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THE COURT: Okay, welcome back everyone.
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 Mr. Gary was going
the make a proffer of what they were going into
and if it was attorney-client privilege 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 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
issues? Not by Mr. DeLuca, any hearsay -- we had

09:15:55
09:23:49
09:24:00
09:24:12
09:24:29
09:24:51

1 a hearsay issue. I'm trying to remember exactly
2 what it was.

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

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

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

14 MR. HUTCHISON: I don't think it would be
15 like an exception. I think weighed to it on a
16 case by case basis as to when Mr. DeLuca. I
17 don't know what they're saying Mr. DeLuca. But
18 everything the man said to the man is not a
19 hearsay exception. I'm not sure what the hearsay
20 exception is.

21 MR. CHAPMAN: And just to add onto that
22 point to the extent that Mr. DeLuca and
23 Mr. Florio were having conversations with respect
24 to the litigation and with respect to meetings
25 with counsel, that would all fall under the

1 attorney-client privilege. 09:26:06

2 THE COURT: Well, again, it's going to
3 depend I think on what the question is. I agree
4 that and Mr. Mariani has conceded that anything
5 that was said in the presence of counsel to 09:26:22
6 DeLuca and Florio or to Florio directly would be
7 privileged.

8 Whether or not it is a statement of a party
9 opponent or statement of -- statement of a party
10 or I should say admission by a party, will have 09:26:46
11 to be considered in the totality of the
12 circumstances, I guess. I have to figure out
13 where we're going to be going here and I don't
14 know where we're going, frankly, as to what
15 direction we're going to be proceeding in that 09:27:05
16 regard.

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

19 THE BAILIFF: Jury is entering.

20 (Whereupon the jury entered the courtroom 09:27:35
21 and the following proceedings were had:).

22 THE COURT: Okay, welcome back ladies and
23 gentlemen, again thank you for your continued
24 service an sacrifice. We're going to continue
25 now with the direct examination of Mr. Florio. 09:28:17

1 Is he present? 09:28:21

2 MR. GARY: Yes, Your Honor.

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

5 THE BAILIFF: Have a seat, sir. 09:29:16

6 THE COURT: All right welcome back, sir.
7 You want go ahead and stand and take the oath,
8 please.

9 THE CLERK: Morning, sir.

10 Thereupon: 09:29:36

11 ALFRED FLORIO

12 was called as a witness and having been first duly
13 sworn, was examined and testified as follows:

14

15 THE WITNESS: I do. 09:29:37

16 THE COURT: Thank you again. Please sit
17 down again. Speak directly into the microphone
18 if you would, please and when the witness is
19 ready Mr. Gary you may proceed.

20 MR. GARY: May it please the Court. 09:29:50

21 THE COURT: Thank you.

22 DIRECT EXAMINATION

23 BY MR. GARY:

24 Q. Good morning?

25 A. Good morning. 09:29:56

ROUGH DRAFT TRANSCRIPT

1 Q. Now, I know we talked briefly last Friday 09:29:59
2 about the operation agreement, but just want to cover
3 a few things about the operation agreement.

4 Now, you were familiar with the operation
5 agreement, because you were the treasurer; is that 09:30:14
6 correct?

7 A. Yes, somewhat familiar with it.

8 Q. Were you familiar with the responsibilities
9 under the operation agreement, what Anthony was
10 responsible for doing and not doing? 09:30:31

11 A. Yes.

12 MR. GARY: Your Honor, I'm going to
13 introduce the operating agreement into evidence
14 at this time, Your Honor.

15 Any objection? 09:30:48

16 MR. HUTCHISON: The operating agreement can
17 I just see it?

18 THE COURT: Just for the record it's
19 operating agreement, is the terminology just to
20 nobody is confused there may be something 09:31:00
21 different than what was talked about.

22 MR. HUTCHISON: I'm sorry, Your Honor did
23 you say the exhibit number.

24 THE COURT: I did not.

25 MR. HUTCHISON: I'm talking about what's the 09:31:16

1 trial Exhibit list number.

09:31:19

2 MR. GARY: 25-one. 25, sorry, Your Honor.

3 THE CLERK: 25.

4 MR. GARY: Yes.

5 THE COURT: 25 then will be admitted without
6 objection.

09:31:40

7 (Whereupon a document/item was marked IN
8 EVIDENCE as Plaintiff's Exhibit 25.)

9 MR. GARY: My I approach the witness, Your
10 Honor.

09:31:49

11 THE COURT: Yes.

12 Q. Mr. Florio I want you to take a look at that
13 operating agreement --

14 THE COURT: That's right 25 is correct.

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

09:32:04

16 Your Honor, may I publish the operating
17 agreement?

18 THE COURT: Not right now. You'll have that
19 in the deliberations room plus we'll be talking
20 about the operative sections with frequency
21 during the trial. So it's easier if you just
22 follow along now.

09:32:19

23 MR. GARY: Thank you, Your Honor.

24 Q. First thing I'd like to do since we have the
25 operating agreement into evidence is pull up the first

09:32:33

1 page on the screen, please.

09:32:36

2 Now, Mr. Florio do you recognize this
3 document?

4 A. Yes.

5 Q. And you recognize it to be what document,
6 operating agreement between Anthony Pugliese and Fred
7 DeLuca?

09:32:52

8 A. Yes.

9 MR. HUTCHISON: Objection, misstates the
10 document.

09:33:08

11 THE COURT: Sustained.

12 Q. You see AVP, you see that?

13 A. Yes.

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

15 A. Yeah.

09:33:22

16 Q. And you see FD Destiny, LLC?

17 A. Yes.

18 Q. What was your understanding as to who were
19 the parties to this agreement?

20 A. Anthony Pugliese was the --

09:33:33

21 MR. HUTCHISON: I'm going object, Judge, to
22 the extent it's inconsistent with the document,
23 calls for a legal conclusion.

24 THE COURT: Sustained the document speaks
25 for itself.

09:33:43

1 Q. Was Anthony Pugliese a managing partner in
2 this venture?

09:33:47

3 A. Yes.

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

5 MR. HUTCHISON: Objection, form prior motion
6 and it misstates the document.

09:33:58

7 THE COURT: Sustained.

8 Q. Now, let me ask you this question. Will you
9 turn to page 34 of the document, please. You have
10 that page 34?

09:34:25

11 A. Yes.

12 Q. And for the jury, without them whose
13 signatures are on this document?

14 A. Anthony Pugliese the III and Frederick
15 DeLuca.

09:34:39

16 Q. What you know those parties are?

17 A. Yes.

18 Q. And let's go to page 13 of the document.

19 A. Yeah.

20 Q. Now, does it indicate Anthony Pugliese's
21 position with the company and what does it say second
22 to the last paragraph?

09:34:59

23 A. He's the president/secretary.

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

25 A. Yes, it is.

09:35:31

1 Q. And what is your position, based on this
2 document?

09:35:32

3 A. Treasurer.

4 Q. And would you turn to page 14 of the
5 document, please. 4.7 of the document, do you see
6 that?

09:35:51

7 A. Yes.

8 Q. And what does it indicate?

9 A. That Anthony Pugliese is the manager and/or
10 president of the company.

09:36:09

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

13 A. Yes.

14 Q. Was he a good manager?

15 A. Yes.

09:36:18

16 Q. Was he a good president?

17 MR. HUTCHISON: Objection.

18 A. Yes.

19 THE COURT: Overruled.

20 Q. And why do you say that?

09:36:23

21 A. Well, the project was his idea. He was the
22 visionary, he worked diligently, spent many, many
23 hours there and in my opinion he knew absolutely what
24 had to be done and he was doing it to accomplish the
25 goal.

09:36:49

1 Q. Say says to prepare a comprehensive
2 development plan. Did he do that?

09:36:51

3 A. They were in the process of doing it yes.

4 Q. And that included residential, commercial,
5 office, golf courses, hotels and things of that
6 nature?

09:37:02

7 A. Yes.

8 Q. Were the plans in the work to make this
9 happen?

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

09:37:14

11 Q. Were there plans in the works to make this
12 happen?

13 A. Oh, yes, yes.

14 Q. Okay. Read paragraph the last paragraph.
15 As part of the development process, to seek approvals
16 from all necessary governmental agencies having
17 jurisdiction thereof to permit the comprehensive
18 plan."

09:37:33

19 Do you see that?

20 A. Yes.

09:37:46

21 Q. Was he doing that?

22 A. Yes.

23 Q. And why do you see that?

24 A. We had many consultants through the meetings
25 and we were in the process of -- they were in the

09:37:54

1 process of getting the zoning changed and working to
2 get this plan approved.

09:37:57

3 Q. Were applications filed to do that?

4 A. Yes.

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

09:38:23

7 A. Yes.

8 Q. Would you read that into the record for me,
9 please.

10 A. You want me to read it?

09:38:43

11 Q. Yes.

12 A. Okay. Payment of --

13 Q. Could you speak up a little bit?

14 A. It says payment of the mortgage, drawdowns
15 by the land company of the company or on the mortgage
16 is in excess of the amount of the mortgage funded at
17 the closing in which the mortgage was executed, called
18 drawn down expenses I guess, shall be used from time
19 to time as needed to pay the operating expenses of the
20 company. At such time as the total of the amount of
21 the mortgage funded at the closing in which the
22 mortgage was executed, plus it would be the total of
23 the drawdown expenses plus all accrued and unpaid
24 interest on the mortgage shall exceed 140 -- what is
25 it million dollars.

09:38:53

09:39:11

09:39:30

1 Q. Big numbers?

09:39:35

2 A. The company shall pay all then accruing
3 interest on the mortgage currently.

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

09:39:47

6 A. The first \$140 million --

7 MR. HUTCHISON: Objection with respect to
8 this topic, Your Honor.

9 THE COURT: Overruled. You can cover it on
10 cross.

09:40:02

11 Q. The first \$140 million plus interest on this
12 \$140 million, who was supposed to pay that money?

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

09:40:21

16 Q. Was Fred DeLuca to pay that money?

17 MR. HUTCHISON: Objection, sustained.

18 A. There was no money --

19 THE COURT: Excuse me, sir, when I sustain
20 an objection that means you can't answer.

09:40:33

21 THE WITNESS: Sorry.

22 THE COURT: That's okay.

23 BY MR. GARY:

24 Q. As it relates to the sharing of the
25 expenses, the sharing of expenses between Fred DeLuca

09:40:44

1 and Anthony Pugliese --

09:40:50

2 THE COURT: It think it would be easier,
3 Mr. Gary, respectfully if you would use the AVP.
4 And the FD Destiny parties that way we can avoid
5 the objections. So if you would use AVP meaning
6 the Pugliese entities and the FD parties as the
7 DeLuca entities, I think that would assist.

09:41:02

8 Q. Based on your understanding, of the two
9 parties, AVP and FD, who was to pay down that first
10 \$140 million plus interest in this deal?

09:41:26

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

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

09:41:36

16 BY MR. GARY:

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

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

09:42:09

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.

09:42:26

1 Q. Was he fulfilling that responsibility? 09:42:27

2 A. Yes.

3 Q. Okay. And did he, to authorize that --

4 A. You want me to read it.

5 Q. Go ahead, sir? 09:42:40

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

8 Q. Did Anthony do that?

9 A. Yes, he did.

10 Q. Did he prepare budgets? 09:42:49

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. 09:42:55

16 THE COURT: Overruled.

17 A. I spent the first couple years, I was there
18 for a meeting, usually -- at some point about four
19 days a week, not full time, but I was there four days
20 a week. 09:43:10

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

25 Was he doing that? 09:43:32

1 A. Yes, he was. 09:43:33

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 he end of the month 09:43:44
6 the budget was either -- the budget was either over or
7 under and I would see that. I would see those
8 documents.

9 Q. And there were months when the dust came in
10 under what had been projected? 09:44:01

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. 09:44:08

17 THE COURT: Overruled.

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

20 A. Anthony was there long -- many hours. I'd 09:44:15
21 have to say 70 hours a week, 60, 70 hours a week.

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

23 A. Yes.

24 Q. And were you reporting to him the work that
25 Mr. Pugliese was doing on the project? Tell the jury 09:44:38

1 how often were you reporting this to Mr. Mr. DeLuca? 09:44:41

2 A. As needed. Obviously Mr. DeLuca was very
3 accessible to me. If I saw something that was -- that
4 I needed to discuss with him, I would just pick up the
5 phone. It might be once day, it might not be for, you 09:44:57
6 know, a month. So, but every time I would give him
7 just a quick update on how I felt the project was
8 going.

9 Q. How would you rate the quality of
10 professionals and consultants that he hired to carry 09:45:14
11 out the duties, the mission of this venture?

12 MR. HUTCHISON: Objection, asked and
13 answered.

14 THE COURT: Overruled on that ground.

15 A. I felt that they were excellent. When I did 09:45:26
16 my due diligence and questioned their abilities, their
17 capability, their background, I think as I stated
18 before, we couldn't find anybody better.

19 Q. Now, how often would you report to Fred
20 DeLuca the activities and what was going on with the 09:45:55
21 project?

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

24 THE COURT: Yeah it's been asked and
25 answered. Go on to something different, please. 09:46:01

1 MR. GARY: All right, Your Honor.

09:46:06

2 THE COURT: Thank you.

3 Q. Now, with respect to the project overall --
4 well, let me rephrase that.

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

09:46:34

10 A. Yes.

09:46:59

11 Q. Tell the jury about that please?

12 MR. HUTCHISON: Objection, hearsay as to
13 what Anthony Pugliese said.

14 Q. Tell the jury what you discussed?

15 THE COURT: Overruled at this point.

09:47:07

16 A. Well, first of all, every time -- there was
17 no question that Anthony was totally in charge of the
18 project and he had the free realm to do whatever he
19 saw fit to do it. So when we started doing some
20 leasehold improvements to the property that we were
21 renting from him, there came a time when we discussed
22 the conference room and Anthony --

09:47:28

23 MR. HUTCHISON: Objection, can we come
24 sidebar on this please.

25 THE COURT: All right.

09:47:44

1 (Whereupon counsel for the respective
2 parties approached the bench and the following
3 proceedings were had outside the presence of the
4 jury:)

5 MR. HUTCHISON: Judge, apparently he had an
6 I that I have any over the weekend, but
7 nevertheless the moat chiller he pled to in the
8 criminal case.

9 THE COURT: Mr. Pugliese.

10 MR. HUTCHISON: Yes he can now come in and
11 say I bar filtered for it or did anything
12 legitimate for it. It's part of the criminal
13 information, it is specifically named in the
14 criminal information. It's also in the probably
15 cause affidavit, Your Honor, that led to his
16 arrest. Therefore he's preclude from getting up
17 there and saying it was some kind of barter.

18 THE COURT: I already ruled in the case that
19 I'm not going to allow Mr. Pugliese and
20 Mr. Reamer to deviate from the sum and substance
21 of their plea. So that's my main concern is that
22 this may deviate from that as part of the plea
23 that Mr. Reamer and Mr. Pugliese was charged with
24 having the moat chiller installed at the Pugliese
25 home for the benefit of LCOC.

1 So I'm concerned about that. 09:49:15

2 MR. MARIANI: May we be heard on that point?

3 THE COURT: Sure.

4 MR. MARIANI: There was no determinations of
5 fact with respect to the plea agreement. There 09:49:22
6 was a presentation of evidence or suggested
7 evidence that may or may not be sufficient to
8 support the charges, but there was no
9 adjudication of facts.

10 THE COURT: It would have to be some factual 09:49:44
11 basis in order for the plea to be accepted by the
12 Judge and Mr. Pugliese and Mr. Reamer would have
13 had to admit to a factual basis for that plea.

14 MR. HUTCHISON: And I have that transcript.

15 MR. MARIANI: We can -- Your Honor, this is 09:50:04
16 an important distinction. A, acknowledge there
17 were facts, if the facts went to the jury, the
18 jury may be able to find a violation.

19 THE COURT: I don't think it's may. I think
20 it's would be able to find, because the proof 09:50:20
21 must be to I don't understand and to the
22 exclusion of every reasonable doubt. That's the
23 standard as you know that the State would have to
24 prove and that's the standard to which the plea
25 would have been supported and based. 09:50:34

1 MR. MARIANI: We'll get a copy of it, Your
2 Honor. It's in the record. The venue and
3 factual assertion says specifically -- (end
4 sidebar).

09:50:40

5 THE COURT: Ladies and gentlemen I'm going
6 to explain something to you T only time you're
7 going to be able to ask questions is when the
8 witness finishes the testimony. Please don't
9 provide those to the deputy, they're not going to
10 be asked.

