q Did he lose money?

10 A Yes he did.

11 Q Were there any members in the LLC that recouped the
12 entire amount that they invested in the beginning?

13 A No member recouped the full amount.

14 Q So would it be fair to say that all members of the LLC
15 lost money on this project?

16 A Correct.

17 Q If you were to summarize the reasons why this project
18 turned out to be in the negative, how would you, what reasons would
19 you list?

20 A The major factors were of course the lawsuit from
21 Jerzy Schnapp, the second major factor that the building front and
22 back had to be reconstructed, moving 18 inches inside, front and
23 back. And that took for Department of Buildings or whatever agency
24 it was more than a year just to tell us about it. And then of
25 course it took time to do it. It didn't take a lot of time, but it

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1 did take time. And in the meantime the mortgage had to be paid,
2 the insurance had to be paid, taxes had to be paid, utilities have
3 to be paid. So therefore it was a lot of expenses in addition to
4 construction.

5 Q Did other members contributing -- did other members
6 contribute to the payment for mortgage and real estate taxes?

7 A Nobody.

8 Q So on whose shoulders were those payments?

9 A We consulted with Faybyshev and we knew talking to our
10 shareholders that nobody was interested in putting this addition
11 money. So Faybyshev suggested to me that I lend the money to LLC,
12 and then when we sell the building then we can recoup that money as
13 a loan. And he did the same thing, not in the same amount I put,
14 but three times as much. He put roughly over about \$100,000. I
15 did over \$200,000.

16 THE COURT: Before you ask your next question,
17 it's now after 5:00 is this a good place to stop or are you
18 almost done?

19 MR. MESTECHKIN: Your Honor, I'm pretty much
20 done. We're done. Mr. Khavinson, thank you so much for
21 your answers. I have no further questions.

22 THE COURT: Okay. Mr. Grasing, do you have any
23 any redirect for this witness?

24 MR. GRASING: Yes.

25 THE COURT: Okay. So we will pick up. How

1 much do you have?

2 MR. GRASING: Approximately a half hour.

3 THE COURT: So we're going to end now. And
4 we're going to pickup. Tomorrow is Friday. We will not be
5 here until 11:30 tomorrow. So if everyone will be here
6 tomorrow at 11:30 to hopefully conclude with
7 Mr. Khavinson's testimony and we end tomorrow at 3:00 p.m.
8 So my expectation that we're going to be done with this
9 witness soon so be prepared with your next witness or two.

10 MR. GRASING: Yes.

11 THE COURT: Okay. Thank you.

12 THE COURT OFFICER: All rise, jury exiting.

13 THE COURT: Everyone may be seated. See
14 everyone tomorrow at 11:30.

15 MR. GRASING: Thank you.

16 MR. MESTECHKIN: Thank you Your Honor.

17 * * * * *

18

19 Certified to be a true and accurate transcript.

20

21 -----
Cassandra Johnson - Senior Court Reporter

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25

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\$1,000,000 [1] - 43:5

\$1,125,000 [1] - 112:4

\$1,375,000 [1] - 112:8

\$100 [2] - 43:7

\$100,000 [2] - 72:13, 114:11

\$112,844 [2] - 80:19, 80:25

\$12,000 [2] - 88:1, 88:3

\$13,000 [3] - 75:15, 90:23, 92:10

\$14,265.21 [2] - 89:21, 89:22

\$15,000 [1] - 90:18

\$150 [2] - 92:25, 93:12

\$150,000 [23] - 35:7, 80:21, 80:23, 80:24, 81:6, 82:1, 82:4, 82:6, 82:14, 82:18, 82:19, 82:22, 82:25, 84:12, 84:13, 84:23, 85:4, 105:7, 105:15, 105:17, 106:4, 112:25

\$2,000 [1] - 53:14

\$2,650 [1] - 77:1

\$20,000 [3] - 50:16, 61:19, 91:3

\$20,500 [1] - 53:14

\$200 [1] - 70:12

\$200,000 [1] - 114:11

\$216,000 [1] - 49:1

\$220,000 [1] - 49:1

\$24,644 [1] - 88:19

\$250 [1] - 54:19

\$250,000 [7] - 72:6, 72:11, 72:12, 72:13, 81:3, 110:16, 110:20

\$3,000,000 [1] - 106:7

\$30,000 [3] - 78:5, 78:9, 89:14

\$300,000 [1] - 54:20

\$32,000 [1] - 54:21

\$38,870 [2] - 86:7, 87:6

\$4,000,000 [1] - 4:23

\$4,185,000 [2] - 41:10, 41:13

\$40,000 [2] - 74:17, 89:15

\$43,000 [1] - 93:17

\$468 [1] - 54:22

\$468,000 [6] - 48:7, 49:10, 49:23, 50:6, 50:9, 52:2

\$47,000 [1] - 77:5

\$48,000 [2] - 74:10,

74:17

\$50,000 [7] - 51:18, 54:19, 54:24, 55:24, 88:5, 88:7, 88:8

\$500,000 [1] - 54:21

\$6,000 [1] - 104:5

\$7,500 [3] - 88:24, 89:7, 89:11

\$70,000 [1] - 50:16

\$722 [1] - 91:8

\$749,800 [10] - 43:6, 44:6, 46:2, 47:16, 47:20, 47:25, 70:11, 70:16, 71:9, 94:5

\$750,000 [10] - 47:25, 66:6, 66:20, 70:9, 70:22, 71:9, 71:12, 78:23, 94:8, 94:18

\$88,000 [2] - 71:25, 73:23

'

'10 [2] - 61:18, 91:1

'11 [1] - 92:8

'14 [1] - 38:17

'21 [1] - 62:14

/

/TPOT [1] - 10:17

1

1 [2] - 72:13, 91:6

1/1/2013 [1] - 89:13

1/1/2014 [2] - 80:16, 86:5

100 [1] - 106:7

10110 [1] - 90:21

10306 [1] - 28:17

104 [4] - 68:9, 69:3, 69:4, 69:6

105 [3] - 67:12, 69:17, 70:6

106 [1] - 70:20

1065 [1] - 71:21

10:15 [2] - 67:7, 68:6

11 [1] - 41:15

11201 [1] - 1:8

11229 [1] - 1:17

1166 [1] - 61:18

11787 [1] - 1:14

1188 [1] - 90:16

1191 [1] - 90:22

11:30 [3] - 115:1, 115:2, 115:10

11th [3] - 77:3, 77:5, 93:18

12/09/21 [1] - 58:16

12/31/2013 [1] - 89:13

12/31/2014 [2] - 80:16, 86:5

12/6 [1] - 91:1

1202 [1] - 91:1

12:45 [1] - 59:19

13 [6] - 17:21, 31:18, 31:21, 58:9, 58:10, 63:17

13.23 [1] - 32:6

13.33 [5] - 9:13, 9:14, 10:3, 32:15

1327 [1] - 93:17

1393 [1] - 92:8

1399 [1] - 91:6

13TH [1] - 1:6

13th [29] - 2:2, 3:25, 4:18, 6:7, 18:24, 22:8, 42:8, 42:10, 43:15, 61:17, 61:23, 90:17, 90:22, 91:3, 91:7, 92:3, 92:9, 92:21, 92:24, 93:18, 93:24, 95:18, 96:11, 98:11, 98:20, 101:10, 101:16

14 [1] - 108:20

1436 [1] - 92:24

14th [1] - 41:17

159 [1] - 61:17

16 [1] - 88:4

16th [2] - 62:15, 62:19

17 [1] - 71:22

17th [7] - 61:19, 71:25, 73:23, 74:1, 90:17, 90:21, 91:2

18 [1] - 113:18

19 [1] - 31:18

19A [2] - 25:9, 30:24

1:00 [2] - 59:20, 59:23

2

2 [1] - 1:11

2/27/14 [1] - 88:23

20 [2] - 69:6, 86:10

200 [1] - 50:15

2000 [2] - 79:4, 108:20

2007 [6] - 4:4, 16:10, 73:9, 95:19, 96:5, 100:22

2008 [22] - 4:4, 5:12, 6:8, 8:12, 8:21, 9:4, 9:24, 10:21, 26:4, 31:9, 31:11, 31:14, 34:4, 34:19, 34:22, 39:23, 39:24, 41:7, 65:2, 97:8, 106:24

2010 [2] - 63:6, 63:7

2011 [2] - 91:7, 99:2

2012 [1] - 18:7

2013 [2] - 4:21, 58:2

2014 [37] - 4:8, 8:14, 8:19, 16:10, 17:21, 35:2, 38:18, 38:19, 38:20, 41:9, 51:19, 51:20, 51:21, 56:13, 56:16, 56:17, 71:16, 73:10, 73:24, 74:6, 75:15, 77:5, 77:14, 78:2, 78:11, 79:4, 79:15, 80:6, 81:4, 81:13, 88:4, 88:17, 106:24, 108:18, 108:19

2016 [3] - 2:7, 57:15, 58:15

2017 [3] - 22:8, 31:18, 31:21

2019 [2] - 67:7, 68:6

2020 [2] - 63:4, 63:5

2021 [3] - 58:9, 58:10, 59:10

2023 [1] - 1:9

2218 [1] - 1:17

23 [2] - 67:7, 68:6

25 [1] - 64:3

2546 [7] - 61:18, 71:24, 73:22, 74:1, 90:16, 90:21, 91:2

268 [1] - 91:6

27 [3] - 35:6, 85:17, 85:18

28 [2] - 24:2, 24:4

29 [1] - 18:7

290 [29] - 1:6, 2:2, 3:25, 4:18, 6:7, 18:24, 42:8, 42:10, 43:15, 61:17, 61:23, 90:17, 90:22, 91:2, 91:7, 92:3, 92:9, 92:21, 92:24, 93:18, 93:24, 95:18, 96:11, 98:11, 98:20, 101:10, 101:16

297 [1] - 92:8

2:30 [3] - 59:21, 60:19, 86:16

3

3.3 [1] - 82:25

3.33 [1] - 33:24

3.5 [2] - 33:8, 33:18

3/22 [1] - 92:8

30 [9] - 10:11, 32:12, 32:21, 32:25, 47:23, 69:7, 69:9, 84:6

31 [3] - 1:1, 2:3, 41:19

323 [1] - 92:24

35 [14] - 46:8, 46:9, 46:10, 46:22, 47:5, 47:15, 47:19, 47:25, 70:10, 70:18, 71:8, 71:12, 78:20, 78:22

358 [1] - 93:16

35th [1] - 46:6

360 [1] - 4:8

365 [1] - 28:16

3:00 [1] - 115:3

4

40868 [1] - 25:7

46 [1] - 64:3

4:00 [1] - 86:15

4B [2] - 9:4

4H [2] - 71:16, 76:19

5

5 [2] - 57:15, 88:17

500499 [1] - 2:6

500499/2016 [1] - 1:4

507368 [1] - 58:14

561 [4] - 77:3, 77:5, 93:17

5:00 [1] - 114:13

6

6 [2] - 1:11, 1:14

6A [1] - 85:9

6B [1] - 85:10

7

7 [3] - 1:9, 27:9, 27:18

71 [1] - 27:9

8

8 [2] - 59:9, 70:6

8/16 [3] - 61:18, 62:14, 62:23

80 [1] - 91:8

861 [2] - 26:8, 27:12

86140861 [1] - 25:7

868 [1] - 27:13

869 [3] - 26:9, 27:12, 27:14

9

9 [5] - 8:12, 26:4, 31:9, 31:14, 65:2

9/10/2014 [2] - 80:18, 86:6

9/22 [1] - 90:16

96th [1] - 64:4

99^[1] - 1:14
 9:59^[1] - 58:16
 9th^[1] - 6:8

A

a.m.^[3] - 58:16, 67:8, 68:6
abatements^[1] - 53:13
able^[9] - 3:13, 28:3, 28:8, 30:13, 86:17, 95:21, 97:23, 99:7, 100:14
absolutely^[1] - 96:20
accept^[2] - 66:9, 79:24
accepting^[3] - 84:8, 103:15, 104:21
access^[8] - 37:10, 37:11, 37:12, 45:11, 63:22, 64:23, 102:9, 102:18
accompany^[1] - 97:18
according^[5] - 23:11, 34:21, 40:22, 83:8, 83:9
accordingly^[1] - 65:13
account^[42] - 14:4, 14:7, 14:18, 14:21, 15:7, 15:10, 15:15, 15:16, 15:17, 15:18, 15:20, 15:21, 15:24, 48:18, 49:15, 49:21, 50:23, 50:25, 51:7, 51:8, 51:9, 52:5, 54:23, 68:13, 68:15, 68:17, 70:13, 82:2, 82:20, 87:7, 88:18, 102:4, 107:22, 108:22, 108:24, 110:2, 110:10
accountant^[7] - 72:21, 73:2, 73:5, 73:9, 73:12, 110:13
accounting^[1] - 80:6
accounts^[2] - 11:22, 110:5
accurate^[37] - 9:22, 9:23, 10:4, 10:5, 10:14, 10:15, 10:21, 27:19, 27:20, 27:25, 28:1, 32:12, 32:14, 32:18, 33:1, 33:8, 33:16, 33:17, 33:22, 33:25, 34:1, 34:25, 39:23, 40:13, 41:14, 71:13, 72:19, 75:14,

75:17, 95:21, 96:4, 96:22, 97:24, 98:10, 99:7, 99:21, 115:15
act^[1] - 66:17
action^[23] - 21:7, 21:10, 21:12, 30:6, 30:22, 32:2, 33:24, 37:4, 51:24, 53:17, 54:15, 54:25, 55:5, 56:7, 56:10, 56:14, 56:16, 56:18, 57:4, 57:14, 57:19, 67:5, 88:14
actual^[2] - 23:8, 96:18
Adams^[1] - 1:8
added^[1] - 7:15
addition^[3] - 44:22, 113:25, 114:6
additional^[9] - 9:1, 25:12, 61:25, 64:3, 85:7, 85:9, 103:1, 103:23, 105:10
address^[8] - 4:17, 25:14, 26:3, 26:15, 28:13, 28:15, 46:10, 96:11
addresses^[1] - 34:19
addressing^[1] - 47:12
administrative^[2] - 53:8, 60:17
admit^[1] - 85:8
admitted^[2] - 25:24
Adobe^[1] - 86:19
advance^[3] - 50:13, 88:8, 88:12
advanced^[7] - 50:14, 50:15, 50:16, 50:17, 54:11, 54:12
affected^[5] - 18:8, 18:9, 18:13, 18:22, 19:1
affidavit^[7] - 21:21, 22:5, 23:1, 23:2, 25:22, 40:23, 41:18
affirm^[1] - 2:17
afternoon^[2] - 95:15, 95:16
agency^[1] - 113:20
Agency^[1] - 67:7
agent^[2] - 45:19, 45:20
ago^[5] - 6:1, 13:6, 44:24, 63:17, 74:3
agree^[11] - 27:10, 30:13, 40:25, 41:1, 41:10, 41:19, 41:20, 53:16, 65:10, 84:3, 85:7
agreed^[9] - 45:13, 46:25, 50:12, 62:4,

