

IN THE CIRCUIT COURT OF THE
15TH JUDICIAL CIRCUIT IN AND
FOR PALM BEACH COUNTY, FLORIDA

CASE NO. 502009 CA029903XXXXMB AG
CONSOLIDATED WITH
CASE NO. 502009 CA040295XXXXMB AG

FD DESTINY, LLC, et al.,

Plaintiffs,

vs.

AVP DESTINY, LLC., et al.,

Defendants.

-----/
AVP DESTINY, LLC., et al.,

Plaintiffs,

vs.

FREDERICK A. DELUCA, et al.,
-----/

Palm Beach County Courthouse
205 North Dixie Highway
West Palm Beach, Florida
January 17, 2017

EXCERPT OF PROCEEDINGS

CONTINUED TESTIMONY OF ALFRED FLORIO

The above-entitled cause came on for Jury
Trial before The Honorable Donald W. Hafele,
Circuit Judge, and a jury, pursuant to Notice.

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1 APPEARANCES:

2

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THE COURT: Okay, welcome back, everyone.
Thank you. Have a seat, please.

Mr. Florio is going to proceed?

MR. GARY: Yes, sir, Your Honor.

MR. HUTCHISON: Judge, we have an unfinished
issue from Friday.

THE COURT: Which was?

MR. HUTCHISON: I think that Mr. Gary was
going to figure out what area -- was going to
make a proffer of what they were going into and
if it was attorney-client privilege, then we want
to address that before we go into that.

THE COURT: Okay. I agree the
attorney-client privilege matter should be
resolved before we go much further.

MR. MARIANI: Your Honor, it's our view you
resolved it. They stated to you that Florio was
an agent of DeLuca and when he met with the
attorneys, that those discussions were protected
by the attorney-client privilege.

THE COURT: Okay. And I guess that brings
us to the next step logically and that is, as it
relates to statements made by Mr. DeLuca, how
will that be dealt with in terms of any hearsay

1 issues? Not by Mr. DeLuca, any hearsay.

2 We had a hearsay issue. I'm trying to
3 remember what exactly it was.

4 MR. MARIANI: He's his agent. He would bind
5 DeLuca in terms of statements by DeLuca.

6 MR. HUTCHISON: I don't know what that
7 means, "agent and bind DeLuca." He certainly was
8 his representative on the project and had some
9 reporting authority to Mr. DeLuca. That's what
10 we agreed to. I don't know how he would bind
11 Mr. DeLuca.

12 THE COURT: Well, I think he means that
13 anything that Mr. DeLuca said would be subject to
14 an exception to the hearsay rule.

15 MR. HUTCHISON: I don't think it would be a
16 blanket exception. I think we take it on a
17 case-by-case basis as to what Mr. DeLuca said. I
18 don't know what they're claiming Mr. DeLuca said,
19 but everything Mr. DeLuca said to the man is not
20 a covered by a blanket hearsay exception.

21 I'm not sure what the hearsay exception is,
22 but --

23 MR. CHAPMAN: And just to add onto that
24 point, to the extent that Mr. DeLuca and
25 Mr. Florio were having conversations with respect

1 to the litigation and with respect to meetings
2 with counsel, that would all fall under the
3 attorney-client privilege.

4 THE COURT: Well, again, it's going to
5 depend, I think, on what the question is. I
6 agree that -- and Mr. Mariani has conceded that
7 anything that was said in the presence of counsel
8 to DeLuca and Florio or to Florio directly would
9 be privileged.

10 Whether or not it is a statement of a party
11 opponent or statement of a party -- or I should
12 say admission by a party, will have to be
13 considered in the totality of the circumstances,
14 I guess. I have to figure out where we're going
15 to be going here and I don't know where we're
16 going, frankly, as to what direction we're going
17 to be proceeding in that regard.

18 So why don't we bring in the jury and let's
19 go ahead and proceed.

20 THE BAILIFF: Jury is entering.

21 (Whereupon the jury entered the courtroom
22 and the following proceedings were had:)

23 THE COURT: Okay. Welcome back, ladies and
24 gentlemen. Again, thank you for your continued
25 service and sacrifice.

1 We're going to continue now with the direct
2 examination of Mr. Florio. Is he present?

3 MR. GARY: Yes, Your Honor.

4 MR. MARIANI: He's out in the hall,
5 Your Honor.

6 THE COURT: Let's go ahead and get him,
7 please.

8 THE BAILIFF: Have a seat, sir.

9 THE COURT: All right. Welcome back, sir.
10 You want go ahead and stand and take the oath,
11 please.

12 THE CLERK: Morning, sir.

13 Thereupon:

14 ALFRED FLORIO

15 was recalled as a witness and having been first duly
16 sworn, was examined and testified as follows:

17 THE WITNESS: I do.

18 THE COURT: Okay, thank you again. Please
19 sit down again. Speak directly into the
20 microphone, if you would, please.

21 And when the witness is ready, Mr. Gary, you
22 may proceed, sir.

23 MR. GARY: May it please the Court,
24 Your Honor.

25 THE COURT: Thank you.

DIRECT EXAMINATION

1
2 BY MR. GARY:

3 Q. Good morning, Mr. Florio.

4 A. Good morning.

5 Q. Now, I know we talked briefly last Friday
6 about the operation agreement, but I just want to
7 cover a few things about the operation agreement.

8 Now, you were familiar with the operation
9 agreement because you were the treasurer; is that
10 correct?

11 A. Yes, somewhat familiar with it.

12 Q. Okay. Were you familiar with the
13 responsibilities under the operation agreement, what
14 Anthony was responsible for doing and not doing?

15 A. Yes.

16 MR. GARY: Your Honor, I'm going to
17 introduce the operating agreement into evidence
18 at this time.

19 Any objection?

20 MR. HUTCHISON: The operating agreement?

21 THE COURT: Yeah.

22 MR. HUTCHISON: Can I just see it?

23 THE COURT: Just for the record, it's
24 "operating agreement", is the terminology, just
25 so that nobody gets confused that there may be

1 something different than what was talked about.

2 MR. HUTCHISON: I'm sorry, Your Honor, did
3 you say the exhibit number?

4 THE COURT: I did not.

5 MR. HUTCHISON: Do you know what exhibit
6 number it is?

7 THE COURT: Well, that's from a deposition.

8 MR. HUTCHISON: I'm talking about on your
9 trial list. What's the trial list exhibit
10 number?

11 MR. GARY: 25-1.

12 THE COURT: 25-1; is that right?

13 MR. GARY: 25. Sorry, Your Honor.

14 THE CLERK: 25?

15 MR. GARY: Yes.

16 THE COURT: All right. 25 then will be
17 admitted without objection.

18 (Whereupon a document/item was marked in
19 evidence as AVP Destiny Exhibit 25.)

20 MR. GARY: May I approach the witness,
21 Your Honor?

22 THE COURT: Yes, sir.

23 BY MR. GARY:

24 Q. Mr. Florio, I want you to take a look at
25 that operating agreement --

1 THE COURT: That's right, 25 is correct.

2 Q. -- and see if you recognize it.

3 MR. GARY: Your Honor, may I publish to the
4 jury the operating agreement?

5 THE COURT: There's no need to do that now.
6 It's too long. They'll have it with them in the
7 deliberations room. Plus we'll be talking about
8 the operative sections with frequency during the
9 trial, so it's easier if you just follow along
10 now.

11 MR. GARY: Okay, Your Honor. Thank you.

12 BY MR. GARY:

13 Q. First thing I'd like to do is since we have
14 the operating agreement into evidence, is pull up the
15 first page of it on the screen, please.

16 Now, Mr. Florio, do you recognize this
17 document?

18 A. Yes.

19 Q. And you recognize it to be a document,
20 operating agreement between Anthony Pugliese and Fred
21 DeLuca?

22 A. Yes.

23 MR. HUTCHISON: Objection, misstates the
24 document.

25 THE COURT: Sustained.

1 BY MR. GARY:

2 Q. Well, you see AVP? You see that?

3 A. Yes.

4 Q. AVP Destiny, is that correct, LLC?

5 A. Yeah.

6 Q. And you see FD Destiny, LLC?

7 A. Yes.

8 Q. What was your understanding as to who were
9 the parties to this agreement?

10 A. Anthony Pugliese was the --

11 MR. HUTCHISON: I'm going to object, Judge,
12 to the extent it's inconsistent with the
13 document; calls for a legal conclusion.

14 THE COURT: Sustained. The document speaks
15 for itself.

16 BY MR. GARY:

17 Q. Okay. Was Anthony Pugliese a managing
18 partner in this venture?

19 A. Yes.

20 Q. Was Fred DeLuca a partner in this venture?

21 MR. HUTCHISON: Objection, form, prior
22 motion, and it misstates the document.

23 THE COURT: Sustained.

24 BY MR. GARY:

25 Q. Now, let me ask you this question. Will you

1 turn to page 34 of the document, please. You have
2 that page, 34?

3 A. Yes.

4 Q. And for the jury, would you tell them whose
5 signatures are on this document?

6 A. Anthony Pugliese, III and Frederick DeLuca.

7 Q. Do you know who those parties are?

8 A. Yes.

9 Q. And then let's go to page 13 of the
10 document.

11 A. Yeah.

12 Q. Now, does it indicate on this document
13 Anthony Pugliese's position with the company?

14 A. Yes.

15 Q. And what does it say? Second to the last
16 paragraph.

17 A. He's the president/secretary.

18 Q. And is your name listed in this document?

19 A. Yes, it is.

20 Q. And what is your position, based on this
21 document?

22 A. Treasurer.

23 Q. And would you turn to page 14 of the
24 document, please. 4.7 of the document, do you see
25 that?

1 A. Yes, I do.

2 Q. And what does it indicate?

3 A. That Anthony Pugliese is the manager and/or
4 president of the company.

5 Q. Okay. Did you understand that to be the
6 case in the day-to-day operations?

7 A. Yes.

8 Q. Was he a good manager?

9 A. Yes.

10 Q. Was he a good president?

11 MR. HUTCHISON: Objection.

12 A. Yes.

13 THE COURT: Overruled.

14 Q. And why do you say that?

15 A. Well, the project was his idea. He was the
16 visionary. He saw -- he worked diligently, spent
17 many, many hours there, and in my opinion he knew
18 absolutely what had to be done and he was doing it to
19 accomplish the goal.

20 Q. "A" says his job is to prepare a
21 comprehensive development plan. Did he do that?

22 A. They were in the process of doing it, yes.

23 Q. And that included residential, commercial,
24 offices, golf courses, hotels, and things of that
25 nature?

1 A. Yes.

2 Q. Were the plans in the works to make this
3 happen?

4 A. I'm not sure of the question.

5 Q. Were there plans in the works to make this
6 happen?

7 A. Oh, yes, yes.

8 Q. Okay. And read paragraph -- the last
9 paragraph. "As part of the developmental process to
10 seek approvals from all necessary governmental
11 agencies having jurisdiction thereof to permit the
12 comprehensive plan."

13 Do you see that?

14 A. Yes.

15 Q. Was he doing that?

16 A. Yes.

17 Q. And why do you say that?

18 A. We had many consultants through the meetings
19 and we were in the process of -- they were in the
20 process of getting the zoning changed and working to
21 get this plan approved.

22 Q. Were applications filed to do that?

23 A. Yes.

24 Q. I want you to turn to page 14 -- 15, I'm
25 sorry, and you see paragraph 5.2?

1 A. Yes.

2 Q. Would you read that into the record for me,
3 please.

4 A. You want me to read it?

5 Q. Yes.

6 A. Okay. "Payment of the mortgage" --

7 Q. Could you speak up just a little bit?

8 A. It says: "Payment of the mortgage,
9 drawdowns by the land company or the company on the
10 mortgage in excess of the amount of the mortgage
11 funded at the closing in which the mortgage was
12 executed" -- called drawdown expenses, I guess --
13 "shall be used from time to time as needed to pay the
14 operating expenses of the company.

15 "At such time as the total of the amount of
16 the mortgage funded at the closing in which the
17 mortgage was executed, plus it would be the total of
18 the drawdown expenses plus all accrued and unpaid
19 interest on the mortgage shall exceed 140" -- what is
20 that -- "million dollars."

21 Q. \$140 million.

22 A. Big numbers. "The company shall pay all
23 then accruing interest on the mortgage currently.

24 Q. So the first \$140 million plus interest was
25 to be paid by whom?

1 A. The first \$140 million was --

2 MR. HUTCHISON: Objection with respect to
3 this topic, Your Honor.

4 THE COURT: Overruled. You can cover it on
5 cross.

6 BY MR. GARY:

7 Q. The first \$140 million, plus interest on
8 this \$140 million, who was supposed to pay that money?

9 A. The money became -- wasn't due yet. That
10 was money that was put aside to buy the property, for
11 the expenses during the entitlement process.

12 Q. Was Fred DeLuca to pay that money?

13 MR. HUTCHISON: Objection.

14 THE COURT: Sustained.

15 A. There was no money --

16 THE COURT: Excuse me, sir. When I sustain
17 an objection, that means you can't answer.

18 THE WITNESS: Okay, sorry.

19 THE COURT: That's okay.

20 BY MR. GARY:

21 Q. As it relates to the sharing of the
22 expenses, the sharing of expenses between Fred DeLuca
23 and Anthony Pugliese --

24 THE COURT: I think it would be easier,
25 Mr. Gary, respectfully, if you would use the AVP

1 and FD Destiny parties. That way we can avoid
2 the objections. So if you just would use AVP,
3 meaning the Pugliese entities, and the FD parties
4 as the DeLuca entities, I think that would
5 assist.

6 BY MR. GARY:

7 Q. Based on your understanding of the two
8 parties, AVP and FD, who was to pay down that first
9 \$140 million plus interest in this deal?

10 MR. HUTCHISON: Objection, asked and
11 answered, as well as my prior objection, which
12 was sustained.

13 THE COURT: Well, I'm sustaining the
14 objection that it was asked and answered already.

15 BY MR. GARY:

16 Q. Now, so let's go back for a moment, though,
17 to page 14. I want to make it clear.

18 Would you read -- back to 14. So we make it
19 clear, would you read paragraph E into the record,
20 please?

21 A. "To develop the Destiny land pursuant to
22 such comprehensive plan as may be modified from time
23 to time."

24 Q. And was that Anthony's responsibility?

25 A. Yes.

1 Q. Was he fulfilling that responsibility?

2 A. Yes.

3 Q. Okay. And D, "To authorize" --

4 A. You want me to read it?

5 Q. Go right ahead, sir.

6 A. "To authorize expenditures and incur
7 expenses in keeping with the budget."

8 Q. Okay. Did Anthony do that?

9 A. Yes, he did.

10 Q. Did he prepare budgets?

11 A. Yes, he did.

12 Q. And how many days a week were you there
13 working in the project where he worked?

14 MR. HUTCHISON: Objection, asked and
15 answered.

16 THE COURT: Overruled.

17 A. I spent the first couple years -- I was
18 there for a meeting usually -- at some point about
19 four days a week, not full time, but I was there four
20 days a week.

21 Q. And let's go to C, paragraph C. "To hire
22 and supervise consultants and other persons --
23 professionals in connection with carrying out the
24 comprehensive plan and in keeping with the budget."

25 Was he doing that?

1 A. Yes, he was.

2 Q. And how do you know that?

3 A. I was there and obviously once a month we
4 met with all of the consultants at one time and I
5 attended all those meetings, and at the end of the
6 month the budget was either -- the budget was either
7 over or under and I would see that. I would see those
8 documents.

9 Q. And there were months when the budget came
10 in under what had been projected?

11 A. Yes.

12 Q. You think Anthony Pugliese was doing a good
13 job?

14 A. Yes.

15 MR. HUTCHISON: Objection, asked and
16 answered.

17 THE COURT: Overruled.

18 BY MR. GARY:

19 Q. What kind of hours was he putting into this
20 project?

21 A. Anthony was there long -- many hours. I'd
22 have to say 70 hours a week; 60, 70 hours a week.

23 Q. Now, were you reporting to Mr. DeLuca?

24 A. Yes.

25 Q. And how were you reporting to him the work

1 that Mr. Pugliese was doing on the project?

2 Tell the jury, how often were you reporting
3 this to Mr. DeLuca?

4 A. Well, as needed. Obviously Mr. DeLuca was
5 very accessible to me. If I saw something that was --
6 that I needed to discuss with him, I would just pick
7 up the phone. It might be once a day. It might not
8 be for, you know, a month.

9 So -- but every time I would give him just a
10 quick update on how I felt the project was going.

11 Q. How would you rate the quality of
12 professionals and consultants that he hired to carry
13 out the duties, the mission of this venture?

14 MR. HUTCHISON: Objection, asked and
15 answered.

16 THE COURT: Overruled on that ground.

17 A. I felt that they were excellent. When I did
18 my due diligence and questioned their abilities, their
19 capabilities, their background, I think as I stated
20 before, we couldn't find anybody better.

21 Q. Now, how often would you report to Fred
22 DeLuca the activities and what was going on with the
23 project?

24 MR. HUTCHISON: Objection, asked and
25 answered.

1 THE COURT: Yeah, it's been asked and
2 answered. Go on to something different, please.

3 MR. GARY: All right, Your Honor.

4 THE COURT: Thank you.

5 BY MR. GARY:

6 Q. Now, in respect to the project overall --
7 well, let me rephrase that.

8 Let's go to the water chiller that we talked
9 about the other day. Did you ever discuss with
10 Anthony his reimbursing himself for the personal
11 expenses related to the project or did you discuss
12 bartering with him?

13 A. Yes.

14 Q. Tell the jury about that, please.

15 MR. HUTCHISON: Objection, hearsay as to
16 what Anthony Pugliese said.

17 Q. Tell the jury what you discussed.

18 THE COURT: Overruled at this point.

19 A. Well, first of all, every time Anthony --
20 there was no question that Anthony was totally in
21 charge of the project and he had the free realm to do
22 whatever he saw fit to do it.