09:51:11

09:51:21

11 Secondly, only the witness may be asked
12 questions. Questions cannot be directed to the
13 Court or counsel. It's only factual information
14 that you're seeking from the witness that may not
15 have been asked of the witness by the attorneys,
16 okay.

09:51:32

17 Any questions on that procedure so that
18 we're not unclear?

19 Okay, thank you. You may return that.

20 THE BAILIFF: Yes, Judge.

09:51:51

21 THE COURT: Okay, I'll need to see the plea
22 colloquy.

23 MR. HUTCHISON: I think we have it and I
24 think we also have his factual basis. The plea
25 colloquy it was Judge Kelly, he took notice of

09:52:04

1 the affiant's statements supporting the please as 09:52:10
2 well as the probable cause affidavit which was in
3 your left hand, on your left side.

4 THE COURT: Okay.

5 MR. HUTCHISON: They're looking for it, 09:52:51
6 Judge. We filed it under judicial notice. It
7 was filed with the court. They're looking for it
8 and if I can't find a hard copy we'll pull it up
9 on the computer.

10 THE COURT: Okay. While we're waiting, just 09:53:03
11 so the record is clear, paragraph 14 of the
12 amended information states, "Anthony Vincent
13 Pugliese the third and Joseph Robert Reamer
14 between August 12008 and September finishing 2008
15 in Palm Beach County good pursuant to one scheme 09:53:21
16 or course of conduct, wrongly obtained or used or
17 endeavor to obtain or use U.S. currency of \$300
18 or more which belonged to Fred DeLuca or FD
19 Destiny or any other defendants with the intent
20 to temporarily and permanently deprive Fred 09:53:39
21 DeLuca or FD Destiny or benefit their from or to
22 appropriate the property to Anthony Vincent
23 Pugliese and to Joseph report Reamer to the use
24 of any person entitled there two to pay the Roman
25 construction company for a moat chiller installed 09:53:59

1 on Anthony Pugliese's home located in Palm Beach
2 County, Florida. Contrary to Florida statute
3 812.0141 and 2C. 812101210C."

4 MR. MARIANI: That's in the probable cause
5 affidavit. 09:54:22

6 THE COURT: That's in the actual amended
7 information.

8 MR. MARIANI: The information.

9 THE COURT: Right.

10 MR. HUTCHISON: I think there's another 09:54:31
11 page, but that's the probable cause affidavit.

12 THE COURT: The probable cause affidavit
13 speak to it as well.

14 MR. MARIANI: I would say the information is
15 an allegation. It's not a determination. 09:54:38

16 THE COURT: That I have understanding,
17 Mr. Mariani, respectfully.

18 MR. HUTCHISON: Here's a copy. And then
19 Judge here's the factual basis -- when you get to
20 the part about the factual basis, Judge I have 09:56:43
21 the factual basis in my hand.

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

24 MR. HUTCHISON: It's Roman construction
25 you'll see. 09:57:51

1 THE COURT: In pertinent part, the executed
2 factual basis signed by Mr. Pugliese on the 25th
3 day of August, 2015 -- for some reason it was
4 notarized on the 28th, I don't know why. In any
5 event it says." Additionally the evidence
6 presented to a jury that a jury could find cause
7 to be billed to Fred DeLuca and FD Destiny LLC
8 for goods and services that were not supplied to
9 him, but no him personally, Roman construction,
10 described in counts 14, 15, 18, and 19 of the
11 information. Count 14 in the information
12 specifically details in moat chiller."

13 MR. MARIANI: Our argument is the operative
14 word you read is the word could. It says it
15 didn't say a jury would find it says a jury could
16 find.

17 THE COURT: I think he's these are
18 semantics. Unless you have a case that says to
19 me that deviates from what I have already ruled
20 upon and that is Mr. Pugliese could not change or
21 otherwise deviate from his plea and the plea has
22 what factual basis concerning this particular
23 moat chiller and what is going to be testified to
24 apparently by Mr. Florio that somehow is going to
25 explain Mr. Pugliese's conduct that would be

1 different from and deviate from the plea of no
2 contest for which an adjudication was entered,
3 I'm not going to permit it. Thank you.

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

6 THE COURT: You may continue Mr. Gary.

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

9 BY MR. GARY:

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

15 A. Yes.

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

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

25 Sometime around into like the second year

1 around '07, I think, I started to get a little
2 concerned. There was a lot of -- it seemed to be that
3 there were things that weren't just happening just
4 right. I was concerned about the budgeting, I wanted
5 to name sure that the equipments we made we could live
6 up to, because some of them were two and three years
7 out and I just wanted to make sure that the money was
8 reserve to pay these people when the time actually
9 came due.

10:00:51

10:01:10

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 to
14 it, we would be fine and be able to pay them.

10:01:26

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 -- when did you think
18 that was going to happen?

10:01:45

19 MR. HUTCHISON: Objection, leading.

20 THE COURT: Overruled.

10:02:05

21 A. First I don't think anything was hidden, I
22 don't think it was to hide money. If you make a
23 commitment at the time it comes due you have to accrue
24 money to pay it S I asked Anthony around '07, I said
25 to him in light of all the budgets and the things that

10:02:19

1 are going on, this is something that we have to
2 address and at the time I had a major concern that
3 parked my feeling there. When we had had a commitment
4 to one of the key employees and he kept on asking for
5 it to be put in writing --

10:02:22

10:02:39

6 Q. Who was that employ's if you recall?

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

10:02:54

13 Q. Did Fred DeLuca promise to do that?

14 A. Yes.

15 Q. Did he do it?

10:03:07

16 A. No.

17 Q. Did he renege on it?

18 MR. HUTCHISON: Objection, asked and
19 answered.

20 A. He --

10:03:13

21 THE COURT: Overruled. You can answer.

22 Q. Go right ahead, sir?

23 A. He just kept postponing I'll get to it, the
24 I'll get to it, even the fact when Tom got married we
25 went to Italy and Tom brought -- there was an attorney

10:03:24

1 there that was going to handle the documents that even 10:03:28
2 if it was done and I remember half an hour before he
3 said I do, he was concerned that he didn't have his
4 agreement yet. So --

5 Q. Now, had Fred DeLuca agreed to this, had 10:03:42
6 made this promise and agreed to do this?

7 MR. HUTCHISON: Objection, leading.

8 THE COURT: Overruled.

9 A. Yes, this was part of -- this was an
10 agreement that was made before Fred was even involved 10:03:53
11 anytime, before he even agreed to be a partner there
12 were certain agreements that were made that obviously
13 we had to live up --

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

15 A. Yes. 10:04:05

16 Q. And did he do it?

17 A. No.

18 Q. Did that concern, that he was making
19 agreement to making promises that he didn't keep?

20 A. Yes. 10:04:18

21 Q. Why?

22 A. Well, because I was the one that was there.
23 I was the one that was supposed to be representing
24 him. I was the one that was telling people, you know,
25 we're credible businessmen we're going to do this and 10:04:28

1 they had no reason to doubt me. And you know if Fred
2 would live to commitments he made, but I wanted to
3 make sure he lived up to the once I was making on his
4 behalf and that was the perfect example.

10:04:31

5 When that happened I got very flustered and
6 I went and I said to Anthony, listen, I mentioned this
7 before to you once before, this is a perfect example
8 of what might happen in the future and I want to make
9 sure that this is being done. I don't care how you do
10 this, but I want you to make sure that the money is
11 set aside to live up to our commitments that we're
12 making as we go on with the project.

10:04:43

10:04:58

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

15 A. No.

10:05:13

16 Q. Were there others who had been promised
17 interest in, I mean other workers, special workers had
18 been professionalism missed interest in the
19 development, the concept, the city?

20 MR. HUTCHISON: Objection, foundation.

10:05:33

21 THE COURT: Sustained.

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

24 MR. HUTCHISON: Same objection, Your Honor.

25 THE COURT: Overruled.

10:05:48

1 A. At the time there were commitments made for
2 dollar amounts, there was not another commitment made,
3 to my recollection, right now, keep in mind it's a
4 long time ago -- to my recollection there was no
5 commitment, but there was to be one, there was to look
6 to higher a president of the company and any president
7 that we were going to hire and some key employees
8 would be -- we would be responsible to do that.

10:05:52

10:06:07

9 Q. Key employees?

10 A. Yes.

10:06:22

11 Q. Do you know who some of those employees
12 were?

13 A. Well, the initial agreement that I was aware
14 of was that ten percent of the net profit of the whole
15 thing was supposed to be split amongst people that
16 Anthony Pugliese deemed to be instrumental in
17 accomplishing the goal.

10:06:36

18 So there was an agreement and there was
19 probably 17 copies of it, different phases. I for one
20 was supposed to get compensated. I was in, I was out,
21 I was in, I was out. The final agreement was never
22 made. The last I heard I was in, but I'm not so sure.

10:07:00

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

25 A. Yes.

10:07:23

1 Q. Did they expect DeLuca to live up to this? 10:07:23

2 A. Yes.

3 Q. Did he do it?

4 A. No.

5 Q. He refused to do it? 10:07:29

6 A. Yes. Well, the first option, the very first
7 time it came in question was over time and he refused.

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

10 A. Yes. 10:07:45

11 Q. They could rely on him?

12 A. Yes.

13 Q. They could trust him?

14 A. Yes.

15 MR. HUTCHISON: Objection, asked and
16 answered. 10:07:50

17 THE COURT: Overruled.

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

19 A. No.

20 Q. On a scale of one to ten, how would you rate
21 Fred DeLuca's actions as it relates to promises that
22 he made during this venture on a scale of one to ten,
23 in terms of him live up to his word, the promises that
24 he made. How would you rate it? 10:07:57

25 MR. HUTCHISON: Objection to form, Your 10:08:17

1 Honor. It's also commenting on another witness'
2 credibility.

10:08:17

3 THE COURT: Overrule.

4 Q. In this project so we be clear?

5 A. In this particular project, I was very
6 disruffled. It was I mean, on a scale of one to ten
7 it was not good. It was three, two. I don't know.

10:08:35

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

9 A. No.

10 Q. Did that concern you?

10:08:51

11 A. Yes it did.

12 Q. Did you discuss with it Fred DeLuca?

13 A. Yes, I did.

14 Q. And what was his take on it?

15 A. Very non-responsive, you know. Kept on
16 reminding me of what I was there for and I would give
17 him my opinions and over that he really wasn't really
18 responsive.

10:08:58

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

20 A. Yes, it does.

10:09:18

21 Q. Why?

22 A. I've been in business my whole life. I
23 really believed that when you make a commitment you
24 live up to it. Sometimes it goes your way, sometimes
25 it doesn't, but other people count on your word.

10:09:30

1 Q. What about Anthony Pugliese's word? 10:09:34

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

5 Q. And how many years did you work with -- 10:09:49

6 A. With who.

7 Q. With Anthony Pugliese?

8 A. I met Anthony in '05 and I never knew him
9 before. When we got involved in the project,
10 that's -- so you know from '05. But my feelings over 10:10:01
11 this agreement that Fred had made I guess started
12 really multiplying in my brain around the '07 is when
13 I started get to concerned.

14 Q. Was Fred DeLuca living up to his word as it
15 relates to his association and his partnership with 10:10:26
16 Anthony Pugliese?

17 MR. HUTCHISON: Objection, asked and
18 answered, form.

19 THE COURT: Sustained let's move on to
20 something else if we could. If you have another 10:10:37
21 area of questioning relative to the operating
22 agreement, that's fine, but let's move on,
23 please.

24 MR. GARY: Okay, Your Honor. Thank you.
25

1 BY MR. GARY:

10:10:51

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

5 A. I remember I was asked some questions about
6 it, yeah.

10:11:06

7 Q. Okay, good and you were asked questions
8 about the funding for this Destiny project; is that
9 correct?

10 A. Yes.

10:11:15

11 Q. Okay. And now, tell the jury even before,
12 you remember we discussed the funding, no funding for
13 September, 2007?

14 A. Yes.

15 Q. No funding for September -- I mean, for
16 October, 2007?

10:11:34

17 A. Yes.

18 Q. No funding from Fred DeLuca for November,
19 2007?

20 MR. HUTCHISON: Objection, leading.

10:11:49

21 THE COURT: Well, sustained. Just if you
22 want to just get to and summarize what you're
23 looking to do, you can do it that way. It would
24 be easier.

25 MR. GARY: Thank you, Your Honor.

10:12:01

1 BY MR. GARY:

10:12:01

2 Q. You remember where we discussed that Fred
3 DeLuca failed to fund the project as required for
4 September 2007, October 2007, November 2007,
5 December 2007, January 2007? Do you remember that?

10:12:18

6 A. Yes.

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

10 A. Yes.

10:12:34

11 MR. HUTCHISON: Objection.

12 THE COURT: Overruled.

13 Q. Now, let's go back. Even before that time,
14 even before that time, from the start was there delays
15 in funding or delays in Fred DeLuca living up to his
16 word and funding the project as he should have?

10:12:50

17 MR. HUTCHISON: Objection to the form.

18 THE COURT: Overruled.

19 A. Yeah, there was right from almost the
20 beginning there was delays in his contributions. They
21 call them capital calls or whatever. There was
22 delays.

10:13:07

23 Q. Did Fred DeLuca have the means to fund fit
24 he wanted to?

25 A. Certainly.

10:13:20

1 Q. And why do you say that? 10:13:22

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

5 Q. And from the start as we discussed, their a 10:13:34
6 lost employees working on this project?

7 A. Yes.

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

9 A. Yes.

10 Q. Did the lack of funding from Fred DeLuca, 10:13:51
11 were you surprised he didn't do what he said he was
12 going to do?

13 MR. HUTCHISON: Objection as to relevance.

14 THE COURT: Sustained. He can testify
15 factually, but would he be surprised or not would 10:14:04
16 not be relevant.

17 MR. GARY: Thank you, Your Honor.

18 BY MR. GARY:

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

20 A. Yeah, the money -- 10:14:16

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

23 Q. As it relates to the slowness in funding or
24 the lack of funding for that period that we talked
25 about, as it relates to this project, did you have any 10:14:32

1 concerns about whether or not -- did you have concerns
2 about whether or not Fred DeLuca was going to live up
3 to the deal that he had made?

10:14:40

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

10:14:50

6 THE COURT: Sustained.

7 BY MR. GARY:

8 Q. Could you tell us what if any impact did
9 Fred DeLuca's lack of funding, lack of living up to
10 his part of the bargain, what if any impact did it
11 have on the overall operation of the Destiny project?

10:15:17

12 A. Well, and I think I said this before,
13 initially I had concerns because of Fred's travel
14 schedule and I just figured that I was told by
15 Connecticut that he's traveling. When he gets back
16 into the country or whenever.

10:15:39

17 I had a concern that the employees were
18 coming to me, other people were coming to me about,
19 you know, their paychecks, but it didn't really have
20 too much of an effect right then and there because
21 Anthony paid the bills.

10:15:54

22 Q. How did you feel well, Anthony -- well,
23 Anthony paid the bills when Fred wouldn't pay the
24 bills; is that correct?

25 A. Correct.

10:16:10

1 MR. HUTCHISON: Objection, leading.

10:16:11

2 THE COURT: Sustained. Please try not to
3 lead the witness.

4 MR. GARY: Thank you.

5 Q. Go right ahead I cut you off?

10:16:16

6 A. If Fred's money didn't come and if there was
7 money that needed to be contributed to pay the bills
8 that would become due, if there was a shortfall in the
9 checkbook, Anthony would put the money in and wait to
10 get reimbursed by the time when Fred would come and
11 square up.

10:16:34

12 In the beginning when I said something to
13 Anthony, he didn't seem too concerned. In fact, he
14 told me, you know, don't worry about it. I'll put up
15 the money, he's my partner, he's good for the money.
16 I'll put the money, in I'll pay the bills. I'm
17 certainly not going to let anybody be aware that we're
18 waiting for money.

10:16:50

19 Because the fact that we could do this
20 project and we did have the money was our whole
21 stance, you know. When we started the project people
22 would ask, well, what makes you different than any
23 other developer and my answer was always because we
24 have the money to do it.

10:17:04

25 Q. Do you know, do you know of anything,

10:17:20

1 anything that Anthony Pugliese had done that would 10:17:23
2 cause or give it rise to Fred DeLuca stopping or not
3 funding the project back from day one and surely
4 through September '07 all the way into January '08?

5 A. No, not at all. I think Anthony was 10:17:46
6 actually doing more than expected.

7 Q. Why do you say that?

8 A. Because I never expected him to lay out
9 money that he didn't need to lay out. You know, he
10 was working hard, he was working diligently. He was 10:18:01
11 doing everything. It was very impressive actually how
12 he handle the whole operation and the respect that
13 everybody had for him was even more amazing.