63:11, 64:6, 64:10, 82:16, 94:4
agreement^[76] - 5:8, 6:3, 6:7, 7:13, 7:23, 8:20, 16:20, 17:7, 17:8, 18:1, 19:8, 19:10, 19:11, 23:5, 24:9, 24:18, 25:13, 26:4, 26:5, 26:7, 26:12, 29:22, 30:17, 31:7, 31:8, 31:10, 31:11, 31:13, 31:14, 34:4, 34:19, 34:22, 35:1, 35:3, 35:8, 36:10, 37:18, 39:23, 39:24, 40:1, 40:3, 40:4, 40:5, 40:11, 40:19, 41:3, 41:6, 41:17, 41:22, 41:25, 45:8, 45:9, 45:10, 54:20, 55:9, 55:11, 55:12, 64:16, 64:19, 65:2, 65:17, 65:21, 66:2, 69:8, 77:18, 78:15, 82:22, 83:10, 83:11, 83:18, 84:1, 85:6, 105:23, 107:17
agreements^[9] - 19:6, 21:9, 21:13, 27:12, 31:13, 31:15, 31:16, 31:19, 37:18
ahead^[4] - 3:22, 23:7, 28:13, 79:19
AL^[1] - 1:6
al^[1] - 2:3
Aleksandra^[12] - 5:1, 7:11, 7:15, 7:18, 7:23, 8:8, 8:17, 8:22, 9:8, 34:3, 34:6, 35:4
allegedly^[1] - 42:9
Allen^[2] - 58:5, 58:16
allocated^[2] - 40:20, 40:22
allow^[2] - 53:16, 69:21
allowed^[5] - 66:8, 66:9, 66:10, 66:17, 107:21
allows^[1] - 66:12
almost^[3] - 86:15, 104:2, 114:14
Alpha^[1] - 91:7
alternates^[1] - 1:11
alternative^[1] - 64:6
amended^[10] - 7:23, 18:1, 31:11, 31:12, 31:15, 31:19, 35:23, 36:9, 37:18
amendment^[4] - 7:14, 19:13, 19:14, 85:15

amendments^[2] - 19:14, 26:3
American^[1] - 84:4
amount^[38] - 47:16, 51:13, 51:15, 61:19, 70:15, 70:22, 74:10, 77:4, 80:18, 82:4, 82:8, 83:13, 84:17, 85:19, 86:7, 87:20, 88:1, 88:5, 88:8, 88:18, 88:24, 89:20, 90:17, 90:22, 91:3, 91:8, 92:9, 92:25, 93:17, 103:2, 105:16, 110:20, 112:6, 112:13, 113:2, 113:8, 113:9, 114:10
amounts^[1] - 104:19
ampersand^[1] - 86:6
amplify^[1] - 62:16
answer^[31] - 2:23, 6:25, 12:8, 13:9, 13:11, 26:15, 31:21, 34:15, 34:23, 36:5, 48:2, 50:4, 51:6, 52:25, 53:19, 54:11, 68:12, 68:16, 68:22, 68:24, 69:9, 69:12, 69:20, 69:25, 70:2, 70:8, 75:5, 76:18, 79:8, 87:15, 107:10
answered^[3] - 47:10, 50:3, 79:7
answers^[5] - 69:14, 69:16, 70:25, 71:2, 114:17
apartment^[2] - 4:16, 45:14
apartments^[2] - 4:16, 45:18
apologies^[1] - 101:1
appear^[2] - 86:18, 110:22
APPEARANCES^[1] - 1:12
appoint^[1] - 84:5
appreciate^[1] - 9:2
approach^[2] - 86:21, 89:1
appropriate^[3] - 13:21, 25:8, 71:15
approved^[2] - 62:2, 62:3
approximate^[2] - 8:16, 35:20
April^[1] - 88:17
Arbitration^[1] - 84:4
architects^[1] - 111:13
Ardsee^[1] - 28:16

area^[2] - 23:9, 59:24
argue^[1] - 74:18
Aronov^[36] - 2:2, 5:6, 5:7, 7:13, 7:23, 8:4, 12:14, 12:16, 12:18, 12:20, 13:25, 17:12, 17:14, 17:24, 19:10, 19:12, 33:24, 35:10, 37:12, 37:23, 53:15, 54:3, 54:5, 56:4, 57:16, 62:8, 62:9, 63:8, 64:2, 82:24, 84:19, 97:15, 97:18, 102:19, 104:24, 106:1
ARONOV^[1] - 1:3
Aronov's^[2] - 37:11, 37:22
article^[4] - 65:16, 83:19, 85:6, 85:9
Artyom^[3] - 5:1, 33:5, 79:23
ARTYOM^[1] - 79:25
Arytom^[1] - 33:3
aspect^[1] - 108:14
ASS^[1] - 88:24
assist^[1] - 101:8
assistance^[3] - 14:1, 80:10, 102:22
Associate^[1] - 58:17
associated^[1] - 78:7
ASSOCIATES^[1] - 1:13
associates^[1] - 67:6
Associates^[22] - 5:24, 15:16, 15:18, 18:12, 29:24, 44:12, 44:16, 53:10, 56:18, 57:5, 58:4, 58:14, 58:25, 68:5, 68:16, 70:14, 87:7, 88:5, 89:6, 89:8, 108:22
assume^[1] - 92:18
attempt^[1] - 82:17
attempts^[4] - 94:9, 94:10, 94:17, 94:19
attention^[28] - 6:5, 9:4, 20:20, 21:24, 22:5, 30:11, 32:4, 40:18, 41:8, 61:16, 65:16, 71:16, 71:18, 71:21, 80:15, 80:17, 83:14, 83:19, 83:20, 85:5, 86:3, 88:22, 90:15, 90:20, 90:25, 92:7, 92:23, 93:16
attest^[3] - 97:23, 99:7, 99:20
attorney^[23] - 12:19, 15:13, 21:16, 32:1,

45:15, 48:21, 48:24,
49:11, 49:13, 50:17,
52:15, 54:4, 54:7,
54:10, 57:19, 68:18,
75:6, 82:2, 87:23,
87:24, 88:8, 88:14,
106:15
attorney's [9] - 15:24,
24:16, 30:21, 41:25,
52:14, 52:18, 52:20,
54:6, 90:1
attributed [2] - 90:9,
110:17
august [2] - 62:15,
62:19
August [2] - 67:7, 68:6
authority [1] - 105:23
available [6] - 23:5,
62:6, 86:14, 101:23,
102:2, 103:11
Avenue [15] - 1:17,
46:8, 46:9, 46:10,
46:22, 47:6, 47:15,
47:19, 48:1, 70:10,
70:19, 71:8, 71:12,
78:20, 78:22
avoid [1] - 75:4
aware [2] - 34:2, 47:22

B

B1 [3] - 96:14, 100:20,
101:5
B2 [3] - 98:16, 98:19,
101:9
B3 [4] - 99:25, 100:3,
100:4, 101:14
balance [6] - 50:24,
94:9, 94:10, 94:11,
94:18, 103:3
bank [6] - 11:22,
68:15, 72:20, 74:18,
90:13, 104:9
Bank [6] - 14:11,
14:17, 14:19, 61:5,
110:2
banking [1] - 89:12
bar [6] - 12:3, 12:12,
12:24, 26:16, 49:3,
67:13
bare [1] - 60:9
bargain [1] - 84:2
base [2] - 20:21, 40:24
based [2] - 12:11,
26:20
baseline [1] - 47:23
basis [4] - 29:9, 34:9,
34:11, 107:7
bearing [1] - 57:4
became [7] - 9:9, 11:8,

16:15, 17:23, 35:6,
37:5, 102:11
become [2] - 8:9, 8:17
becoming [1] - 16:19
bedside [1] - 28:21
BEFORE [1] - 1:10
began [2] - 14:8, 16:4
begin [1] - 9:7
beginning [19] - 9:14,
10:3, 10:11, 18:15,
26:6, 51:10, 68:6,
68:7, 69:2, 69:5,
69:18, 70:6, 70:20,
72:6, 73:24, 77:4,
78:5, 110:10, 113:8
begins [1] - 20:22
behalf [12] - 30:20,
31:3, 48:16, 51:12,
68:17, 70:11, 70:15,
88:15, 105:24,
106:13, 108:8, 109:3
behind [1] - 106:14
belong [1] - 55:21
belonged [2] - 55:6,
73:22
benefit [1] - 35:9
Benson [1] - 31:25
best [2] - 8:17, 97:6
better [2] - 64:7, 84:2
between [4] - 55:9,
58:25, 68:18, 106:24
billing [1] - 11:14
bills [1] - 52:7
binding [1] - 84:5
bit [1] - 62:17
black [2] - 20:21,
99:16
blank [1] - 72:6
Blvd [1] - 1:14
Bogosalvski [1] -
85:14
Bogoslavksi [1] - 34:3
Bogoslavski [38] -
5:1, 7:11, 7:15, 7:18,
7:24, 8:8, 8:17, 8:23,
9:8, 10:15, 19:13,
21:19, 34:6, 34:20,
35:4, 35:6, 37:5,
72:5, 72:11, 72:13,
72:21, 73:21, 80:18,
80:22, 80:24, 82:3,
82:5, 82:13, 82:16,
84:11, 85:15,
104:22, 105:15,
105:16, 106:4,
110:17, 110:19,
112:23
bogoslavski [2] -
7:10, 84:10
Bogoslavski's [3] -

73:2, 80:20, 83:3
bold [1] - 89:20
book [1] - 53:12
bookkeeping [1] -
53:13
borrow [1] - 65:25
borrowed [1] - 70:9
borrowing [1] - 64:6
bottom [1] - 20:20
box [4] - 2:10, 9:12,
9:16, 10:10
boy [1] - 97:2
brainer [1] - 63:12
Braithman [1] - 88:4
break [5] - 28:10,
28:22, 43:14, 59:20,
60:16
brief [2] - 26:16, 49:3
briefly [3] - 5:25, 8:12,
15:20
bring [6] - 82:22, 85:4,
103:20, 103:22,
105:10, 105:15
broad [1] - 101:8
broadcast [1] - 100:12
broke [1] - 45:6
broker [3] - 44:9,
54:15, 111:25
brokerage [2] - 53:12,
94:7
BROOKLYN [1] - 1:1
Brooklyn [10] - 1:8,
1:17, 4:15, 4:18,
46:10, 56:22, 95:18,
96:11, 101:10,
101:16
brother [3] - 9:25,
32:16, 96:5
Brothers [1] - 100:21
building [5] - 4:14,
46:10, 101:2,
113:17, 114:8
Building [1] - 111:11
Buildings [1] - 113:19
buildings [1] - 4:16
built [2] - 46:20, 47:2
business [6] - 4:7,
14:8, 66:18, 66:23,
94:12, 94:13
buy [3] - 61:25, 82:5,
82:17
buyers [4] - 45:12,
107:15, 107:16
buying [1] - 84:17
BY [5] - 3:5, 3:24,
27:7, 29:1, 61:15

C

calendar [7] - 2:3,

10:21, 73:24, 75:14,
77:4, 78:1, 78:11
camera [1] - 100:9
cannot [11] - 8:6, 18:2,
25:2, 34:23, 37:1,
45:24, 62:22, 67:1,
81:13, 84:3, 91:23
capacity [5] - 5:17,
42:23, 42:24, 52:21,
80:9
capital [8] - 9:13, 9:14,
9:19, 10:2, 10:11,
80:18, 105:8
capitals [1] - 89:20
capitol [1] - 66:24
care [3] - 11:13, 13:7,
13:18
carefully [1] - 2:23
carry [3] - 66:18,
66:21, 66:22
case [17] - 2:2, 10:17,
23:2, 25:11, 45:5,
45:8, 46:3, 48:16,
52:14, 53:2, 57:5,
58:6, 58:11, 58:24,
59:11, 59:12, 71:10
cash [7] - 40:22,
85:11, 101:24,
102:2, 102:6,
102:10, 108:23
CASSANDRA [1] -
1:24
Cassandra [1] -
115:17
casting [1] - 101:8
caught [1] - 73:17
caused [2] - 13:5,
13:12
Celinchuck [4] - 78:4,
78:6, 89:13, 89:17
celinchuck [1] - 78:7
cents [2] - 89:21, 91:8
certain [6] - 15:8,
45:9, 73:16, 87:5,
102:19, 103:2
certainly [1] - 50:18
Certified [1] - 115:15
chair [1] - 2:24
chance [1] - 101:4
change [11] - 5:25,
11:5, 11:21, 14:12,
15:9, 17:2, 104:24,
105:1, 105:3, 105:5,
105:20
changed [1] - 6:1
charged [2] - 45:1,
45:2
Chase [6] - 14:11,
14:17, 14:19, 61:4,
110:2

check [24] - 48:18,
50:7, 52:10, 52:12,
54:22, 55:22, 55:23,
61:17, 61:18, 61:20,
61:22, 63:1, 70:15,
74:2, 90:16, 90:21,
90:22, 91:1, 91:6,
92:8, 92:24, 93:17,
93:21
checkbook [1] - 109:2
checks [3] - 103:15,
108:21, 111:2
Chiu [1] - 1:16
chiu [1] - 101:7
Citibank [8] - 14:18,
14:23, 14:24, 15:5,
15:6, 15:9, 15:16,
88:18
citing [1] - 41:17
CIVIL [1] - 1:1
claim [4] - 30:6, 30:9,
91:15, 93:7
claimed [1] - 42:12
clarify [2] - 45:21,
47:11
clear [4] - 4:9, 6:15,
10:17, 79:17
clearly [1] - 61:7
clerk [2] - 58:16, 65:10
CLERK [7] - 2:1, 2:6,
2:16, 28:14, 28:18,
61:14, 109:15
client [4] - 15:21,
23:15, 23:20, 51:9
clients [1] - 51:13
close [5] - 13:20,
15:16, 59:16, 104:5,
104:15
closed [3] - 8:14,
14:21, 110:5
closing [4] - 102:1,
107:22, 111:25,
112:6
code [3] - 37:19,
37:24, 37:25
collect [1] - 94:25
Colon [1] - 2:4
COLON,Justice [1] -
1:11
color [8] - 96:17,
96:18, 98:3, 98:9,
98:15, 99:12, 99:19
colored [1] - 101:2
combination [1] -
37:14
comfortable [1] - 2:24
coming [2] - 51:4,
76:23
comma [1] - 26:8
commenced [1] -