23 So when we started doing some leasehold
24 improvements to the property that we were renting from
25 him, there came a time when we discussed the

1 conference room and Anthony --

2 MR. HUTCHISON: Your Honor, objection. Can
3 we come sidebar on this, please?

4 THE COURT: All right.

5 (Whereupon counsel for the respective
6 parties approached the bench and the following
7 proceedings were had outside the presence of the
8 jury:)

9 MR. HUTCHISON: Judge, apparently he had an
10 epiphany over the weekend about the moat chiller,
11 but nevertheless, the moat chiller he pled to in
12 the criminal case.

13 THE COURT: You mean Mr. Pugliese?

14 MR. HUTCHISON: Yes. So he can't now come
15 in and say "I bartered for it" or in any way did
16 anything legitimate for it. It's part of the
17 criminal information. It is specifically named
18 in the criminal information. It's also in the
19 probably cause affidavit, Your Honor, that led to
20 his arrest and therefore he's precluded from
21 getting up there and now Mr. Florio somehow
22 saying it was some kind of justifiable barter.

23 THE COURT: Okay. I've already ruled in the
24 case that I'm not going to allow Mr. Pugliese and
25 Mr. Reamer to deviate from the sum and substance

1 of their plea. So that's my main concern, is
2 that this may deviate from that plea, as part of
3 the plea that Mr. Reamer and Mr. Pugliese was
4 charged with having the moat chiller installed at
5 the Pugliese home, not for the benefit of LCOC.

6 So I'm concerned about that.

7 MR. MARIANI: May we be heard on that point,
8 Your Honor?

9 THE COURT: Sure.

10 MR. MARIANI: There was no determinations of
11 fact with respect to the plea agreement. There
12 was a presentation of evidence or suggested
13 evidence that may or may not be sufficient to
14 support the charges, but there was no
15 adjudication of facts.

16 In the pleading the facts --

17 THE COURT: There would have to be some
18 factual basis in order for the plea to be
19 accepted by the Judge, and Mr. Pugliese and
20 Mr. Reamer would have had to admit to a factual
21 basis for that plea.

22 MR. HUTCHISON: And I have that transcript.

23 MR. MARIANI: We can -- Your Honor, this is
24 an important distinction. They acknowledge that
25 there were facts. If the facts went to the jury,

1 the jury may be able to find a violation.

2 THE COURT: I don't think it's "may." I
3 think it's "would" be able to find, because the
4 proof must be beyond and to the exclusion of
5 every reasonable doubt. That's the standard,
6 as you know, that the State would have to prove
7 and that's the standard to which the plea would
8 have been supported and based.

9 MR. MARIANI: We'll get a copy of it,
10 Your Honor. It's in the record. The venue and
11 factual assertion says specifically --

12 (Whereupon the following proceedings were
13 had within the presence of the jury:)

14 THE COURT: Ladies and gentlemen, I'll
15 explain this to you. The only time you're going
16 to be able to ask questions is when the witness
17 is finished with the testimony. Please don't
18 provide those to the deputy. They're not going
19 to be asked.

20 Secondly, only the witness may be asked
21 questions. Questions cannot be directed to the
22 Court or to counsel. It's only factual
23 information that you're seeking from the witness
24 that may not have been asked of the witness by
25 the attorneys, okay.

1 Any questions on that procedure so that
2 we're not unclear?

3 Okay, thank you.

4 Just return that to whoever provided it.
5 Thank you.

6 THE BAILIFF: Yes, Judge.

7 (Whereupon the following proceedings were
8 had outside the presence of the jury:)

9 THE COURT: Okay, I'll need to see the plea
10 colloquy.

11 MR. HUTCHISON: I think we have it, Judge,
12 and we also, I think, have his factual basis.

13 The plea colloquy, I'll just -- it was
14 Judge Kelley, he took notice of the affiant's
15 statements supporting the plea as well as the
16 probable cause affidavit, which was in your
17 left -- well, it was in your left hand -- on your
18 left side.

19 THE COURT: Okay.

20 MR. HUTCHISON: They're looking for it,
21 Judge. We filed it under judicial notice. It's
22 also filed with the court as well. They're
23 looking for it and if I can't find a hard copy,
24 we'll pull it up on the computer.

25 THE COURT: Okay. While we're waiting, just

1 so the record is clear, paragraph 14 of the
2 amended information states:

3 "Anthony Vincent Pugliese, III and Joseph
4 Robert Reamer between August 1, 2008 and
5 September 15, 2008 in Palm Beach County, Florida
6 did pursuant to one scheme or course of conduct
7 wrongly obtain or use or endeavor to obtain or
8 use U.S. currency of a value of \$300 or more
9 which is property of Fred DeLuca and/or FD
10 Destiny, LLC or any other person not the
11 defendants, with the intent to permanently and
12 temporarily deprive Fred DeLuca and/or FD
13 Destiny, LLC or any other person not the
14 defendants, of the property or benefit therefrom
15 or to appropriate the property to the use of
16 Anthony Vincent Pugliese, III and/or Joseph
17 Robert Reamer or to the use of any person
18 entitled thereto.

19 "A, the Roman Construction Company for a
20 moat chiller installed on Anthony Pugliese's home
21 located in Delray Beach, Florida and not for the
22 benefit of the Land Company of Osceola County,
23 LLC, contrary to Florida Statute 812.0141 and
24 (2)(c), 812.012(10)(c)."

25 MR. MARIANI: That's in the probable cause

1 affidavit, correct, Your Honor.

2 THE COURT: That's in the actual amended
3 information.

4 MR. MARIANI: The information.

5 THE COURT: Right.

6 MR. HUTCHISON: I think there's another
7 page, but that's the probable cause affidavit.

8 THE COURT: The probable cause affidavit
9 speaks to it as well.

10 MR. MARIANI: I would just say that the
11 information is an allegation. It's not a
12 determination.

13 THE COURT: I have that understanding,
14 Mr. Mariani, respectfully.

15 MR. HUTCHISON: Here's a copy and then,
16 Judge, here's the factual basis. When you get to
17 the part about the factual basis, Judge, I have
18 the factual basis in my hand.

19 THE COURT: Let me see the factual basis,
20 please. Let me look through it a second.

21 MR. HUTCHISON: It's Roman Construction, as
22 you'll see, from the probable cause --

23 THE COURT: In pertinent part, the executed
24 factual basis signed by Mr. Pugliese on the 25th
25 day of August, 2015 -- for some reason it was

1 notarized on the 28th, I don't know why. In any
2 event it says: "

3 Additionally, the State has evidence to
4 present to a jury that a jury could find right
5 cause to be billed to Fred DeLuca and FD Destiny,
6 LLC for goods and services that were not supplied
7 to LCOC, but to me personally by Roman
8 Construction Company, Auman & Associates --
9 described in Counts 14, 15, 18, and 19 of the
10 information. Count 14 in the information
11 specifically details this moat chiller."

12 MR. MARIANI: Your Honor, our argument is
13 the operative word in what you read is the word
14 "could." It didn't say a jury "would" find. It
15 says a jury "could" find.

16 THE COURT: I think these are semantics.
17 Unless you have a case that says to me that
18 deviates from what I have already ruled upon, and
19 that is Mr. Pugliese could not change or
20 otherwise deviate from his plea and the plea has
21 a factual basis concerning this particular moat
22 chiller, and what is going to be testified to
23 apparently by Mr. Florio that somehow is going to
24 explain Mr. Pugliese's conduct that would be
25 different from and deviate from the plea of no

1 contest for which an adjudication was entered,
2 I'm not going to permit it. Thank you.

3 (Whereupon the following proceedings were
4 had within the presence of the jury:)

5 You may continue, Mr. Gary.

6 MR. GARY: Thank you, Your Honor. Please
7 the Court.

8 BY MR. GARY:

9 Q. Now, let me ask you this question. In
10 reference to your interaction with Anthony Pugliese
11 back and forth and day-to-day, did there come a time,
12 point in time, where you all discussed a reserve
13 account?

14 A. Yes.

15 Q. Would you tell the jury, how did that come
16 about and just what was the essence of that?

17 A. I think that -- actually, in the beginning
18 when we started to make commitments Anthony had a very
19 good reputation with a lot of the consultants through,
20 I guess, their due diligence. A lot of stuff were
21 verbal agreements. There were a few agreements that
22 were in writing and we had started to make some
23 commitments that were long-term commitments.

24 Sometime around into like the second year,
25 around '07, I think, I started to get a little

1 concerned. There was a lot of this -- it seemed to be
2 that there were things that weren't happening just
3 right.

4 I was concerned with the budgeting, that I
5 wanted to make sure that the commitments that we made
6 we could live up to when they came. Because some of
7 them were two and three years out and I just wanted to
8 make sure that the money was reserved to pay these
9 people when the -- actually when the time came due.

10 So I approached Anthony and I asked Anthony
11 in regard to these commitments that we had that we
12 didn't have to pay now, if there was a system set up
13 to reserve the money so at the time they did come due,
14 that we would be fine and be able to pay them.

15 Q. So you discussed with him the need to put
16 aside money, to hide money, whatever the case may be,
17 so that when tough times came and you thought -- why
18 did you think that was going to happen?

19 MR. HUTCHISON: Objection, form, and
20 leading.

21 THE COURT: Overruled.

22 A. First of all, I don't think anything was
23 hidden. I don't think that it was to hide money. It
24 was just a common practice. If you make a commitment,
25 at the time it comes due you have to accrue money to

1 pay it.

2 I asked Anthony around '07, I said to him in
3 light of all the budgets and the things that are going
4 on, this is something that we have to address, and at
5 the time I had a major concern that sparked my feeling
6 there when we had had a commitment to one of the key
7 employees, and he kept on asking for it to be put in
8 writing.

9 Q. Who was that employee, if you recall?

10 A. It was a fellow by the name of Tom
11 San Giacomo, who was the original vice president and
12 assistant manager, and he asked to make sure that he
13 had his agreement in writing because he was getting
14 married and he wanted to put this very large sum of
15 money that he was entitled to at some point in his
16 prenuptial.

17 Q. Did Fred DeLuca promise to do that?

18 A. Yes.

19 Q. Did he do it?

20 A. No.

21 Q. Did he renege on it?

22 MR. HUTCHISON: Objection, asked and
23 answered.

24 A. He just kept on postponing --

25 THE COURT: Overruled. You can answer.

1 BY MR. GARY:

2 Q. Go right ahead, sir.

3 A. He just kept on postponing, "I'll get to it,
4 I'll get to it, I'll get to it." To the fact that
5 even when Tom got married, we went to Italy and Tom
6 brought -- there was an attorney there that was going
7 to handle the documents, that even if it was done, and
8 I remember half an hour before he said "I do" he was
9 concerned that he didn't have his agreement yet.

10 So --

11 Q. Now, Fred DeLuca had agreed to this, had
12 made this promise and agreed to do this?

13 MR. HUTCHISON: Objection, leading.

14 THE COURT: Overruled.

15 A. Yes, this was part of -- this was an
16 agreement that was made before Fred was even involved
17 in it. Before he even agreed to be a partner there
18 were certain agreements that were made that obviously
19 we had to live up. It was part of our --

20 Q. Did he agree to live up to them?

21 A. Yes.

22 Q. And did he do it?

23 A. No.

24 Q. Did that concern you, that he was making
25 agreements and making promises that he didn't keep?

1 A. Yes.

2 Q. Why?

3 A. Well, because I was the one that was there.
4 I was the one that was supposed to be representing
5 him. I was the one that was telling people, you know,
6 "we're credible businessmen, we're going to do this,"
7 and they had no reason to doubt me.

8 And you know, Fred would live to commitments
9 he made, but I wanted to make sure he lived up to the
10 ones I was making on his behalf, and that was the
11 perfect example.

12 When that happened I got very flustered and
13 I went and I said to Anthony, "Listen, I mentioned
14 this before, to you once before. This is a perfect
15 example of what might happen in the future and I want
16 to make sure that this is being done. I don't care
17 how you do this, but I want you to make sure that the
18 money is set aside to live up to our commitments that
19 we're making as we go on with the project."

20 Q. Was Fred DeLuca living up to commitments
21 that were made on behalf of the project?

22 A. No.

23 Q. Were there others who had been promised
24 interest in -- I mean, other workers, special workers
25 had been promised an interest in the development, the

1 concept, the city?

2 MR. HUTCHISON: Objection, foundation.

3 THE COURT: Sustained.

4 BY MR. GARY:

5 Q. Were there other workers that were to get a
6 percentage of the project?

7 MR. HUTCHISON: Same objection, Your Honor.

8 THE COURT: Overruled.

9 A. At the time there were commitments made for
10 dollar amounts. There was not another commitment
11 made, to my recollection right now -- keep in mind,
12 it's a long time ago -- to my recollection, there was
13 no commitment.

14 But there was to be one. There was to look
15 to hire a president of the company and any president
16 that we were going to hire and some key employees
17 would be -- we would be responsible to do that.

18 Q. Key employees?

19 A. Yes.

20 Q. Do you know who some of those employees
21 were?

22 A. Well, the initial agreement that I was aware
23 of was that 10 percent of the net profit of the whole
24 thing was supposed to be split amongst people that
25 Anthony Pugliese deemed to be instrumental in

1 accomplishing the goal.

2 So there was an agreement and there was
3 probably 17 copies of it, different phases. I for one
4 was supposed to get compensated. I was in, I was out,
5 I was in, I was out. The final agreement was never
6 made. The last I heard I was in, but I'm not so sure.

7 Q. But are we talking about an agreement that
8 was made and passed on to the key workers?

9 A. Yes.

10 Q. Did they expect DeLuca to live up to this?

11 A. Yes.

12 Q. Did he do it?

13 A. No.

14 Q. He refused to do it?

15 A. Yes. Well, the very first option -- the
16 very first time it came into question was over Tom,
17 and he refused.

18 Q. So we be clear here, is this something that
19 Fred DeLuca had said he would do?

20 A. Yes.

21 Q. They could rely on him?

22 A. Yes.

23 Q. They could trust him?

24 A. Yes.

25 MR. HUTCHISON: Objection, asked and

1 answered.

2 THE COURT: Overruled.

3 BY MR. GARY:

4 Q. And he didn't do it, did he?

5 A. No.

6 Q. On a scale of one to ten, how would you rate
7 Fred DeLuca's actions as it relates to promises that
8 he made during this venture?

9 On a scale of one to ten, in terms of him
10 living up to his word, the promises that he made, how
11 would you rate it?

12 MR. HUTCHISON: Objection to form,
13 Your Honor. It's also commenting on another
14 witness' credibility.

15 THE COURT: Overruled.

16 Q. In this particular project, so we be clear.

17 A. Okay. In this particular project I was very
18 disruffled. It was, you know, three -- I mean, on a
19 scale of one to ten, it was not good. It was three,
20 two. I don't know.

21 Q. It wasn't good, was it?

22 A. No.

23 Q. Did that concern you?

24 A. Yes, it did.

25 Q. Did you discuss it with Fred DeLuca?

1 A. Yes, I did.

2 Q. And what was his take on it?

3 A. Very non-responsive, you know, kept on
4 reminding me of what I was there for. I would give
5 him my opinions and over that he really wasn't really
6 responsive.

7 Q. Does giving your word mean a lot to you?

8 A. Yes, it does.

9 Q. Why?

10 A. I've been in business my whole life. I
11 really believe that when you make a commitment, you
12 live up to it. Sometimes it goes your way, sometimes
13 it doesn't, but other people count on your word.

14 Q. What about Anthony Pugliese's word?

15 A. I don't know of any time when Anthony didn't
16 live up to -- I don't know, in my dealings with
17 Anthony, I never saw him not live up to his word.

18 Q. And how many years did you work with --

19 A. With who?

20 Q. With Anthony Pugliese.

21 A. I met Anthony in '05 and I never knew him
22 before when we got involved in the project. That's --
23 so you know, from '05.

24 But my feelings over this agreement that
25 Fred had made I guess started really multiplying in my

1 brain around '07, is when I really started to get
2 concerned.

3 Q. Was Fred DeLuca living up to his word as it
4 relates to his association and his partnership with
5 Anthony Pugliese?

6 MR. HUTCHISON: Objection, asked and
7 answered, form.

8 THE COURT: Sustained. Let's move on to
9 something else, if we could. If you have another
10 area of questioning relative to the operating
11 agreement, that's fine, but let's move on,
12 please.

13 MR. GARY: Okay, Your Honor. Thank you.

14 BY MR. GARY:

15 Q. Now, you testified last week for this jury
16 about the funding expenses of the Disney project. Do
17 you remember that -- I mean, the Destiny project.

18 A. I remember I was asked some questions about
19 it, yeah.

20 Q. Okay, good. And you were asked questions
21 about the funding for this Destiny project; is that
22 correct?

23 A. Yes.

24 Q. Okay. And now, tell the jury what it is
25 that even before -- you remember we discussed the

1 funding, no funding for September 2007?

2 A. Yes.

3 Q. No funding for September -- I mean, for
4 October 2007?

5 A. Yes.

6 Q. No funding from Fred DeLuca for November
7 2007?

8 MR. HUTCHISON: Objection, leading.

9 THE COURT: Well, sustained. Just -- if you
10 want to just go ahead and summarize what you're
11 looking to do, you can do it that way. It would
12 be easier.

13 MR. GARY: Thank you, Your Honor.

14 BY MR. GARY:

15 Q. You remember where we discussed that Fred
16 DeLuca failed to fund the project as required for
17 September 2007, October 2007, November 2007,
18 December 2007, January 2007?

19 Do you remember that?

20 A. Yes.

21 Q. Now, even before that time when there was no
22 funding from DeLuca and -- did the agreement call for
23 him to fund?

24 A. Yes.

25 MR. HUTCHISON: Objection.

1 THE COURT: Overruled.

2 BY MR. GARY:

3 Q. Now, let's go back. Even before that
4 time -- even before that time, from the start, were
5 there delays in funding or delays in Fred DeLuca
6 living up to his word and funding the project as he
7 should have?

8 MR. HUTCHISON: Objection to the form.

9 THE COURT: Overruled.

10 A. Yeah, there was right from -- almost from
11 the beginning there was delays in his contributions.
12 They call them capital calls or whatever it was.
13 There was delays.