14 Q. You whether say the respect that everybody
15 had, did you have respect for him? 10:18:22

16 A. Absolutely.

17 Q. Did you have respect for his abilities?

18 A. Yes, I did.

19 Q. Tell the jury, if you would, what impact
20 from the start, what impact and surely from September 10:18:33
21 '07 to January '08, what impact did his failure to do
22 what he said he was gonna do in funding this project,
23 did that make difficulty for Anthony Pugliese to keep
24 this project alive and keep it going?

25 MR. HUTCHISON: Objection, asked and 10:18:58

1 answered and form, Your Honor. 10:18:58

2 THE COURT: Yeah I agree it's been asked and
3 answered. Let's try it again. Move on to
4 something a little bit different, a little bit
5 more specific, please. 10:19:07

6 MR. GARY: Thank you, Your Honor.

7 BY MR. GARY:

8 Q. Mr. Florio at some point in time, at some
9 point in time you decided to resign, didn't you?

10 A. Yeah, yes, years later to where you just
11 were. 10:19:31

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

14 A. Well, I guess the litigation, you know, that
15 was going back and forth. You know, I was a
16 financially stable guy. I didn't need the job. I
17 never really considered eight job. I always felt like
18 I was working with these guys and not for these guys.
19 I don't think I ever really worked for anybody in my
20 life. So when I took the opportunity and took the
21 challenge to do this, I did this because I felt like I
22 was learning something versus being a teacher my whole
23 life. Now, for the first time I'm going the learn
24 about something new. It was interesting and I thought
25 as long as got along, we were moving forward and I was 10:20:16
10:20:33

1 learning stuff it was interesting, that was great. I 10:20:35
2 didn't have to do anything.

3 So as long as it was fun, as long as
4 everybody was getting along, I thought that it would
5 be -- I was enjoying it. But when there started to be 10:20:45
6 a conflict, it was not so fun any more.

7 Q. Let's talk about the conflict for a moment.
8 But before we do that, Your Honor, I'd like to get
9 Exhibit 78, the resignation letter, offer it into
10 evidence? 10:21:05

11 THE COURT: Any objection.

12 MR. HUTCHISON: Yes I object.

13 THE COURT: Let me take a look at it please.
14 Thank you.

15 THE CLERK: What number was that, sir, 10:21:14
16 again.

17 THE COURT: 78.

18 MR. GARY: May I pass one to the witness.

19 THE COURT: In one moment, please.

20 (Whereupon counsel for the respective 10:22:09
21 parties approached the bench and the following
22 proceedings were had outside the presence of the
23 jury:)

24 MR. HUTCHISON: Judge, the sentence that
25 says, but after talking to you and your 10:22:11

1 attorneys, I don't think that you like what I 10:22:13
2 have to say -- I feel I'm being pressured to
3 change my opinions and recollections regarding
4 the events. That goes into your prior ruling. I
5 mean, if he's claiming somethings happened in our 10:22:28
6 meetings with me, which I can tell you anything
7 improper did happen, but if he's going to claim
8 that, that's what that sentence certainly implies
9 and that's inconsistent with your prior ruling.
10 Certainly it's during an attorney-client meeting, 10:22:45
11 that's the only time I ever met Mr. Florio and
12 therefore it would be privileged, commenting on
13 the privilege and containing privilege.

14 THE COURT: Okay. What is the relevance of
15 this letter, other than his resignation which he 10:23:00
16 testified to and without getting into
17 attorney-client privileged information, speaks to
18 why he resigned? What would be the relevant of
19 this letter.

20 MR. MARIANI: Your Honor, in their argument 10:23:25
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 a
24 participant at a higher level. And two, not
25 disgruntled in terms of things that happened, you 10:23:44

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

10:23:48

3 THE COURT: Excuse me, go ahead I didn't
4 mean to interrupt you.

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

10:23:58

7 THE COURT: Well, he's gonna say, Mr. Fred
8 DeLuca and Mr. DeLuca himself pressured him to
9 changing his opinions or whatever it may be.
10 That's fine.

10:24:14

11 MR. GARY: Not the lawyers.

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

10:24:31

19 The objection is sustained because I find
20 that the potential this jury could construe from
21 this paragraph that the information at least in
22 part came from counsel would invade the
23 attorney-client privilege as well as any
24 probative value which I believe it has very
25 little, would be materially outweighed by the

10:24:44

10:25:07

1 prejudice in the sense that it could be construed 10:25:10
2 in that fashion.

3 So I'm sustaining the objection as to the
4 letter. I'm not taking issue with you going into
5 his wanting to talk about his -- 10:25:20

6 MR. GARY: Why he resigned.

7 THE COURT: Why he resigned. It should not
8 have anything to do with the lawyers. I'll let
9 the ladies and gentlemen take a break, take a
10 convenience break and instruct him on that now. 10:25:37

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

13 THE COURT: Ladies and gentlemen we're going
14 to take a five minute break to deal with
15 something. It won't take long. But a five 10:25:48
16 minute convenience break for everyone. This will
17 be our morning break. We'll take it a little bit
18 early.

19 Don't talk about the case, don't allow
20 anybody to talk to you about it in any way shape 10:26:00
21 or form. We'll be in recess for about five
22 minutes.

23 (Whereupon the jury retired from the
24 courtroom and the following proceedings were
25 had:). 10:26:06

1 THE COURT: All right. Mr. Florio my
2 understanding is they're going to get into with
3 you why you resigned from working with Mr. DeLuca
4 and his companies. Please ensure that you don't
5 speak in any way, shape or form about any
6 conversations with lawyers, attorneys or anything
7 like that. Do you understand.

10:26:27

10:26:42

8 THE WITNESS: Yes.

9 THE COURT: Very well.

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

10:26:53

12 THE COURT: With Mr. DeLuca, yes, but not
13 anything having to do with lawyer conversations
14 with you, Mr. DeLuca or a combination of the
15 three, do you understand.

10:27:06

16 THE WITNESS: Sort of, yes.

17 THE COURT: Well, you can speak about why
18 you were dissatisfied with Mr. DeLuca, but it
19 can't be relating to anything that allegedly was
20 said by counsel in your presence as an agent for
21 Mr. DeLuca.

10:27:17

22 THE WITNESS: Okay.

23 THE COURT: All right. Thank you. This
24 will be marked as 78, not admitted for the
25 reasons that I've indicated in the objection.

10:27:30

1 The objections were sustained. 10:27:33

2 (Whereupon a document/item was marked for
3 identification as Plaintiff's Exhibit 78.)

4 Okay take a few minutes. We'll be in
5 recess. 10:27:41

6 MR. HUTCHISON: How much time.

7 THE COURT: We'll get started again at 10:30
8 if at all possible.

9 (Whereupon a recess was taken.)

10 THE COURT: All right thank you all very 10:35:26
11 much have a seat. Welcome back.

12 Deputy if you'd kindly summon the jury,
13 please.

14 THE BAILIFF: Yes, Judge.

15 The jury is entering. 10:35:52

16 (Whereupon the jury entered the courtroom
17 and the following proceedings were had:).

18 THE COURT: Welcome back ladies and
19 gentlemen, again thank you for your continued
20 service and sacrifice. We'll now continue with 10:36:12
21 the cross examination of Mr. Florio.

22 Mr. Gary, you may proceed.

23 MR. GARY: Thank you, Your Honor.

24 BY MR. GARY:

25 Q. Mr. Florio we were discussing with the jury 10:36:26

1 your resignation. You recall that just before we
2 broke?

10:36:31

3 A. Yes.

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

10:36:43

8 A. Well, obviously I was ready to resign a
9 couple years prior to even getting involved in the
10 project. Like I said, I stayed there because I
11 enjoyed it and I thought it was a great learning
12 process for me.

10:37:11

13 When things started to be in question, when
14 there started to be some discrepancies between the
15 partners and it wasn't fun, I went to Fred and I said
16 listen, this isn't fun for me any more. Unless this
17 thing is resolved amicably, I'm going to leave. I
18 don't want any part of the meetings that I'm involved
19 in. I don't agree with it. Most of it is from my
20 experience, these accusations aren't true.

10:37:28

10:37:56

21 Q. What accusations?

22 A. The ones that they were discussing when they
23 were getting ready to pile the suit or the suit was
24 going, and they were saying well, this is what
25 happened and I'm saying that didn't happen --

10:38:14

1 MR. HUTCHISON: Objection, Your Honor, gets 10:38:16
2 into the --

3 THE COURT: I want to you just concentrate
4 on Mr. DeLuca and what he may have said.

5 Q. Your conversation with Mr. DeLuca? 10:38:22

6 A. This conversation was with Mr. DeLuca. That
7 you know, that's not true. I mean, I'm the one who's
8 going there.

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

10 A. Yes. 10:38:31

11 Q. Was he lying?

12 MR. HUTCHISON: Objection to form and
13 commenting on the witness.

14 THE COURT: Overruled.

15 A. In all honesty, I don't think that he was 10:38:40
16 lying. I think that the people that he had surrounded
17 himself were leading him to believe that this was a
18 stance that he could take to attain his goal, which
19 was in my opinion, was to take the property back.

20 Q. Take it all? 10:39:01

21 A. Yes.

22 MR. HUTCHISON: Objection, Your Honor, move
23 to strike, that's improper and not a subject of
24 this litigation. And I'll have a motion as well
25 after this and its inconsistent with a motion in 10:39:13

1 limine. So I believe on all those grounds. 10:39:18

2 THE COURT: The jury will be asked to
3 disregard the last statement of the witness and
4 the follow-up question by Mr. Gary at this point
5 in time. 10:39:29

6 You may proceed.

7 MR. GARY: Thank you, Your Honor.

8 BY MR. GARY:

9 Q. Now, as it relates to Fred DeLuca?

10 A. Yes. 10:39:45

11 Q. What were your feelings about what he wanted
12 you to do concerning the disagreements that were going
13 on with this project? What were your feel I know as
14 to what Fred DeLuca wanted you to do?

15 A. I had conversations with Fred in regard to 10:40:04
16 what had transpired while he was there over the last
17 few months and I told him that what he was saying,
18 what he was thinking, what he was led to believe was
19 not true. It just wasn't accurate and I pleaded with
20 him to -- you know, as being a loyal friend of his for 10:40:25
21 so many years, to believe me because I was there. It
22 wasn't like somebody saying something and he's got his
23 head filled with information that was totally not
24 accurate; and I said who said that? And if he did
25 tell me, then I said well, I don't remember seeing 10:40:45

1 that person. I don't remember that person coming to
2 Tallahassee with me or going to Orlando with me. So
3 how in the world could that be true?

10:40:48

4 Towards the end of a couple of meetings I
5 just decided that if they weren't going to believe me,
6 if he wasn't going to believe me, then I had no
7 purpose being there. You know, listen to who you want
8 to listen to, do what you want to do, but I don't want
9 any part of it because it's not what you're
10 insinuating is the furthest from the truth.

10:41:03

10:41:17

11 Q. Were there any reasons whatsoever that you
12 know of and you were the treasurer for DeLuca not to
13 fund this project through '07, '08 and what have you?

14 MR. HUTCHISON: Objection, Judge, form, lack
15 of foundation.

10:41:38

16 THE COURT: Overruled. Based on this
17 gentleman's position.

18 A. Well, at some point, you know if somebody
19 has an obligation to pay something and they don't pay
20 it, for example, if there's a reason for that
21 happening, you know, I can understand that, you know.
22 But in this particular situation there was a
23 discrepancy over, you know, budget, budget figures.

10:41:49

24 Q. Let me ask you this --

25 THE COURT: Excuse me, excuse me Mr. Gary.

10:42:07

1 I'd like the witness to be able to finish the 10:42:10
2 answer.

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

4 THE COURT: You said there were
5 discrepancies over budget, over budget figures. 10:42:16

6 A. Yes there was drip sees over budgets and
7 Fred asked that I ask for budget figures.

8 Q. Did you do that?

9 A. Yes, I did.

10 Q. Were they given to you? 10:42:27

11 A. Yes I had those figures and I submitted them
12 and he wanted them in a different format because --

13 Q. Did you do that?

14 A. Well, I tried to put the numbers. If I can
15 explain this to you. Fred had many different 10:42:39

16 businesses. He had little time. He met with his
17 comptroller, he met with his advisors and he would
18 have a format on just simple numbers going across so
19 he could look at any one of a hundred companies and
20 very quickly identify things. 10:42:55

21 Our process of developing this land did not
22 fit that format. We had no income. We had expenses.
23 We didn't have any income. There was no profit and
24 loss. We're building this thing. We never dipped a
25 check. The only checks I ever saw were the ones that 10:43:16

1 came from Subway to fund us.

10:43:19

2 So it didn't if I did. I worked with his
3 comptroller and assistant comptroller to get our
4 numbers so they could fit so he could readily see what
5 was happening.

10:43:33

6 Once that accomplished he had questions
7 about it.

8 Q. Let me just top you for a second. Once you
9 got done what he wanted to get done did he still have
10 issues?

10:43:50

11 A. Yes.

12 Q. He wanted some?

13 A. Yes I first did it for a year. Then he said
14 about how about five years, how about ten years. It
15 kept that he demanded -- 20 years. Funds the process
16 of getting the stuff entitled and dealing with the
17 counties and dealing with the State, some of the
18 numbers are just not possible to reach. I mean, we're
19 doing that nobody ever else in my opinion, not that I
20 know, ever built a city.

10:44:02

10:44:21

21 You have urban sprawl where all of a sudden
22 a city pops up, but for someone to set out and say I'm
23 going to build a city there were so many things that
24 were uncertain. There were so many things we couldn't
25 really put a handle on and every time I would say Fred

10:44:35

1 that's more or less impossible for me to do it was
2 just a delay.

10:44:37

3 Well, as soon as we get these things, then,
4 you know, I'll fund.

5 So I would go back and forth for a month or
6 two months and finally maybe he got the answers, maybe
7 he didn't, but he would then fund again.

10:44:47

8 Q. But was Anthony Pugliese doing his part in
9 terms of getting the budgets, redoing the budgets,
10 getting new budgets or whatever he wanted done, Fred
11 wanted done?

10:45:04

12 A. Yes.

13 Q. Was Anthony doing it?

14 A. Yes.

15 Q. And would then Fred DeLuca still come up
16 with other reasons?

10:45:11

17 A. Yes.

18 Q. For not funding?

19 A. Well, it was always usually the same reason.

20 It was just a delay in funding. You know, because of
21 well, at this particular 90 question it was always
22 over the budgets and that type of stuff.

10:45:18

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

25 MR. HUTCHISON: Objection, foundation.

10:45:37

1 THE COURT: Overruled. 10:45:39

2 A. From my recollection, any number that we
3 could possibly put a handle on was given to him. He
4 knew everything that I knew. I told Fred everything
5 and I told him reasons why I couldn't attain certain 10:45:51
6 numbers. But you know, when you're dealing with a
7 project that's so much money and you're dealing with
8 13 or 14 different entities, different engineering
9 people and experts, it's very, very difficult, because
10 he was trying to more or less pin the company down to 10:46:09
11 a budget. Now, we had to pin down the people that
12 were doing the work to a budget.

13 You just couldn't possibly go out that
14 length of time.

15 Q. Was he unreasonable? 10:46:23

16 MR. HUTCHISON: Objection.

17 THE COURT: Sustained.

18 A. Yeah.

19 MR. HUTCHISON: Move to strike.

20 THE COURT: Granted. Please disregard the 10:46:30
21 last question and answer.

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

25 A. Yes. 10:46:47

1 Q. And were applications filed with the proper
2 agencies for the entitlements?

10:46:52

3 A. Yes.

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

10:47:06

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

9 Q. By Anthony Pugliese and his team?

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

10:47:23

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

14 A. Yeah.

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

10:47:45

16 A. Well, that was over, again, the first
17 funding was brought about about a budget, because I
18 think '07 was really one of the first budgets we tried
19 to put together. Around I guess it was '09 --

20 Q. Did he stop the funding again?

10:48:04

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

10:48:23

1 Q. And did Fred DeLuca agree to the purchase of 10:48:26
2 the additional land that brought the total project up
3 to 41,000 acres?

4 A. Yes.

5 Q. He knew that it was gonna be additional 10:48:35
6 monies, right?

7 A. Obviously, yes.

8 Q. And he still stopped the funding?

9 MR. HUTCHISON: Objection, form, and asked
10 and answered. 10:48:48

11 THE COURT: Overruled.

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

14 Q. Now, let's go back to your resignation and
15 as it relates to Fred DeLuca. What did you tell him 10:49:06
16 after discussing this with him and don't bring anybody
17 else, but what did you tell him about how you felt
18 what was going on.