57:14
comments [2] - 73:15, 75:4
Commission [1] - 84:4
communicate [1] - 108:16
communicated [1] - 102:16
company [36] - 7:13, 7:18, 10:16, 11:13, 11:14, 18:9, 18:11, 19:10, 19:12, 19:13, 19:18, 19:24, 32:5, 39:17, 40:20, 40:23, 41:16, 45:6, 55:18, 61:24, 62:1, 62:5, 64:16, 66:19, 66:23, 82:11, 83:23, 83:25, 84:7, 84:25, 85:2, 85:9, 88:20, 88:21, 90:1, 105:24
Company [1] - 6:8
company's [1] - 19:16
compensate [1] - 55:18
complaint [4] - 42:25, 54:2, 54:3, 57:3
completed [3] - 4:19, 99:1, 99:4
completely [3] - 72:12, 92:5, 99:3
con [1] - 64:8
conclude [1] - 115:2
conclusion [1] - 107:19
condo [1] - 41:16
condo's [1] - 41:9
condominium [3] - 4:16, 35:2, 53:12
condominiums [1] - 8:13
conduct [1] - 106:21
conducted [1] - 111:3
conference [1] - 26:21
confirm [7] - 35:22, 63:18, 63:19, 64:9, 65:25, 66:2, 66:19
confirmation [1] - 66:3
confirmed [4] - 16:24, 17:3, 17:5, 66:7
confirming [2] - 63:20, 63:24
confused [1] - 53:20
connection [2] - 3:25, 53:11
consent [14] - 56:1, 56:3, 62:13, 63:9, 63:24, 65:24, 66:1, 66:5, 66:13, 66:19, 74:25, 103:16, 104:17, 106:1
consented [8] - 17:14, 17:15, 17:19, 26:22, 53:24, 62:8, 74:22, 77:9
consideration [1] - 81:22
consist [1] - 93:5
consisted [1] - 54:18
constructed [1] - 46:9
Construction [1] - 43:16
construction [28] - 8:19, 43:10, 62:1, 62:6, 63:3, 74:16, 76:11, 77:6, 91:13, 92:2, 93:20, 97:7, 97:10, 97:13, 97:23, 97:25, 98:11, 98:25, 102:15, 102:17, 103:1, 103:12, 103:25, 104:7, 104:14, 105:8, 113:25
consulted [1] - 114:5
contingent [1] - 54:20
continue [11] - 27:6, 60:3, 65:15, 67:20, 68:1, 74:16, 80:14, 93:20, 99:15, 109:9, 109:12
continued [2] - 48:22, 74:24
CONTINUED [2] - 27:7, 61:15
continues [1] - 70:20
continuing [1] - 66:15
contractor [6] - 42:17, 43:6, 43:15, 46:12, 46:14, 47:5
contribute [2] - 64:2, 114:2
contributing [1] - 114:1
contributions [1] - 111:15
controlled [3] - 40:2, 47:2, 61:24
conversations [1] - 62:10
convert [1] - 4:15
convey [1] - 83:24
convicted [2] - 11:16, 12:1
copies [4] - 18:4, 19:9, 37:8, 111:2
copy [17] - 6:15, 6:18, 6:19, 18:3, 19:7, 19:8, 20:12, 24:21, 27:13, 36:1, 36:2, 36:9, 37:7, 37:8, 40:12, 96:17, 96:18
corner [2] - 20:21, 24:20
Corp [1] - 91:8
corporate [3] - 9:5, 51:19, 71:17
corporation [3] - 51:24, 66:4, 84:15
correct [68] - 7:25, 8:15, 10:25, 11:1, 17:25, 24:17, 26:24, 26:25, 27:21, 27:22, 29:13, 32:8, 33:2, 33:7, 33:10, 34:24, 34:25, 40:14, 42:3, 44:17, 45:20, 52:3, 52:4, 66:14, 72:10, 72:25, 73:11, 73:22, 73:25, 74:1, 74:3, 74:5, 74:6, 74:9, 74:17, 74:19, 75:19, 82:25, 83:1, 85:25, 96:19, 96:20, 98:21, 98:22, 101:21, 101:22, 101:24, 102:13, 102:14, 104:7, 104:8, 106:15, 106:16, 106:18, 106:19, 106:22, 108:11, 108:12, 110:18, 110:23, 111:3, 111:4, 111:5, 111:6, 111:19, 111:20, 113:12
correctly [2] - 10:7, 40:4
correspondence [1] - 57:18
cost [9] - 48:20, 48:21, 48:22, 53:12, 53:16, 53:25, 54:7, 82:8, 84:22
costs [1] - 112:9
Counsel [5] - 12:15, 40:13, 60:6, 60:10, 60:15
counsel [1] - 99:11
Counsel's [1] - 61:11
COUNTY [1] - 1:1
County [2] - 58:3, 58:16
course [4] - 41:9, 107:4, 113:16, 113:21
court [7] - 3:12, 12:24, 56:15, 56:21, 57:18, 65:12
Court [5] - 28:21, 34:18, 58:3, 61:12, 115:17
COURT [180] - 1:1, 1:24, 2:1, 2:5, 2:6, 2:7, 2:8, 2:14, 2:16, 2:20, 3:3, 3:8, 3:15, 3:19, 3:22, 6:10, 6:13, 6:19, 6:23, 11:19, 11:23, 12:3, 12:5, 12:6, 12:16, 12:20, 12:22, 13:3, 13:8, 13:16, 13:22, 13:25, 18:16, 20:14, 20:16, 20:18, 22:1, 22:9, 22:14, 22:18, 22:22, 23:7, 23:17, 23:22, 24:1, 24:3, 24:24, 25:2, 25:16, 25:19, 25:21, 26:17, 26:19, 26:20, 27:1, 27:5, 27:6, 27:15, 27:23, 28:2, 28:6, 28:8, 28:11, 28:12, 28:14, 28:18, 28:19, 28:20, 28:25, 29:9, 29:12, 29:20, 30:14, 34:9, 34:11, 34:15, 40:10, 40:16, 47:7, 47:11, 49:4, 49:6, 49:7, 50:2, 50:4, 57:1, 57:11, 58:19, 59:3, 59:18, 59:24, 60:3, 60:7, 60:13, 60:15, 60:21, 60:22, 60:23, 61:1, 61:6, 61:10, 61:14, 62:16, 64:24, 65:3, 65:6, 65:15, 65:18, 67:15, 67:17, 67:18, 67:22, 67:23, 67:25, 68:3, 68:20, 75:1, 75:8, 76:14, 76:19, 77:22, 78:17, 79:8, 79:14, 79:16, 79:19, 79:22, 80:8, 80:12, 85:20, 85:24, 86:2, 86:13, 86:21, 87:1, 89:2, 90:3, 90:8, 90:12, 92:4, 94:22, 95:1, 95:5, 95:6, 95:8, 95:9, 95:10, 95:13, 96:1, 96:15, 96:22, 96:25, 97:4, 98:5, 98:17, 98:19, 99:13, 99:15, 100:1, 100:3, 100:8, 100:13, 100:16, 100:23, 101:4, 107:7, 107:10, 109:9, 109:14, 109:15, 109:17, 109:20, 114:12, 114:18, 114:21, 114:24, 115:7, 115:8, 115:9
cover [2] - 54:7, 59:25
Coverage [1] - 91:8
create [1] - 65:24
credits [1] - 111:19
critical [3] - 107:12, 107:13
cross [1] - 94:23
CROSS [1] - 95:14
cross-examination [1] - 94:23
current [4] - 49:11, 49:12, 71:22, 76:22
cursor [3] - 86:14, 86:15, 86:20
cut [2] - 92:5, 92:6

D

damage [6] - 93:2, 93:3, 93:5, 93:13, 93:15
damages [1] - 94:7
daritive [1] - 55:5
date [25] - 7:14, 7:19, 8:10, 8:16, 14:15, 15:8, 15:19, 16:3, 22:7, 31:17, 31:20, 31:23, 32:9, 32:19, 33:1, 33:9, 35:18, 35:19, 47:24, 56:17, 58:9, 59:16, 67:7, 110:6
Date [1] - 67:7
dated [8] - 6:8, 8:12, 61:18, 65:2, 90:16, 91:1, 91:6, 92:8
dates [4] - 24:13, 25:5, 26:6, 35:18
David [19] - 2:2, 5:5, 5:7, 7:13, 7:22, 12:14, 12:18, 17:12, 17:14, 33:24, 35:10, 53:15, 56:4, 57:16, 62:8, 63:8, 64:2, 82:24, 84:19
DAVID [1] - 1:3
day-to-day [2] - 19:16, 102:17
days [7] - 2:22, 47:23, 47:24, 69:8, 69:9, 84:3, 84:6
deal [2] - 60:17, 108:2
debts [1] - 111:19
debt [2] - 84:15, 85:1
December [5] - 1:9,

22:8, 31:18, 31:21, 59:9
decided [1] - 15:15
decision [5] - 55:24, 106:13, 107:11, 107:13, 107:18
decisions [8] - 65:23, 105:24, 106:23, 106:24, 107:3, 107:5, 107:12
dedicated [1] - 108:22
deducted [3] - 87:22, 88:12, 112:10
deductible [1] - 93:11
deductions [1] - 71:20
deem [1] - 106:25
defendant [1] - 25:25
Defendant [1] - 1:6
Defendant's [15] - 61:4, 61:11, 64:24, 90:15, 91:1, 91:5, 96:14, 97:2, 98:16, 99:25, 100:4, 100:20, 101:5, 101:9, 101:14
defendant's [6] - 22:6, 25:10, 27:3, 30:25, 37:3, 58:18
defended [1] - 5:23
defending [1] - 5:19
Defense [2] - 60:6, 60:10
definite [1] - 17:15
definitely [4] - 8:20, 17:18, 56:8
delegate [1] - 111:21
deliver [1] - 84:7
demand [1] - 103:2
Dennis [3] - 86:6, 87:20, 87:23
dennis [1] - 87:3
Department [2] - 111:11, 113:19
depicting [1] - 99:20
depiction [2] - 96:4, 99:21
deposed [1] - 67:4
deposit [3] - 55:16, 55:22, 103:8
deposited [6] - 35:7, 48:18, 48:19, 82:1, 82:6, 83:13
deposition [4] - 68:4, 69:3, 69:17, 71:6
describe [1] - 109:25
desires [1] - 83:22
destroyed [1] - 18:25
details [3] - 50:18, 58:22
determination [2] - 84:5, 84:6
determine [1] - 84:24
determined [4] - 82:8, 82:14, 82:15, 84:1
develop [1] - 98:21
developed [5] - 98:23, 99:22, 100:22, 101:10, 101:15
device [1] - 80:4
devices [1] - 12:22
dies [1] - 83:21
difference [1] - 72:18
different [8] - 54:13, 62:11, 63:16, 75:3, 80:4, 89:14, 89:24, 107:11
Dinver [19] - 44:12, 48:17, 54:14, 54:25, 55:18, 56:7, 56:10, 56:18, 57:4, 57:14, 57:19, 58:4, 58:14, 58:25, 67:5, 67:6, 68:5, 94:7
dinver [2] - 44:15, 44:16
DINVER [2] - 44:15, 44:16
direct [21] - 6:23, 6:24, 9:3, 12:10, 55:6, 55:17, 55:21, 61:16, 65:12, 71:18, 76:21, 80:15, 83:14, 86:14, 88:22, 90:20, 90:25, 92:7, 92:23, 93:16, 109:21
DIRECT [5] - 3:5, 3:24, 27:7, 29:1, 61:15
directed [2] - 6:24, 87:10
directing [3] - 7:2, 23:19, 80:17
directly [7] - 6:17, 9:18, 55:14, 55:16, 57:10, 87:25, 88:17
disappearance [1] - 18:6
disappeared [4] - 18:5, 29:23, 35:25, 38:7
disconnect [1] - 83:16
discontinuance [2] - 58:13, 59:10
discontinued [2] - 58:11, 58:25
discovered [1] - 39:6
discuss [1] - 74:24
discussed [1] - 74:23
discussion [9] - 12:4, 12:7, 12:12, 26:18, 49:5, 60:14, 67:16, 67:19, 95:7
display [1] - 80:11
dispose [1] - 83:22
distributed [10] - 41:4, 41:16, 45:14, 48:8, 50:11, 69:7, 90:5, 101:24, 102:2, 102:7
distribution [7] - 19:25, 69:10, 88:8, 88:10, 88:11, 108:5, 113:3
distributions [3] - 40:21, 108:8, 112:10
division [1] - 85:10
docket [3] - 27:8, 27:9, 57:10
document [36] - 8:11, 21:6, 22:10, 22:11, 22:15, 22:23, 23:6, 23:8, 23:9, 23:11, 23:15, 23:23, 24:13, 25:14, 25:17, 25:21, 25:23, 26:22, 27:2, 28:2, 30:19, 31:2, 31:17, 32:10, 34:19, 39:19, 40:7, 40:18, 41:9, 58:20, 59:3, 59:7, 60:4, 109:23
documents [17] - 8:5, 18:5, 18:23, 29:2, 29:3, 29:4, 37:20, 37:21, 38:7, 38:23, 52:6, 65:7, 85:8, 85:11, 85:12, 109:21
dollar [3] - 62:4, 69:23, 104:2
dollars [4] - 50:15, 50:16, 70:7, 70:8
donation [1] - 84:15
done [11] - 45:25, 58:5, 59:23, 61:13, 65:11, 84:24, 86:16, 114:14, 114:15, 114:16, 115:4
door [1] - 37:19
dormant [1] - 51:25
doubt [2] - 41:12, 41:13
down [16] - 11:9, 11:10, 13:5, 13:11, 13:13, 16:2, 16:16, 16:19, 17:23, 43:14, 62:1, 62:7, 66:15, 75:9, 89:19, 108:13
dozen [1] - 97:16
draw [13] - 6:5, 20:20, 21:24, 22:5, 41:8, 65:16, 71:15, 71:21, 83:19, 83:20, 85:5, 86:3, 90:15
drawing [3] - 30:11, 32:4, 40:18
Dull [1] - 58:17
duration [1] - 97:13
during [9] - 3:13, 39:4, 78:1, 97:10, 97:23, 97:25, 102:15, 104:6
duty [3] - 106:20, 106:25, 111:21

E

e-mail [5] - 63:22, 63:23, 63:24, 63:25, 64:1
East [7] - 61:19, 64:3, 71:24, 73:23, 90:17, 90:21, 91:2
effect [3] - 41:23, 91:18, 92:2
eight [3] - 16:11, 16:12, 96:17
eighth [1] - 7:3
either [8] - 12:23, 52:10, 59:16, 78:8, 84:8, 89:17, 103:21, 104:15
either/or [1] - 81:19
electronic [2] - 36:1, 36:2
eleven [4] - 96:17, 98:4, 98:9, 99:19
employed [1] - 56:8
end [16] - 4:21, 9:14, 10:3, 10:11, 59:7, 70:22, 71:15, 72:2, 72:7, 72:11, 75:14, 75:17, 79:4, 80:25, 114:24, 115:3
End [14] - 46:8, 46:9, 46:10, 46:22, 47:5, 47:15, 47:19, 47:25, 70:10, 70:18, 71:8, 71:12, 78:20, 78:22
ends [1] - 73:25
enforcement [2] - 30:4, 39:9
engage [1] - 18:17
enlarged [1] - 100:6
ensure [1] - 112:9
enter [3] - 96:13, 98:14, 99:25
entered [3] - 26:22, 98:19, 100:3
entering [5] - 2:7, 28:19, 60:22, 67:24, 95:8
entire [6] - 97:13, 98:20, 106:8, 112:18, 113:2, 113:8
entitled [3] - 30:24, 67:5, 86:4
entity [1] - 9:17
entries [1] - 86:4
entry [8] - 73:22, 75:9, 78:4, 87:2, 88:17, 88:23, 89:5, 89:6
error [1] - 110:22
escrow [6] - 45:19, 45:20, 68:12, 70:12, 102:4, 107:22
estate [3] - 111:9, 111:25, 114:2
ET [1] - 1:6
et [1] - 2:3
eugene [1] - 28:16
EUGENE [1] - 1:6
Eugene [9] - 2:12, 7:3, 12:10, 22:6, 43:6, 50:12, 65:22, 66:16, 70:12
eventually [3] - 15:9, 43:1, 43:2
evidence [19] - 6:12, 22:4, 22:9, 22:15, 26:22, 27:17, 28:2, 56:25, 57:8, 58:1, 67:11, 79:13, 96:14, 96:25, 97:1, 97:4, 98:19, 99:25, 100:3
exact [3] - 7:19, 16:17, 85:22
exactly [6] - 42:24, 63:17, 71:7, 71:13, 89:7, 97:9
examination [1] - 94:23
EXAMINATION [6] - 3:5, 3:24, 27:7, 29:1, 61:15, 95:14
example [1] - 106:2
except [2] - 54:5, 102:19
exception [3] - 21:17, 55:20, 88:11
exchange [1] - 106:5
executed [4] - 26:12, 31:12, 31:14, 85:12
executes [1] - 26:5
exercised [1] - 107:2
exhibit [24] - 6:16, 7:3, 9:6, 24:22, 24:23, 30:14, 61:17, 62:17, 71:15, 71:18, 76:14, 79:13, 79:14, 79:16, 83:14, 89:12, 90:20, 90:25, 92:7, 92:23, 93:17, 100:18, 109:10, 110:24
Exhibit [37] - 6:6,

6:13, 9:4, 20:13,
20:18, 24:18, 25:3,
26:23, 27:9, 30:11,
30:15, 40:12, 41:18,
61:4, 61:11, 64:20,
64:21, 65:1, 65:19,
71:16, 76:19, 79:20,
80:5, 80:17, 83:18,
85:6, 85:24, 90:15,
91:1, 91:5, 98:16,
100:20, 101:9,
101:14, 109:7
exist [1] - 4:5
existing [1] - 94:14
existing [2] - 95:5,
115:8
exiting.THE [3] -
28:11, 60:21, 67:23
expect [1] - 75:2
expectation [1] -
115:3
expedite [2] - 3:12,
14:3
expenses [7] - 48:11,
54:21, 89:20, 89:22,
108:16, 109:3,
113:25
explain [1] - 15:20
explanation [1] - 3:15
extended [3] - 44:20,
44:21, 44:23
extent [3] - 4:19, 49:2,
60:11
extrinsic [1] - 75:4

F

face [2] - 63:23
fact [3] - 24:12, 31:5, 66:17
factor [1] - 113:17
factors [1] - 113:16
facts [4] - 25:9, 25:24, 30:11, 30:25
fair [18] - 11:15, 17:22, 19:15, 30:20, 83:2, 83:25, 84:1, 84:24, 84:25, 95:21, 96:4, 97:24, 98:10, 99:7, 99:21, 104:12, 106:10, 113:10
familiar [1] - 44:16
far [4] - 10:21, 11:25, 20:7, 38:6
fast [1] - 9:9
faybyshev [4] - 16:15, 16:19, 17:3, 81:11
Faybyshev [49] - 4:25, 10:8, 11:8, 17:8, 17:23, 21:18, 32:21.