14 Q. Did Fred DeLuca have the means to fund it if
15 he wanted to?

16 A. Certainly.

17 Q. And why do you say that?

18 A. Well, I'm very familiar with Fred and his
19 ability to pay the kind of amounts that were scheduled
20 to be paid.

21 Q. And from the start, as we discussed, were
22 there a lot of employees working on this project?

23 A. Yes.

24 Q. A lot of companies working on this project?

25 A. Yes.

1 Q. Did this lack of funding from Fred DeLuca
2 surprise you? Were you surprised that he didn't do
3 what he said he was going to do?

4 MR. HUTCHISON: Objection as to relevance.

5 THE COURT: Sustained. He can testify
6 factually, but would he be surprised or not would
7 not be relevant.

8 MR. GARY: Thank you, Your Honor.

9 BY MR. GARY:

10 Q. Well, factually were you aware or --

11 A. Yeah, the money --

12 THE COURT: There's really no question
13 pending. Wait for a question to be asked, sir.

14 Q. As it relates to the slowness in funding or
15 the lack of funding for that period that we talked
16 about as it relates to this project, did you have any
17 concerns about whether or not -- did you have concerns
18 about whether or not Fred DeLuca was going to live up
19 to the deal that he had made?

20 MR. HUTCHISON: Objection, asked and
21 answered.

22 THE COURT: Sustained.

23 BY MR. GARY:

24 Q. Could you tell us what if any impact did
25 Fred DeLuca's lack of funding, lack of living up to

1 his part of the bargain, what if any impact did it
2 have on the overall operation of the Destiny project?

3 A. Well, and I think I said this before,
4 initially I had concerns because of Fred's travel
5 schedule and I just figured that I was told by
6 Connecticut that he's traveling; when he gets back
7 into the country or whenever.

8 I had a concern that the employees were
9 coming to me. Other people were coming to me about,
10 you know, their paychecks, but it didn't really have
11 too much of an effect right then and there because
12 Anthony paid the bills.

13 Q. How did you feel about Anthony -- well, I
14 mean, Anthony paid the bills and Fred wouldn't pay the
15 bills; is that correct?

16 A. Correct.

17 MR. HUTCHISON: Objection, leading.

18 THE COURT: Sustained. Please try not to
19 lead the witness, Mr. Gary.

20 MR. GARY: Thank you.

21 BY MR. GARY:

22 Q. Go right ahead. I cut you off.

23 A. If Fred's money didn't come and if there was
24 money that needed to be contributed to pay the bills
25 that would become due, if there was a shortfall in the

1 checkbook, Anthony would put the money in and wait to
2 get reimbursed by the time when Fred would come and
3 square up.

4 In the beginning when I said something to
5 Anthony, he didn't seem too concerned. In fact, he
6 told me, you know, "Don't worry about it. I'll put up
7 the money. He's my partner, he's good for the money.
8 I'll put the money. I'll pay the bills. I'm
9 certainly not going to let anybody be aware that we're
10 waiting for money."

11 Because the fact that we could do this
12 project and we did have the money was our whole
13 stance, you know. When we started the project people
14 would ask, "Well, what makes you different than any
15 other developer?"

16 And my answer was always, "Because we have
17 the money to do it."

18 Q. Do you know of anything, anything that
19 Anthony Pugliese had done that would cause or give it
20 rise to Fred DeLuca stopping or not funding the
21 project back from day one and surely through September
22 '07 all the way into January '08?

23 A. No, not at all. I think Anthony was
24 actually doing more than expected.

25 Q. Why do you say that?

1 A. Well, because I never expected him to have
2 to lay out money that he didn't need to lay out. You
3 know, he was working hard. He was working diligently.
4 He was doing everything. It was very impressive,
5 actually, how he handle the whole operation and the
6 respect that everybody had for him was even more
7 amazing.

8 Q. When you say the respect that everybody had
9 for Anthony, did you have respect for him?

10 A. Absolutely.

11 Q. Did you have respect for his abilities?

12 A. Yes, I did.

13 Q. Tell the jury, if you would, what impact --
14 from the start, what impact -- and surely from
15 September '07 to January '08, what impact did his
16 failure to do what he said he was going to do in
17 funding this project, did that make it difficult for
18 Anthony Pugliese to keep this project alive and keep
19 it going?

20 MR. HUTCHISON: Objection, asked and
21 answered and form, Your Honor.

22 THE COURT: Yeah, I agree it's been asked
23 and answered. Let's try, again, to move on to
24 something a little bit different, a little bit
25 more specific, please.

1 MR. GARY: Thank you, Your Honor.

2 BY MR. GARY:

3 Q. Now, Mr. Florio, at some point in time -- at
4 some point in time you decided to resign, didn't you?

5 A. Yeah. Yes, years later, to where you just
6 were.

7 Q. And tell the jury, if you would, what was it
8 that caused you to say enough is enough?

9 A. Well, I guess the litigation, you know, that
10 was going back and forth. You know, I was a
11 financially stable guy. I didn't need the job. I
12 never really considered it a job. I always felt like
13 I was working with these guys and not for these guys.
14 I don't think I ever really worked for anybody,
15 really, in my life.

16 So when I took the opportunity and took the
17 challenge to do this, I did this because I felt like I
18 was learning something versus being a teacher my whole
19 life. Now for the first time I'm going to learn about
20 something new. It was interesting, and I thought as
21 long as everybody got along, we were moving forward
22 and I was learning stuff, it was interesting and that
23 was great. I didn't have to do anything.

24 So as long as it was fun, as long as
25 everybody was getting along, I thought that it would

1 be -- I was enjoying it. But when there started to be
2 a conflict, it was not so fun anymore.

3 Q. Let's talk about the conflict for a moment.

4 MR. GARY: But before we do that,
5 Your Honor, I'd like to get to Exhibit 78, the
6 resignation letter, offer it into evidence.

7 THE COURT: Any objection?

8 MR. HUTCHISON: Yes, I object, Your Honor.

9 THE COURT: Let me take a look at it,
10 please. Thank you.

11 THE CLERK: What number was that, sir,
12 again?

13 THE COURT: 78.

14 MR. GARY: May I pass one to the witness?

15 THE COURT: In one moment, please.

16 (Whereupon counsel for the respective
17 parties approached the bench and the following
18 proceedings were had outside the presence of the
19 jury:)

20 Okay, Mr. Hutchison?

21 MR. HUTCHISON: Judge, the sentence that
22 says, "But after talking to you and your
23 attorneys, I don't think that you like what I
24 have to say. I feel I'm being pressured to
25 change my opinions and recollections regarding

1 the events."

2 Judge, that goes into your prior ruling. I
3 mean, if he's claiming something happened during
4 meetings with me -- which I can tell you nothing
5 improper did happen -- but if he's trying to
6 claim that, that's what that sentence certainly
7 implies and that's inconsistent with your prior
8 ruling.

9 Certainly it's during an attorney-client
10 meeting. It's not the only time I ever met
11 Mr. Florio and therefore it would be privileged,
12 commenting on the privilege, and containing
13 privilege.

14 THE COURT: Okay. What is the relevance of
15 this letter other than his resignation, which he
16 testified to and without getting into
17 attorney-client privileged information, can speak
18 to why he resigned? What would be the relevance
19 of this letter?

20 MR. MARIANI: Your Honor, in their argument
21 so far they suggested Mr. Florio is a disgruntled
22 former employee. We're trying to show, number
23 one, he really wasn't an employee, he was more of
24 a participant at a higher level; and two, not
25 disgruntled in terms of things that happened, you

1 know, relative to the job or relative to his
2 involvement in the project.

3 THE COURT: All right. That would --

4 MR. MARIANI: To the extent --

5 THE COURT: Excuse me, go ahead. I'm sorry,
6 I didn't mean to interrupt you.

7 MR. MARIANI: To the extent that he was
8 pressured, that's not attorney-client activity.

9 THE COURT: Well, he's gonna say that
10 Mr. DeLuca and Mr. DeLuca himself pressured him
11 into changing his opinions or whatever it may be.
12 That's fine.

13 MR. GARY: Not the lawyers.

14 THE COURT: Yeah, that's number one.

15 Number two, the disgruntled employee issue
16 is really, in my view, a definition of what is a
17 collateral matter and this is really not
18 impeaching him on a collateral matter. It's
19 simply an inconsistent statement that he was
20 disgruntled, but he had reasons to be. So he can
21 testify to that.

22 The objection is sustained because I find
23 the potential that this jury could construe from
24 this paragraph that the information at least in
25 part came from counsel would invade the

1 attorney-client privilege; as well as in my view,
2 any probative value, which I think it has very
3 little, would be materially outweighed by the
4 prejudice, in the sense that it could be
5 construed in that fashion.

6 So I'm sustaining the objection as to the
7 letter. I'm not taking issue with you going into
8 his wanting to talk about his --

9 MR. GARY: Why he resigned.

10 THE COURT: -- why he resigned. It should
11 not have anything to do with the lawyers.

12 What I'm going to do is allow the ladies and
13 gentlemen of the jury to take a break, take a
14 convenience break now, and instruct him on that
15 as well.

16 (Whereupon the following proceedings were
17 had within the presence of the jury:)

18 Ladies and gentlemen, I'm just going to take
19 a five-minute break because we need to deal with
20 something very, very quickly. It won't take
21 long. But again, a very, very quick five-minute
22 convenience break for everyone.

23 This will be our morning break. We'll just
24 take it a tad earlier than usual, okay. Have a
25 good break.

1 Don't talk about the case to anybody. Don't
2 allow anybody to talk to you about it in any way,
3 shape, or form. Go right ahead. We'll be in
4 recess for about five minutes.

5 (Whereupon the jury retired from the
6 courtroom and the following proceedings were
7 had:).

8 All right. Mr. Florio, my understanding is
9 they're going to get into with you why you
10 resigned from working with Mr. DeLuca and his
11 companies. Please ensure that you don't speak in
12 any way, shape, or form about any conversations
13 with lawyers, attorneys, or anything like that.

14 Do you understand?

15 THE WITNESS: Yes.

16 THE COURT: All right, very well.

17 MR. GARY: But Your Honor, he can talk about
18 his conversation with Fred DeLuca.

19 THE COURT: With Mr. DeLuca, yes, but not as
20 it relates to anything having to do with lawyer
21 conversations with you, Mr. DeLuca or a
22 combination of the three.

23 Do you understand?

24 THE WITNESS: Sort of, yes.

25 THE COURT: Well, you can speak about why

1 you were dissatisfied with Mr. DeLuca, but it
2 can't be relating to anything that allegedly was
3 said by counsel in your presence as an agent for
4 Mr. DeLuca.

5 THE WITNESS: Okay.

6 THE COURT: All right, thank you.

7 This will be marked as 78 but not admitted,
8 for the reasons that I've indicated in the
9 objection. The objections were sustained.

10 (Whereupon a document/item was marked for
11 identification as AVP Destiny Exhibit 78.)

12 Okay, take a few minutes, folks. We'll be
13 in recess just briefly.

14 MR. HUTCHISON: How much time?

15 THE COURT: We'll get started again at
16 10:30, if at all possible.

17 (Whereupon a recess was taken, after which
18 the following proceedings were had:)

19 THE COURT: All right. Thank you all very
20 much. Have a seat, please. Welcome back.

21 Deputy, if you'd kindly summon the jury,
22 please.

23 THE BAILIFF: Yes, Judge.

24 The jury is entering.

25 (Whereupon the jury entered the courtroom

1 and the following proceedings were had:)

2 THE COURT: Welcome back, ladies and
3 gentlemen. Again, thank you for your continued
4 service and sacrifice. We're continuing now with
5 the direct examination of Mr. Florio.

6 Mr. Gary, you may proceed.

7 MR. GARY: Thank you, Your Honor.

8 BY MR. GARY:

9 Q. Mr. Florio, we were discussing with the jury
10 your resignation, you recall that, just before we
11 broke?

12 A. Yes.

13 Q. And with the Judge's instructions and his
14 ruling, could you tell this jury, based on your
15 dealings with Fred DeLuca, why is it that you came to
16 the end, you resigned?

17 A. Well, obviously I was ready to resign a
18 couple years prior to even getting involved in the
19 project. Like I said, I stayed there because I
20 enjoyed it and I thought it was a great learning
21 process for me.

22 When things started to be in question, when
23 there started to be some discrepancies between the
24 partners and it wasn't fun, I went to Fred and I said,
25 "Listen, this isn't fun for me anymore and unless this

1 thing is resolved amicably, I'm going to leave. I
2 don't want any part of the meetings that I'm involved
3 in. I don't agree with it. Most of it is -- from my
4 experience, these accusations aren't true."

5 Q. What accusations?

6 A. The ones that they were discussing when they
7 were getting ready to file the suit or the suit was
8 going and they were saying, "Well, this is what
9 happened" and I'm saying, "That didn't happen."

10 MR. HUTCHISON: Objection, Your Honor, gets
11 into the --

12 THE COURT: Yeah, I want you to just
13 concentrate on Mr. DeLuca and what he may have
14 said.

15 BY MR. GARY:

16 Q. Your conversation with Mr. DeLuca.

17 A. This conversation was with Mr. DeLuca, that
18 you know, that's not true. I mean, I'm the one who's
19 going there.

20 Q. Was he saying things that were not true?

21 A. Yes.

22 Q. Was he lying?

23 MR. HUTCHISON: Objection to form and
24 commenting on the witness.

25 THE COURT: Overruled.

1 A. In all honesty, I don't think that he was
2 lying. I think that the people that he had surrounded
3 himself with were leading him to believe that this was
4 a stance that he could take to attain his goal, which
5 was -- in my opinion, was to take the property back.

6 Q. Take it all?

7 A. Yes.

8 MR. HUTCHISON: Objection, Your Honor, move
9 to strike. That's improper and not a subject of
10 this litigation. I'll have a motion as well,
11 Judge, after this and it's inconsistent with a
12 motion in limine. So I object on all those
13 grounds.

14 THE COURT: All right. The jury will be
15 asked to disregard the last statement of the
16 witness and the follow-up question by Mr. Gary at
17 this point in time.

18 You may proceed.

19 MR. GARY: Thank you, Your Honor.

20 BY MR. GARY:

21 Q. Now, as it relates to Fred DeLuca --

22 A. Yes.

23 Q. -- what were your feelings about what he
24 wanted you to do concerning the disagreements that
25 were going on with this project?

1 What were your feelings as to what Fred
2 DeLuca wanted you to do?

3 A. I had conversations with Fred in regard to
4 what had transpired while I was there over the last
5 few months and I told him that what he was saying,
6 what he was thinking, what he was led to believe was
7 not true. It just wasn't accurate and I pleaded with
8 him to -- you know, as being a loyal friend of his for
9 so many years, to believe me because I was there.

10 It was like somebody saying something and
11 he's got his head filled with information that was
12 totally not accurate and I said, "Who said that?" And
13 if he did tell me, then I said, "Well, I don't
14 remember seeing that person. I don't remember that
15 person coming to Tallahassee with me or going to
16 Orlando with me. So how in the world could that be
17 true?"

18 Towards the end of a couple of meetings I
19 just decided that if they weren't going to believe me,
20 if he wasn't going to believe me, then I had no
21 purpose being there. You know, listen to who you want
22 to listen to, do what you want to do, but I don't want
23 any part of it because it's not -- what you're
24 insinuating is the furthest from the truth.

25 Q. Were there any reasons whatsoever that you

1 know of -- and you were the treasurer -- for DeLuca to
2 not fund this project through '07, '08, and what have
3 you?

4 MR. HUTCHISON: Objection, form, Judge.
5 Foundation, calls for a legal conclusion.

6 THE COURT: Overruled. Based on this
7 gentleman's position, that's all.

8 A. Well, at some point, you know, if somebody
9 has an obligation to pay something and they don't pay
10 it -- for example, if there's a reason for that
11 happening, you know, I can understand that, you know.

12 But in this particular situation there was a
13 discrepancy over, you know, budgets, budget figures --

14 Q. Let me ask you this --

15 THE COURT: Excuse me. Excuse me, Mr. Gary.
16 I'd like the witness to be able to finish the
17 answer.

18 MR. GARY: I'm sorry, go ahead.

19 THE COURT: You said there were
20 discrepancies over budgets, budget figures?

21 THE WITNESS: Yes, there was discrepancies
22 over budgets and Fred requested that I ask for
23 budget figures and stuff like that.

24 BY MR. GARY:

25 Q. Did you do that?

1 A. Yes, I did.

2 Q. Were they given to you?

3 A. Yes. I had those figures and I submitted
4 them and he wanted them in a different format
5 because --

6 Q. Did you do that?

7 A. Well, I tried to put the numbers -- if I can
8 explain this to you, Fred had many different
9 businesses. He had little time. He met with his
10 comptroller, he met with his advisors, and he would
11 have a format on just simple numbers going across so
12 he could look at any one of the hundred companies and
13 very quickly identify things.

14 Our process of developing this land did not
15 fit that format. We had no income. We had expenses.
16 We didn't have any income. There was no profit and
17 loss. We're building this thing. We never deposited
18 a check. The only checks I ever saw were the ones
19 that came from Subway to fund us.

20 So it didn't fit. I worked with his
21 comptroller and assistant comptroller to try and get
22 our numbers so they could fit so he could readily,
23 easily see what was happening.

24 Once that was accomplished he had questions
25 about it.

1 Q. Let me just stop you for a second.

2 A. Yeah.

3 Q. Once you got done with what he wanted you to
4 do, once that was accomplished did he still have
5 issues about it?

6 A. Yes. He wanted some -- I first did it for a
7 year. Then he said, "Well, how about five years?"

8 "Okay." "Well, how about ten years?"

9 It got to the point where he kept on
10 demanding that I -- 20 years -- and if you understand
11 the process of getting stuff entitled and dealing with
12 the counties and dealing with the State, some of the
13 numbers are just not possible to reach. I mean, we're
14 doing something that nobody ever else, in my opinion,
15 not that I know, ever built a city.

16 You know, you have urban sprawl where all of
17 a sudden a city pops up. But for somebody to set out
18 to say "I'm going to build a city," there were so many
19 things that were uncertain, there were so many things
20 that we couldn't really put a handle on, and every
21 time I would tell Fred that's more or less impossible
22 for me to do, it was just a delay.