19 A. Well, we were meeting, I was concerned on
20 how we were going to go forward and I told him that 10:49:29
21 his approach, I didn't agree with. I told him I that
22 I didn't -- everything that he was making accusations
23 that weren't true, to my knowledge.

24 Q. Did he listen to you?

25 A. He listened to me, but in my opinion, his 10:49:50

1 mind was already made up. At this particular point 10:49:54
2 filthy look at the people that were surrounding him he
3 was looking for people that would tell him what he
4 wanted to hear versus, you know, what he should hear,
5 and he started surrounding himself with people that 10:50:10
6 would just agree with what he was trying to do, and
7 that was not me, because none of what he was telling
8 me was accurate and again, I didn't need to be there
9 and if it wasn't going to be done and done right, I
10 did not want to be a party of anything that wasn't 10:50:28
11 totally, you know, right, in my opinion.

12 So I decided that the time had come where I
13 could leave. At that time I had other businesses that
14 I owned. It wasn't that I was sitting there and I
15 needed a job. So I decided to focus on my own things 10:50:46
16 and wished him good luck, but I didn't want any part
17 of it.

18 Q. In your dealings with Fred DeLuca and during
19 this time, did it come to a point in time where you
20 felt that you were being pushed to say things or do 10:51:02
21 things that were not true?

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

24 THE COURT: Leading, correct. Sustained.
25

1 BY MR. GARY:

10:51:15

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

10:51:24

10:51:41

12 Q. He said this to you?

13 A. Yes and it's going to be time consuming and
14 I just -- to tell you the truth, I just got
15 aggravated. I don't like the fact that -- I just
16 didn't like anything that he was saying because it
17 wasn't true. It just wasn't true, and the fact that
18 he could afford to take that approach was his business
19 and certainly not mine, and I said I'm out of here.

10:51:55

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

10:52:14

24 MR. HUTCHISON: Objection, leading, summing
25 up the answer.

10:52:31

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

5 A. What was the question? 10:52:41

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

10 A. Yes, he was trying to let me see his side 10:53:11
11 and agree, which there was no possible way I could,
12 because it was all based on stuff that was not
13 accurate.

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

15 A. Correct. 10:53:23

16 Q. And what did he do about that?

17 A. He just sort of like pushed it aside and
18 would talk to people that were putting these same
19 thoughts into his head, and that's when I said well,
20 if you're going to listen to these people, leave me
21 alone. 10:53:40

22 Q. You were there four days a week and
23 sometimes more?

24 A. Sometimes I was there five days a week.

25 Q. So you knew what was going on? 10:53:48

1 A. Absolutely.

10:53:50

2 Q. Now, whether the addition of 14,000 acres of
3 land was purchased, did that change the need for money
4 to carry out the plan to get this project up and
5 going?

10:54:19

6 MR. HUTCHISON: Objection, asked and
7 answered. We went over this on Friday
8 extensively.

9 THE COURT: Could you just repeat the
10 question again. I didn't understand. Mr. Gary
11 can you repeat the question.

10:54:26

12 MR. GARY: Yes, Your Honor.

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

10:54:52

16 A. Yes.

17 THE COURT: Overruled, the objection is
18 overruled.

19 Q. And why was that?

20 A. Well, I mean it's common sense if you're
21 gonna develop, if you're doing a project with
22 27,000 acres and now all of a sudden you're going to
23 do a project with 41,000 acres, just about every
24 expense you're going to have a is going to go up
25 substantially. There were certain efficiencies, like

10:54:58

10:55:14

1 you could use the same people, you didn't have to go 10:55:19
2 out and hire different consultants, but you know, if
3 you did a survey, now you got a survey. If you had to
4 put people on the ground looking for certain different
5 species and stuff like that you still had to do for 10:55:32
6 that property too.

7 So I would say there was little bit of
8 efficiency. It wouldn't do you believe all the costs,
9 but it certainly was another tremendous burden on the
10 finances to get it done. 10:55:49

11 Q. But he signed onto that deal to get the
12 additional 14,000?

13 A. Yes.

14 Q. So he knew it was gonna take more money?

15 A. Yes. 10:55:58

16 Q. Had to develop new budgets?

17 A. Yes.

18 Q. And did Anthony do that?

19 A. Yes, to the best of our ability, minus
20 anything that could be unforeseen oh uncertain. 10:56:10

21 Q. And you took part in that bringing that all
22 together; is that correct?

23 A. Yes.

24 Q. Now, you were talking about just a minute
25 ago Fred DeLuca had the money in terms of this 10:56:32

1 litigation. What were you talking about? 10:56:35

2 MR. HUTCHISON: Objection, relevance, Your
3 Honor.

4 THE COURT: Sustained. You're not talking
5 about the project, you're talking about now, the 10:56:44
6 litigation.

7 MR. GARY: Right, Your Honor.

8 THE COURT: Okay, that would be
9 inappropriate. You can go on.

10 Q. Did you tell Fred DeLuca that he was wrong? 10:57:06

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

13 THE COURT: I don't believe so. You can
14 answer.

15 A. Yes, numerous times. 10:57:13

16 Q. Did you expect him to believe you?

17 A. Yes.

18 Q. Did he, did he listen to you?

19 A. I think that he knew that I was telling him
20 the truth. I knew that he knew the truth. I felt 10:57:27
21 that he wasn't gonna react according to the truth.

22 Q. Why?

23 A. I think that it was --

24 MR. HUTCHISON: Objection relevance and
25 calls for speculation. 10:57:38

1 THE COURT: Overruled. Make sure it doesn't 10:57:39
2 get into any of the things we talked about
3 earlier, sir.

4 A. I think at the time that there was a
5 premeditated plan to take the project back -- 10:57:50

6 MR. HUTCHISON: Objection, Your Honor.

7 THE COURT: Sustained T jury will ignore
8 that last comment.

9 Q. Don't tell us what the plan was, but do you
10 think there was a plan? 10:58:05

11 MR. HUTCHISON: Objection, same question and
12 move to strike Mr. Willie Gary's comment as well.

13 THE COURT: Well, I'm going to sustain the
14 objection.

15 Q. Now, did the actions of Fred DeLuca impact 10:58:18
16 Anthony Pugliese in a negative way?

17 A. Yes.

18 Q. And why do you see that?

19 A. I think that -- well, obviously it was
20 Anthony's vision. I think everything was moving in 10:58:54
21 the right direction, and when this happened it
22 obviously through a wrench in the middle of everything
23 and everybody was concerned, the consultants were
24 concerned, the people getting paid in the office were
25 getting concerned that that they didn't know what the 10:59:11

1 future was going to be with the project. 10:59:16

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

4 A. Yes.

5 Q. And who ultimately got that property? 10:59:28

6 MR. HUTCHISON: Objection, sidebar, Your
7 Honor. Or just objection --

8 THE COURT: Sustained. Mr. Gary, I've made
9 my rulings on this and I don't want to have to do
10 anything that's going to embarrass anyone here. 10:59:44

11 So I've made it clear, it should be well known to
12 everyone and again, I'm going to make this the
13 last warning. Unfortunately I don't like to do
14 that, but I feel I have no other choice at this
15 moment. 11:00:05

16 You may proceed.

17 MR. GARY: Thank you, Your Honor.

18 Q. Don't go over into any areas that -- let me
19 ask this question of you. Now, when you resigned,
20 without talking to anybody else, did you get chance to 11:00:27
21 tell Fred DeLuca face-to-face as to why you were
22 resigning, why you were stepping down?

23 A. I had no conversation with Fred except for
24 some written communication from the time that I did
25 resign. I did have conversation with him prior to me 11:00:44

1 resigning.

11:00:49

2 Q. Did Anthony have anything to do with you
3 resigning or you haven't enough of this and you wanted
4 out? Did Anthony Pugliese have anything to do with
5 that?

11:01:00

6 MR. HUTCHISON: Objection, relevance.

7 THE COURT: Overruled.

8 A. I don't think Anthony was aware that I was
9 going to resign. Prior to me resigning I was told not
10 to speak or the communicate with Anthony.

11:01:11

11 Q. Who told you this?

12 A. Fred DeLuca.

13 Q. Fred DeLuca, okay.

14 A. He told me that he was not allowed to speak
15 to Anthony, any of the employees, senators, an gross
16 men. He went on to say not even a courtesy phone call
17 was I allowed to make to let the people know.

11:01:21

18 Q. Was that the way Fred DeLuca operated?

19 MR. HUTCHISON: Objection, form.

20 A. Never. I never saw him do that to me
21 before, up to the time of this going on. He always
22 just would take my advice and do it. There was
23 something else I guess going on.

11:01:41

24 THE COURT: The objection is overruled, but

25 Mr. Florio, when both sides are questioning you,

11:02:01

1 if you hear an objection kindly talk talking for 11:02:04
2 a moment so I can make a ruling.

3 THE WITNESS: Okay.

4 THE COURT: I'm pretty quick, but not that
5 quick. You may proceed. 11:02:14

6 BY MR. GARY:

7 Q. Just so you we can be clear, you explain to
8 the jury, when you resigned from Fred DeLuca in this
9 project, did you have ever gone to work for Anthony
10 Pugliese? 11:02:29

11 A. No.

12 Q. Did you ever even discuss going to work for
13 Anthony Pugliese?

14 A. No.

15 Q. Did your saying enough is enough in this and 11:02:36
16 getting out of it, did that have anything to do with
17 your relationship or your knowing Anthony Pugliese?

18 A. No.

19 Q. How many years you had worked with Fred
20 DeLuca? 11:02:50

21 A. 16 years as working alongside of him.

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

25 Did there come a point in time that Fred 11:03:14

1 DeLuca took over the management of the project? 11:03:18

2 A. Yes.

3 Q. And would you tell us then, if you would,
4 did he have any experience in doing any kind of
5 project like this? 11:03:39

6 A. No.

7 Q. Did he know what he was doing?

8 A. No.

9 Q. Did he run it in the ground?

10 MR. HUTCHISON: Objection, form. 11:03:47

11 THE COURT: I think I've already made --
12 well, I didn't --

13 MR. HUTCHISON: And beyond the scope of the
14 pleadings.

15 THE COURT: Overruled. 11:03:53

16 A. Obviously Fred nor I had any experience
17 undertaking this type of project or the scope of
18 project. We didn't have any experience.

19 MR. GARY: Can I have Exhibit 4? May I
20 approach the witness. 11:04:33

21 MR. HUTCHISON: What is it.

22 THE COURT: Exhibit 74.

23 MR. HUTCHISON: Your Honor, my objection is
24 simply relevance of this exhibit.

25 THE COURT: Let me seep it then please. 11:04:52

1 Who was Eric Friedman. 11:05:38

2 MR. HUTCHISON: He worked for Fred DeLuca.

3 THE COURT: Your objection is what.

4 MR. HUTCHISON: My objection is relevance.

5 What's the relevance of this. He's already said 11:05:47

6 you can go back and work on the project and

7 you're already in November. The lawsuits with

8 about Mr. Fred DeLuca filed was in September,

9 2009, two months before this email.

10 THE COURT: Okay, Mr. Gary. 11:06:04

11 MR. GARY: Your Honor, I think that the
12 relevance in here is one of Mr. DeLuca's workers

13 on this project is telling Fred Florio that he

14 should charge more to Destiny than he was

15 normally -- in other words they're telling him to 11:06:27

16 jack up his hourly rate and charge it to Destiny.

17 Now, that's the same thing they claim that

18 Anthony was doing.

19 THE COURT: How does this affect the breach

20 of contract or any of the defenses that anybody 11:06:41

21 claims.

22 MR. HUTCHISON: He was never paid. FD

23 Destiny management, Mr. Fred DeLuca's management

24 company, pros teeing is the other company. LCOC

25 was never funded after September of 2009, that's 11:06:55

1 actually in the pretrial stip: 11:06:58

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

4 MR. GARY: It goes both ways. He had to do
5 to it protect the asset of the company and not to 11:07:08
6 run might the ground like chair claiming our
7 client did.

8 THE COURT: I don't think that's what
9 they're claiming.

10 MR. GARY: Yeah, but in this letter the 11:07:17
11 witness the gonna testify that he was told to
12 charge only do you believe what he was charge.

13 THE COURT: I don't think that's already
14 been established number one and number two I
15 don't know what would be the relevance to it 11:07:32
16 since everything broke down months earlier than
17 this. It has no relevance.

18 MR. GARY: We're going forward. It says --
19 this was our point. We're going forward. We're
20 going to need to track hours you work on Destiny 11:07:51
21 and by the way whatever -- by the way, increase
22 your numbers on it so we can in essence it had
23 defendant any for more money.

24 MR. HUTCHISON: It doesn't say that, number
25 one. Nobody was funding LCOC after September of 11:08:11

1 2009. So it's really not relevant. It's in the 11:08:15
2 pretrial stip that nobody funded after September
3 of 2008. It's a stipulated back. They can't go
4 back that. LCOC had no money, Your Honor. It's
5 not relevant. 11:08:28

6 THE COURT: This doesn't mean that this is
7 relevant. So I'm sustaining the objection to
8 Exhibit fee.

9 (Whereupon the following proceedings were
10 had within the presence of the jury:) 11:08:54

11 THE CLERK: May have Exhibit 74 I could put
12 a sticker on it.

13 THE COURT: Make sure the exhibits are
14 marked. We need them to be marked. ID only at
15 this time. 11:09:11

16 (Whereupon a document/item was marked for
17 identification as Plaintiff's Exhibit 74.)

18 MR. GARY: May it please the Court. May I
19 proceed.

20 THE COURT: Yes. 11:09:42

21 BY MR. GARY:

22 Q. Now, Mr. Florio, how long did you work for
23 Fred DeLuca and the project? How long did you work
24 for Fred DeLuca after the litigation started?

25 A. I'm a little confused what year the 11:10:03

1 litigation started.

11:10:06

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

4 MR. HUTCHISON: Objection to the form of
5 that question, Your Honor.

11:10:16

6 THE COURT: I think we've gone over that
7 many times. I'd like to get to, go over a new
8 ground if we could, please.

9 Q. Okay. Now, is it safe to say that -- let me
10 ask you this question. Back in 2008 and as it relates
11 to monies being spent or funding and what have you,
12 was there a meeting that took place at Fred DeLuca's
13 house in Fort Lauderdale?

11:10:39

14 A. Yes.

15 Q. And was Anthony Pugliese there?

11:11:06

16 A. I don't know exactly what meeting you're
17 talking about.

18 Q. Was there a December 2008 meeting that took
19 place in Fred DeLuca's house, Fred DeLuca, yourself?

20 A. Yes.

11:11:29

21 Q. Randy Johnson?

22 A. Yes.

23 Q. You remember that?

24 A. Yeah.

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

11:11:35

1 A. I think that basically they were talking
2 about the budget again, budget issue, but if I'm not
3 mistaken, if that's the meeting that you're referring
4 to was when Anthony approached Fred about the
5 possibility of --

11:11:39

11:11:58

6 MR. HUTCHISON: Objection, Your Honor.
7 Sidebar.

8 THE COURT: All right. Approach please.

9 (Whereupon counsel for the respective
10 parties approached the bench and the following
11 proceedings were had outside the presence of the
12 jury:)

11:12:14

13 MR. HUTCHISON: His testimony in deposition
14 is about the interest rate. You already ruled
15 the interest rate is not admissible. Mr. Gary am
16 I wrong are you going into the interest rate
17 because that's what his deposition testimony was.

11:12:21

18 MR. GARY: I thought his honor said during
19 opening statement it was not to be talked about.
20 If I'm wrong --

11:12:38

21 THE COURT: We talked about this LIBOR
22 interest rate and demonstrated why with regard to
23 the last claim that is made and that is the
24 breach of contract, why the difference between
25 the LIBOR and the interest rate charged to

11:12:54

1 Mr. Pugliese would be admissible.

11:12:58

2 MR. HUTCHISON: Judge, this is the pretrial
3 motion. I showed you the statements by
4 Mr. Mariani that they were not relying, he said
5 underscore, not relying on the loan, the interest
6 rate. You specifically quizzed him on that and
7 asked him a question. He propounded the same
8 question to you that they're not relying on the
9 interest rate. What they're trying to get in
10 here is the best rate spread. He would noted to
11 give LCOC another rate. That interest rate, the
12 from sorry note is not at issue here.