32:22, 35:4, 35:8,
36:19, 36:22, 37:7,
43:22, 43:24, 46:16,
46:17, 47:18, 48:16,
50:13, 50:15, 54:12,
61:24, 62:25, 63:2,
63:13, 64:7, 70:17,
78:7, 81:9, 81:14,
81:23, 81:25, 82:10,
82:15, 82:21, 85:3,
85:14, 85:16, 92:18.
93:22, 93:23,
102:21, 102:23,
103:2, 105:20,
112:18, 114:5, 114:7

Faybyshév's [5] -
10:22, 74:13, 75:13,
77:6, 105:3

February [7] - 6:8,
8:12, 26:4, 31:9,
31:14, 65:2, 91:6

Federal [3] - 11:16,
71:19, 81:4

fee [4] - 54:20, 54:22,
89:9, 111:24

fees [20] - 52:5, 52:6,
52:9, 52:13, 52:23,
53:25, 54:14, 54:16,
54:18, 54:21, 54:25,
56:7, 88:23, 89:20,
89:25, 90:5, 90:9,
90:10, 111:11

few [2] - 2:22, 59:25

fiduciary [2] - 106:20,
106:25

fifteen [2] - 60:11,
84:3

file [1] - 44:9

filed [10] - 29:24, 37:8,
42:7, 51:19, 58:13,
58:15, 59:10, 72:15,
73:14, 107:17

filing [1] - 37:20

finally [2] - 101:15,
108:2

finances [1] - 19:16

financial [2] - 105:24,
106:23

financially [1] - 35:9

fine [1] - 22:2

finger [2] - 86:20,
86:22

finish [1] - 84:16

Finishes [1] - 92:25

FIRM [1] - 1:13

firm [17] - 5:15, 5:19,
5:20, 15:23, 17:17,
18:12, 21:1, 53:4,
53:10, 53:13, 64:8,
69:11, 70:11, 90:10

90:11, 94:7, 107:23
Firm [1] - 69:21
firms [1] - 53:12
first [44] - 9:10, 9:25,
 10:7, 19:9, 19:12,
 21:1, 25:6, 25:7,
 30:21, 32:15, 32:21,
 33:3, 33:18, 36:21,
 38:22, 39:20, 40:24,
 41:19, 43:14, 48:21,
 48:24, 52:13, 53:11,
 53:18, 53:22, 54:24,
 67:4, 67:10, 69:22,
 71:17, 71:19, 71:24,
 73:22, 74:12, 77:1,
 77:5, 78:5, 80:17,
 88:25, 102:25,
 107:15, 107:17,
 109:22
Five [2] - 109:7, 109:8
five [23] - 30:12,
 31:10, 35:6, 37:5,
 66:12, 74:2, 81:6,
 82:3, 82:5, 82:9,
 82:17, 82:23, 84:11,
 84:14, 85:16, 94:24,
 97:9, 104:6, 106:6,
 112:1, 112:2, 112:3,
 112:4
floor [4] - 3:3, 3:23,
 28:25, 49:8
flow [1] - 40:22
flows [1] - 85:11
FMV [1] - 84:5
follow [1] - 76:20
followed [1] - 84:9
following [4] - 65:23,
 68:7, 70:5, 102:11
follows [2] - 32:6,
 39:18
force [1] - 103:12
forget [1] - 21:20
forgive [1] - 10:7
form [2] - 55:15, 71:21
formal [1] - 16:17
formed [2] - 4:3, 11:2
former [1] - 24:16
forms [1] - 73:15
forth [1] - 68:18
forward [1] - 12:17
four [14] - 4:16, 8:13,
 65:16, 66:15, 68:8,
 71:21, 76:22, 97:9,
 101:20, 101:21,
 101:23, 104:6,
 111:25
Four [1] - 41:18
fourteen [1] - 17:21
Frank [2] - 58:5, 58:16
fraud [2] - 11:16, 12:1

free [1] - 52:24
freed [1] - 102:6
frequency [1] - 102:15
Frias [1] - 2:4
FRIAS [1] - 1:11
Frias-Colon [1] - 2:4
FRIAS-COLON,
Justice [1] - 1:11
Friday [1] - 114:25
friend [4] - 74:13,
75:13, 78:8
front [16] - 6:16, 6:17,
6:18, 7:1, 22:8,
22:10, 24:13, 24:21,
25:18, 26:2, 39:24,
57:12, 58:20,
100:17, 113:17,
113:18
full [1] - 113:9
function [1] - 11:11
funds [29] - 51:1,
52:19, 53:4, 55:7,
55:17, 59:14, 61:25,
62:5, 64:3, 64:13,
69:21, 70:12, 71:10,
71:11, 76:10, 85:2,
88:10, 103:10,
103:14, 103:18,
103:21, 103:23,
104:13, 105:9,
105:10, 108:2,
108:3, 108:25

G

general [7] - 42:17,
43:5, 43:15, 46:12,
47:5, 79:15, 85:23
General [1] - 67:6
gentleman's [1] - 10:6
gentlemen [1] - 2:2
gift [1] - 84:13
given [5] - 20:19, 22:7,
40:7, 67:18, 69:16
glad [1] - 62:5
Gorlicht [2] - 74:8,
74:15
gorlicht [2] - 74:20,
74:22
gorlicht's [2] - 76:5,
76:10
governed [1] - 35:1
governing [1] - 41:3
Government [1] -
11:17
grant [1] - 12:24
GRASING [85] - 1:13,
2:12, 3:4, 3:5, 3:11,
3:18, 3:21, 3:24,
6:12, 6:21, 11:21,

12:13, 13:2, 18:19,
20:10, 20:15, 20:17,
22:3, 22:13, 22:16,
22:21, 23:25, 24:2,
25:1, 25:5, 25:23,
26:16, 26:25, 27:3,
27:7, 27:22, 28:5,
28:24, 29:1, 30:15,
34:17, 40:15, 40:17,
47:14, 49:3, 56:23,
57:8, 57:25, 59:2,
59:8, 59:22, 60:1,
60:4, 60:9, 60:20,
60:25, 61:3, 61:9,
61:15, 65:5, 65:14,
65:20, 67:21, 68:2,
76:17, 78:18, 79:12,
79:15, 79:18, 79:21,
80:5, 80:11, 85:21,
86:1, 86:18, 86:23,
89:1, 89:3, 90:13,
94:20, 96:24, 97:3,
98:6, 98:18, 107:6,
107:8, 114:20,
114:23, 115:6,
115:11

Grasing [42] - 1:13,
2:10, 3:3, 3:22, 6:10,
11:20, 12:10, 13:3,
18:16, 22:9, 23:9,
23:18, 23:19, 23:22,
24:24, 26:24, 27:2,
27:17, 27:21, 28:3,
28:23, 29:15, 29:18,
49:7, 58:19, 59:19,
60:24, 61:6, 67:14,
67:19, 68:1, 68:20,
76:14, 76:24, 77:22,
85:20, 86:13, 90:12,
96:23, 107:7,
110:15, 114:18

Grasing's [1] - 60:7

great [1] - 85:1

Gregory [1] - 89:13

GROUP [1] - 1:16

guess [2] - 54:22, 70:4

H

half [9] - 35:5, 35:6,
81:8, 81:9, 85:17,
85:18, 88:9, 96:17,
114:23

hand [10] - 2:17, 8:6,
9:16, 9:20, 20:21,
21:14, 24:20, 96:16,
98:7, 99:18

hands [3] - 41:6, 96:4,
98:8

handwriting [2] -

62:24, 110:24
hard [5] - 6:15, 6:18,
6:19, 20:12, 24:20
heading [1] - 57:22
health [3] - 11:13,
13:7, 13:18
hear [7] - 2:25, 3:17,
5:5, 14:6, 15:4, 61:8,
97:15
heirs [1] - 83:24
help [4] - 22:11, 22:23,
23:24, 58:24
hidden [1] - 55:20
hire [3] - 54:3, 54:5,
54:7
hired [1] - 90:1
hit [1] - 57:23
hold [9] - 8:6, 20:12,
45:17, 47:7, 50:2,
57:23, 67:22, 98:8,
99:18
holders [1] - 104:9
holding [3] - 21:14,
96:3, 96:16
holds [1] - 54:23
Honor [28] - 12:13,
13:1, 20:11, 23:14,
23:21, 28:7, 34:13,
40:14, 62:21, 67:13,
80:2, 80:5, 94:24,
95:12, 95:24, 96:13,
96:21, 97:5, 98:2,
98:14, 99:10, 99:24,
100:5, 101:1, 109:6,
109:13, 114:15,
115:12
HONORABLE [1] -
1:11
Honorable [2] - 2:3,
58:3
hopefully [1] - 115:2
hour [1] - 114:23
hypothetical [1] -
107:9

I

idea [3] - 29:25, 30:1,
82:7
identified [2] - 26:7,
58:21
image [11] - 95:25,
98:3, 98:8, 98:11,
98:15, 100:9,
100:11, 101:6,
101:8, 101:14
images [1] - 100:6
immediately [10] -
44:18, 45:11, 47:16,
48:17, 55:23, 70:13,

70:15, 70:18,
103:10, 103:14
impossible [3] -
66:18, 66:21, 66:22
inaccurate [1] - 32:9
Inc [5] - 58:4, 67:6,
67:7, 94:12, 94:13
inches [1] - 113:18
include [5] - 111:7,
111:9, 111:11,
111:13, 111:15
includes [1] - 111:5
including [1] - 7:22
income [2] - 20:8,
71:17
incorrect [4] - 72:12,
72:14, 72:22, 74:4
indebtedness [2] -
65:24, 66:8
independent [1] -
45:15
independently [3] -
69:1, 69:15, 70:1
INDEX [1] - 1:3
index [4] - 2:5, 2:6,
57:4, 58:14
indicate [2] - 79:23,
100:18
indicated [1] - 110:16
indicted [1] - 11:16
individual [2] - 9:17,
54:9
individually [1] -
42:19
informed [1] - 16:18
informing [1] - 17:2
initial [1] - 108:10
initials [1] - 21:4
injured [4] - 42:8,
42:9, 91:16
injuries [2] - 42:7,
42:13
inside [1] - 113:18
insignificant [1] -
51:13
instead [3] - 63:12,
64:3, 87:11
instructions [3] -
18:17, 75:5, 108:7
Insurance [3] - 43:5,
55:19, 69:22
insurance [14] - 11:16,
12:1, 44:9, 91:10,
91:11, 91:19, 91:20,
91:21, 91:22, 91:25,
92:1, 93:8, 93:11,
113:23
intent [2] - 10:20,
82:21
interes [1] - 76:8

interest [18] - 32:6,
37:6, 39:18, 40:23,
45:1, 45:2, 55:7,
55:17, 55:21, 63:11,
76:1, 76:2, 77:20,
77:23, 82:25, 83:23,
83:25, 85:9
interested [4] - 55:5,
84:17, 84:20, 114:6
interrupting [1] -
101:2
invest [1] - 80:22
invested [5] - 80:24,
81:11, 112:14,
112:19, 113:8
investment [6] -
80:20, 82:8, 87:4,
112:18, 112:23,
113:3
investments [1] - 45:7
investors [1] - 108:4
IOLA [9] - 15:18,
15:20, 49:21, 50:23,
50:25, 51:7, 54:23,
68:16, 70:13
iOLA [1] - 15:21
Island [1] - 28:17
issue [2] - 26:15,
108:21
issued [5] - 20:7,
70:15, 92:20, 93:17,
109:3
issues [2] - 13:10,
60:18

J

Jerzy [23] - 5:19, 5:23,
15:13, 42:1, 42:4,
42:5, 43:23, 44:2,
44:4, 45:23, 46:3,
53:2, 66:6, 70:3,
70:4, 70:11, 91:15,
92:2, 94:1, 102:8,
102:12, 107:21,
113:16
job [7] - 46:12, 46:14,
97:11, 97:16, 97:18,
97:22, 101:9
jog [8] - 9:8, 25:11,
26:10, 44:12, 57:5,
57:20, 58:8, 59:13
jogs [1] - 58:6
JOHNSON [1] - 1:24
Johnson [1] - 115:17
join [1] - 10:15
joined [4] - 7:13, 7:18,
19:12, 19:13
Joshua [1] - 31:25
judge [1] - 20:10

Judge [2] - 2:3,
107:19
judgement [1] - 25:22
judgment [10] - 21:22,
22:7, 23:2, 25:10,
27:4, 30:22, 30:25,
37:3, 39:25, 107:2
June [1] - 88:4
JURORS [2] - 13:24,
101:12
jury [46] - 1:11, 2:7,
2:10, 6:11, 13:21,
13:22, 21:25, 22:1,
28:3, 28:8, 28:11,
28:19, 28:21, 57:1,
60:18, 60:21, 60:22,
61:4, 61:11, 64:22,
64:25, 65:4, 65:9,
67:11, 67:23, 67:24,
76:15, 76:20, 76:21,
80:7, 80:12, 83:17,
95:2, 95:5, 95:8,
100:6, 100:17,
101:4, 101:6, 101:8,
101:19, 109:11,
109:12, 109:25,
115:8

K

K-I-R-Z-H-N-E-R [1] -
79:25
K1 [5] - 9:24, 10:7,
10:21, 20:7, 73:15
K1's [2] - 9:7, 105:20
Kasowitz [1] - 21:3
Kaufman [1] - 58:17
KBTF [6] - 20:22,
20:24, 24:14, 24:19,
25:5, 26:7
KBTF-0000865 [1] -
40:24
keep [2] - 27:5, 29:15
kept [1] - 19:8
key [1] - 37:14
Khavinson [67] - 2:13,
2:14, 2:21, 3:6, 3:25,
5:2, 5:21, 7:4, 9:3,
9:24, 12:10, 13:4,
13:8, 15:16, 15:18,
18:12, 22:6, 23:24,
25:16, 27:8, 28:12,
28:16, 29:2, 29:23,
32:6, 32:15, 34:15,
41:18, 43:6, 47:13,
48:3, 50:12, 53:10,
57:3, 59:4, 61:1,
61:16, 62:18, 65:22,
66:16, 68:2, 68:4,
68:16, 70:12, 70:14,

75:1, 79:9, 86:6,
86:12, 87:6, 87:7,
88:23, 89:6, 89:8,
90:3, 92:4, 95:15,
97:6, 98:8, 98:20,
99:18, 100:21,
101:17, 108:21,
109:22, 114:16
khavinson [3] - 5:24,
27:15, 96:3
KHAVINSON [1] - 1:6
Khavinson's [1] -
115:2
Kings [2] - 58:3, 58:15
kirzhner [1] - 33:3
Kirzhner [5] - 5:1,
21:20, 33:4, 33:5,
79:23
Klein [3] - 102:5,
102:10, 107:23
knock [1] - 57:1
knowledge [1] - 47:6
Kochnev [6] - 5:2,
21:19, 33:11, 33:12,
33:13, 102:22
Kosowitz [3] - 24:15,
27:12, 48:22
kosowitz [1] - 27:11
Koswitz [1] - 31:25
Kran's [1] - 68:12
Kranz [1] - 69:21
kremerman [8] -
81:10, 81:23, 81:25,
82:15, 85:13, 85:17,
108:6, 113:2
Kremerman [40] - 5:1,
11:4, 11:9, 11:10,
11:15, 11:25, 13:11,
13:13, 14:20, 16:2,
16:13, 16:16, 16:18,
17:3, 17:7, 17:22,
19:4, 20:1, 21:19,
32:12, 35:5, 35:8,
36:19, 50:16, 54:12,
65:22, 66:16, 81:10,
81:17, 82:10, 82:21,
85:4, 87:4, 88:5,
88:7, 88:20, 102:21,
105:19, 108:9,
108:10
Kremerman's [9] -
13:4, 19:23, 20:3,
87:3, 87:10, 87:22,
88:2, 105:5, 108:8