23 "Well, as soon as we get these things, then,
24 you know, I'll fund." So I would go back and forth
25 for a month or two months and finally maybe he got the

1 answers, maybe he didn't, but he would then fund
2 again.

3 Q. But was Anthony Pugliese doing his part in
4 terms of getting the budgets, redoing the budgets,
5 getting new budgets or whatever he wanted done, Fred
6 wanted done?

7 A. Yes.

8 Q. Was Anthony doing it?

9 A. Yes.

10 Q. And would then Fred DeLuca still come up
11 with other reasons --

12 A. Yes.

13 Q. -- for not funding?

14 A. Well, it was always usually the same reason.
15 It was just a delay in funding. You know, because
16 of -- well, at this particular point that's in
17 question it was always over the budgets and that type
18 of stuff.

19 Q. And did you see any issues with the budgets
20 that Anthony didn't correct or get right?

21 MR. HUTCHISON: Objection, foundation.

22 THE COURT: Overruled.

23 A. From my recollection, any number that we
24 could possibly put a handle on was given to him. He
25 knew everything that I knew. I told Fred everything

1 and I told him reasons why I couldn't attain certain
2 numbers.

3 But you know, when you're dealing with a
4 project that's so much money and you're dealing with
5 13 or 14 different entities, different engineering
6 people and experts, it's very, very difficult, because
7 he was trying to more or less pin the company down to
8 a budget. Now we had to pin down the people that were
9 doing the work to a budget.

10 You just couldn't possibly go out that
11 length of time.

12 Q. Was he unreasonable?

13 MR. HUTCHISON: Objection.

14 THE COURT: Sustained.

15 A. Yeah.

16 MR. HUTCHISON: Move to strike.

17 THE COURT: Granted. Please disregard the
18 last question and answer.

19 BY MR. GARY:

20 Q. Now, in reference to entitlements -- and I
21 think we hit this briefly -- but applications had to
22 be filed for entitlements; is that correct?

23 A. Yes.

24 Q. And were applications filed with the proper
25 agencies for the entitlements?

1 A. Yes.

2 Q. As a matter of fact, how many applications
3 were filed for entitlements, if you know, sir?

4 A. Oh, I don't know how many were in the
5 process. I know that anything that had to be filed
6 was filed in a timely manner.

7 Q. By Anthony Pugliese and his team?

8 A. By the staff that Anthony was in charge of.

9 Q. Now, at some point in time the funding
10 stopped again, the second funding stopped after he
11 started back to fund?

12 A. Yeah.

13 Q. Tell the jury what that was all about.

14 A. Well, that was over -- again, the first
15 funding was brought about by a budget, because I think
16 '07 was really one of the first budgets we tried to
17 put together.

18 Around, I guess it was '09 --

19 Q. Did he stop the funding again?

20 A. Again, it was over budget issues, because we
21 had then had a commitment to purchase another parcel
22 of land. So the whole budget that was initial in '07
23 was now being totally different. The project almost
24 doubled in size and so many things had changed.

25 Q. And did Fred DeLuca agree to the purchase of

1 the additional land that brought the total project up
2 to 41,000 acres?

3 A. Yes.

4 Q. He knew that it was going to be additional
5 monies, right?

6 A. Obviously, yes.

7 Q. And he still stopped the funding?

8 MR. HUTCHISON: Objection, form, and asked
9 and answered.

10 THE COURT: Overruled.

11 A. You asked if Fred was aware and I said
12 definitely, yes.

13 Q. Now, let's go back to your resignation and
14 as it relates to Fred DeLuca.

15 What did you tell him after discussing this
16 with him -- and don't bring anybody else, but what did
17 you tell him about how you felt about what was going
18 on?

19 A. Well, we were meeting. I was concerned on
20 how we were going to go forward and I told him that
21 his approach I didn't agree with. I told him that I
22 didn't -- everything that he was making accusations
23 about weren't true, to my knowledge.

24 Q. Did he listen to you?

25 A. He listened to me, but in my opinion, his

1 mind was already made up. At this particular point I
2 think if I look at the people that were surrounding
3 him, he was looking for people that would tell him
4 what he wanted to hear versus, you know, what he
5 should hear and he started surrounding himself with
6 people that would just agree with what he was trying
7 to do, and that was not me, because none of what he
8 was telling me was accurate.

9 Again, I didn't need to be there and if it
10 wasn't going to be done and done right, I did not want
11 to be a part of anything that wasn't totally, you
12 know, right, in my opinion. So I decided that the
13 time had come where I could leave.

14 At that time I had other businesses that I
15 owned. It wasn't that I was sitting there and I
16 needed a job. So I decided to focus on my own things
17 and wished him good luck, but I didn't want any part
18 of it.

19 Q. In your dealings with Fred DeLuca and during
20 this time, did it come to a point in time where you
21 felt that you were being pushed to say things or do
22 things that were not true?

23 MR. HUTCHISON: Objection, leading, and
24 asked and answered.

25 THE COURT: Leading, correct. Sustained.

1 BY MR. GARY:

2 Q. Would you explain to the jury then, if you
3 would, in terms of your resignation.

4 A. Well, I had had meetings with Fred, numerous
5 meetings with him, and I actually was standing on my
6 head trying to, you know, tell him that this isn't
7 right. We're not gonna get anyplace. If you file
8 some litigation, what is the basis on it?

9 I had conversations with him and he said,
10 "We'll see what happens. We'll see what happens.
11 Anthony is still going to have to defend himself.
12 That's going to be a very costly situation."

13 Q. He said this to you?

14 A. Yes, "And it's going to be time-consuming."

15 And I just really -- to tell you the truth,
16 I just got aggravated. I don't like the fact that --
17 I just didn't like anything that he was saying,
18 because it wasn't true. It just wasn't true, and the
19 fact that he could afford to take that approach was
20 his business and certainly not mine, and I said I'm
21 out of here.

22 Q. Well, you say -- you told the jury that he
23 talked about what Anthony couldn't afford to do as
24 opposed to what he could do. What did you derive from
25 that?

1 MR. HUTCHISON: Objection, leading, and
2 form, summing up the answer.

3 THE COURT: Overruled. Let's try to not sum
4 up the answer, because it does lead to difficulty
5 in ruling, but the gist of it is fine. You can
6 answer the question.

7 A. What was the question?

8 Q. In reference to -- in reference to the issue
9 of not wanting to get involved with something that you
10 knew wasn't true, was Fred DeLuca trying to do that
11 with you?

12 A. Yes.

13 Q. Trying to get you to do that?

14 A. He was trying to let me see his side and
15 agree, which I couldn't. There was no possible way I
16 could, because it was all based on stuff that was not
17 accurate.

18 Q. And you told him it wasn't accurate?

19 A. Correct.

20 Q. And what did he do about that?

21 A. He just sort of like pushed it aside and
22 would talk to people that were putting these same
23 thoughts into his head and that's when I said, "Well,
24 listen, if you're going to listen to these people, you
25 listen to these people. Leave me alone."

1 Q. You were there four days a week?

2 A. Yeah. Well, at the time --

3 Q. And sometimes more?

4 A. -- I was there five days a week.

5 Q. So you knew what was going on?

6 A. Absolutely.

7 Q. Now, when the addition of 14,000 acres of
8 land was purchased, did that change the need for money
9 to carry out the plan to get this project up and
10 going?

11 MR. HUTCHISON: Objection, asked and
12 answered. We went over this on Friday
13 extensively.

14 THE COURT: Could you just repeat the
15 question again? I didn't understand.

16 Mr. Gary, can you repeat the question?

17 MR. GARY: Yes, Your Honor.

18 BY MR. GARY:

19 Q. As far as the 14,000 acres that was added to
20 the project, did that create a need for more money
21 than had been initially planned?

22 A. Yes.

23 THE COURT: Overruled. The objection is
24 overruled.

25 Q. And why was that?

1 A. Well, I mean, it's common sense. If you're
2 gonna develop -- if you're doing a project with
3 27,000 acres and now all of a sudden you're going to
4 do a project with 41,000 acres, just about every
5 expense you're going to have is going to go up
6 substantially.

7 There were certain efficiencies. Like you
8 could use the same people. You didn't have to go out
9 and hire different consultants. But you know, if you
10 did a survey, now you got a survey. If you had to put
11 people on the ground looking for certain different
12 species and stuff like that, you still had to do it
13 for that property too.

14 So I would say there was a little bit of an
15 efficiency. It wouldn't double all the costs, but it
16 certainly was another tremendous burden on the
17 finances to do it, to get it done.

18 Q. But he signed on to that deal to get the
19 additional 14,000?

20 A. Yes.

21 Q. So he knew it was going to take more money?

22 A. Yes.

23 Q. And had to develop new budgets?

24 A. Yes.

25 Q. And did Anthony do that?

1 A. Yes, to the best of our ability, minus
2 anything that could be unforeseen or uncertain.

3 Q. And you took part in that --

4 A. Yeah.

5 Q. -- bringing all of this together; is that
6 correct?

7 A. Yes.

8 Q. Now, you were talking about Fred DeLuca just
9 a minute ago had the money in terms of this
10 litigation. What were you talking about?

11 MR. HUTCHISON: Objection, relevance,
12 Your Honor.

13 THE COURT: Sustained. You're not talking
14 about the project. You're talking about now the
15 litigation?

16 MR. GARY: Right, Your Honor.

17 THE COURT: Okay, that would be
18 inappropriate. You can go on.

19 BY MR. GARY:

20 Q. Now, did you tell Fred DeLuca that he was
21 wrong?

22 MR. HUTCHISON: Objection, asked and
23 answered.

24 THE COURT: I don't believe so. You can
25 answer.

1 A. Yes, numerous times.

2 Q. Did you expect him to believe you?

3 A. Yes.

4 Q. Did he? Did he listen to you?

5 A. I think that he knew that I was telling him
6 the truth. I knew that he knew the truth. I felt
7 that he wasn't going to react according to the truth.

8 Q. Why?

9 A. I think that it was --

10 MR. HUTCHISON: Objection, relevance and
11 calls for speculation.

12 THE COURT: Overruled. Make sure it doesn't
13 get into any of the things we talked about
14 earlier, sir.

15 THE WITNESS: I think at the time that there
16 was a premeditated plan to take the project
17 back --

18 MR. HUTCHISON: Objection, Your Honor.

19 THE COURT: Sustained. The jury will ignore
20 that last comment.

21 BY MR. GARY:

22 Q. Don't tell us what the plan was, but do you
23 think there was a plan?

24 A. I think that --

25 MR. HUTCHISON: Objection, same question,

1 and move to strike Mr. Willie Gary's comment as
2 well.

3 THE COURT: All right. Well, I'm going to
4 sustain the objection.

5 BY MR. GARY:

6 Q. Now, did the actions of Fred DeLuca impact
7 Anthony Pugliese in a negative way?

8 A. Yes.

9 Q. And why do you say that?

10 A. I think that -- well, obviously it was
11 Anthony's vision. I think everything was moving in
12 the right direction and when this happened it
13 obviously threw a wrench in the middle of everything
14 and everybody was concerned.

15 The consultants were concerned, the people
16 getting paid in the office were getting concerned that
17 they didn't know what the future was going to be with
18 the project.

19 Q. There was a total of 41,000 acres; is that
20 correct?

21 A. Yes.

22 Q. And who ultimately got that property?

23 MR. HUTCHISON: Objection, sidebar,

24 Your Honor, or just objection --

25 THE COURT: Sustained.

1 Mr. Gary, I've made my rulings on this and I
2 don't want to have to do anything that's going to
3 embarrass anyone here. So I've made it clear.
4 It should be well known to everyone.

5 Again, I'm going to make this the last
6 warning, unfortunately. I don't like to do that,
7 but I feel I have no other choice at this moment.

8 You may proceed.

9 MR. GARY: Thank you, Your Honor.

10 BY MR. GARY:

11 Q. Don't go over into any areas that -- let me
12 ask this question of you.

13 Now, when you resigned, without talking to
14 anybody else, did you get a chance to tell Fred DeLuca
15 face-to-face as to why you were resigning, why you
16 were stepping down?

17 A. I had no conversation with Fred except for
18 some written communication from the time that I did
19 resign. I did have conversation with him prior to me
20 resigning.

21 Q. Did Anthony have anything to do with you
22 resigning or you having enough of this and you wanted
23 out? Did Anthony Pugliese have anything to do with
24 that?

25 MR. HUTCHISON: Objection, relevance.

1 THE COURT: Overruled.

2 A. I don't think Anthony was aware that I was
3 going to resign. Prior to me resigning I was told not
4 to speak or communicate with Anthony.

5 Q. Who told you this?

6 A. Fred DeLuca.

7 Q. Fred DeLuca, okay.

8 A. He told me that I was not allowed to speak
9 to Anthony, any of the employees, any of the senators,
10 congressmen, no one, and he went on to instruct me
11 that not even a courtesy phone call was I allowed to
12 make to let the people know.

13 Q. Was that the way Fred DeLuca operated?

14 MR. HUTCHISON: Objection, form.

15 A. Never. I never saw him do that to me
16 before, up till the time of this going on. He always
17 just would take my advice and do it. There was
18 something else, I guess, going on.

19 THE COURT: The objection is overruled. But
20 Mr. Florio, when both sides are questioning you,
21 if you hear an objection, kindly stop talking for
22 a moment so I can make a ruling.

23 THE WITNESS: Okay.

24 THE COURT: All right? I'm pretty quick,
25 but not that quick.

1 You may proceed.

2 BY MR. GARY:

3 Q. Now, just so we can be clear, can you
4 explain to the jury, when you resigned from Fred
5 DeLuca in this project did you ever go to work for
6 Anthony Pugliese?

7 A. No.

8 Q. Did you even discuss going to work for
9 Anthony Pugliese?

10 A. No.

11 Q. Did your saying enough is enough in this and
12 getting out of it, did that have anything to do with
13 your relationship or your knowing Anthony Pugliese?

14 A. No.

15 Q. How many years had you worked with Fred
16 DeLuca?

17 A. 16 years as working alongside of him.

18 Q. Did you make it clear to him as to what you
19 thought was going down or going on with this -- let me
20 strike that.

21 Did there come a point in time that Fred
22 DeLuca took over the management of the project?

23 A. Yes.

24 Q. And would you tell us then, if you would,
25 did he have any experience in doing any kind of

1 project like this?

2 A. No.

3 Q. Did he know what he was doing?

4 A. No.

5 Q. Did he run it into the ground?

6 MR. HUTCHISON: Objection, form.

7 THE COURT: I think I've already made --
8 well, I didn't make --

9 MR. HUTCHISON: And beyond the scope of the
10 pleadings.

11 THE COURT: Overruled.

12 A. Obviously Fred nor I had any experience
13 undertaking this type of project or this scope of
14 project. We didn't have any experience.

15 MR. GARY: Can I have Exhibit 74? May I
16 approach the witness?

17 THE COURT: Yes, you can.

18 MR. HUTCHISON: What is it?

19 THE COURT: Exhibit 74.

20 MR. HUTCHISON: Your Honor, my objection is
21 simply relevance of this exhibit.

22 THE COURT: Let me see it then, please.

23 (Whereupon counsel for the respective
24 parties approached the bench and the following
25 proceedings were had outside the presence of the

1 jury:)

2 Who was Eric Friedman?

3 MR. HUTCHISON: He worked for Fred DeLuca.

4 THE COURT: Your objection is what?

5 MR. HUTCHISON: My objection is relevance.

6 What's the relevance of the email? He's already
7 saying you can go back and work on the project,
8 and you're already in November. The lawsuit that
9 Mr. DeLuca filed was in September 2009, two
10 months before this email.

11 THE COURT: Okay, Mr. Gary?

12 MR. GARY: Your Honor, I think that the
13 relevance in here is one of Mr. DeLuca's workers
14 on this project is telling Fred Florio that he
15 should charge more to Destiny than he was
16 normally -- in other words, they're telling him
17 to jack up his hourly rate and charge it to
18 Destiny. Now, that's the same thing they claim
19 that Anthony was doing.

20 THE COURT: How does this get to a breach of
21 contract or any of the defenses that you're
22 bringing against the FD party claims?

23 MR. HUTCHISON: And I'll add that this money
24 was never paid. FD Destiny Management is
25 Mr. DeLuca's management company, Prestige is the

1 other company, and LCOC was never funded after
2 September of 2009. That's actually in the
3 pretrial stip. That's undisputed facts.

4 THE COURT: I just don't know what the
5 relevance of this is.

6 MR. GARY: Yeah, it goes both ways. He had
7 a duty to protect the asset of the company and
8 not to run it in the ground like they're claiming
9 our client did.

10 THE COURT: I don't think that's what
11 they're claiming.

12 MR. GARY: Yeah, but in this letter the
13 witness is going to testify that he was told to
14 charge almost double what he was charging.

15 THE COURT: I don't think that's already
16 been established, number one; and number two, I
17 don't know what would be the relevance to it,
18 since everything broke down months earlier than
19 this. It doesn't have any real relevance.

20 MR. GARY: "We're going forward." It
21 says -- this was our point. "We're going
22 forward. We're going to need to track the hours
23 you work on Destiny." And by the way, you know,
24 whatever -- by the way, increase your numbers on
25 it so we can in essence hit Destiny for more

1 money.

2 MR. HUTCHISON: It doesn't say that, number
3 one.

4 MR. GARY: Because he wasn't charging --

5 MR. HUTCHISON: And they stipulated that
6 nobody was funding LCOC after September of 2009.
7 So it's really not relevant. It's in the
8 pretrial stip that nobody funded after September
9 of 2009. It's a stipulated fact. They can't go
10 back on that. LCOC wasn't paying anybody because
11 LCOC had no money, Your Honor. It's not
12 relevant.

13 THE COURT: It's just not been demonstrated
14 to me that this is relevant, so I'm sustaining
15 the objection to Exhibit 74.

16 (Whereupon the following proceedings were
17 had within the presence of the jury:)

18 All right, Mr. Gary. Whenever you're ready,
19 please, sir.

20 THE CLERK: Let me put a sticker on that 74.

21 THE COURT: Make sure we please have the
22 exhibits marked, if they're not done so already.
23 We need them to be marked please.