11:13:10

11:13:24

13 Mr. Mariani even represented that to you quite
14 clearly. It's in the relevant, it's prejudice
15 at, it's not framed by the pleadings. It has
16 nothing to do with what's being tried before you
17 and you already ruled on this.

11:13:38

18 MR. MARIANI: So the record is clear, my
19 comments at those hearings were we were not
20 making a claim, we did not have a cause of action
21 under the note in terms of the relevance of the
22 facts of the case and the relationship between
23 the parties. It should be able to come N.

11:13:49

24 They have claims for misappropriation,
25 mismanagement, breach of fiduciary duty. To the

11:14:04

1 extent that this witness can discuss the 11:14:08
2 circumstances around that we're not saying we
3 have a claim for it, but it's part of the
4 circumstances that the parties were dealing with
5 each other. 11:14:23

6 THE COURT: Then I have to balance the
7 prejudice versus the probative value to determine
8 whether or not any probative value is materially
9 outweighed by the prejudice here, which would be
10 essentially a character assassination of DeLuca 11:14:35
11 based upon the claim of the interest rate charged
12 by Mr. Pugliese was above the LIBOR in his loan
13 from Wachovia if rhyme not mistaken.

14 MR. MARIANI: They can argue and point out
15 that there's no legal obligation. There's no 11:14:58
16 prejudice.

17 THE COURT: What is the really vans other
18 than to assassinate the character of DeLuca,
19 which would pass in a bad light or charging a
20 different interest rate. 11:15:12

21 MR. MARIANI: The relevance the show how the
22 principals were dealing with each other.

23 THE COURT: The course of dealing is not in
24 the claims here or the defenses. I just think
25 that the prejudice would materially outweigh the 11:15:26

1 probative value because is note is not being sued 11:15:32
2 upon. I don't know.

3 Any defenses would relate specifically to
4 the interest rate issue and again, the only
5 reason for its introduction that I can see thus 11:15:44
6 far is to simply act as a matter of character
7 assassination on Mr. Fred DeLuca.

8 So without more I'm really left with not
9 having any type of relevant say.

10 MR. MARIANI: One more statement, Your 11:16:03
11 Honor. What if Mr. Pugliese were to testify that
12 that information resulted in his decision-make
13 org his actions relative to the relationship
14 between the principals.

15 THE COURT: I have to take that into 11:16:23
16 consideration, but it's a clot closer than what
17 this witness can do in terms of trying to frame
18 something that's not framed by the pleadings and
19 try to testify to something that would be casting
20 a bad light on DeLuca. 11:16:34

21 Mr. Pugliese's testimony as it relates to
22 that and concerning that is a different story.
23 He can introduce it through Mr. Pugliese. Again
24 it would be a closer question from a legal
25 standpoint. In terms that the admissibility 11:16:50

1 would matter.

11:16:53

2 Okay, thank you.

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

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

11:17:01

6 MR. GARY: Thank you, Your Honor.

7 BY MR. GARY:

8 Q. Mr. Florio you worked on this project while
9 Fred DeLuca decided to take over for a while; is that
10 correct?

11:17:12

11 A. Yeah, from the time Fred took over my
12 involvement was miniscule.

13 Q. And you worked on the project while Anthony
14 Pugliese was the manager and running this project,
15 right?

11:17:28

16 A. Yes.

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

19 MR. HUTCHISON: Objection to form and
20 foundation, Your Honor.

11:17:41

21 THE COURT: Overruled. Again, this is this
22 gentlemen essentially his lay opinion of the
23 differences. That's the reason for its
24 introduction. The jury will consider it only in
25 that regard. Thank you.

11:17:56

1 You may answer.

11:17:59

2 A. From the time when I worked with Anthony, we
3 had an office, we had a facility, we had call lines,
4 we had websites. We had meetings. We were traveling
5 to tall hacker Orlando, every place to benefit the
6 project. It was a project, we were moving forward,
7 there were consultants and everything was moving in a
8 direction to accomplish the goal of getting the
9 property rezoned.

11:18:12

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

11:18:27

12 A. Absolutely.

13 Q. Did Fred DeLuca's leadership bring value to
14 this property?

15 A. No.

11:18:35

16 Q. Why do you say that?

17 A. From the time Fred took over, he was
18 questioning everything that had been gone on for the
19 last, about the time maybe three or four or five years
20 and everything was being again looked at, reviewed,
21 getting opinions from other people who didn't have any
22 basis to Judge an opinion, that had no awareness of
23 the project from its onset.

11:18:52

24 So from the time Fred took over there was no
25 communication with anybody that had -- I wouldn't say

11:19:16

1 anybody, but maybe one or two people that had any 11:19:19
2 involvement in the project at all, even right down to
3 the receptionist. She would call me up and say people
4 are calling the number, where am I supposed to send
5 these phone calls. Nobody would return phone calls. 11:19:31
6 you know.

7 Q. Would he show up every day?

8 A. No.

9 Q. Would he show up every week?

10 A. No. 11:19:41

11 Q. Every month?

12 A. Most of the time he wasn't there. He was
13 running a very, very large business on his own. This
14 was I wouldn't even say secondary to him. It was more
15 like fifth or sixth. It was way down the line in his 11:19:57
16 urgencies.

17 Q. And this was 4041000 acres; is that correct?

18 MR. HUTCHISON: Objection, asked and
19 answered.

20 THE COURT: Overrule. 11:20:08

21 A. At that time when he took over, I think very
22 shortly, the other 14,000 acres became questionable.

23 Q. After he took over?

24 A. Yeah there was no communication with the
25 family, the Rohdes that owned the property. There was 11:20:24

1 no. Mr. Rohde called me to find out about what was
2 going to go on now, and obviously I was instructed, I
3 wasn't allowed to talk to anybody so I couldn't even
4 give him a courtesy phone call back because that's
5 what I was instructed to do.

11:20:28

11:20:45

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

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

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

11:21:12

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

14 THE COURT: I agree.

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

11:21:20

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

20 THE COURT: Sustained as to foundation.

11:21:28

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

22 A. Well I was working with the project. I
23 never considered mice working with Anthony.

24 Q. Working with him.

25 A. With him, right. I was there on behalf of

11:21:45

1 Fred DeLuca. I was there from the time woe closed on 11:21:48
2 the property which I think was August of '05 to the
3 file I was told not to go, which was '09.

4 Q. Do you feel you owe any allegiance to
5 Anthony Pugliese? 11:22:10

6 A. No.

7 Q. Have you told this jury the truth?

8 MR. HUTCHISON: Objection.

9 A. Absolutely.

10 THE COURT: Sustained. Let's not ask that 11:22:15
11 again.

12 Anything else Mr. Gary?

13 MR. GARY: What, Your Honor.

14 THE COURT: Any other questions?

15 MR. GARY: May I. 11:22:25

16 THE COURT: Sure, go right ahead.

17 MR. GARY: I want to approach you.

18 THE COURT: Sure.

19 (Whereupon counsel for the respective
20 parties approached the bench and the following 11:22:39
21 proceedings were had outside the presence of the
22 jury:)

23 MR. GARY: I want to get your permission
24 first. I need to get your permission, in
25 reference to the affidavit that was signed, I 11:22:52

1 want to discuss it with him. 11:22:54

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

3 MR. HUTCHISON: That's half of -- there's a
4 bunch of exhibits too. Judge, that's an
5 affidavit -- okay. 11:23:27

6 THE COURT: I don't think I've seen this
7 before.

8 MR. HUTCHISON: Judge, Mr. Florio signed
9 that in my office that I prepared along with
10 Mr. Chapman after meeting with Mr. Florio. The 11:24:16
11 woman was a secretary in my firm. She made a
12 mistake she, but Broward County on the front and
13 Palm Beach County on the third page with her
14 signature block, but she did in fact notarize it
15 in front of Mr. Florio. I should say Mr. Florio 11:24:33
16 signed anytime front of her.

17 But that is all about the fake companies.

18 THE COURT: That's what.

19 MR. HUTCHISON: All about the fake
20 companies. 11:24:44

21 THE COURT: Yeah, I read it.

22 MR. HUTCHISON: That's not even an issue in
23 this lawsuit. They are estopped, every one of
24 those companies are in the probably cause
25 affidavit and mentioned in the facts supporting 11:24:56

1 the flee that he signed, they're estopped from 11:25:00
2 even contesting Mr. Pugliese took that money. So
3 I don't know what the relevance, is I don't know
4 why an affidavit would come in and it goes back
5 to the meeting with the lawyers. 11:25:14

6 THE COURT: Mr. Mariani.

7 MR. MARIANI: It's not about meeting with
8 the lawyers. It's about that distinctions that
9 been in this case since last spring about they're
10 effort to attempt to get a civil judgment on more 11:25:27
11 money than the judgment and the restitution
12 allowed through the criminal proceeding.

13 So we have two consolidated cases. They're
14 making claims beyond restitution and these issues
15 will go to our defense, if you will, relative to 11:25:48
16 those allegations and those efforts.

17 THE COURT: Is he going to deny it? Then we
18 have a real problem.

19 MR. MARIANI: No, he's not going to say
20 that. 11:26:04

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

22 THE COURT: Then what is the relevance.

23 MR. MARIANI: To get into the delineation
24 along with the different expenses by floor 0 he
25 signed that affidavit and it's their exhibit list 11:26:24

1 as well; not that that makes it admissible from 11:26:27
2 my understanding, I acknowledge that. But we
3 want to start here. That's where we want to
4 start.

5 THE COURT: Well, I mean, I trust that he's 11:26:39
6 been forewarned that if he's lying under oath.

7 MR. GARY: It has nothing to do with that.

8 THE COURT: If it has nothing to do with
9 that let's take it on a question-by question
10 basis. One issue is that again, I'm stead fast 11:26:55
11 in my decision that there is not going to be any
12 deviation from the flee of no contest with an
13 adjudication as it relates to the companies, many
14 of whom that are mentioned in this affidavit.

15 Number two, that if you're representing to 11:27:09
16 me as offers of the court that he is not stating
17 or going to state that he lied in terms of his
18 affidavit --

19 MR. GARY: No, he's not.

20 THE COURT: Whatever else would be relevant. 11:27:24

21 MR. GARY: Can I tell you what I'd like to
22 do so you can rule on that.

23 THE COURT: Sure.

24 MR. GARY: I want to just talk about the
25 affidavit itself, the way it was signed, dah dah 11:27:32

1 dah dah. 11:27:36

2 THE COURT: If it was signed in the lawyers'
3 office that, would immediately communicate to
4 these jurors that the attorneys were involved in
5 the preparation of this affidavit. If it has no 11:27:46
6 other bearing or relevance than that, then again,
7 it flies in the face of my earlier warnings about
8 the attorney-client privilege and you've had an
9 attorney-client privilege, it's already been up
10 to the fourth district court of appeal. I'm 11:28:04
11 going the keep that sack sang. It goes back to
12 Judge Crowe's ruling. You agreed to that as
13 relates to his representation of Mr. DeLuca, that
14 being Florio's representation as an agent of
15 DeLuca. 11:28:21

16 So I don't want to get into that aspect.

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

18 THE COURT: If there's no other relevance
19 than that, then the objection is sustained.

20 Thank you. 11:28:33

21 (Whereupon the following proceedings were
22 had within the presence of the jury:)

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

25 MS. MATSEN: 379. 11:28:59

1 THE COURT: 379 is withdrawn. 11:29:00

2 MR. GARY: Thank you, Your Honor.

3 THE COURT: Whatever you're ready please.

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

5 Q. Mr. Florio, you made reference to the 11:29:21
6 reserve account. You discussed with Mr. Pugliese; is
7 that correct?

8 A. Yes.

9 Q. Tell this jury, look them in the face and
10 tell them, did he come to you about a reserve account 11:29:34
11 or did you go to him?

12 A. I think originally I went to him and I asked
13 again to make sure we had money set aside for
14 commitments we were making.

15 Q. You were concerned about people getting 11:29:51
16 paid?

17 A. Yes.

18 Q. Based on Pugliese's -- based on Fred
19 DeLuca's lack of funding?

20 MR. HUTCHISON: Objection, leading and asked 11:29:57
21 and answered.

22 THE COURT: Sustained on both grounds.

23 Q. So why were you concerned about him doing a
24 reserve situation?

25 MR. HUTCHISON: Objection, asked and 11:30:08

1 answered.

11:30:08

2 THE COURT: Sustained.

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

4 A. No.

5 MR. HUTCHISON: Objection, asked and

11:30:16

6 answered.

7 THE COURT: Overruled.

8 Q. You told him one was needed?

9 A. Yes.

10 Q. Did you really feel that one was needed with

11:30:25

11 Fred DeLuca?

12 MR. HUTCHISON: Objection, asked and

13 answered and relevance at this point.

14 THE COURT: It's been asked and answered.

15 Please move on to something else.

11:30:32

16 Q. Now, would you discuss with the jury, if you

17 would, in terms of your relationship with Anthony

18 Pugliese again, you had a good relationship, working

19 relationship with him, right?

20 A. Yes.

11:30:49

21 Q. But has any relationship or anything that

22 Anthony has ever done with you, for you, around you,

23 whatever would cause you to come in here and not tell

24 the truth?

25 MR. HUTCHISON: Objection, form, and asked

11:31:04

1 and answered.

11:31:05

2 THE COURT: I've already indicated to you

3 Mr. Gary, I really do not want that question to

4 be asked. It's not an appropriate question.

5 That is for the jury to decide and only for the

11:31:15

6 jury to decide. They are the Judge of the facts.

7 They will hear the -- they will hear the

8 credibility instruction as well.

9 So please refrain from asking that question.

10 MR. GARY: I'm sorry.

11:31:29

11 THE COURT: You may proceed.

12 BY MR. GARY:

13 Q. Have you told this jury the truth?

14 MR. HUTCHISON: Same objection, Your Honor.

15 THE COURT: I don't know how much more I can

11:31:35

16 make clear to you, that is not for the witness to

17 testify to. That is for the jury to make the

18 decision. I am not going to permit that question

19 to be asked again.

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

11:31:48

21 That's all we have. Thank you Mr. Florio.

22 THE COURT: Thank you. Who will be

23 conducting the cross examination. Mr. Hutchison?

24 THE CLERK: Can I have 25. This is in

25 evidence, Your Honor.

11:32:20

1 THE COURT: 25 is in evidence. 24, if you
2 would provide -- 74, if you would provide the
3 clerk with a copy, please. Thank you.

4 MR. HUTCHISON: May I proceed, Your Honor.

5 THE COURT: Yes.

6 CROSS EXAMINATION

7 BY MR. HUTCHISON:

8 Q. Mr. Florio I'm going to take you back to
9 2005. Prior to getting involved with the 27,000 acres
10 at Yeehaw Junction, you did not have any experience
11 sometime land development business, correct?

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

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

15 A. Not of this magnitude, correct.

16 Q. And prior to August 2005 you weren't
17 actually doing any due diligence on the purchase of
18 the property, were you?

19 A. No.

20 Q. And prior to the closing, you had very
21 little involvement in the project prior to the closing
22 in August 2005?

23 A. Correct.

24 Q. And prior to August 2005 you didn't see any
25 market analysis performed regarding the Yeehaw

ROUGH DRAFT TRANSCRIPT

1 Junction property, correct?

11:33:35

2 A. Prior to 2005?

3 Q. Prior to the closing.

4 A. No, I did not.

5 Q. And you have no personal knowledge of
6 whether a market analysis was even done prior to
7 closing, correct?

11:33:42

8 A. I was told that it was part of the due
9 diligence.

10 Q. You have no personal knowledge, though?

11:33:56

11 A. Other than what I was told.

12 Q. And you never saw it, correct?

13 A. I'd have to say no. I don't recollect
14 seeing it.

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

11:34:08

18 A. Again, I think that was part of the due
19 diligence that was being done, but again, prior to --
20 until it closed I was not involved at all.

11:34:24

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

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

25 Q. And you didn't discuss a risk analysis with

11:34:37

1 Anthony Pugliese prior to the closing in 2005,
2 correct?

11:34:40

3 A. That's not totally accurate. I think that
4 the risk of what was trying to be done was certainly
5 discussed amongst the partners prior to agreeing to do
6 it. I mean, it wasn't like, you know, give me
7 \$137 million and shut up. I mean, obviously they
8 talked about what was going to be accomplished, what
9 were the odds of it being accomplished so I would take
10 for granted that was a discussing on what the risks
11 possibly could be.