L

ladies [1] - 2:1
large [2] - 100:9,
100:11

last [9] - 4:7, 12:7, 17:20, 25:6, 25:7, 80:16, 86:5, 89:12, 91:23
LAW [2] - 1:13, 1:16
Law [1] - 69:21
law [18] - 5:14, 5:18, 5:20, 13:7, 13:18, 15:23, 18:12, 30:4, 39:9, 53:4, 53:10, 53:13, 87:3, 87:6, 87:11, 90:10, 90:11, 107:23
lawsuit [16] - 5:19, 24:8, 39:3, 42:7, 43:23, 44:3, 44:9, 44:18, 54:23, 55:7, 55:24, 85:1, 107:14, 107:17, 113:16
lawyer [2] - 34:22, 40:3
lawyer's [1] - 54:8
least [5] - 13:21, 19:9, 19:14, 37:11, 73:10
ledger [4] - 79:15, 80:6, 85:23, 111:18
left [5] - 8:4, 9:16, 9:20, 38:11, 38:20
left-hand [2] - 9:16, 9:20
legal [32] - 5:16, 11:11, 11:12, 13:5, 13:10, 13:12, 19:3, 50:13, 52:5, 52:6, 52:9, 52:13, 52:23, 53:4, 53:6, 53:25, 54:14, 54:16, 54:18, 54:21, 54:25, 56:7, 88:23, 88:24, 89:7, 89:20, 89:25, 90:5, 90:8, 90:10, 90:11
legals [1] - 88:25
legs [1] - 95:2
lend [7] - 45:4, 71:8, 74:2, 74:15, 74:20, 89:17, 114:7
lender [1] - 74:4
lent [7] - 44:3, 47:16, 71:9, 72:11, 72:13, 78:23, 78:25
less [5] - 51:18, 82:20, 83:2, 84:15, 107:13
letter [3] - 58:2, 58:9, 91:23
liabilities [4] - 71:22, 72:7, 76:22, 112:9
Liability [1] - 6:8
liability [14] - 73:23, 73:24, 75:15, 75:18, 77:4, 78:4, 91:10, 91:11, 91:19, 91:20, 91:21, 91:22, 91:24, 92:1
liberate [2] - 107:14, 108:1
lien [9] - 15:14, 45:5, 45:11, 45:21, 45:23, 102:8, 104:9, 107:18, 107:24
life [1] - 108:14
lift [2] - 45:5, 107:18
lifted [1] - 45:11
light [4] - 65:21, 66:17, 84:8, 101:2
likely [5] - 10:23, 56:16, 78:8, 89:8, 89:9
limit [2] - 44:19, 44:20
Limited [1] - 6:8
line [10] - 39:20, 68:9, 69:6, 69:18, 70:6, 70:21, 71:22, 72:14, 86:8, 86:9
list [3] - 7:16, 88:17, 113:15
listed [12] - 6:2, 34:3, 34:7, 72:5, 74:8, 78:20, 79:6, 79:10, 81:4, 85:16, 85:17, 86:5
listen [2] - 2:22, 13:9
listening [1] - 80:1
listing [1] - 7:23
litigation [9] - 23:4, 48:11, 48:20, 48:21, 48:22, 53:16, 53:21, 53:25, 54:1
litigations [1] - 53:21
LLC [218] - 1:6, 4:1, 4:9, 4:10, 4:13, 4:14, 4:24, 5:9, 5:16, 5:23, 6:7, 7:8, 9:5, 10:22, 10:25, 11:2, 14:5, 14:7, 15:17, 16:4, 18:23, 18:24, 19:1, 19:3, 20:8, 26:13, 29:5, 29:11, 29:13, 34:20, 35:1, 35:8, 37:6, 38:24, 40:2, 42:8, 42:10, 42:17, 42:21, 42:22, 42:24, 43:5, 43:7, 43:9, 43:11, 43:16, 43:24, 44:1, 44:3, 44:18, 45:4, 45:8, 45:10, 46:1, 46:6, 46:8, 46:9, 46:18, 46:21, 46:22, 46:24, 47:1, 47:6, 47:12, 47:16, 47:19, 47:24, 48:1, 48:19, 50:14, 51:1, 51:2, 51:8, 51:19, 51:25, 52:21, 53:1, 53:22, 55:2, 55:6, 55:8, 55:9, 55:14, 55:16, 55:20, 55:23, 56:4, 56:5, 56:19, 59:13, 61:18, 61:19, 61:23, 63:4, 63:6, 63:9, 64:4, 66:4, 66:24, 68:14, 68:17, 70:10, 70:12, 70:15, 71:8, 71:9, 71:11, 71:12, 72:11, 72:12, 72:13, 72:16, 72:18, 73:9, 74:3, 74:6, 74:16, 74:20, 74:24, 75:15, 75:20, 76:1, 76:3, 76:5, 78:9, 78:11, 78:20, 78:22, 78:23, 78:25, 80:6, 81:1, 81:2, 81:6, 81:11, 81:15, 81:18, 82:2, 82:6, 82:11, 82:12, 82:17, 82:19, 82:20, 82:22, 82:25, 83:13, 84:13, 85:4, 85:23, 87:10, 88:15, 90:17, 90:21, 90:22, 91:2, 91:3, 91:7, 92:1, 92:3, 92:9, 92:14, 92:17, 92:20, 92:21, 92:25, 93:18, 93:20, 93:24, 98:21, 101:10, 101:24, 102:3, 102:16, 102:25, 103:8, 103:16, 104:21, 104:24, 105:1, 105:7, 105:9, 105:17, 105:20, 106:14, 106:17, 106:21, 106:25, 108:11, 108:14, 108:18, 108:22, 108:25, 109:4, 110:2, 110:10, 110:19, 111:18, 111:22, 112:14, 112:19, 113:7, 113:10, 114:8
LLC's [7] - 18:20, 19:2, 52:19, 53:4, 71:16, 73:4, 112:10
LLP [2] - 31:25, 58:17
loan [67] - 8:22, 44:7, 44:8, 47:20, 47:24, 48:3, 49:10, 49:23, 50:10, 50:20, 52:2, 55:9, 55:11, 55:12, 55:15, 61:23, 61:24, 63:10, 63:15, 64:3, 64:10, 64:11, 66:4, 66:6, 66:12, 66:20, 66:22, 70:10, 70:18, 71:12, 71:24, 72:5, 74:8, 74:14, 74:22, 75:22, 75:24, 76:6, 76:10, 76:25, 77:3, 77:7, 77:10, 77:13, 77:14, 77:18, 78:1, 78:4, 78:9, 78:15, 78:20, 79:5, 79:11, 81:1, 81:2, 89:13, 89:14, 92:20, 93:20, 94:18, 103:11, 106:2, 110:16, 110:19, 114:9
loans [8] - 63:11, 66:9, 66:10, 74:24, 76:2, 77:23
lobby [1] - 79:24
located [1] - 95:18
location [1] - 79:22
look [14] - 9:16, 24:12, 27:18, 49:18, 50:23, 58:2, 71:17, 71:24, 74:18, 86:9, 89:3, 89:19, 91:5, 98:6
looked [2] - 73:20, 97:25
looking [8] - 25:9, 27:16, 27:23, 38:23, 67:10, 81:4, 85:21, 89:15
looks [1] - 80:2
lose [5] - 45:7, 112:16, 112:21, 112:23, 113:5
loss [6] - 9:12, 9:13, 9:19, 10:2, 10:10, 72:19
losses [3] - 40:20, 55:19, 85:11
lost [3] - 8:5, 76:17, 113:11
louder [1] - 29:18
loudly [1] - 61:7
lower [1] - 24:20

M

mail [5] - 63:22, 63:23, 63:24, 63:25, 64:1
main [1] - 5:7
maintain [2] - 109:2, 110:8
maintained [2] - 15:22, 15:23
maintaining [2] - 110:3, 110:9
major [5] - 64:10, 66:4, 85:3, 113:16, 113:17
management [2] - 65:17, 65:23
managing [21] - 4:2, 10:24, 11:2, 11:9, 13:13, 16:2, 16:13, 16:16, 16:20, 17:2, 17:23, 43:24, 46:18, 46:20, 47:1, 62:17, 81:14, 81:17, 93:24, 106:17, 108:10
manners [1] - 28:22
Mark [2] - 68:12, 69:21
marked [4] - 26:23, 96:25, 97:1, 101:8
market [6] - 83:6, 83:25, 84:1, 84:24, 84:25, 106:10
marketing [1] - 53:12
masonry [1] - 43:9
material [2] - 30:11, 61:25
Matronica [1] - 5:21
matter [8] - 18:20, 22:24, 25:13, 51:1, 51:4, 51:9, 53:5, 87:13
matters [1] - 58:22
maximum [3] - 94:7, 108:3
mean [8] - 18:15, 38:12, 38:14, 45:21, 51:16, 72:3, 75:20, 81:24
meaning [2] - 82:11, 103:21
means [1] - 87:6
meantime [1] - 113:22
member [39] - 4:2, 8:9, 8:17, 10:25, 11:2, 11:9, 16:2, 16:13, 16:16, 16:20, 17:2, 17:23, 19:11, 19:18, 33:6, 33:14, 33:20, 33:21, 34:20, 35:3, 36:9, 37:5, 43:24, 46:21, 47:1, 54:9, 56:4, 56:5, 81:14, 81:17, 83:20, 83:21, 83:24, 84:4, 84:7, 93:24, 104:21, 106:17, 113:9
members [54] - 4:24, 4:25, 6:2, 7:8, 7:16, 16:18, 16:21, 17:2, 17:10, 21:19, 32:5, 35:8, 39:17, 40:21, 40:22, 41:16, 46:18,

48:8, 50:11, 50:12,
53:24, 54:5, 56:2,
56:3, 62:2, 62:3,
65:24, 66:1, 66:5,
66:13, 74:21, 74:25,
77:9, 81:20, 83:23,
84:3, 85:7, 85:12,
85:15, 101:24,
102:3, 102:16,
102:20, 103:16,
104:17, 106:20,
108:11, 111:16,
112:11, 113:7,
113:10, 114:1

membership [5] -
20:5, 81:21, 82:9,
82:18, 105:1

memo [1] - 91:10

memorialize [1] -
109:3

memory [11] - 9:8,
23:16, 25:11, 26:10,
44:13, 44:25, 57:5,
57:20, 58:6, 58:8,
59:13

mention [2] - 21:21,
29:3

mentioned [3] - 7:10,
24:15, 29:2

message [1] - 55:11

Mestechkin [6] -
12:25, 23:18, 48:23,
94:22, 95:10, 109:10

MESTECHKIN [48] -
1:16, 11:18, 13:1,
23:14, 23:21, 28:7,
29:8, 29:10, 34:8,
34:10, 34:13, 40:14,
47:4, 47:9, 50:1,
50:3, 62:21, 67:13,
79:7, 80:2, 94:24,
95:4, 95:12, 95:14,
95:24, 96:2, 96:13,
96:20, 97:5, 98:2,
98:14, 99:10, 99:14,
99:24, 100:2, 100:5,
100:12, 100:14,
100:19, 101:1,
101:7, 101:13,
109:6, 109:13,
109:16, 109:18,
114:15, 115:12

mestechkin [1] -
50:17

Mestechkin/Wing [1] -
1:16

method [1] - 64:6

mic [5] - 2:25, 3:10,
3:20, 61:7, 68:3

Michael [29] - 5:2,
9:24, 11:4, 11:15,
11:25, 13:4, 16:1,
16:12, 16:16, 16:18,
17:3, 17:7, 17:22,
19:3, 19:23, 20:1,
20:2, 32:16, 81:9,
87:3, 87:4, 87:9,
87:22, 88:2, 88:7,
88:20, 108:8, 108:9,
108:10

Michellin [2] - 75:10,
76:25

microphone [1] -
29:16

middle [4] - 96:7,
96:8, 100:25, 101:3

might [8] - 18:21,
23:10, 23:23, 74:3,
74:17, 80:3

Mikhail [3] - 4:25,
65:22, 66:16

mikhail [1] - 32:12

Mikola [2] - 5:2, 33:19

million [4] - 69:23,
70:7, 70:8, 104:2

mind [1] - 29:15

mine [1] - 111:1

minus [1] - 52:5

minutes [5] - 13:6,
59:25, 60:11, 74:3,
94:24

mischaracterization
[1] - 29:10

missing [2] - 30:18,
38:22

moment [2] - 27:24,
51:2

momentarily [1] -
83:15

money [83] - 15:14,
15:15, 41:4, 44:1,
44:3, 45:4, 45:9,
45:12, 45:13, 45:14,
46:1, 47:15, 47:17,
47:18, 48:12, 48:14,
48:17, 48:18, 48:19,
50:13, 50:15, 50:17,
50:20, 51:8, 51:13,
52:4, 53:1, 53:20,
54:4, 54:8, 54:11,
54:12, 54:23, 55:4,
55:6, 55:21, 55:25,
63:12, 63:13, 63:14,
64:6, 65:25, 68:10,
74:2, 74:16, 74:20,
79:1, 80:22, 81:1,
81:2, 81:10, 81:11,
83:13, 84:18, 84:22,
87:10, 87:14, 87:20,
87:22, 88:3, 88:7,
88:10, 88:21, 89:10,
89:16, 89:17, 103:1,
103:3, 103:5, 103:8,
108:18, 112:13,
112:16, 112:21,
112:23, 113:5,
113:11, 114:7, 114:9

monies [2] - 51:4,
51:12

month [3] - 35:20,
53:14, 97:12

monthly [1] - 104:3

months [3] - 53:14,
88:9

morning [6] - 2:1, 2:8,
3:6, 3:7, 12:20,
12:21

mortgage [10] - 104:1,
104:2, 104:4, 104:7,
104:15, 108:4,
111:7, 112:6,
113:22, 114:2

most [7] - 3:11, 10:23,
56:16, 78:8, 89:8,
89:9, 107:13

mostly [2] - 18:23,
111:1

motion [9] - 21:22,
22:6, 25:10, 27:3,
30:21, 30:25, 37:2,
37:3, 39:25

mouth [1] - 10:18

move [5] - 15:15,
23:10, 23:13, 29:17,
101:5

moved [1] - 107:24

movement [1] - 11:22

moves [1] - 29:16

moving [1] - 113:18

MR [131] - 2:12, 3:4,
3:5, 3:11, 3:18, 3:21,
3:24, 6:12, 6:21,
11:18, 11:21, 12:13,
13:1, 13:2, 18:19,
20:10, 20:15, 20:17,
22:3, 22:13, 22:16,
22:21, 23:14, 23:21,
23:25, 24:2, 25:1,
25:5, 25:23, 26:16,
26:25, 27:3, 27:7,
27:22, 28:5, 28:7,
28:24, 29:1, 29:8,
29:10, 30:15, 34:8,
34:10, 34:13, 34:17,
40:14, 40:15, 40:17,
47:4, 47:9, 47:14,
49:3, 50:1, 50:3,
56:23, 57:8, 57:25,
59:2, 59:8, 59:22,
60:1, 60:4, 60:9,
60:20, 60:25, 61:3,
61:9, 61:15, 62:21,
65:5, 65:14, 65:20,
67:13, 67:21, 68:2,
76:17, 78:18, 79:7,
79:12, 79:15, 79:18,
79:21, 80:2, 80:5,
80:11, 85:21, 86:1,
86:18, 86:23, 89:1,
89:3, 90:13, 94:20,
94:24, 95:4, 95:12,
95:14, 95:24, 96:2,
96:13, 96:20, 96:24,
97:3, 97:5, 98:2,
98:6, 98:14, 98:18,
99:10, 99:14, 99:24,
100:2, 100:5,
100:12, 100:14,
100:19, 101:1,
101:7, 101:13,
107:6, 107:8, 109:6,
109:13, 109:16,
109:18, 114:15,
114:20, 114:23,
115:6, 115:11,
115:12

multiple [1] - 62:3

must [1] - 83:24

N

Naiberg [3] - 87:3,
87:21, 87:23

name [15] - 5:5, 5:20,
10:7, 21:1, 22:17,
28:13, 28:14, 34:24,
35:4, 37:22, 44:10,
44:11, 44:12, 44:14,
46:7

names [2] - 7:7, 7:10

Nayberg [1] - 86:6

ND [1] - 70:19

necessary [3] - 54:8,
63:19, 103:13

need [21] - 3:15, 3:17,
6:19, 6:24, 6:25,
12:23, 23:8, 23:15,
28:12, 53:18, 54:8,
56:23, 63:23, 64:9,
77:24, 79:16, 80:9,
100:9, 100:10,
109:10, 109:21

needed [1] - 85:2

negative [1] - 113:14

net [4] - 40:19, 40:20,
54:22, 102:2

never [8] - 8:24, 10:6,
19:19, 20:6, 53:6,
72:13, 73:20

NEW [1] - 1:1

new [5] - 35:23, 50:17,
55:23, 104:21

New [10] - 1:8, 4:15,
4:18, 6:7, 28:17,
46:10, 92:8, 92:14,
92:16, 92:20

next [35] - 2:11, 9:24,
10:6, 12:11, 12:14,
12:19, 13:16, 25:8,
29:18, 33:3, 33:11,
41:15, 50:5, 59:25,
69:17, 70:20, 72:5,
75:8, 75:9, 76:23,
77:3, 78:4, 79:12,
80:14, 86:2, 88:22,
89:12, 92:6, 99:15,
101:6, 103:5, 103:7,
114:12, 115:5