24 THE CLERK: For ID purposes?

25 THE COURT: Yes, ID only at this time.

1 Thank you.

2 (Whereupon a document/item was marked for
3 identification as AVP Destiny Exhibit 74.)

4 MR. GARY: May it please the Court. May I
5 proceed?

6 THE COURT: Yes.

7 BY MR. GARY:

8 Q. Now, Mr. Florio, how long did you work for
9 Fred DeLuca and the project? How long did you work
10 for Fred DeLuca after the litigation started?

11 A. I'm a little confused what year the
12 litigation started.

13 Q. And was your word and your integrity more
14 important to you than your salary with these people?

15 MR. HUTCHISON: Objection to the form of
16 that question, Your Honor.

17 THE COURT: I think we've gone over that
18 many times. I'd like to get to -- to go over a
19 new ground if we possibly could, please.

20 BY MR. GARY:

21 Q. Okay. Now, is it safe to say that -- let me
22 ask you this question.

23 Back in 2008 and as it relates to monies
24 being spent or funding and what have you, was there a
25 meeting that took place at Fred DeLuca's house in Fort

1 Lauderdale?

2 A. Yes.

3 Q. And was Anthony Pugliese there?

4 A. I don't know exactly what meeting you're
5 talking about.

6 Q. Okay. Was there a December 2008 meeting
7 that took place in Fred DeLuca's house?

8 A. Okay.

9 Q. Fred DeLuca, yourself?

10 A. Yes, yes.

11 Q. Randy Johnson?

12 A. Yes.

13 Q. You remember that?

14 A. Yeah.

15 Q. And what was the nature of that meeting?

16 A. I think that basically they were talking
17 about the budget again, budget issues. But if I'm not
18 mistaken, if that's the meeting that you're referring
19 to, was when Anthony approached Fred about the
20 possibility of --

21 MR. HUTCHISON: Objection, Your Honor.

22 Sidebar.

23 THE COURT: All right. Approach, please.

24 (Whereupon counsel for the respective
25 parties approached the bench and the following

1 proceedings were had outside the presence of the
2 jury:)

3 MR. HUTCHISON: His testimony on this in the
4 deposition is about the interest rate. You
5 already ruled the interest rate and the loan is
6 not admissible.

7 Mr. Gary, am I wrong? Are you going into
8 the interest rate? Because that's what his
9 deposition testimony was.

10 MR. GARY: I thought His Honor said during
11 opening statement it was not to be talked about
12 and if I'm wrong --

13 THE COURT: Well, we talked about this LIBOR
14 interest rate and demonstrated why with regard to
15 the last claim that is made, and that is the
16 breach of contract, why the difference between
17 the LIBOR and the amount charged to Mr. Pugliese
18 would be admissible and would be relevant.

19 MR. HUTCHISON: Judge, this is the pretrial
20 motion. I showed you the statements by
21 Mr. Mariani that they were not relying -- and he
22 said underscore, not relying on the loan, the
23 interest rate. You specifically quizzed him on
24 that and asked him a question. He again
25 propounded the same question to you, that they're

1 not relying on the loan and interest rate.

2 What they're trying to get in here is the
3 interest rate spread. They borrowed the money at
4 one rate and loaned it to LCOC at another rate.
5 That interest rate, the promissory note, is not
6 at issue here. Mr. Mariani even represented that
7 to you quite clearly.

8 It's not relevant, it's prejudicial, it's
9 not framed by the pleadings. It has nothing to
10 do with what's being tried before you, and you
11 already ruled on this.

12 MR. MARIANI: So the record is clear, my
13 comments at those hearings were we were not
14 making a claim, we did not have a cause of action
15 under the note in terms of the relevance to the
16 facts of the case and the relationship between
17 the parties.

18 It should be able to come in. They have
19 claims for misappropriation, mismanagement,
20 breach of fiduciary duty. To the extent that
21 this witness can discuss the circumstances around
22 that, we're not saying we have a claim for it,
23 but it's part of the circumstances that the
24 parties were dealing with each other.

25 THE COURT: Then I have to balance the

1 prejudice versus the probative value to determine
2 whether or not any probative value is materially
3 outweighed by the prejudice here, which would be
4 essentially a character assassination of DeLuca
5 based upon the claim that somehow the interest
6 rate charged to Mr. Pugliese was above the amount
7 of the LIBOR in his loan directly from Wachovia,
8 which if I'm not mistaken, is the bank.

9 MR. MARIANI: If I may, Your Honor, they can
10 argue and point out that there's no legal
11 obligation. There's no prejudice.

12 THE COURT: What is the relevancy other than
13 to assassinate the character of DeLuca or to cast
14 him in a bad light for charging a different
15 interest rate?

16 MR. MARIANI: The relevance is to show how
17 the principals were dealing with each other.

18 THE COURT: The course of dealing is not
19 really one of the claims here that I'm aware of,
20 nor one of the defenses. I just think that the
21 prejudice would materially outweigh the probative
22 value, because the note is not being sued upon.

23 I don't know of any defenses as it relates
24 specifically to the interest rate issue, and
25 again, the only reason for its introduction that

1 I can see thus far is to simply act as a matter
2 of character assassination on Mr. DeLuca.

3 So without more I'm really left with not
4 having any type of relevancy.

5 MR. MARIANI: One more statement,
6 Your Honor. What if Mr. Pugliese were to testify
7 that that information resulted in his
8 decision-making or his actions relative to the
9 relationship between the principals?

10 THE COURT: I have to take that into
11 consideration, but it's a lot closer than what
12 this witness can do in terms of trying to frame
13 something that's not framed by the pleadings and
14 trying to testify to something that would be
15 casting a bad light on DeLuca.

16 Mr. Pugliese's testimony as it relates to
17 anything concerning that is a different story.
18 He can introduce it with Mr. Pugliese. Again, it
19 would be a lot closer question from a legal
20 standpoint. As from the standpoint of
21 admissibility, it wouldn't matter.

22 Okay, thank you.

23 (Whereupon the following proceedings were
24 had within the presence of the jury:)

25 THE COURT: Okay. Mr. Gary, you may proceed

1 when ready, sir.

2 MR. GARY: Thank you, Your Honor.

3 BY MR. GARY:

4 Q. Mr. Florio, you worked on this project while
5 Fred DeLuca decided to take over for a while; is that
6 correct?

7 A. Yeah, from the time Fred took over my
8 involvement was miniscule.

9 Q. And you worked on the project while Anthony
10 Pugliese was the manager and running this project,
11 right?

12 A. Yes.

13 Q. And how would you rate what Anthony did for
14 the project against what Fred DeLuca did?

15 MR. HUTCHISON: Objection to form and
16 foundation, Your Honor.

17 THE COURT: Overruled. Again, this is this
18 gentleman's -- essentially his lay opinion of the
19 differences. That's the reason for its
20 introduction. The jury will consider it only in
21 that regard. Thank you.

22 You may answer, sir.

23 A. Okay. From the time when I worked with
24 Anthony we had an office, we had a facility. We had
25 phone lines, we had websites. We had meetings. We

1 were traveling to Tallahassee or Orlando, everyplace
2 to benefit the project.

3 It was a project. It was moving forward.
4 There were consultants. And everything was moving in
5 a direction to accomplish the goal of getting the
6 property rezoned.

7 Q. Did Anthony's leadership bring value to this
8 property?

9 A. Absolutely.

10 Q. Did Fred DeLuca's leadership bring value to
11 this property?

12 A. No.

13 Q. Why do you say that?

14 A. Well, from the time Fred took over, all he
15 was doing was questioning everything that had gone
16 on for the last -- about the time, maybe three or
17 four, maybe five years, and everything was being again
18 looked at, reexamined, getting opinions from other
19 people who didn't have any basis to judge an opinion,
20 that had no awareness of the project from its onset.

21 So from the time Fred took over there was no
22 communication with anybody that had -- I wouldn't say
23 anybody, but maybe one or two people that had any
24 involvement in the project at all, even right down to
25 the receptionist. She would call me up and say,

1 "People are calling the number. Where am I supposed
2 to send these phone calls?"

3 Nobody would return phone calls, you know.

4 Q. Would he show up every day?

5 A. No.

6 Q. Would he show up every week?

7 A. No.

8 Q. Every month?

9 A. Most of the time he wasn't there. He was
10 running a very, very large business on his own. This
11 was -- I wouldn't even say secondary to him. It was
12 more or less like fifth or sixth. It was way down the
13 line in his urgencies.

14 Q. And this was 41,000 acres; is that correct?

15 MR. HUTCHISON: Objection, asked and
16 answered.

17 THE COURT: Overruled.

18 A. At that time I don't know whether or not --
19 after he took over I think very shortly the other
20 14,000 acres became questionable.

21 Q. After he took over?

22 A. Yeah. There was no communication with the
23 family, the Rohdes, that owned the property. There
24 was no -- Mr. Rohde had called me to find out is
25 anybody ever going to talk to him about what was going

1 to go on now, and obviously I was instructed that I
2 wasn't allowed to talk to anybody, so I couldn't even
3 give him a courtesy phone call back because that's
4 what I was instructed to do.

5 Q. And who told you that you couldn't even talk
6 to anybody?

7 A. Fred DeLuca sent me an email and he followed
8 it with a phone call.

9 Q. Did Anthony Pugliese do a good job with this
10 project?

11 MR. HUTCHISON: Objection, asked and
12 answered, Your Honor.

13 THE COURT: I agree.

14 BY MR. GARY:

15 Q. Did you find any flaws in the work that
16 Anthony did for this project?

17 MR. HUTCHISON: Objection, asked and
18 answered, Your Honor, and relevance and
19 foundation at this point.

20 THE COURT: Sustained as to foundation.

21 BY MR. GARY:

22 Q. You worked with Anthony for how many years?

23 A. Well, I was involved with the project. I
24 never considered myself working for Anthony.

25 Q. But you actually worked with him?

1 A. With him, right, and I was there on behalf
2 of Fred DeLuca. I was there from the time we closed
3 on the property, which I think was around August of
4 '05, to the time that I was told not to go, which was
5 '09.

6 Q. Do you feel that you owe any allegiance to
7 Anthony Pugliese?

8 A. No.

9 Q. Have you told this jury the truth?

10 MR. HUTCHISON: Objection.

11 A. Absolutely.

12 THE COURT: Sustained. Let's not ask that
13 again, please.

14 Anything else, Mr. Gary?

15 MR. GARY: What, Your Honor?

16 THE COURT: Any other questions?

17 MR. GARY: May I?

18 THE COURT: Sure, go right ahead.

19 MR. GARY: I want to approach you,

20 Your Honor.

21 THE COURT: Sure.

22 (Whereupon counsel for the respective
23 parties approached the bench and the following
24 proceedings were had outside the presence of the
25 jury:)

1 Yes, sir?

2 MR. GARY: I want to get your permission
3 first. I need to get your permission in
4 reference to the affidavit that was signed. I
5 want to discuss it with him.

6 THE COURT: I need to see it. Thank you.

7 MR. HUTCHISON: That's half of it. There's
8 a bunch of exhibits too.

9 Judge, that's an affidavit that Mr. --

10 THE COURT: Okay, I don't think I've seen
11 this before.

12 MR. HUTCHISON: Judge, that's an affidavit
13 that Mr. Florio signed in my office that I
14 prepared, along with Mr. Chapman, after meeting
15 with Mr. Florio. The woman was a secretary in my
16 firm. She made a mistake, she put Broward County
17 on the front and I think Palm Beach County on the
18 third page with her signature block, but she did
19 in fact notarize it in front of Mr. Florio.
20 Mr. Florio signed it in front of her, I should
21 say, and she notarized it.

22 But my point is this. That is all about the
23 fake companies.

24 THE COURT: That's all what?

25 MR. HUTCHISON: All about the fake

1 companies.

2 THE COURT: Yeah, I read it.

3 MR. HUTCHISON: Okay, and that's not even an
4 issue in this lawsuit anymore. They are
5 estopped. Every one of those companies are in
6 the criminal information you just read earlier
7 and the probable cause affidavit and mentioned in
8 the facts supporting the plea that he signed.

9 They're estopped from even contesting
10 Mr. Pugliese took that money. So I don't know
11 what the relevance is. I don't know why an
12 affidavit would come in. And it goes back to the
13 meeting with the lawyers.

14 If you want to hear further argument from
15 Mr. Chapman --

16 THE COURT: Thank you, Mr. Gary.

17 Mr. Mariani?

18 MR. MARIANI: It's not about meeting with
19 the lawyers. It's about the distinction that's
20 been in this case since last spring about their
21 effort to attempt to get a civil judgment on more
22 money than the judgment and the restitution
23 allowed through the criminal proceeding.

24 So we have two consolidated cases. They're
25 making claims beyond restitution and these issues

1 or this will go to our defense, if you will,
2 relative to those allegations and those efforts.

3 THE COURT: So is he going to deny it? Then
4 we have a real problem.

5 MR. MARIANI: No, no, he's not going to say
6 that.

7 MR. HUTCHISON: Then what's the relevance?

8 THE COURT: Then what is the relevance?

9 MR. MARIANI: To get into the delineation
10 along with the different expenses. We're just
11 laying a floor here. He signed that affidavit
12 and it's on their exhibit list as well; not that
13 that makes it admissible, from my understanding.
14 I acknowledge that.

15 But we want to start here. That's where we
16 want to start.

17 THE COURT: Well, I mean, I trust and hope
18 that he's been forewarned that if he's lied under
19 oath and this is being used to --

20 MR. GARY: It has nothing to do with that,
21 Your Honor.

22 THE COURT: Well, okay. If it has nothing
23 to do with it, let's take it on a
24 question-by-question basis.

25 One issue is that again, I'm steadfast in my

1 decision that there is not going to be any
2 deviation from the plea of no contest with an
3 adjudication as it relates to the companies, many
4 of whom that are mentioned in this affidavit.

5 Number two, that if you're representing to
6 me as officers of the Court that he is not
7 stating or going to state that he lied in terms
8 of his affidavit --

9 MR. GARY: No, Your Honor. No, he's not.

10 THE COURT: Whatever else may be relevant --

11 MR. GARY: Can I tell you what I'd like to
12 do, Your Honor, so you can just rule on it too?

13 THE COURT: Sure.

14 MR. GARY: Or shoot me down or not.

15 I want to just talk about the affidavit
16 itself, the way it was dah, dah, dah, dah, dah.

17 MR. HUTCHISON: And that was in the lawyers'
18 office.

19 THE COURT: If it was signed in the lawyers'
20 office, that would immediately communicate to
21 these jurors that the attorneys were involved in
22 the preparation of this affidavit. If it has no
23 other bearing or relevance than that, then again,
24 it flies in the face of my earlier warnings about
25 the attorney-client privilege.

1 We've had an attorney-client privilege
2 already go up to the Fourth District Court of
3 Appeal. They have kept that sacrosanct, as far
4 as I'm concerned. It goes all the way back to
5 Judge Crow's ruling in terms of attorney-client
6 privilege. It extends to Mr. Florio. You agreed
7 to that as it relates to his representation of
8 Mr. DeLuca, that being Florio's representation as
9 an agent of DeLuca.

10 So I don't want to get into that aspect
11 either.

12 MR. GARY: That's why I asked.

13 THE COURT: If there's no other relevance
14 than that, then the objection is sustained.
15 Thank you.

16 MR. GARY: We'll respectfully withdraw it,
17 Your Honor.

18 THE COURT: All right, thank you.

19 (Whereupon the following proceedings were
20 had within the presence of the jury:)

21 THE CLERK: What is that exhibit?

22 THE COURT: Withdrawn. It's withdrawn.
23 That number was -- just give me the number,
24 please.

25 MS. MADSEN: 379.

1 THE COURT: 379 is withdrawn.

2 MR. GARY: Thank you, Your Honor.

3 THE COURT: All right. Whenever you're
4 ready, please.

5 MR. GARY: I'm getting pretty close here.

6 BY MR. GARY:

7 Q. Mr. Florio, you made reference to the
8 reserve account you discussed with Mr. Pugliese; is
9 that correct?

10 A. Yes.

11 Q. Could you tell this jury, look them in the
12 face and tell them, did he come to you about a reserve
13 account or did you go to him?

14 A. I think originally I went to him and I
15 asked, again, to make sure we had money set aside for
16 commitments that we were making.

17 Q. You were concerned about people getting
18 paid?

19 A. Yes.

20 Q. Based on Pugliese's -- based on Fred
21 DeLuca's lack of funding?

22 MR. HUTCHISON: Objection, leading, and
23 asked and answered.

24 THE COURT: Sustained on both grounds.

25

1 BY MR. GARY:

2 Q. So why were you concerned about him doing a
3 reserve situation?

4 MR. HUTCHISON: Objection, asked and
5 answered.

6 THE COURT: Sustained.

7 Q. Did you tell him how to set up a reserve?

8 A. No.

9 MR. HUTCHISON: Objection, asked and
10 answered.

11 THE COURT: Overruled.

12 Q. You told him one was needed?

13 A. Yes.

14 Q. Did you really feel that one was needed with
15 Fred DeLuca?

16 MR. HUTCHISON: Objection, asked and
17 answered, and relevance at this point.

18 THE COURT: It's been asked and answered.
19 Please move on to something else.

20 BY MR. GARY:

21 Q. Now, would you discuss with the jury, if you
22 would, in terms of your relationship with Anthony
23 Pugliese -- again, you had a good relationship,
24 working relationship with him, right?

25 A. Yes.

1 Q. But has any relationship or -- anything that
2 Anthony has ever done with you, for you, around you,
3 whatever, would cause you to come in here and not tell
4 the truth?

5 MR. HUTCHISON: Objection, form, and asked
6 and answered.

7 THE COURT: I've already indicated to you,
8 Mr. Gary, I really do not want that question to
9 be asked. It's not an appropriate question.

10 That is for the jury to decide and only for
11 the jury to decide. They are the judge of the
12 facts. They will hear the credibility
13 instruction as well.

14 So please refrain from asking that question.

15 MR. GARY: I'm sorry.

16 THE COURT: You may proceed.

17 BY MR. GARY:

18 Q. Have you told this jury the truth?

19 MR. HUTCHISON: Same objection, Your Honor.

20 THE COURT: I don't know how much more I can
21 make clear to you, that is not for the witness to
22 testify to. That is for the jury to make the
23 decision. I am not going to permit that question
24 to be asked again.