11:34:53

11:35:13

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

14 A. I've given a couple of depositions, so I do
15 remember giving a deposition, yeah.

11:35:31

16 Q. And you had your own personal lawyer there,
17 correct?

18 A. Yeah.

19 Q. And Mr. Pugliese's lawyers were there?

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

11:35:40

22 Q. And Doug more Ricks his in-house counsel was
23 there? I'm talking about your June 10th, 2014
24 deposition?

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

11:35:51

1 THE COURT: For the record there musting 11:36:09
2 something different in the air in this courtroom.
3 It's warmer. Anyway. Tons out to be nothing is
4 perfect. Back on the record please. (Delete).

5 MR. GARY: You got a page and number. 11:36:30

6 MR. HUTCHISON: Page 130. May I approach
7 the witness to give him a copy.

8 THE COURT: Yes. 130.

9 BY MR. HUTCHISON:

10 Q. In this deposition you swore to tell the 11:36:42
11 truth?

12 MR. GARY: What's the line.

13 MR. HUTCHISON: I haven't gotten there yet
14 Mr. Gary, but I will.

15 Q. You swore to tell the truth in your 11:36:49
16 deposition Mr. Florio, correct?

17 A. Now, this deposition, this is the one you
18 were involved in.

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

20 A. Okay. 11:36:58

21 Q. And all those lawyers were present?

22 MR. GARY: I'm going to object to the
23 lawyers being present.

24 THE COURT: Overruled. The date was
25 June 10, 2014. 11:37:04

1 Q. Page 130, line 15 through 17. Can you find
2 line 15 on page 130?

11:37:09

3 A. Yes.

4 Q. "Did you discuss a risk analysis with
5 Anthony Pugliese?

11:37:17

6 "A: I had no reason to.

7 Did I read that correctly?

8 A. Yes you did.

9 Q. And you don't know whether Fred DeLuca did a
10 risk analysis, do you before he got involved in Land
11 Company of Osceola County?

11:37:36

12 A. If you're talking about friend performing or
13 hiring a staff to go out there and do a search, I
14 don't know of that, but I'm sure he's had
15 conversations with Anthony in regard to the risk and
16 I'm sure that I had conversations with Fred in regard
17 to what were the odds of doing this.

11:37:50

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

11:38:04

21 A. Did I personally, no.

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

24 A. Yes.

25 Q. And the closing was four, five months later,

11:38:22

1 I guess in August 2005?

11:38:24

2 A. Correct.

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

11:38:35

6 A. Yes.

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

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

11:38:48

12 Q. Well, you know, at the closing right, both
13 AVP Destiny and FD Destiny had to put up some cash at
14 closing?

15 A. Yes.

11:39:03

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

19 A. I don't know whether or not that's totally
20 accurate, because there was another deal that they
21 were working on together and there was, from what I
22 recollect, Anthony had more money put in the first
23 deal so there was some accounting to be done.

11:39:16

24 So as far as the actual cash out laid at
25 that particular time, the numbers weren't that.

11:39:38

1 Q. FD Destiny put in more than 75 percent at
2 closing because of the other deal, is that your
3 testimony?

11:39:42

4 A. There was a difference in the money I would
5 say.

11:39:49

6 Q. And FD Destiny put up about almost nearly
7 \$30 million at closing that went to the seller?

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

9 Q. And when you got involved the initial plan
10 was to purchase the property, by the property, have it
11 rezoned or entitled and then sell it, correct?

11:40:00

12 A. Correct.

13 Q. And Anthony Pugliese and his company were
14 responsible forgetting the rezoning of the
15 entitlements, correct?

11:40:14

16 A. The company that they -- the company that
17 was formed by Fred and Anthony was responsible for
18 doing it.

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

20 A. Correct.

11:40:29

21 Q. Anthony ran Land Company of Osceola County,
22 correct?

23 A. Correct.

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

11:40:35

1 A. No to this scope of property, no.

11:40:39

2 Q. And you know that at closing, AVP Destiny
3 and FD Destiny agreed that they would spend six to
4 \$7 million on the entitlements initially, correct?

5 A. That was the initial budget, yes.

11:40:54

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

8 A. I would say that's accurate.

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

11:41:08

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

13 Q. But do you know that once the initial six or
14 \$7 million for entitlements was spent, Anthony
15 Pugliese through his company was to pay 25 percent of
16 the expenses and Fred DeLuca through his company to
17 pay 75 percent of the expenses, correct?

11:41:26

18 A. That's my understanding.

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

11:41:41

22 A. Correct.

23 Q. And monthly funding requests are capital
24 calls, same thing?

25 A. Correct.

11:41:52

1 Q. And Joe Reamer would look at all the 11:41:53
2 invoices for that month and he would calculate what
3 expenses were incurred that month and they would then
4 bill Anthony Pugliese and AVP Destiny 25 percent of
5 that monthly expense and he would bill Fred DeLuca and 11:42:06
6 FD Destiny 75 percent, correct?

7 A. Correct.

8 Q. And those were for expenses that were
9 actually incurred during that month. So for example
10 if in the month of June it was a million dollars of 11:42:20
11 expenses incurred, Fred DeLuca would have to through
12 FD Destiny would have to fund 75 percent and AVP
13 Destiny would have to fund 25 percent or \$250,000,
14 correct?

15 A. That's my understanding. 11:42:35

16 Q. And one involved in preparing those monthly
17 capital calls, were you?

18 A. No.

19 Q. And you didn't have any involvement in those
20 monthly capital calls going taught to FD Destiny, 11:42:49
21 correct?

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

24 Q. And then Joseph Reamer or Tom San Giacomo
25 whoever it was would send those capital calls to Fred 11:43:07

1 DeLuca's or FD Destiny's representative in
2 Connecticut, correct?

11:43:11

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

5 Q. Then the money was sent down from
6 Connecticut and you weren't involved in the wiring of
7 the money from Connecticut at all, correct?

11:43:20

8 A. No. The only time I ever got involved in
9 even questioning where the money was was if it was
10 late. Then I was asked by Joe or Anthony if I could
11 make a phone call the find out what the delay was and
12 other than that, I had no involvement in preparing it
13 or collecting it or anything.

11:43:32

14 Q. Right. So with respect to the payment
15 that's came down from Connecticut that was done by
16 Dave Worroll or Bobby Friedman, correct?

11:43:45

17 A. Well, Bobby Ray is a real late comer. I
18 don't think he had much to do with anything and I
19 don't remember that and I don't think that David
20 Freedman had too much involvement there. He was
21 more or less in the same vein as I was. If somebody
22 needed something or didn't get what they requested,
23 then we would turn to try and find -- sort through it.

11:44:01

24 The main communication was through Joe
25 Reamer to Dave Worroll, who was the comptroller of

11:44:21

1 Subway or a fellow by the name of Doug Dempsey, who
2 was Dave Worroll's assistant.

11:44:26

3 So there was very, very seldom a time where
4 I had to be involved in wire transfers or money and
5 the same went for David Freedman.

11:44:40

6 Q. Okay. And with respect how, the mechanics
7 of how the money came down, that was all done by Dave
8 Worroll or the other gentleman you mentioned?

9 A. Well, it would be -- the system set up was
10 set up by Dave Worroll, because he worked for Fred and
11 Fred was the one doing it. So therefore it had to
12 satisfy Fred.

11:44:56

13 So Dave was the follow that set it up.

14 Q. Now, you had talked about being treasurer of
15 Land Company of Osceola County. Do you remember that
16 testimony?

11:45:13

17 A. Yeah.

18 Q. Now, as a treasurer of Land Company of
19 Osceola County, you didn't do any responsibilities of
20 a treasurer, correct?

11:45:19

21 A. Correct.

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

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

11:45:32

1 Q. And you didn't have any spending authority,
2 you didn't have authority to spend Land Company of
3 Osceola County's money, correct?

11:45:34

4 A. Correct.

5 Q. And do you have the authority to incur
6 expenses on behalf of Land Company of Osceola County,
7 correct?

11:45:42

8 A. I had some input during the course of
9 meetings to give my input on whether or not I thought
10 that it might be feasible to do certain things that we
11 were contemplating doing, but to have a person to say
12 go ahead and do it, the sole responsibility on how the
13 money was spent and what we did was Anthony's.

11:45:55

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

11:46:14

16 A. Correct.

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

19 A. Correct.

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

11:46:20

23 A. You know, again, if there was something that
24 was in question, if I was questioned whether or not I
25 thought that it was a feasible thing, I would say it

11:46:39

1 was fine with me and that would be it. That would be
2 minute put.

11:46:43

3 Q. You could make recommendations, but you
4 didn't have spinal spending authority?

5 A. Correct, correct.

11:46:53

6 Q. So with respect to Fred DeLuca's money he
7 had final spending authority?

8 A. Correct.

9 Q. So although you were there on a weekly
10 basis, sometimes a daily basis, you had no authority
11 to spend Fred's money on behalf of LCOC?

11:47:07

12 MR. GARY: I'm gonna object, asked and
13 answered.

14 THE COURT: Sustained, agreed.

15 Q. Tom San Giacomo, you remember that name you
16 used it on direct examination?

11:47:21

17 A. Yes.

18 Q. He reported directly to Anthony Pugliese?

19 A. Yes.

20 Q. And Tom San Giacomo, he told us took
21 direction from Anthony Pugliese?

11:47:29

22 A. Yes.

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

25 A. I would say that Tom was second in charge of

11:47:44

1 the project.

11:47:47

2 Q. And he reported directly to Anthony
3 Pugliese?

4 A. Correct.

5 MR. HUTCHISON: May I approach the witness.

11:48:18

6 THE COURT: Thank you. Yes.

7 BY MR. HUTCHISON:

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

10 A. Yeah.

11:48:38

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

13 A. Yes.

14 Q. And it's center to Dave Worroll?

15 A. Yes.

11:48:50

16 Q. And others, including you're copied on it
17 too, you see that?

18 A. Correct.

19 Q. You see that?

20 A. Yes, I do.

11:48:57

21 Q. And with your permission Your Honor -- and
22 as far as you know that looks like a fair and accurate
23 copy of those two emails?

24 A. Yeah.

25 MR. HUTCHISON: Your Honor, there was no

11:49:13

1 objection to this email? 11:49:16

2 MR. MARIANI: We're objecting, Your Honor.
3 Objection.

4 THE COURT: Okay U come forward, please.

5 (Whereupon counsel for the respective 11:49:30
6 parties approached the bench and the following
7 proceedings were had outside the presence of the
8 jury:)

9 THE COURT: It's Exhibit 594 for the record.
10 FD Destiny parties' Exhibit 594. 11:49:39

11 The objection, please.

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

15 THE COURT: He asked if he's already seen it 11:49:57
16 before. I thought he said he has.

17 MR. HUTCHISON: Yes and he said that's his
18 email address.

19 THE COURT: The email address up here is on
20 there. 11:50:06

21 MR. HUTCHISON: He's copied on it.

22 THE COURT: He is copied on it. My mistake.

23 MR. HUTCHISON: I asked him if he was copied
24 and he said yes and I asked him if it looked like
25 an accurate copy and he said yes. It's from Tom 11:50:15

1 San Giacomo who according to both Al Quentel and 11:50:19
2 Mr. Florio's trial testimony ten minutes ago
3 worked for Anthony.

4 THE COURT: Similar to what Mr. Florio has
5 to do with it. 11:50:34

6 MR. HUTCHISON: Correct so it's an admission
7 of a party opponent as far as that's concerned if
8 that's your hearsay objection.

9 MR. MARIANI: Well, that's the problem.
10 They're admitting this for the truth of the 11:50:42
11 statements in the email.

12 THE COURT: Okay. Mr. San Giacomo was the
13 managing agent for Mr. Pugliese, similar to what
14 I found Mr. Florio to be of Mr. DeLuca. Then we
15 would have reciprocal rights in terms of the 11:51:01
16 agency relationship and the managing agency
17 relationship being admissible to over come any
18 hearsay issues.

19 MR. MARIANI: Are you making that
20 determination. I have two comments. 11:51:12

21 THE COURT: I'm making the determination
22 from what I've understood this to be from day one
23 that Mr. San Giacomo is in the same position that
24 Mr. Florio was. Now, if you need further
25 foundation for that then value to ask him if he 11:51:29

1 knows, but I don't know. Are you taking a 11:51:33
2 different position than what I've understood in
3 the past that, Mr. San Giacomo was the managing
4 person for Mr. Pugliese and had those types of --
5 that type of authority? The email speaks for 11:51:54
6 itself as to the authority that he has. He's
7 speak being the budget, he's speak being funding,
8 he's speak being the funding as to the
9 understanding of the funding on behalf of
10 Mr. Pugliese or the AVP parties. 11:52:06

11 MR. HUTCHISON: And Mr. Florio just
12 testified he was Mr. Pugliese's go-to guy. He
13 reported directly to Mr. Pugliese and Mr. Quentel
14 even talked about it on Friday.

15 THE COURT: Again, I think the email speaks 11:52:20
16 for itself as to his authority. Mr. Hutchison
17 you may want to ask Mr. Florio if he understood
18 Mr. San Giacomo's ripe to the project any further
19 and whether or not he knows whether or not
20 Mr. San Giacomo had authority to send this email. 11:52:36
21 I 19 if that's what you're suggesting I don't
22 know.

23 MR. MARIANI: I'm suggesting it binds
24 Mr. Pugliese.

25 THE COURT: I'm not suggesting it binds 11:52:50

1 Mr. Pugliese right now either. What I'm saying 11:52:51
2 is there is sufficient foundation as
3 Mr. Pugliese's managing person, one of the people
4 managing the project and assisting him in the
5 management, his second in command so to speak, 11:53:04
6 and that the email itself speaks to issues of
7 funding and budget that only someone in that type
8 of managerial capacity on behalf of the AVP
9 parties would have, unless Mr. Florio or
10 Mr. Pugliese or Mr. San Giacomo says otherwise 11:53:22
11 that this email was not authorized, then that's
12 not what is being contended here.

13 So the objection is overruled.

14 (Whereupon the following proceedings were
15 had within the presence of the jury:) 11:53:34

16 THE COURT: All right. You may proceed.

17 BY MR. HUTCHISON:

18 Q. Do you have Exhibit 594 in front of you,
19 sir?

20 THE COURT: Right now I don't think you've 11:53:40
21 asked it to be admitted.

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

24 THE COURT: If there's no other objections
25 than what I heard it will be admitted over 11:53:48

1 objection out of turn as Exhibit 594. FD party 11:53:50
2 594. You may proceed, sir.

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

5 Q. And the exhibit says." Subject new 11:53:58
6 funding." Do you see that?

7 A. Yes.

8 Q. And he writes." Gave -- can you zoom into
9 the first two sentences of that please, up to 50-50.
10 San Giacomo was working at this time for Anthony 11:54:31
11 Pugliese, correct?

12 A. Yes.

13 Q. And he says Dave as per my email earlier
14 this week replying to your email alerting us to
15 prepare early enough for you to organize with Fred 11:54:39
16 DeLuca the next round of consulting entitlement
17 funding. The following is our planning the after
18 discussing with Fred Florio. Do you see that?

19 A. Uh-huh.

20 Q. Is that a "yes." Sir, you've got the say 11:54:52
21 yes or no?

22 A. Yes, sorry.

23 Q. Does that refresh your recollection that the
24 initial budget of six to \$7 million was going to be
25 spent up by summer of 2007? 11:55:03

1 A. Yeah I would assume things that sees saying
2 concerning the next rounding funding, yes.

11:55:16

3 Q. So after the six or \$7 million budget, the
4 initial six or \$7 million budget was used up they
5 would fund 75-25 percent; is that correct?

11:55:29

6 A. That's my understanding.

7 Q. In fact, Mr. San Giacomo writes we believe
8 the best strategy at this time is to short term the
9 funding and abide by the operating agreement for Land
10 Company of Osceola County, section 5.3 on page 15,
11 capital contributions, in the ratio of 75 percent by
12 the FD entity and 25 percent by the AVP entity until
13 August 10, 2010, when they become 50-50."

11:55:43

14 Did I read that correctly?

15 A. Yes.

11:56:04

16 Q. And that was your understanding, correct,
17 that once the initial budget of six or seven ends was
18 used up, AVP Destiny which is the AVP entity and FD
19 Destiny which is the FD tin were supposed to fund in
20 the ratio of 25 percent for the AVP Destiny and
21 75 percent for FD Destiny, correct?

11:56:19

22 A. Correct.

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

11:56:34

1 A. Yeah it was referred to a square-up date.

11:56:36

2 Q. And that's because Anthony Pugliese was the
3 manager doing the work on a daily basis so he was
4 going the pay 25 less for the first five years,
5 correct?

11:56:59

6 A. Well, at the time -- again we're referring
7 to an operating agreement from '05 which was totally
8 obsolete at the dates you're talking about.