Next [1] - 77:25

nine [6] - 23:10, 23:14,
23:23, 40:19, 41:5,
44:24

NO [1] - 1:3

nobody [4] - 62:4,
103:10, 114:3, 114:6

none [1] - 107:1

nonetheless [2] -
104:18, 110:15

Northfield [1] - 55:19

Northfield's [1] -
69:22

notary [1] - 22:7

note [6] - 44:21,
70:16, 76:3, 76:5,
77:16, 78:13

noted [2] - 13:1, 80:2

nothing [6] - 2:18,
29:10, 32:24, 45:25,
72:2, 94:20

notice [1] - 84:7

notified [6] - 16:21,
16:23, 23:3, 24:8,
25:12, 26:11

notify [5] - 21:12,
30:4, 39:9, 56:6,
81:20

notifying [1] - 57:19

nowhere [1] - 66:2

number [29] - 2:5, 2:6,
20:22, 24:13, 25:5,
26:6, 27:8, 27:9,
40:24, 57:4, 58:14,
61:18, 69:7, 72:10,
74:1, 74:4, 74:17,
79:16, 80:1, 82:16,
90:16, 90:21, 90:22,
91:1, 91:6, 92:8,
92:24, 93:17, 105:14

numerous [1] - 75:3

NY [2] - 1:14, 1:17

NYCEF [2] - 57:10,
58:15

O

oath [1] - 61:2

object [1] - 23:18

objection [19] - 11:18,
11:19, 11:23, 12:8,
12:9, 23:13, 28:6,
29:8, 29:12, 34:8,
34:11, 47:4, 47:7,
50:1, 50:2, 79:7,
98:17, 100:1, 107:6

objections [1] - 97:1

observing [1] - 2:21

obstruct [1] - 100:10

OBT [1] - 77:1

obtain [1] - 103:16

obtained [1] - 57:10

obtaining [3] - 64:3,
65:23, 104:17

obviously [1] - 45:12

occasionally [1] -
108:17

occasions [1] - 97:10

occur [1] - 81:12

occurred [2] - 11:22,
57:21

Ocean [1] - 1:17

October [4] - 18:7,
58:2, 58:9, 58:10

OET [1] - 76:25

OF [4] - 1:1, 1:1, 1:13

Off-the-record [6] -
12:4, 26:18, 49:5,
60:14, 67:16, 95:7

off-the-record [3] -
12:7, 26:21, 67:19

offer [5] - 82:11,
82:12, 83:24, 84:3,
84:8

offered [3] - 82:5,
82:10, 82:12

office [9] - 8:4, 8:5,
18:5, 18:6, 18:8,
29:23, 37:9, 62:9,
62:10

OFFICER [13] - 2:7,
12:5, 26:19, 28:11,
28:19, 49:6, 60:21,
60:22, 67:17, 67:24,
95:5, 95:8, 115:8

Oleg [1] - 1:16

Omega [1] - 91:7

Omnibuild [52] -
18:23, 18:25, 43:6,
43:11, 43:14, 43:15,
44:1, 44:3, 44:8,
45:4, 45:8, 46:1,

46:13, 46:14, 46:15,
47:2, 47:5, 47:12,
47:15, 47:18, 47:22,
47:24, 47:25, 48:16,
49:24, 54:14, 54:25,
55:4, 55:10, 55:19,
55:21, 55:25, 56:18,
57:4, 57:14, 58:4,
58:14, 58:25, 66:6,
67:5, 68:5, 70:9,
70:16, 70:17, 70:18,
71:9, 79:1, 94:4,
94:6, 94:12, 94:13

Omnibuilds [1] - 56:6

once [1] - 97:12

one [56] - 6:2, 8:25,
9:10, 10:6, 13:20,
19:7, 19:8, 21:13,
23:4, 24:8, 24:10,
24:23, 25:3, 25:18,
25:19, 25:20, 26:12,
33:3, 33:11, 36:20,
44:20, 44:23, 46:17,
46:25, 54:7, 54:10,
54:18, 57:19, 57:23,
59:8, 60:1, 60:9,
60:10, 62:17, 71:14,
71:19, 71:20, 71:24,
76:25, 77:3, 77:6,
80:15, 81:25, 84:14,
92:19, 96:6, 96:8,
97:2, 105:14,
107:22, 108:10,
110:11, 110:15,
111:4, 111:21

One [12] - 6:6, 6:13,
20:13, 20:19, 24:18,
24:22, 40:12, 64:22,
65:1, 65:19, 83:18,
85:6

ongoing [2] - 63:3,
63:6

open [4] - 3:14, 37:14,
37:17, 37:19

opened [6] - 14:5,
14:9, 14:17, 19:10,
38:23, 39:6

opening [1] - 110:10

operating [57] - 5:8,
6:3, 6:7, 7:12, 7:23,
14:4, 14:7, 15:7,
15:17, 18:1, 19:6,
19:7, 19:10, 21:9,
21:13, 23:4, 24:9,
24:18, 25:13, 26:3,
26:5, 26:7, 26:12,
27:12, 29:21, 30:17,
31:7, 31:8, 34:19,
34:22, 35:1, 35:3,
35:7, 37:18, 39:22,

39:24, 40:1, 40:5,
40:11, 40:19, 41:3,
41:6, 41:17, 41:22,
42:6, 49:14, 49:21,
51:8, 64:16, 64:19,
65:1, 82:20, 83:10,
83:11, 83:18, 85:5,
105:22

operation [1] - 16:10

operations [5] - 16:4,
19:16, 63:3, 63:6,
102:17

opinion [2] - 66:11,
107:8

opportunity [1] - 95:2

opposing [1] - 99:11

opposite [1] - 40:5

option [1] - 105:14

oral [1] - 66:3

order [15] - 2:4, 12:5,
15:14, 26:19, 45:5,
45:7, 49:6, 55:18,
55:24, 66:21, 67:17,
69:20, 85:8, 102:6,
102:9

ordered [1] - 72:20

ordinary [2] - 66:18,
66:23

original [2] - 7:12,
44:22

otherwise [1] - 83:22

outcome [1] - 105:13

outside [1] - 111:21

overall [1] - 97:7

overrule [1] - 29:12

overruled [4] - 12:9,
50:4, 79:8, 107:10

owes [1] - 103:8

own [1] - 54:6

owned [3] - 43:19,
43:21, 46:15

owner [4] - 9:9, 34:7,
42:16, 42:20

owners [3] - 4:24,
92:16, 92:19

ownership [9] - 10:22,
32:6, 32:9, 32:25,
33:9, 33:16, 33:22,
39:17, 105:19

owns [1] - 34:21

P

P.C [3] - 1:13, 1:16,
5:24

p.m [1] - 115:3

packs [1] - 109:20

page [41] - 7:3, 7:7,
7:14, 9:6, 13:21,
23:10, 23:12, 23:14,

23:23, 24:19, 25:1,
25:6, 25:7, 26:8,
35:23, 61:16, 67:12,
68:8, 68:9, 69:3,
69:4, 69:6, 69:17,
70:6, 70:20, 71:18,
71:19, 80:15, 86:4,
88:22, 89:12, 89:17,
89:19, 91:5, 92:8,
92:24, 93:16, 109:22

pages [2] - 20:11,
27:11

paid [49] - 43:5, 43:6,
43:7, 46:3, 48:3,
48:21, 49:1, 49:11,
49:12, 50:6, 51:12,
52:7, 53:10, 54:14,
54:16, 55:1, 55:2,
55:13, 55:14, 55:16,
69:22, 70:7, 70:8,
70:11, 70:12, 72:4,
72:12, 74:6, 75:20,
76:8, 77:20, 78:1,
81:10, 82:24, 84:12,
87:5, 87:8, 89:8,
89:9, 90:10, 90:11,
103:21, 104:7,
113:23, 113:24

Paint [1] - 92:25

papers [1] - 17:9

paragraph [31] -
23:12, 23:23, 24:2,
24:4, 24:10, 24:12,
26:1, 26:14, 27:9,
27:18, 27:19, 27:23,
30:12, 31:8, 31:9,
31:18, 32:4, 34:4,
34:21, 39:20, 39:22,
40:18, 41:5, 41:6,
41:8, 41:15, 41:19,
65:17, 83:20

paralegals [1] - 111:4

pardon [9] - 16:25,
36:15, 37:16, 38:3,
38:13, 39:13, 52:17,
71:4, 110:7

Park [4] - 92:8, 92:14,
92:16, 92:20

part [13] - 2:3, 3:11,
48:4, 48:5, 50:9,
54:18, 54:19, 54:25,
73:14, 75:4, 76:12,
83:23, 106:13

PART [1] - 1:1

partial [4] - 49:23,
50:10, 51:3, 52:2

participate [1] -
108:14

particular [25] - 10:19,
23:9, 23:12, 23:19,

23:22, 24:13, 25:25,
39:19, 43:17, 43:18,
50:8, 59:11, 59:12,
63:15, 65:17, 65:24,
67:10, 71:21, 72:17,
73:18, 76:12, 83:19,
83:21, 86:3

parties [8] - 2:9,
26:21, 57:19, 84:2,
84:6, 103:15, 103:19

partner [3] - 9:17,
9:18, 13:13

partner's [1] - 9:6

partnership [1] - 9:12

parts [1] - 54:18

party [3] - 2:21, 56:19,
106:2

PATRIA [1] - 1:11

pay [26] - 20:1, 44:2,
46:4, 46:5, 47:20,
48:20, 48:24, 48:25,
52:9, 52:13, 52:18,
52:23, 53:4, 53:7,
53:16, 54:8, 55:24,
66:6, 76:1, 78:11,
82:19, 87:5, 87:9,
87:10, 94:4, 108:4

payable [6] - 61:17,
90:22, 91:2, 91:7,
92:9, 93:18

paying [2] - 53:25,
56:6

payment [11] - 50:10,
86:5, 87:25, 88:4,
89:18, 105:16,
111:7, 111:9,
111:13, 111:15,
114:2

payments [5] - 19:24,
19:25, 104:3, 111:5,
114:4

paystubs [1] - 111:2

PC [1] - 5:21

penny [2] - 82:1, 84:14

people [1] - 107:24

percent [36] - 9:13,
10:3, 10:11, 32:7,
32:12, 32:15, 32:21,
33:1, 33:8, 33:16,
33:18, 33:25, 35:5,
35:7, 37:6, 81:6,
81:8, 81:9, 82:3,
82:5, 82:9, 82:17,
82:23, 82:25, 84:11,
84:14, 85:16, 85:17,
85:18, 106:6, 106:7,
112:1, 112:2, 112:3,
112:4

percentage [6] -
32:18, 32:25, 33:22,

35:4, 54:19, 106:5
percentages [1] -
 35:24
perform [1] - 35:11
performed [1] - 53:11
perhaps [1] - 41:24
period [2] - 39:19,
 45:7
permission [11] -
 12:14, 53:18, 53:19,
 65:12, 66:5, 95:24,
 98:2, 99:10, 99:24,
 100:5, 109:6
person [5] - 5:7,
 16:22, 79:25, 102:25
personal [3] - 32:24,
 73:2, 108:24
personally [2] - 5:18,
 31:5
peruse [1] - 109:19
petition [1] - 84:4
phonetic [1] - 86:7
photograph [5] -
 96:17, 96:18, 96:19,
 98:10, 109:11
physical [2] - 7:1,
 40:12
physically [2] - 20:14,
 20:15
pick [1] - 114:21
pickup [1] - 114:25
picture [11] - 95:20,
 96:3, 96:14, 97:22,
 98:4, 99:6, 99:12,
 99:20, 100:24,
 101:3, 101:11
pivot [1] - 13:25
place [6] - 47:24, 65:8,
 94:11, 102:12,
 112:7, 114:13
placed [1] - 63:13
Plaintiff [2] - 1:3,
 30:11
plaintiff [14] - 12:14,
 12:17, 15:13, 26:5,
 30:3, 31:12, 31:14,
 33:24, 42:6, 45:23,
 55:5, 58:17, 67:6,
 102:8
PLAINTIFF [2] - 12:21,
 14:2
plaintiff's [2] - 24:18,
 40:8
Plaintiff's [24] - 6:6,
 6:13, 9:4, 20:12,
 20:18, 25:3, 26:23,
 27:9, 27:16, 27:18,
 30:15, 40:12, 64:21,
 65:1, 65:19, 71:16,
 76:19, 79:19, 80:5,

80:17, 83:18, 85:6,
 85:24, 109:7
Plata [1] - 69:11
Platta [2] - 69:21,
 70:11
point [7] - 5:9, 5:16,
 12:23, 20:8, 76:15,
 84:16, 97:2
policies [1] - 93:11
policy [2] - 69:23, 93:8
portion [8] - 20:1,
 23:19, 43:11, 49:14,
 83:21, 85:22, 87:20,
 94:5
possession [6] -
 18:11, 18:12, 18:21,
 18:24, 19:3, 41:25
possible [4] - 45:3,
 45:10, 55:8, 102:12
power [1] - 109:14
powers [1] - 105:23
precise [1] - 16:1
predicted [1] - 97:8
preferred [1] - 105:14
Preparation [2] - 42:6,
 43:4
prepare [5] - 30:19,
 31:5, 40:3, 40:4,
 110:13
prepared [3] - 5:8,
 73:7, 115:5
preparer [1] - 73:11
present [1] - 12:18
president [1] - 70:17
pretty [2] - 111:18,
 114:15
previous [1] - 74:23
previously [6] - 21:6,
 23:3, 25:12, 26:11,
 29:2, 42:1
price [3] - 83:2, 83:6,
 112:3
principal [1] - 74:20
problem [3] - 11:13,
 13:6, 14:17
problems [6] - 11:11,
 11:12, 13:18, 14:4,
 14:19, 14:20
procedure [2] - 16:15,
 16:17
proceed [8] - 2:11,
 13:3, 28:23, 60:24,
 94:23, 95:11, 95:13,
 99:17
proceeds [7] - 41:15,
 44:17, 45:17, 67:14,
 87:4, 87:5, 107:22
process [3] - 75:4,
 100:14, 106:13
produce [3] - 21:6,

21:8, 21:9
productive [2] - 12:7,
 26:21
proffers [1] - 112:10
profit [6] - 9:12, 9:13,
 9:19, 10:2, 10:10,
 72:19
profits [2] - 40:20,
 85:11
program [1] - 86:19
project [19] - 4:19,
 8:13, 42:8, 43:17,
 43:18, 46:20, 47:3,
 47:12, 84:16, 91:13,
 92:2, 93:3, 93:15,
 99:3, 104:16, 106:8,
 106:11, 113:11,
 113:13
projects [1] - 94:14
promissory [6] -
 44:21, 70:16, 76:3,
 76:5, 77:16, 78:13
prompted [1] - 13:10
promptly [1] - 60:18
pronounced [1] - 10:6
properties [4] - 96:6,
 99:1, 100:23, 107:24
property [31] - 15:14,
 42:10, 42:16, 42:20,
 45:6, 45:22, 45:24,
 45:25, 93:4, 95:17,
 95:20, 95:22, 96:4,
 96:8, 98:21, 99:6,
 99:8, 99:20, 99:21,
 100:21, 100:24,
 101:15, 101:18,
 101:19, 102:1,
 102:9, 104:1, 104:2,
 104:10, 107:15
proportions [2] -
 40:21, 54:13
protocol [3] - 6:21,
 6:23, 65:8
provide [2] - 85:10,
 105:16
provided [1] - 110:12
provides [1] - 40:19
providing [1] - 67:4
provision [2] - 84:9
publish [1] - 101:6
published [16] - 6:14,
 64:22, 65:4, 65:9,
 67:11, 76:15, 76:20,
 79:13, 80:7, 80:13,
 83:17, 100:17,
 100:18, 109:11,
 109:12
publishing [3] - 21:25,
 64:24, 65:18
pull [5] - 8:25, 56:23,