25 MR. GARY: Thank you very much, Your Honor.

1 That's all we have.

2 Thank you, Mr. Florio.

3 THE COURT: Thank you. Who will be
4 conducting the cross-examination?

5 Mr. Hutchison?

6 THE CLERK: Can I have 25? This is in
7 evidence, Your Honor.

8 THE COURT: That's okay. I don't know if
9 they need a copy of it. 25 is in evidence. If
10 you would provide -- 74, if you would provide the
11 clerk with a copy, please. Thank you.

12 MR. HUTCHISON: May I proceed, Your Honor?

13 THE COURT: Yes.

14 CROSS EXAMINATION

15 BY MR. HUTCHISON:

16 Q. Mr. Florio, I'm going to take you back to
17 2005. Prior to getting involved with the 27,000 acres
18 at Yeehaw Junction you did not have any experience in
19 the land development business, correct?

20 A. No, I didn't. I did not.

21 Q. And you didn't have experience in 2005 in
22 doing due diligence on a project like this, correct?

23 A. Not of this magnitude, correct.

24 Q. And prior to August 2005 you weren't
25 actually doing any due diligence on the purchase of

1 the property, were you?

2 A. No.

3 Q. And prior to the closing you had very little
4 involvement in the project, prior to the closing in
5 August 2005?

6 A. Correct.

7 Q. And prior to August 2005 you didn't see any
8 market analysis performed regarding the Yeehaw
9 Junction property, correct?

10 A. Prior to 2005?

11 Q. Prior to the closing.

12 A. No, I did not.

13 Q. And you have no personal knowledge of
14 whether a market analysis was even done prior to
15 closing, correct?

16 A. I was told that it was part of the due
17 diligence.

18 Q. You have no personal knowledge, though?

19 A. Other than what I was told.

20 Q. And you never saw it, correct?

21 A. I'd have to say no, I don't recollect seeing
22 it.

23 Q. And you don't have personal knowledge of
24 whether a financial feasibility study was done prior
25 to the August 2005 closing?

1 A. Again, I think that was part of the due
2 diligence that was being done. But again, prior to --
3 until after it closed I was not involved at all.

4 Q. So my question to you is, you have no
5 personal knowledge that a financial feasibility study
6 was done prior to the closing in 2005?

7 A. I don't know that, no.

8 Q. And you didn't discuss a risk analysis with
9 Anthony Pugliese prior to the closing in 2005,
10 correct?

11 A. That's not totally accurate. I think that
12 the risk of what was trying to be done was certainly
13 discussed amongst the partners prior to agreeing to do
14 it. I mean, it wasn't like, you know, give me
15 \$137 million and shut up.

16 I mean, obviously they talked about what was
17 going to be accomplished, what were the odds of it
18 being accomplished, and so I would take for granted
19 that that was a discussion on what the risks possibly
20 could be.

21 Q. Now, did you give a deposition in this case?
22 You remember giving a deposition in this case?

23 A. I've given a couple of depositions. So I do
24 remember giving a deposition, yeah.

25 Q. And you had your own personal lawyer there,

1 remember?

2 A. Yeah.

3 Q. And Mr. Pugliese's lawyers were there,
4 correct?

5 A. I think Mr. Pugliese's lawyers were there at
6 one of the depositions, yes.

7 Q. And Doug Merrick, his in-house counsel, was
8 there as well? I'm talking about your June 10th, 2014
9 deposition.

10 A. Yeah, I don't know that one in particular.

11 THE COURT: What's the page you're on?

12 MR. GARY: You got a page and number?

13 MR. HUTCHISON: Page 130. May I approach
14 the witness to give him a copy?

15 THE COURT: Yes, 130.

16 BY MR. HUTCHISON:

17 Q. In this deposition you swore to tell the
18 truth, right, Mr. Florio?

19 MR. GARY: What's the line?

20 MR. HUTCHISON: I haven't gotten there yet,
21 Mr. Gary, but I will in a minute.

22 BY MR. HUTCHISON:

23 Q. You swore to tell the truth in your
24 deposition, correct, Mr. Florio?

25 A. Yes. Now, is this the deposition -- this is

1 the one that you were involved in?

2 Q. This is the one I took of you, sir.

3 A. Okay.

4 Q. And all those lawyers were present that we
5 just --

6 MR. GARY: I'm going to object to his
7 comments about the lawyers being present.

8 THE COURT: Overruled. The date was
9 June 10, 2014.

10 BY MR. HUTCHISON:

11 Q. Page 130, lines 15 through 17. Can you find
12 line 15, sir, on page 130?

13 A. Yes.

14 Q. "Q: Did you discuss a risk analysis with
15 Anthony Pugliese?

16 "A: I had no reason to."

17 Did I read that correctly?

18 A. Yes, you did.

19 Q. And you don't know whether Fred DeLuca did a
20 risk analysis, do you, before he invested in Land
21 Company of Osceola County?

22 A. If you're talking about Fred performing or
23 hiring a staff to go out there and do a search, I
24 don't know of that, but I'm sure he's had
25 conversations with Anthony in regard to the risk and

1 I'm sure that I had conversations with Fred in regard
2 to what were the odds of doing this.

3 Q. Well, you did not do any type of risk
4 analysis as to whether Fred DeLuca should invest in
5 Land Company of Osceola County, did you?

6 A. Did I personally, no.

7 Q. Now, you and Mr. DeLuca met Anthony Pugliese
8 in March or April of 2005; is that correct?

9 A. Yes.

10 Q. And the closing was four, five months later,
11 I guess in August 2005?

12 A. Correct.

13 Q. And when you had met Anthony he had been
14 working, he about 16 or 18 different projects going at
15 that time you told us?

16 A. Yes.

17 Q. And you are aware that Fred DeLuca in June
18 of 2005 made a deposit to the seller of the property
19 for \$4.2 million, correct?

20 A. No, I'm not so sure that those dates are --
21 how much was given.

22 Q. Well, you know at the closing, right, both
23 AVP Destiny and FD Destiny had to put up some cash at
24 closing, correct?

25 A. Yes.

1 Q. And you know that Fred DeLuca's company, FD
2 Destiny, put up 75 percent of the money at closing,
3 correct?

4 A. I don't know whether or not that's totally
5 accurate, because there was another deal that they
6 were working on together and there was -- from what I
7 recollect, Anthony had more money put in the first
8 deal, so there was some accounting to be done.

9 So as far as the actual cash outlaid at that
10 particular time, the numbers weren't that.

11 Q. FD Destiny put in more than 75 percent at
12 closing because of the other deal; is that your
13 testimony?

14 A. There was a difference in the money, I would
15 say.

16 Q. And FD Destiny put up about almost nearly
17 \$30 million at closing that went to the seller?

18 A. I'm not sure of those numbers.

19 Q. And when you got involved the initial plan
20 was to purchase the property, buy the property, have
21 it rezoned or entitled and then sell it, correct?

22 A. Correct.

23 Q. And Anthony Pugliese and his company were
24 responsible for getting the rezoning of the
25 entitlements, correct?

1 A. The company that they -- the company that
2 was formed by Fred and Anthony was responsible for
3 doing it.

4 Q. And Anthony was the manager of that company?

5 A. Correct.

6 Q. Anthony ran Land Company of Osceola County,
7 correct?

8 A. Correct.

9 Q. And you knew Fred DeLuca didn't have any
10 experience in obtaining land entitlements, correct?

11 A. Not to this scope of property, no.

12 Q. And you know that at closing AVP Destiny and
13 FD Destiny agreed that they would spend six to
14 \$7 million on the entitlements initially, correct?

15 A. That was the initial budget, yes.

16 Q. And the initial budget for entitlements was
17 between six or \$7 million?

18 A. I would say that's accurate.

19 Q. And the initial budget of six to \$7 million
20 was all spent by approximately August 2007?

21 A. I don't know of it ever being -- the
22 threshold was ever reached. I'm not aware of that.

23 Q. But you do know that once the initial six or
24 \$7 million for entitlements was spent, Anthony
25 Pugliese through his company was to pay 25 percent of

1 the expenses and Fred DeLuca through his company was
2 to pay 75 percent of the expenses, correct?

3 A. That's my understanding.

4 Q. So after the initial entitlement budget of
5 six to \$7 million was spent Joe Reamer prepared
6 monthly funding requests, correct?

7 A. Correct.

8 Q. And monthly funding requests are capital
9 calls, same thing, correct?

10 A. Correct.

11 Q. And Joe Reamer would look at all the
12 invoices for that month and he would calculate what
13 expenses were incurred that month and he would then
14 bill Anthony Pugliese and AVP Destiny 25 percent of
15 that monthly expense and he would bill Fred DeLuca and
16 FD Destiny 75 percent, correct?

17 A. Correct.

18 Q. And those were for expenses that were
19 actually incurred during that month. So for example,
20 if in the month of June it was a million dollars of
21 expenses incurred, Fred DeLuca would have to --
22 through FD Destiny would have to fund 75 percent and
23 AVP Destiny would have to fund 25 percent or \$250,000,
24 correct?

25 A. That's my understanding.

1 Q. And you weren't involved in preparing those
2 monthly capital calls, were you?

3 A. No.

4 Q. And you didn't have any involvement at all
5 in those monthly funding requests that went out to AVP
6 Destiny and FD Destiny, correct?

7 A. I was never involved unless -- no, I was
8 never involved in preparing it to make the call.

9 Q. And then Joseph Reamer or Randy Johnson or
10 Tom San Giacomo, whoever it was at the time, would
11 send those monthly funding requests to Fred DeLuca's
12 or FD Destiny's representatives in Connecticut,
13 correct?

14 A. Yeah, Joe prepared the reports and then sent
15 it out to collect the money, yeah.

16 Q. Then the money was sent down from
17 Connecticut. And you weren't involved in the wiring
18 of the money from Connecticut at all, correct?

19 A. No. The only time I ever got involved in
20 even questioning where the money was was if it was
21 late. Then I was asked by Joe or Anthony if I could
22 make a phone call to find out what the delay was.

23 Other than that, I had no involvement in
24 preparing it or collecting it or anything.

25 Q. Right. So with respect to the payments that

1 came down from Connecticut, that was done by either
2 Dave Worroll, David Friedman, or Bobby Ray, correct?

3 A. Well, Bobby Ray is a real latecomer. I
4 don't think he had much to do with anything. I don't
5 remember that. And I don't think that David Friedman
6 had too much involvement there. He was more or less
7 in the same vein as I was. If somebody needed
8 something or didn't get what they asked or requested,
9 then we would turn to try and find -- sort through it.

10 The main communication was through Joe
11 Reamer to Dave Worroll, who was the comptroller of
12 Subway, or a fellow by the name of Doug Dempsey, who
13 was Dave Worroll's assistant. So there was very, very
14 seldom a time where I had to be involved in wire
15 transfers or money, and the same went for David
16 Friedman.

17 Q. Okay. And with respect to how, the
18 mechanics of how the money came down, that was all
19 done by Dave Worroll or the other gentleman you
20 mentioned?

21 A. Well, it would be -- the system setup was
22 set up by Dave Worroll, because he worked for Fred and
23 Fred was the one doing it. So therefore it had to
24 satisfy Fred. So Dave was the fellow that set it up.

25 Q. Now, you had talked about being treasurer of

1 Land Company of Osceola County. Do you remember that
2 testimony?

3 A. Yeah.

4 Q. Now, as a treasurer of Land Company of
5 Osceola County -- you didn't do any responsibilities
6 of a treasurer, correct?

7 A. Correct.

8 Q. You didn't do anything as a treasurer for
9 Land Company of Osceola County?

10 A. No, I would say that I had no -- no, I
11 didn't. I wasn't involved in that.

12 Q. And you didn't have any spending
13 authority -- you didn't have authority to spend Land
14 Company of Osceola County's money, correct?

15 A. Correct.

16 Q. And you didn't have the authority to incur
17 expenses on behalf of Land Company of Osceola County,
18 correct?

19 A. I had some input during the course of
20 meetings to give my input on whether or not I thought
21 that it might be feasible to do certain things that we
22 were contemplating doing. But to have authority to
23 say go ahead and do it or not, the sole responsibility
24 on how the money was spent and what we did was
25 Anthony's.

1 Q. So you didn't have authority to spend LCOC's
2 money, correct?

3 A. Correct.

4 Q. And you didn't have authority to incur
5 expenses on behalf of LCOC, correct?

6 A. Correct.

7 Q. And with respect to making decisions to
8 spend Fred DeLuca's money on or for LCOC, you did not
9 have any authority to do that as well, correct?

10 A. You know, again, if there was something that
11 was in question, if I was questioned whether or not I
12 thought that it was a feasible thing, I would say it
13 was fine with me and that would be it. That would be
14 my input.

15 Q. You could make recommendations, but you
16 didn't have final spending authority?

17 A. Correct, correct.

18 Q. So with respect to Fred DeLuca's money, you
19 didn't have final spending authority?

20 A. Correct.

21 Q. Is that correct?

22 A. Correct.

23 Q. So although you were there on a weekly basis
24 and sometimes a daily basis, you had no authority to
25 spend Fred DeLuca's money on LCOC, correct?

1 MR. GARY: I'm going to object, already
2 asked and answered.

3 THE COURT: Sustained, agreed.

4 BY MR. HUTCHISON:

5 Q. Tom San Giacomo, you remember that name?
6 You used it on direct examination.

7 A. Yes.

8 Q. He reported directly to Anthony Pugliese?

9 A. Yes.

10 Q. And Tom San Giacomo, you told us, took
11 direction from Anthony Pugliese?

12 A. Yes.

13 Q. He was -- I think you described him earlier
14 as he was the go-to guy for Anthony; is that correct?

15 A. I would say that Tom was second in charge of
16 the project.

17 Q. And he reported directly to Anthony
18 Pugliese?

19 A. Correct.

20 MR. HUTCHISON: May I approach the witness?

21 THE COURT: Thank you, yes.

22 BY MR. HUTCHISON:

23 Q. You see the bottom email there, Mr. Florio,
24 dated June 21st, 2007?

25 A. Yeah.

1 Q. And that's from Tom San Giacomo at
2 TSanGiancomo@PuglieseCo.com. You see that?

3 A. Yes.

4 Q. And it's sent to Dave Worroll?

5 A. Yes.

6 Q. And others, including you're copied on it
7 too. You see that?

8 A. Correct.

9 Q. You see that?

10 A. Yes, I do.

11 MR. HUTCHISON: And with your permission,
12 Your Honor --

13 Q. And as far as you know, that looks like a
14 fair and accurate copy of those two emails?

15 A. Yeah.

16 MR. HUTCHISON: Your Honor, there was no
17 objection to this email?

18 MR. MARIANI: We're objecting, Your Honor.
19 Objection.

20 THE COURT: Okay. Come on forward, please.

21 (Whereupon counsel for the respective
22 parties approached the bench and the following
23 proceedings were had outside the presence of the
24 jury:)

25 It is Exhibit 594, for the record, FD

1 Destiny parties' Exhibit 594.

2 The objection, please?

3 MR. MARIANI: The objection is this witness
4 can't lay the foundation for the document. He's
5 not -- his name is nowhere on the document.

6 THE COURT: He asked if he's already seen it
7 before. I thought he said he has.

8 MR. HUTCHISON: Yes, and he said that's his
9 email address.

10 THE COURT: Well, the email address up here
11 is on there.

12 MR. HUTCHISON: No, he's copied on it.

13 THE COURT: Oh, he is copied on it. My
14 mistake.

15 MR. HUTCHISON: I asked him if he was copied
16 on it and he said yes, and I asked him if it
17 looked like an accurate copy and he said yes.

18 It's from Tom San Giacomo, who according to
19 both Al Quentel and Mr. Florio's trial testimony
20 ten minutes ago, worked for Anthony.

21 THE COURT: And this is his agent, similar
22 to what Mr. Florio has to do with it?

23 MR. HUTCHISON: Correct.

24 THE COURT: Okay.

25 MR. HUTCHISON: So it's an admission of a

1 party opponent, as far as that's concerned, if
2 that's your hearsay objection.

3 MR. MARIANI: Well, that's the problem.
4 They're admitting this for the truth of the
5 statements in the email.

6 THE COURT: Okay. Mr. San Giacomo was the
7 managing agent for Mr. Pugliese, similar to what
8 I found Mr. Florio to be of Mr. DeLuca. Then we
9 would have reciprocal rights in terms of the
10 agency relationship and the managing agency
11 relationship being admissible to overcome any
12 hearsay issues.

13 MR. MARIANI: Are you making that
14 determination? I have two comments.

15 THE COURT: I'm making the determination on
16 what I've understood this to be from day one, and
17 that is Mr. San Giacomo was in the same position
18 as Mr. Florio was.

19 Now, if you need further foundation for
20 that, then you'll have to ask him if he knows.
21 But I don't know, are you taking a different
22 position than what I've understood in the past,
23 that Mr. San Giacomo was the managing person for
24 Mr. Pugliese and had those types of -- that type
25 of authority?

1 I mean, the email speaks for itself as to
2 the authority that he has. He's speaking about
3 the budget. He's speaking about funding. He's
4 speaking about the understanding as to the
5 funding on behalf of Mr. Pugliese or the AVP
6 parties.

7 MR. HUTCHISON: And Mr. Florio just
8 testified he was Mr. Pugliese's go-to guy. He
9 reported directly to Anthony Pugliese.
10 Mr. Quentel even talked about it on Friday.

11 THE COURT: Well, again, I think the email
12 speaks for itself as to his authority.

13 Mr. Hutchison, you may want to ask
14 Mr. Florio if he understood Mr. San Giacomo's
15 relationship to the project any further and
16 whether or not he knows whether or not
17 Mr. San Giacomo had authority to send this email.
18 I mean, is that's what you're suggesting? I
19 don't know.