9 The operating agreement became obsolete once
10 there were numerous things that had changed in it.
11 Everything was pending the operating agreement
12 operating. The operating agreement was totally
13 obsolete at this date.

11:57:23

14 Q. First of all, the Rohde property was never
15 purchased?

11:57:39

16 A. The Rohde property, the that you are charges
17 there was no first right. It was a purchase
18 agreement.

19 Q. Lease say yes or in and then you can answer?

20 A. It was never purchased.

11:57:53

21 Q. The Rohde property was never purchased. It
22 was a option contract?

23 A. It didn't call to be paid for ten years.

24 Q. It was an option contract, it was an option
25 to buy the land?

11:58:04

1 A. Okay. 11:58:06

2 Q. You agree with me?

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

5 Q. So LCOC never took ownership of the 11:58:11
6 14,000 acres called the Rohde property, correct?

7 A. According to the agreement we weren't
8 supposed to do that.

9 Q. So is my statement accurate that LCOC never
10 took ownership of the Rohde property? 11:58:23

11 A. Correct.

12 Q. And the Rohde property the option agreement
13 we just talked about that was signed in September of
14 2006, correct?

15 A. That date is a little unclear to me. 11:58:39

16 Q. Well, to go back to Exhibit 594, Mr. San
17 Giacomo is referencing the operating agreement section
18 5.3, correct?

19 A. Yes, the one that I'm referring to as being
20 obsolete at that time. 11:58:55

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

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

24 Q. Do you know who Al Quentel is?

25 A. Certainly. 11:59:13

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

11:59:14

3 A. He was LCOC's attorney.

4 Q. And are you aware, this is my question, that
5 he provided this language to Tom San Giacomo?

11:59:23

6 A. I'm not aware where Tom got that
7 information.

8 Q. And then you see on top, Mr. DeLuca response
9 on June 27th, 2007?

10 A. Yeah.

11:59:41

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

12 A. Yes.

13 Q. He rights hi team before more money is put
14 in I think we need to review what was originally
15 budgeted by line item, what has been spent by line
16 item, and what is differences from the budget were,
17 what was a proposed budget for the future is, what the
18 proposed budget for the future is."

11:59:54

19 You see what I just read?

20 A. Yeah, yes.

12:00:09

21 Q. So in June 2007, Mr. Clubbing is requesting
22 budget information before he funds the next round, the
23 next budget, correct?

24 A. It says that it's looking for him to review
25 the budget.

12:00:23

1 Q. And it says then we should consider what the 12:00:24
2 proposed budget for the future is." Do you see that,
3 number three?

4 A. Yes.

5 Q. Now, I want to stay in 2007 and I'm going to 12:00:36
6 show you Exhibit 595.

7 MR. HUTCHISON: May I approach.

8 THE COURT: Yes, thank you.

9 Let opposing counsel know what you're
10 looking at specifically, since there's a strange 12:01:16
11 of emails here.

12 MR. HUTCHISON: Yeah I'm going to be looking
13 at -- Judge can we approach one minute.

14 THE COURT: Okay. Counsel, is this a good
15 time to take a lunch break. 12:01:41

16 MR. HUTCHISON: Five minutes, Judge, if I
17 could get through this.

18 THE COURT: Five minutes.

19 (Whereupon counsel for the respective
20 parties approached the bench and the following 12:01:48
21 proceedings were had outside the presence of the
22 jury:)

23 MR. HUTCHISON: I would just prefer if we
24 blacked out -- it doesn't talk about.

25 MR. GARY: Can I look at a copy? 12:01:56

1 MR. HUTCHISON: It doesn't talk about 12:01:58
2 DeLuca's loan specifically but the bottom talks
3 about a debt schedule. I just want to make sure
4 I'm not in violation of your prior order and I
5 don't want to open the door to anything. I can 12:02:06
6 black that out.

7 THE COURT: That's what caught my attention
8 is there was a mention of this LIBOR rate at the
9 bottom. I want to make sure we're not getting
10 into anything that I've already ruled upon. 12:02:17

11 MR. HUTCHISON: In the prior email on the
12 second page, Judge, Mr. San Giacomo was asking
13 for a debt schedule and then in the next page
14 Worroll is providing it, the balance of the debt,
15 but doesn't talk about who's loan it is or 12:02:34
16 anything like that.

17 Then above they're talking about -- Worroll
18 asked about the status of the budget. I'm only
19 concerned about the top two emails and I can
20 redact the bottom two to be consistent with your 12:02:49
21 ruling.

22 THE COURT: I'd rather it be -- hold on.
23 Mr. Mariani wants to answer.

24 MR. MARIANI: They can't use at this time
25 both ways. They we have a completeness doctrine 12:03:04

1 in respect of evidence and they're offering this 12:03:10
2 Exhibit and now they want to redact. They're the
3 ones who are the beneficiaries of the ruling.
4 For them to come up here and say we don't want to
5 violate the ruling is backwards. 12:03:26

6 So the point is if they're gonna use this
7 document they need to use it in its entirety.
8 They can't tiptoe -- either they open the door or
9 they don't open the door. But for them to cherry
10 pick through exhibits an -- well put in parts of 12:03:42
11 exhibits and not the other part of the exhibit is
12 not the way the evidence should come in.

13 THE COURT: It just depends on whether or
14 not it's critical to what they're trying to
15 establish. You know, whether it's these pages or 12:03:53
16 with put in separate pages to crystalize the
17 point that is trying to be made or the evidence
18 trying to be introduced. So if they're trying to
19 introduce something that doesn't need those last
20 three emails, that's fine. If it doesn't good to 12:04:13
21 the last three emails then we have a different
22 issue.

23 MR. HUTCHISON: Let me make a proffer --

24 MR. MARIANI: Excuse me. This is their
25 exhibit. It's marked, it's a two page exhibit, 12:04:25

1 5595 an it has this particular veers of emails. 12:04:27
2 So either it comes in in its entirety or they
3 can't submit it.

4 For them to edit it now --

5 THE COURT: Well I disagree because if 12:04:40
6 things are edited all the time, if so I
7 respectfully disagree with that general
8 statement. The purpose for intuition it the what
9 please.

10 MR. HUTCHISON: To talk about the budget, 12:04:53
11 Judge, and as you can see, Mr. San Giacomo
12 respondents to Dave Worroll and says that the
13 budget is being about slice and diced by
14 Mr. Pugliese and that's the only thing that I
15 want to get those two top emails, Worroll's 12:05:05
16 request for the budget and the status and San
17 Giacomo's reply and take two minutes and we'll
18 finish this.

19 MR. MARIANI: Turn debt service is the
20 biggest part of the budget so now, we're gonna 12:05:16
21 talk about a budget without the biggest single
22 component in the budget.

23 MR. HUTCHISON: That's absolutely not
24 correct. Debt service was never in a budget and
25 there was no debt paid and that's already been 12:05:27

1 established and agreed to. That's an Osceola
2 County job and there's no debt service.

3 MR. MARIANI: I'm sorry. The accumulated
4 interest is a significant part of the budget and
5 how money was spent and whether or not the
6 \$140 million threshold was passed. What they're
7 doing with these documents and they're allowed to
8 do it, but not with incomplete document, they're
9 trying to show that the \$140 million threshold is
10 not relevant. They're trying to sell 75-25 from
11 the beginning. That's not what the document
12 says.

13 THE COURT: What does it have to do with
14 liability?

15 MR. MARIANI: What labor has to do with is
16 the debt service and the accumulation of interest
17 which is a significant factor in driving the
18 money spent or at least the money that
19 accumulated to be spent and its impact on budgets
20 throughout the five year period from '05 to '09.

21 THE COURT: Well, I can't force them to use
22 these two pages or these two other emails. If
23 they're not seeking to use them, I can redact
24 those two, they can redact those two emails.

25 Now, if you can show to me that those are

1 relevant and those need to be introduced through 12:06:53
2 this witness or any other witness, I'll take that
3 into consideration, but as far as their wanting
4 to introduce just those two emails for the
5 purpose they're seeking to have them introduced 12:07:05
6 is different from debt service and is different
7 from the issue of LIBOR. April I am trying to
8 stay way from LIBOR unless we have to get into it
9 and if you're saying to me, which I think you're
10 trying to say to me, is that somehow because of 12:07:19
11 the difference in the rates that the \$140 million
12 figure would have been arrived at later if it was
13 using the labor rate that DeLuca get from
14 Wachovia as opposed to the LIBOR rate he charged
15 to Pugliese? Is that what you're trying to say. 12:07:44

16 MR. MARIANI: That's exactly what we're
17 saying and indeed the subject matter of these
18 emails is debt schedule.

19 THE COURT: I got to let the jury go.

20 (Whereupon the following proceedings were 12:07:54
21 had within the presence of the jury:)

22 Okay, folks I'm going to go ahead and excuse
23 four the lunch break now.

24 Thank you again for your continued service
25 and sacrifice. Please return back no later than 12:08:02

1 1:20, 1:20, we'll get back as soon as possible
2 there after.

12:08:06

3 Please don't talk about the case to anyone,
4 don't allow anybody to speak to you about it.

5 Please don't use any form of electronic device or
6 otherwise to do any research about anybody

12:08:16

7 involved in the case or any issues in the case,
8 any of the terms that are being utilized in the

9 case. Please leave that to the lawyers and the
10 Court, whether it comes from the facts or the

12:08:31

11 law.

12 And have a very pleasant lunch. Thank you
13 again for your courtesies.

14 THE COURT: You can help me a great deal
15 folks if you get these exhibits marked. They
16 should have already have had last week, I told
17 you that pre-marking was required. They should
18 have a sticker that is used by our clerk.

12:09:11

19 THE CLERK: Want to ask you something later.

20 THE COURT: Legitimately, with regard to the
21 exhibits being marked properly, but it is

12:09:26

22 becoming a bit of a difficulty for me to have to
23 answer to him and have to answer to you all at
24 the same time.

25 Please have a seat.

12:09:41

1 THE CLERK: I'm fine, Your Honor. 12:09:46

2 MR. HUTCHISON: May respond to the last
3 argument, Your Honor.

4 THE COURT: Sure.

5 MR. HUTCHISON: Two things. First with 12:09:53
6 respect to the subject exhibit I'm only looking
7 at the top two emails. You can read those and
8 it's only referring to a budget, not debt
9 schedule. It's the status of the budget to which
10 Mr. San Giacomo responds. He doesn't have it 12:10:05
11 yet. That's the purpose, okay.

12 Can the witness be excused.

13 THE COURT: Yes, you can sit outside,
14 Mr. Floor 0 please don't talk about your
15 testimony with anyone while you're still on the 12:10:19
16 stand.

17 Thank you very much. Watch your step over
18 the wires and every place.

19 (Witness left the room).

20 MR. HUTCHISON: It has nothing to do with 12:10:33
21 it. As you can see I've been out of the loop,
22 has the status of the above items and he's
23 talking about the budget an then Mr. San Giacomo
24 responds. So that email has nothing to do with
25 the debt. 12:10:50

1 Number two, to address Mr. Mariani's point 12:10:51
2 about the \$40 million. I think is important,
3 okay. There's a promissory note signed --

4 THE COURT: You don't have to stand so
5 close. 12:11:05

6 MR. HUTCHISON: There's a promissory note
7 zoned buy Mr. If you go. It establishes the best
8 rate, okay. In other words if it was a
9 \$111 million loan they're going the let the
10 interest accrue and then interest will be paid 12:11:25
11 monthly on the \$140 million.

12 The promissory note is the only issue
13 between these two parties.

14 Mr. Mariani's issue is well if Fred DeLuca
15 has a different note from Wachovia and gets a 12:11:41
16 lower interest rate that interest rate should be
17 used. That's a different transaction, it's a
18 different promissory note an it's not part of the
19 LCOC, it's not this promissory note that
20 Mr. Pugliese signed. Mr. Pugliese and LCOC are 12:11:55
21 not a party to the Wachovia loan. So it's
22 totally irrelevant. If they decided Mr. Pugliese
23 knew what the interest rate was he signed for
24 LCOC, he had lawyers help draft that promissory
25 note. So the LIBOR is other interest rate, sir 12:12:14

1 relevant.

12:12:20

2 Number two, to the it was or arguably could
3 be, it's already been ruled on Land Company of
4 Osceola County. Assuming there's any probative
5 value at all is so outweighed by the approach
6 given the fact that now you're going to bring in
7 and unravel the whole Osceola County mortgage
8 foreclosure.

12:12:30

9 So Mr. Mariani says oh, that 140 in May of
10 2008 should have been later because of the lower
11 interest rate. That's irrelevant.

12:12:44

12 They agreed to one interest rate. That's
13 what they agreed to and I have a copy of the
14 promissory note with LCOC.

15 MR. MARIANI: Your Honor, may I?

12:12:58

16 THE COURT: Yes.

17 MR. HUTCHISON: It's not wrestle to that
18 exhibit anyway, but he's addressing the second
19 argument.

20 MR. MARIANI: 5.2 of the operating agreement
21 which is already in evidence and it's headed
22 payments of operating expenses, which one could
23 understand as budgets, payment of mortgage.

12:13:04

24 That's the heading of 5.2. I'm gonna read right
25 the record. Drawdowns by the land company or the

12:13:23

1 company on the mortgage in excess of the amount
2 of the mortgage funded at the closing in which
3 the mortgage was executed, define as drawdown
4 expenses, shall be used from time to time as
5 needed to pay the operating expenses of the
6 company. At such time as the total of A, the
7 amount of the mortgage funded at the closing in
8 which the mortgage was executed, plus B, the
9 total of all draw-down expenses plus C, all
10 accrued and unpaid interest on the mortgage --
11 crude add unpaid.

12:13:28

12:13:41

12:13:59

12 THE COURT: Which numbers are they talking
13 about.

14 MR. MARIANI: Talking about the mortgage
15 that LCOC holds.

12:14:09

16 THE COURT: Wachovia.

17 MR. MARIANI: I'm sorry.

18 THE COURT: Through Wachovia, is that the
19 one you're talking about or you're talking about
20 the promissory note between AVP and DeLuca
21 parties.

12:14:17

22 MR. MARIANI: I'm not speaking of the
23 promissory note at all. This does not speak to
24 the promissory note. It speaks of the mortgage
25 and interest on the mortgage.

12:14:32

1 THE COURT: So you're talking about the 12:14:34
2 mortgage and interest on the mortgage that DeLuca
3 parties had with Wachovia.

4 MR. MARIANI: Which were -- well,
5 technically we would say yes to that question, 12:14:43
6 but I need to answer eight little more
7 completely, because LCOC never had a direct
8 relationship with Wachovia.

9 THE COURT: That's why I'm is asking --

10 MR. MARIANI: What DeLuca did was borrow the 12:14:58
11 money from Wachovia and then become the lender --
12 excuse me the mortgagor of the property, the
13 mortgagee.

14 THE COURT: The mortgagee of the property.

15 MR. MARIANI: But if I may finish this 12:15:10
16 sentence." Unpaid interest on the mortgage --
17 when all those numbers including the number
18 that's not paid, nobody is saying the best was
19 paid. We're saying the best is accumulating and
20 when this combination of those three numbers 12:15:24
21 exceeds \$140 million, that's called the FD entity
22 commitment. That's a defined phrase in this.
23 The company shall pay all then accruing interest
24 on the mortgage currently.

25 So the combination of all those factors, 12:15:45

1 those expenses and how they're adding up, we 12:15:47
2 understand that interest doesn't take a day off.
3 Yesterday was a holiday, everybody still got
4 charged on their mortgage whatever interest
5 amount is a daily interest amount. 12:15:59

6 So the dispute in this case and it's a very
7 real dispute and it's why counsel is using this
8 winters to try to build his case that it's 75-25
9 from the beginning. That's not how it was. Our
10 position is much different. Our position is 12:16:16
11 expenses were a hundred percent until after this
12 140 was reached.

13 So if the combination of those factors would
14 have given more time, it which would have,
15 Mr. San Giacomo and other emails that were 12:16:35
16 incorrect under this particular provision,
17 they're using those or attempting to use those as
18 admissions against interest and to bind the fact
19 in the case, which I understand that they're
20 allowed to make that argument, but you're cutting 12:16:54
21 our argument entirely out by suggesting that the
22 interest rate and that difference in interest
23 rate doesn't matter.

24 THE COURT: I don't know if I'm cutting it
25 out, Mr. Mariani. I was the one who raised the 12:17:07

1 topic and articulated the issue and as far as I'm 12:17:10
2 concerned the best way it's been articulate to do
3 date. So to accuse the Court of cutting
4 something out is not appropriate.