64:20, 83:15, 85:21
pulling [1] - 79:21
purchase [3] - 20:2,
 20:5, 81:7
purchased [10] - 4:15,
 81:6, 81:8, 84:10,
 84:11, 95:17, 95:22,
 96:5, 96:9, 100:21
purchases [1] -
 108:24
purpose [5] - 4:9,
 4:13, 4:14, 83:25,
 98:20
purposes [1] - 72:18
pursuance [1] - 85:9
pursuant [1] - 41:16
push [1] - 107:20
put [18] - 6:13, 10:18,
 15:14, 22:10, 22:23,
 37:17, 37:20, 45:23,
 57:9, 58:20, 59:9,
 60:4, 61:25, 62:4,
 63:14, 65:8, 114:10
putting [5] - 37:19,
 57:12, 63:12, 63:13,
 114:6

Q

questions [13] - 27:6,
 36:21, 60:12, 69:13,
 69:16, 70:24, 71:1,
 74:23, 75:6, 95:11,
 102:17, 102:19,
 114:17
quick [2] - 60:12, 98:6
quicker [1] - 23:10
Quires [1] - 58:3

R

raise [2] - 2:16, 105:8
range [3] - 24:19,
 25:1, 25:5
ranges [1] - 26:6
rather [5] - 39:18,
 41:22, 55:14, 82:4,
 94:5
raymond [1] - 1:13
re [1] - 29:20
re-ask [1] - 29:20
reach [1] - 102:18
read [12] - 22:14, 23:6,
 24:6, 26:1, 27:19,
 27:24, 34:17, 34:18,
 58:20, 58:21, 66:12,
 91:23
reading [4] - 24:4,
 58:5, 68:25, 70:1
ready [10] - 2:10,

28:22, 60:18, 60:24,
 65:3, 67:19, 94:22,
 95:10, 99:1, 99:4
real [3] - 111:9,
 111:24, 114:2
realize [1] - 38:22
really [2] - 18:15,
 72:18
Realty [8] - 61:19,
 90:21, 91:2, 92:9,
 92:14, 92:16, 92:20,
 93:18
reason [9] - 34:2,
 41:12, 41:13, 48:14,
 93:10, 94:4, 94:6,
 105:7, 106:14
reasons [4] - 31:6,
 53:7, 113:13, 113:14
receive [12] - 47:15,
 47:18, 47:25, 48:12,
 56:1, 81:25, 89:18,
 102:9, 108:7,
 112:13, 112:25,
 113:2
received [12] - 48:14,
 48:17, 49:10, 50:10,
 51:3, 52:1, 53:14,
 54:2, 56:3, 59:14,
 80:24, 111:16
receiver [1] - 89:6
recently [1] - 82:24
recess [1] - 67:22
recognize [2] - 61:20,
 109:22
recollection [15] -
 8:18, 22:25, 23:3,
 24:5, 24:7, 24:10,
 24:14, 25:11, 26:11,
 26:14, 57:13, 58:24,
 59:5, 71:8, 97:6
reconstruct [1] - 4:14
reconstructed [2] -
 99:8, 113:18
record [33] - 2:9, 12:3,
 12:4, 12:6, 12:7,
 12:18, 24:3, 26:17,
 26:18, 26:20, 26:21,
 28:13, 28:15, 40:10,
 49:4, 49:5, 49:7,
 60:11, 60:13, 60:14,
 64:14, 64:15, 67:15,
 67:16, 67:18, 67:19,
 79:17, 95:6, 95:7,
 96:15, 100:19,
 101:7, 109:2
records [10] - 18:9,
 18:11, 18:20, 19:1,
 19:2, 52:11, 61:5,
 90:14, 110:4, 110:12
recoup [2] - 112:18,

114:8
recouped [2] - 113:7, 113:9
recover [7] - 45:9, 93:7, 94:7, 94:9, 94:10, 94:11, 94:17
redirect [1] - 114:19
reduce [1] - 73:16
reduced [1] - 35:5
refer [6] - 20:13, 30:17, 31:9, 39:19, 40:1, 46:25
reference [3] - 30:18, 31:6, 68:8
referenced [1] - 71:20
references [1] - 40:23
referencing [3] - 25:21, 25:23, 40:11
referred [4] - 24:13, 40:9, 41:21, 54:24
referring [6] - 5:22, 25:17, 37:2, 50:25, 53:23
refers [5] - 34:4, 39:22, 40:4, 41:2, 41:5
reflect [5] - 2:9, 12:18, 24:3, 40:10, 96:16
reflection [1] - 96:22
refresh [10] - 22:25, 23:2, 23:16, 24:7, 24:10, 24:14, 25:11, 26:10, 26:14, 58:24
refreshes [3] - 24:4, 57:13, 59:4
regarding [7] - 12:8, 24:25, 25:3, 53:5, 57:13, 58:4, 73:21
register [1] - 110:1
reimbursed [2] - 89:10
rejecting [1] - 84:8
related [4] - 12:7, 18:24, 38:24, 53:16
release [1] - 68:21
released [5] - 69:11, 68:14, 70:13, 71:11
relevance [3] - 11:18, 11:19, 12:8
relevant [1] - 34:5
reliable [1] - 67:6
remain [8] - 2:9, 12:5, 15:3, 15:5, 15:17, 26:19, 49:6, 67:17
remained [1] - 15:6
remaining [1] - 94:17
remains [1] - 15:19
remember [64] - 5:14, 7:19, 7:21, 8:10, 13:8, 15:2, 16:5, 16:14, 16:17, 17:9, 17:11, 17:13, 21:11, 21:23, 22:11, 22:19, 22:20, 22:23, 23:20, 23:24, 27:5, 35:19, 35:21, 38:17, 39:4, 39:8, 42:17, 42:24, 44:24, 45:2, 48:13, 49:12, 49:18, 49:25, 51:15, 51:18, 53:19, 58:12, 63:17, 64:18, 67:2, 67:3, 67:4, 74:15, 75:25, 76:13, 77:8, 77:15, 78:10, 79:10, 81:16, 90:19, 90:24, 91:4, 92:11, 93:6, 93:25, 95:17, 97:9, 98:25, 104:3, 104:17, 111:24, 112:6
remind [2] - 12:10, 61:1
reminder [1] - 61:6
reminding [1] - 28:21
removed [1] - 102:9
rendered [1] - 53:5
repaid [7] - 44:18, 49:23, 64:11, 64:12, 64:14, 70:18, 71:12
repayment [2] - 50:20, 51:3
repayments [1] - 52:2
repeat [5] - 34:16, 43:13, 46:19, 55:16, 101:25
repeats [1] - 34:21
rephrase [2] - 11:23, 12:2
report [1] - 111:15
Reporter [2] - 34:18, 115:17
REPORTER [1] - 1:24
represent [6] - 5:16, 5:18, 5:19, 52:21, 88:14, 98:10
representation [8] - 50:14, 95:22, 97:24, 98:9, 98:11, 99:7, 99:12, 99:19
representations [1] - 72:20
represented [2] - 21:1, 102:2
representing [2] - 53:1, 89:25
represents [2] - 101:9, 101:15
reproduction [4] - 98:3, 98:15, 99:19
request [2] - 12:25, 65:11
require [1] - 106:1
required [3] - 85:8, 102:25, 105:7
respect [6] - 102:16, 104:21, 105:22, 106:23, 108:16, 111:18
respectfully [2] - 18:14, 87:15
respective [3] - 32:5, 39:17, 80:13
responsible [3] - 19:15, 19:17, 106:10
responsibly [1] - 106:21
result [1] - 44:17
return [11] - 9:5, 70:16, 71:17, 72:15, 73:7, 73:14, 80:20, 83:12, 89:16, 108:3, 110:22
returns [3] - 51:19, 110:13, 110:16
review [6] - 23:1, 31:2, 59:3, 72:15, 73:14, 99:11
reviewed [2] - 73:15, 110:25
reviewing [1] - 72:17
Rich [1] - 58:17
right-hand [2] - 20:21, 24:20
rise [10] - 2:7, 28:11, 28:19, 60:21, 60:22, 67:23, 67:24, 95:5, 95:8, 115:8
role [3] - 45:16, 45:17, 108:13
room [1] - 42:6
Rosenber [1] - 72:23
Rosenberg [6] - 72:23, 73:1, 73:4, 73:6, 73:16, 73:18
roughly [2] - 98:9, 114:10
rozenberg [1] - 72:22
Rule [1] - 30:24
rules [1] - 2:22

S

18:10, 18:13, 18:22, 18:25
satisfy [1] - 104:15
save [1] - 15:14
saw [4] - 17:17, 62:9, 63:23, 102:20
Schanpp [1] - 43:23
Schapp [1] - 71:10
schedule [4] - 9:7, 71:22, 73:19, 75:9
Schnapp [25] - 5:19, 5:23, 15:13, 42:1, 42:2, 42:4, 42:5, 44:2, 44:4, 45:23, 46:3, 53:2, 66:6, 70:3, 70:4, 70:11, 90:1, 91:15, 92:2, 94:1, 102:8, 102:12, 107:18, 107:21, 113:17
schnappp [4] - 43:5, 47:21, 107:14, 108:1
Scone [1] - 42:5
Scott [1] - 58:3
screen [45] - 6:9, 6:20, 9:5, 9:19, 13:20, 13:22, 14:3, 21:25, 23:5, 23:8, 25:19, 25:20, 26:2, 26:8, 27:9, 27:16, 30:12, 39:21, 56:24, 57:1, 57:2, 57:9, 57:11, 58:1, 60:5, 60:7, 61:3, 61:10, 64:21, 65:2, 65:4, 65:7, 70:21, 71:14, 79:20, 80:6, 80:11, 83:15, 85:22, 86:19, 99:16, 100:20, 101:18
screens [7] - 3:14, 6:14, 9:1, 61:12, 65:7, 80:13, 100:17
scroll [5] - 9:2, 9:7, 13:21, 20:10, 25:8
searched [1] - 36:7
seated [14] - 2:9, 2:20, 3:9, 12:5, 12:19, 26:19, 28:20, 49:6, 60:23, 67:17, 67:25, 95:6, 95:9, 115:9
second [21] - 7:12, 8:25, 9:2, 13:20, 19:7, 19:14, 32:18, 39:20, 49:18, 52:15, 54:19, 59:8, 60:1, 60:5, 60:9, 60:10, 64:21, 71:14, 72:14, 83:16, 113:17
secondary [1] - 55:20
secret [1] - 62:11
section [3] - 25:9, 65:21, 66:15
secure [4] - 103:18, 104:12, 104:18, 105:9
secured [1] - 65:25
see [51] - 9:10, 9:12, 9:15, 9:18, 9:21, 10:2, 10:8, 10:12, 10:13, 20:22, 22:11, 24:4, 25:14, 26:8, 27:11, 28:3, 28:9, 30:13, 31:18, 35:18, 38:5, 57:12, 57:22, 59:6, 60:6, 62:14, 62:15, 62:23, 69:4, 71:25, 72:1, 72:7, 72:8, 74:11, 75:10, 75:11, 80:12, 86:9, 86:24, 86:25, 89:21, 89:22, 92:18, 99:3, 100:23, 101:5, 101:11, 102:20, 115:9
seeing [1] - 101:5
sell [8] - 4:16, 83:6, 83:22, 83:24, 85:8, 104:15, 107:15, 114:8
seller [1] - 83:9
selling [4] - 55:19, 83:24, 84:3, 84:7
sells [1] - 44:9
send [9] - 63:24, 63:25, 87:20, 88:3, 88:7, 88:12, 103:7, 108:18
SENIOR [1] - 1:24
Senior [1] - 115:17
September [1] - 41:17
Serge [2] - 72:23, 73:1
serge [1] - 73:4
series [1] - 36:21
served [2] - 54:3, 106:17
services [7] - 53:5, 53:6, 53:8, 53:11, 87:8, 87:9, 89:7
set [2] - 30:21, 107:13
settle [5] - 44:3, 45:5, 45:8, 46:3, 71:10
settled [10] - 43:1, 43:2, 43:24, 45:10, 48:16, 56:14, 56:15, 58:6, 58:8, 107:21
settlement [23] - 43:3, 43:4, 43:12, 44:2, 45:13, 47:20, 49:9, 50:9, 54:21, 57:20, 57:21, 66:7, 69:8,