20 MR. MARIANI: I'm suggesting it doesn't bind
21 Mr. Pugliese.

22 THE COURT: I'm not suggesting it binds
23 Mr. Pugliese either right now. What I'm saying
24 is that there is sufficient foundation as
25 Mr. Pugliese's managing person, one of the people

1 managing the project and assisting him in the
2 management -- his second in command, so to
3 speak -- and that the email itself speaks to
4 issues of funding and budget that only someone in
5 that type of a managerial capacity on behalf of
6 the AVP parties would have.

7 Unless Mr. Florio or Mr. Pugliese or Mr. San
8 Giacomo says otherwise, that this email was not
9 authorized, then that's not what is being
10 contended here.

11 So the objection is overruled.

12 (Whereupon the following proceedings were
13 had within the presence of the jury:)

14 All right. You may proceed.

15 BY MR. HUTCHISON:

16 Q. Do you have Exhibit 594 in front of you,
17 sir?

18 THE COURT: Right now I don't think you've
19 asked it to be admitted, correct?

20 MR. HUTCHISON: I'm going to move for the
21 admission of 594 at this time, Your Honor.

22 THE COURT: All right. If there's no other
23 objections than what I've heard, it will be
24 admitted over objection out of turn as
25 Exhibit 594, FD party 594.

1 Okay. You may proceed, sir.

2 (Whereupon a document/item was marked in
3 evidence as Defendant's Exhibit 594.)

4 BY MR. HUTCHISON:

5 Q. Okay. And the exhibit says, "Subject: New
6 funding." Do you see that?

7 A. Yes.

8 Q. And he writes: "Dave" -- can you zoom into
9 the first two sentences of that, please, up to
10 "50-50".

11 Mr. San Giacomo at this time was working for
12 Anthony Pugliese, correct?

13 A. Yes.

14 Q. And he writes: "Dave, as per my email
15 earlier this week replying to your email alerting us
16 to prepare early enough for you to organize with Fred
17 DeLuca the next round of consulting entitlement
18 funding, the following is our planning after
19 discussing with Fred Florio."

20 Do you see that?

21 A. Uh-huh.

22 Q. Is that a "yes"?

23 A. Yes.

24 Q. Sir, you've got to say yes or no.

25 A. Yes.

1 Q. Thank you.

2 A. Sorry.

3 Q. Does that refresh your recollection that the
4 initial budget of six to \$7 million was going to be
5 spent up by summer of 2007?

6 A. Yeah, I would assume the things that he's
7 saying, the next round of consulting funding, yes.

8 Q. So after the six or \$7 million budget was --
9 the initial six or \$7 million budget was used up they
10 would fund 75-25 percent, correct?

11 A. That's my understanding.

12 Q. In fact, Mr. San Giacomo writes: "We
13 believe the best strategy at this time is to short
14 term the funding and abide by the operating agreement
15 for Land Company of Osceola County, Section 5.3 on
16 page 15, "Capital Contributions", in the ratio of
17 75 percent by the FD entity and 25 percent by the AVP
18 entity until August 10, 2010, when they become 50-50."

19 Do you see that? Did I read that correctly?

20 A. Yes.

21 Q. And that was your understanding, correct,
22 that once the initial budget of six or \$7 million was
23 used up AVP Destiny, which is the AVP entity, and FD
24 Destiny, which is the FD entity, were supposed to fund
25 in the ratio of 25 percent for AVP Destiny and

1 75 percent for FD Destiny, correct?

2 A. Correct.

3 Q. And then you knew in August 2010 instead of
4 being 75-25, the two of them were to fund 50 percent
5 each, correct?

6 A. Yeah, it was referred to as a square-up
7 date.

8 Q. And that's because Anthony Pugliese was the
9 manager doing the work on a daily basis, so he was
10 going to pay 25 percent less for the first five years,
11 correct?

12 A. Well, at the time -- again, we're referring
13 to an operating agreement from '05, which was totally
14 obsolete at the dates that you're talking about.

15 The operating agreement became obsolete once
16 there were numerous things that had changed in it.
17 Everything was pending the operating agreement
18 changing, okay. The operating agreement was totally
19 obsolete at this date.

20 Q. First of all, the Rohde property was never
21 purchased, correct?

22 A. The Rohde property, for all intents and
23 purpose, it had the first -- the purchase. There was
24 no first right. It was a purchase agreement.

25 Q. Please say yes or no and then you can

1 explain your answer.

2 A. It was a purchase agreement.

3 Q. Right, but it was never purchased. The
4 Rohde property was never purchased. In fact, it was
5 an option contract?

6 A. The Rohde agreement didn't call for the
7 property to be purchased, paid for, until -- for ten
8 years.

9 Q. It was an option contract. It was an option
10 to buy the land --

11 A. Okay.

12 Q. -- you agree with me?

13 A. Well, like I said, it was a purchase
14 agreement as far as I'm concerned.

15 Q. So LCOC never took ownership of the
16 14,000 acres called the Rohde property, correct?

17 A. According to the agreement, we weren't
18 supposed to do that.

19 Q. So is my statement accurate, that LCOC never
20 took ownership of the Rohde property?

21 A. Correct.

22 Q. And the Rohde property, the option agreement
23 we just talked about, that was signed in September of
24 2006, correct?

25 A. That date is a little unclear to me.

1 Q. Well, to go back to Exhibit 594,
2 Mr. San Giacomo is referencing the operating agreement
3 Section 5.3, correct?

4 A. Yes, the one that I'm referring to as being
5 obsolete at that time.

6 Q. And did you know that Al Quentel provided
7 this language to Tom San Giacomo at the time?

8 A. I'm not so sure of that.

9 Q. Do you know who Al Quentel is?

10 A. Certainly.

11 Q. He was an attorney for Anthony Pugliese and
12 Land Company of Osceola County?

13 A. He was LCOC's attorney.

14 Q. And are you aware -- and this is my
15 question -- that he provided this language to Tom
16 San Giacomo?

17 A. I'm not aware where Tom got that
18 information.

19 Q. And then you see on top Mr. DeLuca responds,
20 do you see that, on June 27th, 2007?

21 A. Yeah.

22 Q. And you're copied on that email as well?

23 A. Yes.

24 Q. He writes: "Hi, team. Before any more
25 money is put in I think we need to review what was

1 originally budgeted by line item, what has been spent
2 by line item, and what the differences from the budget
3 were, what a proposed budget for the future is -- what
4 the proposed budget for the future is."

5 You see what I just read?

6 A. Yeah, yes.

7 Q. Okay. So in June 2007 Mr. DeLuca is
8 requesting budget information before he funds the next
9 round, the next budget, correct?

10 A. It says that it's looking for him to review
11 the budget.

12 Q. And it says, "Then we should consider what
13 the proposed budget for the future is."

14 Do you see that, number three?

15 A. Yes.

16 Q. Now, I want to stay in 2007 and I'm going to
17 show you Exhibit 595.

18 MR. HUTCHISON: May I approach, Your Honor?

19 THE COURT: Yes, thank you.

20 Let opposing counsel know what you're
21 looking at specifically, since there's a string
22 of emails here.

23 MR. HUTCHISON: Yeah, I'm going to be
24 looking at -- Judge, can we approach one minute?

25 THE COURT: Okay, counsel.

1 Is this a good time to take our lunch break
2 since we're getting into something different?

3 MR. HUTCHISON: Five minutes, Judge, if I
4 could get through this exhibit first.

5 THE COURT: All right, five minutes.

6 (Whereupon counsel for the respective
7 parties approached the bench and the following
8 proceedings were had outside the presence of the
9 jury:)

10 MR. HUTCHISON: I would just prefer if we
11 blacked out -- it doesn't talk about DeLuca --

12 MR. GARY: Can I look at a copy?

13 MR. HUTCHISON: It doesn't talk about
14 DeLuca's loan specifically, but the bottom email
15 talks about a debt schedule. I just want to make
16 sure that I'm not in violation of your prior
17 order and I don't want to open the door to
18 anything. I can black that out.

19 THE COURT: That's what caught my attention,
20 is there was a mention of this LIBOR rate at the
21 bottom. I want to make sure we're not getting
22 into anything that I've already ruled upon.

23 MR. HUTCHISON: In the prior email on the
24 second page, Judge, Mr. San Giacomo was asking
25 for a debt schedule and then in the next page

1 Worroll is providing it, the balance of the debt,
2 but it doesn't talk about whose loan it is or
3 anything like that. Then up above they're
4 talking about -- Worroll asked about the status
5 of the budget.

6 I'm only concerned about the top two emails,
7 and I can redact the bottom two to be consistent
8 with your ruling.

9 THE COURT: I'd rather it be that way.

10 MR. MARIANI: Your Honor, they're trying to
11 use all this --

12 THE COURT: Hold on. Mr. Mariani wants to
13 answer.

14 MR. MARIANI: They can't use it both ways.
15 They can't pick and choose. We have a
16 completeness doctrine in respect of evidence and
17 they're offering this exhibit and now they want
18 to redact. They're the ones who are the
19 beneficiaries of your ruling. For them to come
20 up here and say we don't want to violate the
21 ruling is backwards.

22 So the point is if they're going to use this
23 document, they need to use it in its entirety.
24 They can't tiptoe -- either they open the door or
25 they don't open the door. But for them to

1 cherry-pick through exhibits and only put in
2 parts of exhibits and not the other part of the
3 exhibit is not the way the evidence should come
4 in.

5 THE COURT: It just depends on whether or
6 not it's critical to what they're trying to
7 establish. You know, in other words, these email
8 pages are often put on separate pages to
9 crystalize the point that is trying to be made or
10 the evidence that's trying to be introduced.

11 So if they're trying to introduce something
12 for a different reason that doesn't need those
13 last emails, that's fine. If it doesn't include
14 those last three emails, then we have a different
15 issue.

16 MR. HUTCHISON: Let me make a proffer --

17 MR. MARIANI: Excuse me. This is their
18 exhibit. It's marked. It's a two-page exhibit,
19 Exhibit 595, and it has this particular series of
20 emails. So either it comes in in its entirety or
21 they can't submit it.

22 For them to edit it now --

23 THE COURT: Well, I disagree, because things
24 are edited all the time if there are issues that
25 don't need to go to the jury. So I respectfully

1 disagree with that general statement.

2 The purpose for introducing it is what,
3 please?

4 MR. HUTCHISON: It would only be to talk
5 about the budget, Judge. As you can see, Mr. San
6 Giacomo responds to Dave Worroll and says that
7 the budget is still being sliced and diced by
8 Mr. Pugliese. That's the only thing that I want
9 to get, those two top emails; Worroll's request
10 for the budget and the status and San Giacomo's
11 reply. Take two minutes and we can finish this.

12 MR. MARIANI: Your Honor, the debt service
13 is the biggest part of the budget, so now we're
14 going to talk about a budget without the biggest
15 single component in the budget.

16 MR. HUTCHISON: That's absolutely not
17 correct. The debt service was never in a budget,
18 and there was no debt paid. That's already been
19 established and agreed to. That's Osceola
20 County, John, and there's no debt service.

21 MR. MARIANI: I'm sorry, the accumulated
22 interest is a significant part of the budget and
23 how money was spent and whether or not the
24 \$140 million threshold was passed. What they're
25 doing with these documents -- and they're allowed

1 to do it, but not with incomplete documents --
2 they're trying to show that the \$140 million
3 threshold is not relevant. They're trying to
4 sell 75-25 from the beginning.

5 That's not what the document says.

6 THE COURT: But what does that have to do
7 with LIBOR?

8 MR. MARIANI: Well, what LIBOR has to do
9 with is the debt service and the accumulation of
10 interest, which is a significant factor in
11 driving the money spent or at least the money
12 that accumulated to be spent and its impact on
13 budgets throughout the five-year period from '05
14 to '09.

15 THE COURT: Well, I can't force them to use
16 these two pages or these two other emails. If
17 they're not seeking to use them, I can redact
18 those two -- they can redact those two emails.

19 Now, if you can show me that those are
20 relevant and those need to be introduced through
21 this witness or any other witness, I'll take that
22 into consideration. But as far as their wanting
23 to just introduce these two emails for the
24 purpose that they're seeking to have them
25 introduced is different from debt service and is

1 different from the issue of LIBOR.

2 I am trying to stay away from LIBOR unless
3 we have to get into it and if you're saying to
4 me, which I think you're trying to say to me,
5 that somehow because of the difference in the
6 rates, that the \$140 million figure would have
7 been arrived at later if it was using the LIBOR
8 rate that DeLuca got from Wachovia as opposed to
9 the LIBOR rate he charged to Pugliese.

10 Is that what you're trying to suggest to me?

11 MR. MARIANI: That's exactly what we're
12 saying and indeed, the subject matter of these
13 emails is a debt schedule.

14 THE COURT: I've got to let the jury go.

15 (Whereupon the following proceedings were
16 had within the presence of the jury:)

17 Okay, folks. I'm going to go ahead and
18 excuse you for the lunch break now.

19 Thank you again for your continued service
20 and sacrifice. Please return back no later than
21 1:20, 1:20. We'll get back as soon as possible
22 thereafter.

23 Please don't talk about the case to anyone.
24 Don't allow anybody to speak to you about it.
25 Please don't use any form of electronic device or

1 otherwise to do any research about anybody
2 involved in the case or any issues in the case,
3 any of the terms that are being utilized in the
4 case. Please leave that to the lawyers and to
5 the Court, whether it comes from the facts or the
6 law.

7 Have a very pleasant lunch. Thank you again
8 for your courtesies.

9 (Whereupon the jury retired from the
10 courtroom and the following proceedings were
11 had:)

12 You can help me a great deal, folks, if you
13 get these exhibits marked. They should already
14 have been from last week. I told you that
15 premarking was required. They should have a
16 sticker that is used by our clerk.

17 THE CLERK: I want to ask you something
18 later.

19 THE COURT: I'm concerned, legitimately,
20 with regard to the exhibits being marked
21 properly. But it is becoming a bit of a
22 difficulty for me to have to answer to him and
23 have to answer to you all at the same time.

24 Please have a seat.

25 THE CLERK: I'm fine, Your Honor.

1 MR. HUTCHISON: May I respond to the last
2 argument, Your Honor?

3 THE COURT: Sure.

4 MR. HUTCHISON: Judge, two things. First,
5 with respect to the subject exhibit, I'm only
6 looking at the top two emails. You can read
7 those. It's referring to a budget, not the debt
8 schedule. It's the status of the budget to which
9 Mr. San Giacomo responds. He doesn't have it
10 yet, that's the purpose, okay.

11 Can the witness be excused?

12 THE COURT: Yes, you can sit outside,
13 Mr. Florio. Please don't talk about your
14 testimony with anyone while you're still on the
15 stand.

16 Thank you very much. Watch your step,
17 there's wires all over the place.

18 (Whereupon Mr. Florio left the courtroom).

19 MR. HUTCHISON: That's number one. It has
20 nothing to do with the lower two emails. The
21 subject matter changed. As you can see by
22 looking at the emails, he's saying "I've been out
23 of the loop, what's the status of the above
24 items," and he's talking about the budget. Then
25 Mr. San Giacomo responds.

1 So that email has nothing to do with the
2 debt.

3 Number two, to address Mr. Mariani's point
4 about the \$40 million, this is important, Judge,
5 because I think -- okay. There's a promissory
6 note signed --

7 THE COURT: You don't have to stand so
8 close.

9 MR. HUTCHISON: Judge, there's a promissory
10 note signed by Mr. Pugliese on behalf of the Land
11 Company of Osceola County. It establishes the
12 interest rate, okay, and it says the interest is
13 not due till \$140 million. In other words, if it
14 was a \$111 million loan, they're going let the
15 interest accrue to \$29 million, and then interest
16 will be paid monthly on the \$140 million.

17 That promissory note is the only promissory
18 note issued between these two parties.

19 Mr. Mariani's point is well, geez, if Fred
20 DeLuca has a different promissory note from
21 Wachovia and gets a lower interest rate, that
22 interest rate should be used.

23 That's a different transaction. It's a
24 different promissory note and it's not part of
25 the LCOC. It's not this promissory note that

1 Mr. Pugliese signed. Mr. Pugliese and LCOC are
2 not a party to the Wachovia loan, so it's totally
3 irrelevant.

4 They decided -- Mr. Pugliese knew what the
5 interest rate was on the promissory note he
6 signed for LCOC. He had lawyers help draft that
7 promissory note. So the other LIBOR, the other
8 interest rate is irrelevant, number one.

9 Number two, to the extent it was or arguably
10 could be, it's already been resolved in Osceola
11 County. So you're really going to prejudice --
12 assuming there's any probative value at all, it's
13 so outweighed by the prejudice given the fact
14 that now you're going to bring in and unravel the
15 whole Osceola County mortgage foreclosure.

16 Mr. Mariani says, oh, that 140 in May of
17 2008 should have been later because of the lower
18 interest rate. That's irrelevant. They agreed
19 to one interest rate, that's what they agreed to,
20 and I have a copy of the promissory note with
21 LCOC.

22 MR. MARIANI: Your Honor, may I?

23 THE COURT: Yes.

24 MR. HUTCHISON: It's not relevant to that
25 exhibit anyway, but he's addressing the second

1 argument.

2 MR. MARIANI: 5.2 of the operating
3 agreement, which is already in evidence, it's
4 headed "Payments of Operating Expenses," which
5 one could understand as budgets. "Payment of
6 Mortgage," that's the heading of 5.2. I'm going
7 to read it into the record.

8 "Drawdowns by the Land Company or the
9 company on the mortgage in excess of the amount
10 of the mortgage funded at the closing in which
11 the mortgage was executed, defined as drawdown
12 expenses, shall be used from time to time as
13 needed to pay the operating expenses of the
14 company at such time as the total of A, the
15 amount of the mortgage funded at the closing in
16 which the mortgage was executed; plus B, the
17 total of all drawdown expenses; plus C, all
18 accrued and unpaid interest on the mortgage --"

19 THE COURT: Which mortgage are they talking
20 about?

21 MR. MARIANI: Talking about the mortgage
22 that LCOC holds.

23 THE COURT: Through Wachovia?

24 MR. MARIANI: I'm sorry?

25 THE COURT: Through Wachovia, is that the

1 one you're talking about or you're talking about
2 the promissory note between AVP and DeLuca
3 parties?

4 MR. MARIANI: I'm not speaking of the
5 promissory note at all. This does not speak to
6 the promissory note. It speaks of the mortgage
7 and interest on the mortgage.