5 MR. MARIANI: I apologize and I didn't mean 12:17:22
6 that it way.

7 THE COURT: Well, it sure came out like
8 that.

9 MR. MARIANI: Well, then I apologize.

10 THE COURT: Let's go back to the record if 12:17:28
11 you like to and get the quote that the court made
12 as far as framing the issue as far as I'm
13 concerned in the best manner that it's been
14 phrased thus far.

15 MR. MARIANI: There won't be a need nor 12:17:38
16 that, Your Honor. Again I apologize to the
17 Court. What I mean to say is that the arguments
18 that being advanced by counsel is cutting that or
19 attempting to cut that out, and the continued use
20 of the word prejudice is just over stated. We're 12:17:52
21 talking about this commercial transaction. It's
22 complicated. This language is complicated, and
23 the point would be we should be able to make that
24 argument relative to the \$140,000.

25 So to say that this string of emails has 12:18:09

1 nothing to do with debt service is just not
2 accurate.

3 MR. HUTCHISON: Your Honor, may I approach
4 and show you the promissory note. That's the
5 promissory note.

6 THE COURT: I understand that.

7 MR. HUTCHISON: And that's the only
8 promissory note that has any relevance to the
9 operating agreement.

10 THE COURT: Well, that's what I'm not
11 certain of. Let's go to 5.2. 5.2 says."
12 Payment of operating expenses, payment of
13 mortgage."

14 Now, it doesn't say payment of the
15 promissory note. It says payment of mortgage.
16 It says." Drawdown business the land company or
17 the company on the mortgage in excess of the
18 amount of the mortgage funded at the closing.
19 Now, the mortgage funded at the closing that I
20 understand to be the mortgage is the mortgage
21 that was between Mr. DeLuca and Wachovia.

22 MR. HUTCHISON: Well, no.

23 MR. MARIANI: That's not right, Your Honor.

24 THE COURT: Well, then what is the mortgage
25 funded at the closing.

1 MR. HUTCHISON: That's the mortgage that 12:19:10
2 secures Mr. DeLuca's promissory note. In other
3 words Mr. DeLuca gave a promissory note, received
4 a promissory note from Land Company of Osceola
5 County, right. 12:19:19

6 THE COURT: Okay. That I understand.

7 MR. HUTCHISON: Okay, and that's the
8 mortgage that secures the note.

9 THE COURT: So the mortgage and note ride
10 together as far as this transaction is concerned. 12:19:29

11 MR. HUTCHISON: I don't think if I --

12 THE COURT: The mortgage and the note, these
13 are the two comp men tear document.

14 MR. HUTCHISON: Yes, Your Honor. and that's
15 the only mortgage -- that's the mortgage that 12:19:40
16 secures Mr. DeLuca's where 111 million loan.

17 THE COURT: I've never seen this before.

18 MR. HUTCHISON: I don't think I really had a
19 cause to bring it to your attention.

20 But to answer your question, the only loan 12:19:52
21 LCOC had is the \$111 million loan and the
22 mortgage that secures that loan is the one in
23 your hands and it's between DeLuca, the mortgagor
24 and Land Company of Osceola County would be the
25 mortgagee. 12:20:09

1 THE COURT: Right. Okay, I've never seen 12:20:09
2 this before. So forgive me for having to take a
3 look at it fresh.

4 Okay. So then is it fair, Mr. Mariani, that
5 the mortgages that being addressed in 5.2 is the 12:20:44
6 mortgage that was handed to that travels with the
7 note that was executed apparently on the same
8 day.

9 MR. MARIANI: May I see that for a moment,
10 Your Honor. 12:21:01

11 THE COURT: Sure of course. Just give me a
12 moment, please. Well, the note was dated
13 August 9th for \$111 million and the mortgage for
14 that same \$111 million was prepared on
15 August 11th, 2005. Both are 2005 dates. 12:21:20

16 MR. MARIANI: Thank you. This is the
17 mortgage. The mortgagor is Fred DeLuca
18 individually. It's not Wachovia Bank.

19 THE COURT: I understand.

20 MR. MARIANI: And so we don't assume the way 12:21:51
21 zero posing counsel does the relationship between
22 that mortgage and that note.

23 THE COURT: But I'm look at the language. I
24 just want to make sure the language now that I
25 understand it a little bit better in terms of the 12:22:09

1 mortgage that I've not seen before tied so this 12:22:11
2 note and not having anything to do with the
3 Wachovia mortgage that was executed by DeLuca as
4 the mortgagor to Wachovia.

5 MR. HUTCHISON: May I assist the Court. 12:22:29

6 THE COURT: Sure.

7 MR. HUTCHISON: Page two of the operating
8 agreement defines the mortgage. That will cut to
9 the chassis believe. Page two, C2. First
10 there's a glossary and you go to mortgage it says 12:22:40
11 go to C2 and it's on page two of the operating
12 agreement. For longs the mortgage on the Destiny
13 land.

14 THE COURT: Yes I see it.

15 MR. HUTCHISON: For Land Company of Osceola 12:22:53
16 County \$111 million, mortgage. And there's no
17 dispute the mortgage from Wachovia was
18 \$105 million. That's the only mortgage the
19 operating agreement is talking about is the one
20 from DeLuca to LCOC. 12:23:12

21 THE COURT: So let me read the following.
22 5.2 says drawdowns by the land company or the
23 company on the mortgage in excess of the amount
24 of the mortgage." we agrees about what the \$111
25 million mortgage tied to the note. \$111 million. 12:23:28

1 MR. HUTCHISON: Yeah. 12:23:35

2 THE COURT: Funded at the closing -- which
3 is at or near the time of the subject closing and
4 does correlate to the promissory note date. In
5 which the mortgage was executed. Drawdown 12:23:49
6 expenses shall be used from time to time as
7 needed to pay the operating expenses of the
8 company. At such time as the total of A, the
9 amount of the mortgage funded at the closing --
10 which again is the mortgage at issue dated 12:24:04
11 August 11th, 2005 -- in which the mortgage was
12 executed, plus the total of all drawdown expenses
13 which would have been drawn down from the
14 existing amount covered by the mortgage, plus all
15 accrued and unpaid interest on the mortgage shall 12:24:24
16 exceed \$140 million, the company shall pay all
17 then accruing interest on the mortgage
18 currently."

19 I don't see any relationship to the DeLuca
20 mortgage, which I'll call the DeLuca mortgage, 12:24:44
21 the Wachovia mortgage, let's put it that way, and
22 the language contained in the operating
23 agreement.

24 Excuse me just a moment. Let me just finish
25 my thought please. Mr. Pugliese or his related 12:24:58

1 companies may have had a separate cause of action
2 against Mr. DeLuca, probably personally if he
3 could have shown that the amount that was charged
4 was somehow or some way not consistent with the
5 contract.

12:25:01

12:25:32

6 He may have had a separate cause of action,
7 I don't know if it even -- I don't know if it
8 rises to fraud, if it rises to negligent
9 misrepresentation. I don't even know if it gets
10 that far.

12:25:50

11 As to the separate issue as it relates to
12 this LIBOR rate, if anything at all -- and that
13 would have had to have hashed out differently and
14 perhaps in a different case or in this case it
15 would have had to be specifically pled -- but 5.2
16 in my respectful estimation has nothing to do
17 with that Wachovia loan. Good, bad or
18 indifferent, right or wrong. I'm not sitting
19 here and suggesting by any means that I think
20 that Fred DeLuca should have charged the same
21 rate to Mr. DeLuca as he got from Wachovia.

12:26:05

12:26:26

22 That's not for me to say.

23 but I don't -- what is for me to say is
24 that it is not related at all to my reading of
25 5.2, now that I have what has to my recollection

12:26:42

1 never been shown to me before, is the mortgage
2 that's tied to the note of August of 2005.

12:26:47

3 Again, while frame the issue in the manner

4 that I think you were traveling under and you

5 confirmed that to me, at the same time there's

12:27:02

6 nothing that's been brought into this case that

7 would suggest that that mortgage, the Wachovia

8 mortgage for ease of reference, has anything to

9 do with 5.2, has anything to do with the

10 operating agreement and has anything to do with

12:27:19

11 the way the operating agreement functioned which

12 is the manner that these draw-down expenses were

13 tied to the \$111 million mortgage and note.

14 MR. MARIANI: Would your view different if

15 it's shown that the money from Wachovia funded

12:27:37

16 the mortgage referred to in 5.2?

17 THE COURT: I'm sorry, say that again please

18 so I can follow.

19 MR. MARIANI: Would your interpretation be

20 different if facts showed that the money borrowed

12:27:50

21 from Wachovia was used to finance the mortgage

22 and the purchase of the mortgage -- excuse me the

23 purchase of the property that's mortgaged by the

24 mortgage referred to in 5.2.

25 THE COURT: Not really, because let's say

12:28:07

1 the mortgage was tied to real estate and there 12:28:09
2 was a different amount charged by the learned
3 than was charged in this note to the LCOC or
4 charged to the mortgage to LCOC, it wouldn't make
5 any difference. It may not have been a nice 12:28:33
6 thing to do, but I don't find any illegality.
7 There's no issue of usury or anything of that
8 nature.

9 You had two sophisticated business persons
10 between Mr. Pugliese and Mr. DeLuca on either 12:28:49
11 side. They were both represented by more than
12 competent counsel? Mr. Quentel was a legend in
13 the industry. I mean, I think I can say that
14 without hurting anyone's feelings, I trust, and
15 God rest his soul. But you couldn't have asked 12:29:05
16 for better representation. He had ever right in
17 the due diligence process in my view to have
18 inspected that the under pin I know of the
19 funding that was provided by Wachovia to DeLuca
20 and determine what rate of interest was being 12:29:26
21 charged by Wachovia. That's part in my view that
22 would have been a huge part of the due diligence
23 process.

24 Now, I'm not taking shots at Mr. Quentel,
25 don't get me wrong. What I'm saying, though, is 12:29:40

1 that these issues were bargained for and if part 12:29:42
2 of the bargain was that a higher interest rate is
3 going to be charged by DeLuca to LCOC, that's
4 part of the way it went.

5 Again I'm not saying it's necessarily fair, 12:29:59
6 I'm in the saying it's right. I don't get into
7 moral issues here. I get into what I perceive to
8 be the legal ones, and until and unless I can
9 wrap my arms around something having to do with
10 that LIBOR rate other than trying, again, to 12:30:13
11 suggest that DeLuca was a bad guy for doing what
12 he did, I'm having trouble finding that tie-in.

13 So the answer in a long winded fashion and I
14 apologize for the length of any response is no it
15 would not change my evaluation of the matter. It 12:30:31
16 has to do with what transpired as between
17 AVP/Pugliese and FD/DeLuca as relates to the LCOC
18 mortgage an note. How Mr. DeLuca got that money
19 and under what terms and conditions, I still find
20 at this juncture, without more and based upon my 12:30:50
21 again casual review of 5.2 and having this
22 mortgage in front of me and knowing its
23 applicability, that the Wachovia loan just does
24 not enter into the picture.

25 So with that in mind, I'm going to allow the 12:31:08

1 two emails on the top of the page to be 12:31:13
2 introduced into evidence, without having the
3 second two introduce -- excuse me let me finish
4 my ruling. I find that introducing the word
5 LIBOR into this text or into this record and in 12:31:28
6 this context, to confuse the jury, could open a
7 door that I've already closed and I'm not
8 convinced or even close to being convinced that
9 that Wachovia loan would have any basis to get
10 into in this case. It doesn't have anything to 12:31:48
11 do at least by way of the contract with regard to
12 the drawdowns.

13 So that's the ruling of the court.

14 MR. MARIANI: May I speak for a moment.

15 THE COURT: If you want the complete the 12:31:59
16 record, absolutely.

17 MR. MARIANI: Because there's no need nor
18 that redaction because LIBOR is also referred to
19 in the mortgage in question. It's predicated on
20 LIBOR. The word LIBOR is not a dirty word. It's 12:32:11
21 in the a word that -- it's a word that has a
22 definition that's used in mortgage circumstances
23 at this level. So that mortgage that just went
24 through painfully to determine the applicability
25 of it, it refers to LIBOR. 12:32:31

1 THE COURT: But what would be the relevancy
2 in just mentioning the word LIBOR have does not
3 potentially open the door to what I indicated
4 earlier would be prohibitive.

12:32:34

5 MR. MARIANI: It's just the completeness of
6 the document.

12:32:45

7 THE COURT: All right. My rule has been
8 made clear and I couldn't make it any clearer I
9 don't think. I don't have a problem with it
10 simply being used in the manner in which it's
11 used if it's going to give it some context as to
12 when the discussing began and when it sended.

12:32:55

13 MR. HUTCHISON: Judge not only is the
14 Wachovia loan not relevant.

15 THE COURT: May have the exhibit back
16 please.

12:33:14

17 THE CLERK: You have it, Your Honor, I
18 think. It's 595.

19 THE COURT: I do, thank you.

20 MR. HUTCHISON: Not only is the Wachovia
21 loan irrelevant, but now they're mixing apples
22 and oranges. You ruled the promissory note, the
23 one you have in your hand that they're not at
24 issue as far as the debt schedule and everything
25 else.

12:33:20

12:33:33

1 THE COURT: I haven't made that rule.

12:33:33

2 MR. HUTCHISON: I thought a pretrial rule
3 was that the loan was not admissible.

4 THE COURT: The loan itself is not going to
5 be brought in because there's a no cause of
6 action that's been brought under the loan.

12:33:40

7 MR. HUTCHISON: So where your thumb is it
8 talks about the outstanding debt schedule, the
9 balance is \$133 million and even the subject line
10 debt schedule should be redacted, but why are we
11 going into LIBOR interest rates and loan balances
12 because they're not wrestle to their loans, their
13 claims I mean, count seven breach of contract and
14 it's in the raised in their defenses.

12:33:56

15 So I don't understand how it possibly comes
16 in. The fact that a document is redacted we do
17 it all the time in discovery as well as during
18 the middle of trial because it's inconsistent
19 with your rule. This doctrine of completeness is
20 completely inapplicable here and we're spending a
21 lost time on just redacting two emails to talk
22 about a loan that you've already ruled is not
23 subject to this lawsuit.

12:34:11

12:34:24

24 THE COURT: Where are we going to go with
25 this Mr. Mariani.

12:34:37

1 MR. MARIANI: Your Honor, in the 12:34:39
2 calculations under the \$40 million they're
3 pounding on the 75-25 percent issue. We need to
4 have the proper facts and we need to have
5 documents like this to show and argue from the 12:34:54
6 way the 140 was reached.

7 MR. HUTCHISON: Judge there's no issue T1 40
8 was reached in May of 2008 under the promissory
9 note in your hand.

10 THE COURT: Let Mr. Mariani finish. 12:35:09

11 MR. HUTCHISON: Oh, I thought he was
12 finished. I apologize.

13 THE COURT: Did you have anything you want
14 to say.

15 MR. MARIANI: We disagree vehemently about 12:35:19
16 the dates when such add such was reached.
17 Counsel keeps suggests everything has been
18 stipulated too.

19 THE COURT: Is the rule of the court is as
20 follows. Because I believe that LIBOR is really 12:35:28
21 a red herring and has nothing to do with this
22 issue, what I will solely excise here is going to
23 be the one line or two lines that says." I
24 usually get the LIBOR rate from a Fannie Mae
25 site, but for some reason I haven't updated since 12:35:47

1 June so I continue to use the June rate."

12:35:50

2 That is going to be excised the reminder,
3 will be permitted to be admitted and the request
4 of the Pugliese parties, finding that the two
5 emails before provide some context to the
6 follow-up two emails there after.

12:36:08

7 So Mr. Valencia, if you would excise just
8 white those out and make a new copy. Just white
9 this portion.

10 THE CLERK: The last two lines.

12:36:24

11 THE COURT: Leave Dave in.

12 MR. MARIANI: Over our objection, Your
13 Honor.

14 THE COURT: Over objection of the Pugliese
15 parties.

12:36:33

16 But that's what I feel is the best way to
17 make it fair to both sides to give it context,
18 but at the same time not to confuse this jury,
19 because I do not believe LIBOR is going to be an
20 issue here as it pertains to anything in
21 contention. It may be an issue as it relates to
22 how the amount is calculated, but at this point
23 without further introduction or explanation and
24 it won't come from this witness, it's irrelevant.

12:36:45

25 Have a good lunch. We'll see you back set

12:37:06

1 up at 1:20, please.

12:37:08

2 (Whereupon at 12:35 p.m. a luncheon recess
3 was taken until 1:30 p.m.)

4 - - -

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