69:20, 70:3, 70:4,
94:1, 94:2, 94:3,
102:12, 107:16,
107:20, 108:1
settlements [1] -
45:13
settling [1] - 55:17
seven [6] - 16:11,
16:12, 26:24, 98:4,
98:9, 99:19
Seven [3] - 27:17,
30:11, 30:15
shall [4] - 40:20, 84:1,
84:5, 84:7
share [15] - 9:18, 10:2,
10:22, 33:9, 33:16,
40:21, 43:12, 44:2,
103:22, 104:24,
105:1, 105:3, 105:5,
105:19
shared [1] - 61:11
shareholder [5] -
64:5, 83:12, 84:16,
85:16, 103:9
shareholders [13] -
45:6, 61:25, 63:13,
64:1, 84:12, 84:13,
85:3, 102:18,
102:23, 103:10,
103:13, 105:10,
114:6
shares [18] - 20:3,
20:5, 35:4, 35:5,
81:21, 82:4, 82:5,
82:23, 83:3, 83:6,
83:12, 84:10, 84:11,
84:14, 84:17, 85:13,
85:17, 85:18
Shimmons [1] - 92:25
short [9] - 4:10, 61:24,
62:6, 63:11, 67:22,
70:10, 79:11, 93:20,
103:11
shorthand [1] - 86:12
shoulder [1] - 89:3
shoulders [1] - 114:4
show [12] - 6:9, 9:6,
57:9, 95:20, 95:25,
97:22, 98:3, 99:6,
99:12, 100:6,
101:13, 109:7
showed [6] - 57:3,
57:18, 58:13, 74:2,
100:7, 110:15
showing [7] - 20:7,
21:25, 27:8, 30:10,
31:17, 58:15
shown [4] - 6:11, 22:1,
61:3, 101:18
shows [1] - 100:20
shut [4] - 9:1, 56:24,
60:5, 64:20
side [12] - 9:16, 9:20,
12:3, 12:12, 12:23,
20:21, 24:20, 26:16,
40:6, 40:8, 49:3,
67:13
Siegel [1] - 31:25
siegel [1] - 40:24
Siegel's [1] - 41:18
sign [8] - 6:2, 17:10,
17:12, 76:3, 76:5,
77:16, 77:18, 85:7
signature [7] - 7:4,
7:5, 7:6, 22:17, 63:1,
92:18, 93:21
signatures [1] - 35:23
signed [17] - 7:15,
7:23, 8:11, 8:20,
17:7, 17:8, 19:11,
22:24, 31:13, 35:24,
37:8, 40:7, 58:16,
70:17, 78:13, 78:15,
85:15
simple [1] - 70:23
simply [2] - 62:19,
75:5
single [2] - 30:17,
41:22
sit [3] - 3:13, 12:14,
71:3
site [7] - 97:11, 97:16,
97:18, 97:22, 97:25,
98:11, 101:9
sites [1] - 77:6
sitting [3] - 52:4,
68:12, 102:4
six [7] - 32:4, 34:21,
39:16, 39:20, 39:22,
83:19, 85:6
size [1] - 66:4
Slope [4] - 92:8,
92:14, 92:16, 92:20
slow [3] - 9:9, 62:1,
62:6
small [5] - 51:15,
51:17, 54:19, 61:23,
104:18
smaller [1] - 104:18
Smithtown [2] - 1:14,
1:14
soft [1] - 53:11
sold [13] - 4:20, 4:22,
8:13, 35:2, 41:9,
45:14, 45:24, 99:1,
99:4, 101:21,
107:24, 111:25
solemnly [1] - 2:17
SOLST [1] - 88:18
solst [1] - 88:20
Solst [1] - 88:21
solution [1] - 107:25
sometime [1] - 8:14
sometimes [1] -
107:11
son [3] - 87:3, 87:6,
87:11
son-in-law [3] - 87:3,
87:6, 87:11
soon [5] - 58:12,
59:15, 64:13, 71:11,
115:4
sorry [5] - 3:8, 46:8,
64:21, 77:3, 108:19
sort [1] - 28:9
Soskil [9] - 19:18,
19:20, 19:24, 20:2,
86:4, 86:9, 87:25,
88:2, 108:5
Soskowitz [1] - 45:15
sounds [1] - 44:16
speaking [1] - 25:2
specializing [1] - 90:2
specific [9] - 16:3,
27:16, 35:17, 36:25,
37:1, 51:16, 53:9,
62:13, 96:21
speculate [1] - 90:7
speedy [1] - 107:19
spells [2] - 31:8, 34:21
spent [2] - 49:20,
49:22
stamp [1] - 58:15
stamped [1] - 58:23
stand [5] - 2:13, 3:9,
3:16, 3:19, 50:4
stands [1] - 50:19
start [5] - 36:14,
36:16, 56:10, 56:11,
110:8
started [6] - 39:3,
51:7, 56:12, 56:13,
56:16, 57:6
State [1] - 6:7
STATE [1] - 1:1
state [2] - 28:14, 95:21
statement [24] - 25:9,
25:24, 27:10, 27:19,
27:20, 27:25, 28:1,
30:10, 30:13, 30:24,
39:16, 40:25, 41:1,
41:2, 41:10, 41:19,
71:20, 71:21, 72:17,
72:19, 73:20, 76:22,
81:4
statements [3] -
71:19, 72:20, 74:19
Staten [1] - 28:17
states [2] - 40:19,
83:21
stay [1] - 3:9
stays [1] - 39:18
step [7] - 11:10, 13:5,
13:11, 13:13, 16:2,
103:7, 107:17
stepped [3] - 11:9,
16:16, 17:22
stepping [5] - 16:19,
17:8, 17:9, 108:13
steps [1] - 103:6
still [15] - 4:5, 8:19,
49:14, 49:24, 50:20,
56:4, 56:5, 56:8,
61:2, 63:20, 94:12,
94:13, 103:8,
107:24, 109:10
stipulation [2] - 58:13,
59:10
stock [1] - 81:6
stop [9] - 21:24,
21:25, 38:16, 64:24,
103:12, 103:20,
103:25, 104:14,
114:13
stopped [4] - 17:24,
38:12, 38:14, 38:25
storage [1] - 29:24
stored [1] - 38:24
storing [1] - 37:20
Storm [3] - 18:7, 18:9,
18:22
story [3] - 70:23,
101:2, 103:4
strategy [1] - 45:9
STREET [1] - 1:6
Street [41] - 1:8, 2:3,
4:1, 4:18, 6:7, 18:24,
28:16, 42:8, 42:10,
42:11, 43:15, 46:6,
61:18, 61:19, 61:23,
64:4, 71:25, 73:23,
74:2, 77:3, 77:5,
90:17, 90:21, 90:22,
91:2, 91:3, 91:7,
92:3, 92:9, 92:21,
92:24, 93:18, 93:24,
95:18, 96:11, 98:12,
98:20, 101:10,
101:16
stretch [1] - 95:2
subcontractor [2] -
42:5, 43:9
subcontractors [1] -
55:20
subject [1] - 99:11
subjects [1] - 62:11
submit [1] - 40:6
submitted [6] - 30:20,
31:3, 32:1, 32:10,
37:3, 39:25
subparagraph [4] -
65:17, 66:11, 66:15,
85:6
substantial [1] - 4:7
sue [5] - 42:12, 42:15,
42:19, 42:21, 94:6
sued [7] - 42:16,
42:17, 42:20, 42:22,
54:6
sufficient [2] - 54:10,
66:3
suggested [1] - 114:7
Suite [1] - 1:14
sum [1] - 88:12
summarize [1] -
113:13
summary [11] - 21:22,
22:6, 23:2, 25:10,
25:22, 27:4, 30:22,
30:25, 37:3, 39:25,
89:12
summons [1] - 57:3
Super [3] - 18:7, 18:9,
18:22
supply [2] - 43:11,
44:1
support [6] - 21:21,
22:6, 23:2, 25:10,
30:21, 30:25
suppose [2] - 102:8
supposed [1] - 110:16
supposedly [1] -
110:16
Supreme [2] - 56:22,
58:3
SUPREME [8] - 1:1,
2:1, 2:6, 2:16, 28:14,
28:18, 61:14, 109:15
Susklovich [1] - 89:9
Suslovich [3] - 102:5,
102:10, 107:23
sustained [1] - 11:23
Svetlana [1] - 37:23
swear [2] - 2:14, 2:17
swore [1] - 28:12
sworn [1] - 67:5

T

table [2] - 6:16, 12:15
talks [1] - 31:13
tax [12] - 10:19, 10:20,
51:19, 53:12, 71:17,
72:15, 73:7, 73:11,
73:14, 110:13,
110:15, 110:22
taxes [3] - 111:9,
113:23, 114:2
technical [1] - 14:4
technically [1] - 29:13

telephone ^[1] - 16:22
ten ^[3] - 13:6, 41:8, 53:14
TERM ^[1] - 1:1
term ^[8] - 44:23, 46:24, 55:9, 61:24, 62:6, 63:11, 79:11, 93:20
terms ^[12] - 43:3, 43:4, 44:7, 44:8, 44:22, 44:24, 53:20, 58:22, 74:4, 75:24, 82:21
testified ^[8] - 13:6, 17:1, 29:11, 42:1, 52:1, 53:24, 71:5, 82:24
testify ^[2] - 78:22, 78:25
testimony ^[7] - 29:14, 67:5, 67:9, 76:23, 77:23, 97:15, 115:3
thankfully ^[1] - 65:7
THE ^[195] - 1:1, 1:13, 2:1, 2:5, 2:6, 2:7, 2:8, 2:14, 2:16, 2:19, 2:20, 3:2, 3:3, 3:8, 3:15, 3:19, 3:22, 6:10, 6:13, 6:19, 6:23, 11:19, 11:23, 12:3, 12:5, 12:6, 12:16, 12:20, 12:21, 12:22, 13:3, 13:8, 13:15, 13:16, 13:22, 13:24, 13:25, 14:2, 18:16, 20:14, 20:16, 20:18, 22:1, 22:9, 22:14, 22:18, 22:22, 23:7, 23:17, 23:22, 24:1, 24:3, 24:6, 24:24, 25:2, 25:16, 25:18, 25:19, 25:20, 25:21, 26:17, 26:19, 26:20, 27:1, 27:5, 27:15, 27:23, 28:1, 28:2, 28:6, 28:8, 28:11, 28:14, 28:16, 28:18, 28:19, 28:20, 28:25, 29:9, 29:12, 29:20, 30:14, 34:9, 34:11, 34:15, 34:16, 40:10, 40:16, 47:7, 47:11, 49:4, 49:6, 49:7, 50:2, 50:4, 57:1, 57:11, 58:19, 59:3, 59:6, 59:9, 59:18, 59:24, 60:3, 60:7, 60:13, 60:15, 60:21, 60:23, 61:1, 61:6, 61:10, 61:14, 62:16, 62:19, 62:22,

64:24, 65:3, 65:6, 65:15, 65:18, 67:15, 67:17, 67:18, 67:22, 67:23, 67:25, 68:3, 68:20, 75:1, 75:7, 75:8, 76:14, 76:19, 77:22, 78:17, 79:8, 79:14, 79:16, 79:19, 79:22, 80:8, 80:12, 85:20, 85:24, 86:2, 86:13, 86:21, 87:1, 89:2, 90:3, 90:6, 90:8, 90:12, 92:4, 94:22, 95:1, 95:5, 95:6, 95:8, 95:9, 95:10, 95:13, 96:1, 96:15, 96:22, 96:25, 97:4, 98:5, 98:17, 98:19, 99:13, 99:15, 100:1, 100:3, 100:8, 100:13, 100:16, 100:23, 101:4, 101:12, 107:7, 107:10, 109:9, 109:14, 109:15, 109:17, 109:20, 114:12, 114:18, 114:21, 114:24, 115:7, 115:8, 115:9
thereabouts ^[1] - 70:10
therefore ^[11] - 19:11, 40:7, 40:8, 50:14, 55:23, 62:5, 72:14, 72:20, 85:2, 108:1, 113:24
third ^[4] - 101:14, 103:15, 103:19, 106:2
thoughts ^[1] - 94:25
thousand ^[1] - 50:15
Three ^[1] - 41:18
three ^[9] - 19:9, 33:16, 88:9, 96:6, 97:20, 101:2, 109:20, 114:10
title ^[1] - 27:1
today ^[6] - 4:5, 5:21, 46:25, 56:4, 56:5, 71:3
together ^[3] - 28:9, 60:17, 97:21
tomorrow ^[6] - 103:14, 114:25, 115:1, 115:3, 115:10
took ^[11] - 8:4, 8:6, 35:6, 38:10, 47:24, 77:13, 88:14, 102:12, 112:7, 113:19, 113:21

Torres ^[1] - 31:25
total ^[6] - 4:22, 41:10, 53:14, 87:22, 88:12, 112:3
touch ^[2] - 93:2, 93:14
track ^[2] - 42:6, 76:17
transaction ^[6] - 35:9, 35:11, 80:16, 81:12, 82:1, 86:4
transactions ^[1] - 41:4
transcript ^[2] - 70:1, 115:15
transfer ^[4] - 52:11, 83:22, 84:10, 85:13
transferred ^[2] - 54:22, 82:3
travelling ^[1] - 97:19
tripod ^[1] - 100:9
troubles ^[3] - 13:5, 13:12, 19:3
true ^[1] - 115:15
trust ^[4] - 15:21, 15:24, 54:9, 87:7
trusted ^[1] - 40:3
truth ^[3] - 2:18
try ^[9] - 3:12, 9:8, 22:11, 22:25, 32:24, 86:16, 94:7, 104:15, 105:11
trying ^[6] - 10:18, 22:10, 79:23, 79:24, 80:3, 107:20
turn ^[9] - 13:22, 23:25, 68:3, 70:21, 71:9, 71:14, 79:12, 88:22, 90:13
turned ^[2] - 109:15, 113:14
Two ^[4] - 79:20, 80:6, 80:17, 85:24
two ^[28] - 3:13, 16:8, 16:9, 19:14, 26:1, 27:9, 27:11, 27:18, 27:19, 27:23, 31:8, 35:5, 35:8, 39:22, 46:18, 52:20, 54:18, 68:9, 69:13, 69:18, 70:21, 79:18, 81:8, 81:9, 85:3, 97:12, 97:20, 115:5
type ^[2] - 9:17, 74:24
typed ^[1] - 7:3

U

unanimously ^[1] - 84:2
unanimous ^[1] - 65:23
unclear ^[1] - 18:15
under ^[5] - 61:2,

71:22, 93:7, 105:23, 108:3
underneath ^[2] - 76:25, 89:19
understood ^[3] - 29:14, 29:19, 107:25
undisputed ^[3] - 25:9, 25:24, 30:24
unit ^[1] - 83:2
units ^[7] - 4:20, 8:13, 35:2, 101:19, 101:21, 101:23, 111:25
up ^[30] - 8:25, 14:1, 17:9, 20:17, 26:23, 29:17, 45:8, 56:23, 57:12, 60:7, 64:20, 72:21, 76:21, 79:20, 79:21, 82:23, 83:12, 83:15, 84:12, 84:13, 85:21, 86:21, 90:4, 90:8, 93:2, 93:14, 102:7, 107:14, 107:19, 114:21
up.THE ^[1] - 27:5
utilities ^[2] - 111:5, 113:24

V

value ^[5] - 83:25, 84:1, 84:24, 84:25, 106:10
verses ^[1] - 2:2
version ^[3] - 7:12, 9:1, 22:24
versions ^[1] - 29:21
violation ^[1] - 106:25
visit ^[1] - 97:11
visited ^[1] - 97:16
Vitaly ^[3] - 5:2, 33:11, 102:22
vitaly ^[1] - 33:13
voice ^[1] - 27:5
voluminous ^[2] - 109:7, 109:20
voluntary ^[2] - 94:1, 94:3
vyacheslav ^[4] - 43:22, 46:16, 63:2, 93:22
Vyacheslav ^[7] - 4:25, 10:7, 32:22, 50:13, 70:17, 81:9, 92:18
vyaschelav ^[1] - 11:8

W

wait ^[2] - 92:4, 103:20
waiting ^[1] - 109:18
walk ^[2] - 3:9, 20:17

wants ^[1] - 87:14
water ^[4] - 93:2, 93:3, 93:5, 93:13
ways ^[1] - 75:3
West ^[15] - 46:6, 46:8, 46:9, 46:10, 46:22, 47:5, 47:15, 47:19, 47:25, 70:10, 70:18, 71:8, 71:12, 78:20, 78:22
whole ^[2] - 2:18, 48:4
wife ^[6] - 19:23, 20:1, 37:11, 37:22, 88:2, 88:3
wire ^[2] - 52:10, 88:21
wired ^[1] - 88:18
withdraw ^[5] - 34:14, 101:17, 102:11, 106:15, 108:7
withdrawal ^[1] - 83:20
withdrawn ^[11] - 4:3, 19:2, 47:8, 47:9, 48:24, 50:9, 53:15, 53:23, 55:13, 64:20, 73:13
witness ^[45] - 2:11, 2:15, 3:12, 6:9, 12:11, 18:17, 20:12, 20:19, 22:3, 22:10, 22:11, 22:16, 22:19, 23:1, 24:4, 25:4, 29:11, 29:14, 40:11, 47:9, 47:11, 57:2, 57:12, 59:23, 60:6, 61:12, 68:19, 68:21, 77:24, 83:17, 86:15, 86:16, 86:22, 89:1, 94:23, 95:25, 96:16, 98:7, 99:12, 100:7, 109:7, 109:19, 114:19, 115:4, 115:5
WITNESS ^[15] - 2:19, 3:2, 13:15, 24:6, 25:18, 25:20, 28:1, 28:16, 34:16, 59:6, 59:9, 62:19, 62:22, 75:7, 90:6
witness's ^[6] - 39:5, 57:9, 57:11, 58:1, 58:24, 83:14
Wolinski ^[4] - 5:2, 21:20, 33:18, 33:19
wonderful ^[1] - 3:19
word ^[1] - 86:12
words ^[1] - 10:18
worth ^[1] - 60:11
writing ^[14] - 16:24, 17:4, 17:5, 35:22, 63:18, 63:19, 63:20, 63:21, 64:8, 64:9,

66:1, 66:3, 66:7,
66:19
written ^[6] - 7:11,
34:25, 62:20, 82:22,
84:7, 92:3
wrote ^[4] - 48:18,
55:23, 64:16

Y

yana ^[1] - 88:2
Yana ^[5] - 20:2, 86:4,
86:9, 87:25, 108:5
Yanna ^[3] - 19:18,
19:20, 19:24
year ^[38] - 6:1, 7:20,
8:8, 9:14, 9:22, 10:3,
10:11, 10:19, 10:21,
16:6, 16:7, 35:20,
44:21, 44:23, 53:11,
62:14, 62:15, 62:22,
72:2, 72:6, 72:7,
72:11, 73:24, 73:25,
75:15, 75:17, 77:5,
78:1, 78:5, 78:11,
79:3, 80:16, 86:5,
89:13, 95:17, 98:25,
113:20
years ^[10] - 10:20,
16:8, 16:9, 16:11,
16:12, 44:24, 63:17,
97:9, 104:6
yesterday ^[1] - 6:22
YORK ^[1] - 1:1
York ^[6] - 1:8, 4:15,
4:18, 6:7, 28:17,
46:11
yourself ^[2] - 27:24,
106:21
yourselves ^[1] - 60:16

Z

Zom ^[1] - 70:7
zom ^[3] - 43:8, 43:9,
69:22
Zone ^[1] - 43:8
Zone's ^[1] - 43:4