8 THE COURT: So you're talking about the
9 mortgage and interest on the mortgage that the
10 DeLuca parties had with Wachovia?

11 MR. MARIANI: Which were -- well,
12 technically we would say yes to that question,
13 but I need to answer it a little more completely,
14 because LCOC never had a direct relationship with
15 Wachovia.

16 THE COURT: That's why I'm asking.

17 MR. MARIANI: What DeLuca did was borrow the
18 money from Wachovia and then become the lender --
19 excuse me, the mortgagor of the property -- the
20 mortgagee.

21 THE COURT: The mortgagee of the property,
22 right.

23 MR. MARIANI: But if I may finish this
24 sentence -- "and unpaid interest on the
25 mortgage." When all those numbers, including the

1 number that's not paid -- nobody is saying the
2 interest was paid. We're saying the interest is
3 accumulating and when the combination of those
4 three numbers exceeds \$140 million, that's called
5 the FD entity commitment. That's a defined
6 phrase in this. "The company shall pay all then
7 accruing interest on the mortgage currently."

8 So the combination of all those factors,
9 those expenses and how they're adding up -- we
10 understand that interest doesn't take a day off.
11 Yesterday was a holiday, everybody still got
12 charged on their mortgage. Whatever interest
13 amount is a daily interest amount.

14 So the dispute in this case -- and it's a
15 very real dispute and it's why Counsel is using
16 this witness to try to build his case -- is that
17 it's 75-25 from the beginning. That's not how it
18 was. Our position is much different. Our
19 position is expenses were a hundred percent until
20 after this 140 was reached.

21 So if the combination of those factors would
22 have given more time, which it would have,
23 Mr. San Giacomo in other emails that were
24 incorrect under this particular provision,
25 they're using those or attempting to use those as

1 admissions against interest and to bind the fact
2 in the case.

3 Which I understand that they're allowed to
4 make that argument, but you're cutting our
5 argument entirely out by suggesting that the
6 interest rate and that difference in interest
7 rate doesn't matter.

8 THE COURT: I don't know if I'm cutting it
9 out, Mr. Mariani. I was the one who raised the
10 topic and articulated the issue and as far as I'm
11 concerned, is the best way it's been articulated
12 to date. So to accuse the Court of cutting
13 something out is not appropriate.

14 MR. MARIANI: I apologize, and I didn't mean
15 it that way.

16 THE COURT: Well, it sure came out like
17 that.

18 MR. MARIANI: Well, then I apologize.

19 THE COURT: Let's go back to the record, if
20 you'd like to, and get the quote that the Court
21 made as far as framing the issue, as far as I'm
22 concerned, in the best manner that it's been
23 phrased thus far.

24 MR. MARIANI: There won't be a need for
25 that, Your Honor. Again, I apologize to the

1 Court.

2 What I mean to say is that the argument
3 that's being advanced by Counsel is cutting that
4 or attempting to cut that out and the continued
5 use of the word "prejudice" is just overstated.

6 We're talking about this commercial
7 transaction. It's complicated. This language is
8 complicated and the point would be we should be
9 able to make that argument relative to the
10 \$140,000.

11 So to say that this string of emails has
12 nothing to do with debt service is just not
13 accurate.

14 MR. HUTCHISON: Your Honor, may I approach
15 and show you the promissory note? That's the
16 promissory note.

17 THE COURT: I understand that.

18 MR. HUTCHISON: And that's the only
19 promissory note that has any relevance to the
20 operating agreement.

21 THE COURT: Well, that's what I'm not
22 certain of.

23 Let's go to 5.2. 5.2 says, "Payment of
24 Operating Expenses, Payment of Mortgage."

25 Now, it doesn't say payment of the

1 promissory note. It says, "Payment of mortgage."
2 It says, "Drawdowns by the Land Company or the
3 company on the mortgage in excess of the amount
4 of the mortgage funded at the closing."

5 Now, the mortgage funded at the closing that
6 I understand to be the mortgage is the mortgage
7 that was between Mr. DeLuca and Wachovia.

8 MR. HUTCHISON: Well, no.

9 MR. MARIANI: That's not right, Your Honor.

10 THE COURT: Well, then what is the mortgage
11 funded at the closing?

12 MR. HUTCHISON: That's the mortgage that
13 secures Mr. DeLuca's promissory note. In other
14 words, Mr. DeLuca gave a promissory note --
15 received a promissory note from Land Company of
16 Osceola County, right?

17 THE COURT: Okay, that I understand.

18 MR. HUTCHISON: Okay, and that's the
19 mortgage that secures the note.

20 THE COURT: So the mortgage and note ride
21 together as far as this transaction is concerned.

22 MR. HUTCHISON: I don't think if I --

23 THE COURT: The mortgage and the note, these
24 are the two complementary documents.

25 MR. HUTCHISON: Yes, Your Honor, and that's

1 the only mortgage -- that's the mortgage that
2 secures Mr. DeLuca's \$111 million loan.

3 THE COURT: All right. I've never seen this
4 before.

5 MR. HUTCHISON: And I don't think I really
6 had a cause to bring it to your attention.

7 But to answer your question, the only loan
8 LCOC had is the \$111 million loan and the
9 mortgage that secures that loan is the one in
10 your hands and it's between DeLuca, the
11 mortgagor, and Land Company of Osceola County
12 would be the mortgagee.

13 THE COURT: Correct. Okay, I've never seen
14 this before, so forgive me for having to take a
15 look at it fresh.

16 Okay. So is it fair then, Mr. Mariani, that
17 the mortgage that's being addressed in 5.2 is the
18 mortgage that was handed to me that travels with
19 the note that was executed apparently on the same
20 day?

21 MR. MARIANI: May I see that for a moment,
22 Your Honor?

23 THE COURT: Sure, of course. Just give me a
24 moment, please.

25 Well, the note was dated August 9th for

1 \$111 million and the mortgage for that same
2 \$111 million was prepared on August 11th, 2005.
3 Both are 2005 dates.

4 MR. MARIANI: Thank you.

5 This is the mortgage, Your Honor. The
6 mortgagor is Fred DeLuca individually. It's not
7 Wachovia Bank.

8 THE COURT: I understand.

9 MR. MARIANI: Okay. So we don't assume the
10 way opposing counsel does the relationship
11 between that mortgage and that note.

12 THE COURT: But I'm looking at the language.
13 I just want to make sure the language -- now that
14 I understand it a little bit better in terms of
15 the mortgage that I've not seen before -- is tied
16 to this note and not having anything to do with
17 the Wachovia mortgage that was executed by DeLuca
18 as the mortgagor to Wachovia.

19 MR. HUTCHISON: May I assist the Court?

20 THE COURT: Sure.

21 MR. HUTCHISON: Page two of the operating
22 agreement defines the mortgage. That will cut to
23 the chase, I believe.

24 Page two, C2. First there's a glossary and
25 if you go to mortgage, it says go to C2 and it's

1 on page two of the operating agreement. First
2 log of the mortgage on the Destiny land --

3 THE COURT: Yes, I see it.

4 MR. HUTCHISON: -- is for Land Company of
5 Osceola County and the \$111 million mortgage.
6 There's no dispute the loan from Wachovia was
7 \$105 million. That's the only promissory note
8 the operating agreement is talking about, is the
9 one from DeLuca to LCOC.

10 THE COURT: Okay. So let me read in the
11 following. 5.2 says: "Drawdowns by the land
12 company or the company on the mortgage in excess
13 of the amount of the mortgage."

14 We agree that that's -- would be the
15 \$111,000 mortgage tied to the note, correct,
16 \$111 million?

17 MR. HUTCHISON: Yeah.

18 THE COURT: Okay. "Funded at the
19 closing" -- which is at or near the time of the
20 subject closing and does correlate to the
21 promissory note date -- "in which the mortgage
22 was executed. Drawdown expenses shall be used
23 from time to time as needed to pay the operating
24 expenses of the company. At such time as the
25 total of A, the amount of the mortgage funded at

1 the closing" -- which again is the mortgage at
2 issue dated August 11th, 2005 -- "in which the
3 mortgage was executed, plus the total of all
4 drawdown expenses" -- which would have been drawn
5 down from the existing amount covered by the
6 mortgage -- "plus all accrued and unpaid interest
7 on the mortgage shall exceed \$140 million, the
8 company shall pay all then accruing interest on
9 the mortgage currently."

10 I don't see any relationship to the DeLuca
11 mortgage -- which I'll call the DeLuca mortgage
12 the Wachovia mortgage, let's put it that way --
13 and the language contained in the operating
14 agreement.

15 Excuse me just a moment. Let me just finish
16 my thought, please.

17 Mr. Pugliese or his related companies may
18 have had a separate cause of action against
19 Mr. DeLuca, probably personally, if he could have
20 shown that the amount that was charged was
21 somehow or someway not consistent with the
22 contract.

23 He may have had a separate cause of action.
24 I don't know if it even -- I don't know if it
25 rises to fraud, if it rises to negligent

1 misrepresentation. I'm not even sure it gets
2 that far.

3 As to the separate issue as it relates to
4 this LIBOR rate, if anything at all, that would
5 have had to have been hashed out differently and
6 perhaps in a different case or in this case it
7 would have had to be specifically pled. But 5.2
8 in my respectful estimation has nothing to do
9 with that Wachovia loan.

10 Good, bad or indifferent, right or wrong,
11 I'm not sitting here and suggesting by any means
12 that I think that Fred DeLuca should have charged
13 the same rate to Mr. DeLuca as he got from
14 Wachovia. That's not for me to say.

15 But I don't -- what is for me to say is that
16 it is not related at all to my reading of 5.2,
17 now that I have what has, to my recollection,
18 never been shown to me before, is the mortgage
19 that's tied to the note of August of 2005.

20 Again, while I framed the issue in the
21 manner that I think you were traveling under, and
22 you confirmed that to me, at the same time
23 there's nothing that's been brought into this
24 case that would suggest that that mortgage, the
25 Wachovia mortgage for ease of reference, has

1 anything to do with 5.2, has anything to do with
2 the operating agreement, and has anything to do
3 with the way in which the operating agreement
4 functioned, and that is the manner in which these
5 drawdown expenses were tied to the \$111 million
6 mortgage and note.

7 MR. MARIANI: Would your view be different
8 if it's shown that the money from Wachovia funded
9 the mortgage referred to in 5.2?

10 THE COURT: I'm sorry, say that again,
11 please, so I can follow.

12 MR. MARIANI: Would your interpretation be
13 different if facts showed that the money borrowed
14 from Wachovia was used to finance the mortgage
15 and the purchase of the mortgage -- excuse me,
16 the purchase of the property that's mortgaged by
17 the mortgage referred to in 5.2?

18 THE COURT: Not really, because let's say
19 the mortgage was tied to real estate, okay, and
20 there was a different amount of money charged by
21 the lender than was charged in this note to LCOC
22 or charged to the mortgage to LCOC. It wouldn't
23 make any difference.

24 It may not have been a nice thing to do, but
25 I don't find any illegality. There's no issue of

1 usury or anything of that nature.

2 You had two sophisticated businesspersons
3 between Mr. Pugliese and Mr. DeLuca on either
4 side. They were both represented by more than
5 competent counsel. Mr. Quentel was a legend in
6 the industry. I mean, I think I can say that
7 without hurting anyone's feelings, I trust, and
8 God rest his soul.

9 But you couldn't have asked for better
10 representation. He had every right during the
11 due diligence process, in my view, to have
12 inspected the underpinnings of the funding that
13 was provided by Wachovia to DeLuca and determine
14 what rate of interest was being charged by
15 Wachovia. In my view, that would have been a
16 huge part of the due diligence process.

17 Now, I'm not taking shots at Mr. Quentel,
18 don't get me wrong. What I'm saying, though, is
19 that these issues were bargained for and if part
20 of the bargain was that a higher interest rate
21 was going to be charged by DeLuca to LCOC, that's
22 part of the way it went.

23 Again, I'm not saying it's necessarily fair.
24 I'm not saying it's right. I don't get into
25 moral issues here. I get into what I perceive to

1 be the legal ones, and until and unless I can
2 wrap my arms around something having to do with
3 that LIBOR rate other than trying, again, to
4 suggest that DeLuca was a bad guy for doing what
5 he did, I'm having trouble finding that tie-in.

6 So the answer in a long-winded fashion --
7 and I apologize for the length of my response --
8 is no, it would not change my evaluation of the
9 matter. It has to do with what transpired as
10 between AVP/Pugliese and FD/DeLuca as relates to
11 the LCOC mortgage and note.

12 How Mr. DeLuca got that money and under what
13 terms and conditions, I still find at this
14 juncture without more and based upon my again
15 careful review of 5.2 and having this mortgage in
16 front of me and knowing its applicability, that
17 the Wachovia loan just does not enter into the
18 picture.

19 So with that in mind, I'm going to allow the
20 two emails on the top of the page to be
21 introduced into evidence, without having the
22 second two introduced. I find that -- excuse me,
23 let me just finish my ruling.

24 I find that introducing the word "LIBOR"
25 into this text or into this record and in this

1 context could confuse the jury, could open a door
2 that I've already closed, and I'm not convinced
3 or even close to being convinced that that
4 Wachovia loan would have any basis to get into in
5 this case. It doesn't have anything to do at
6 least by way of the contract with regard to the
7 drawdowns.

8 So that's the ruling of the Court.

9 MR. MARIANI: May I speak for a moment?

10 THE COURT: If you want to just complete the
11 record, absolutely.

12 MR. MARIANI: There's no need for that
13 redaction, because LIBOR is also referred to in
14 the mortgage in question. It's predicated on
15 LIBOR. The word "LIBOR" is not a dirty word.
16 It's not a word that -- it's a word that has a
17 definition that's used in mortgage circumstances
18 at this level.

19 So the mortgage that we just went through
20 painfully to determine the applicability of it,
21 it refers to LIBOR.

22 THE COURT: But what would be the relevancy
23 in just mentioning the word "LIBOR" except to
24 potentially open the door to what I indicated
25 earlier is prohibited?

1 MR. MARIANI: It's the completeness of the
2 document, Your Honor.

3 THE COURT: All right. My ruling has been
4 made clear and I couldn't make it any clearer, I
5 don't think.

6 I don't have a problem with it simply being
7 used in the manner in which it's used if it's
8 going to give it some context as to when the
9 discussion began and when it ended.

10 MR. HUTCHISON: Judge, not only is the
11 Wachovia loan not relevant --

12 THE COURT: Let me have the exhibit back,
13 please.

14 THE CLERK: You have it, Your Honor, I
15 think. It's 595.

16 THE COURT: I do, thank you.

17 MR. HUTCHISON: Not only is the Wachovia
18 loan irrelevant, but now they're mixing apples
19 and oranges. You ruled that the promissory note
20 in this case, the one in your hand and the
21 mortgage, that they're not at issue as far as the
22 debt schedule and everything else.

23 THE COURT: I haven't made that ruling.

24 MR. HUTCHISON: Well, I thought a pretrial
25 ruling was that the loan was not admissible.

1 THE COURT: The loan itself is not going to
2 be brought in because there's no cause of action
3 that's been brought under the loan.

4 MR. HUTCHISON: So by where your thumb is it
5 talks about the outstanding debt schedule. The
6 balance is \$133 million. Even the subject line
7 "Debt Schedule," should be redacted.

8 But why are we going into LIBOR interest
9 rates and loan balances? Because they're not
10 relevant to their loans; their claims, I mean,
11 count seven, the breach of contract claim, and
12 it's not raised in their defenses.

13 So I don't understand how it possibly comes
14 in. The fact that a document is redacted, we do
15 it all the time in discovery as well as during
16 the middle of trial, because it's inconsistent
17 with your ruling.

18 This doctrine of completeness is completely
19 inapplicable here and we're spending a lot time
20 on just redacting two emails to talk about a loan
21 that you've already ruled is not subject to this
22 lawsuit.

23 THE COURT: Where are we going to go with
24 this, Mr. Mariani? Give me some help.

25 MR. MARIANI: Your Honor, in the

1 calculations of the \$140 million they're pounding
2 on the 75-25 percent issue. We need to have the
3 proper facts and we need to have documents like
4 this to show and argue from when the 140 was
5 reached.

6 MR. HUTCHISON: Judge, there's no issue the
7 140 was reached in May of 2008 under the
8 promissory note in your hand.

9 THE COURT: Let Mr. Mariani finish.

10 MR. HUTCHISON: Oh, I thought he was
11 finished. I apologize.

12 THE COURT: Did you have anything you want
13 to say?

14 MR. MARIANI: We disagree vehemently about
15 the dates when such and such was reached.
16 Counsel keeps suggesting that everything has been
17 stipulated to.

18 THE COURT: The ruling of the Court is as
19 follows. Because I believe that LIBOR is really
20 a red herring and has nothing to do with this
21 issue, what I will solely excise here is going to
22 be the one line or two lines that say: "I
23 usually get the LIBOR rate from a Fannie Mae
24 site, but for some reason they haven't issued an
25 update since June, so I continue to use the June

1 rate."

2 Okay, that is going to be excised. The
3 remainder will be permitted to be admitted at the
4 request of the Pugliese parties, finding that the
5 two emails before provide some context to the
6 follow-up two emails thereafter.

7 So Mr. Valencia, if you would excise -- just
8 white those out and make a new copy. Just white
9 out this portion.

10 THE CLERK: The last two lines?

11 THE COURT: The last two lines. Leave
12 "Dave" in.

13 MR. MARIANI: Over our objection,
14 Your Honor.

15 THE COURT: Over objection of the Pugliese
16 parties.

17 But that's what I feel is the best way to
18 make it fair to both sides to give it context,
19 but at the same time not to confuse this jury,
20 because I do not believe LIBOR is going to be an
21 issue here as it pertains to anything in
22 contention.

23 It may be an issue as it relates to how the
24 amount is calculated, but at this point without
25 further introduction or explanation -- and it

1 won't come from this witness -- it's irrelevant.

2 Have a good lunch. We'll see you back set
3 up at 1:20, please.

4 (Whereupon at 12:35 p.m. a luncheon recess
5 was taken until 1:20 p.m.)

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