

STATE OF MICHIGAN  
IN THE CIRCUIT COURT FOR THE COUNTY OF WASHTENAW

**Packard Square LLC**, a Michigan limited liability company,

Plaintiff,

v.

**Can IV Packard Square LLC**, a Delaware limited liability company,

Defendant,

Hon. Archie C. Brown

Case No. 22-000175-CB

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**Amended Complaint**

*A civil action between these parties or other parties arising out of the transaction or occurrence alleged in the complaint has been previously filed in this court, where it was given case number 16-000990-CB and was assigned to Judge Brown. The action is no longer pending. This complaint seeks to reopen the matter due to the discovery of new evidence of fraud on the court. MCR 1.109(D)(2)(a)(ii).*

Packard Square LLC (“Packard Square”), by and through its attorneys, submit its Amended Complaint against Can IV Packard Square LLC (“Can IV”) as follows:

### **Parties, Jurisdiction, and Venue Allegations**

1. Packard Square is a Michigan limited liability company with its principal place of business in Oakland County, Michigan.
2. Can IV is a single-purpose Delaware limited liability company.
3. Venue is proper in this Court pursuant to MCL 600.1621(a), given that Can IV conducts business in Washtenaw County, Michigan.
4. This Court has jurisdiction in that the amount in dispute exceeds \$25,000 exclusive of interest and costs and Packard Square requests equitable relief herein.
5. This case presents a “business or commercial dispute” under MCL 600.8031(1)(c) since all of the parties are business enterprises.

### **General Allegations**

6. Plaintiff realleges all preceding paragraphs as though each were fully set forth.
7. This Complaint addresses a fraud on the Court perpetrated by Can IV via its co-optation of Matthew Mason, the representative of the court-appointed receiver chosen by Can IV and appointed to act as a fiduciary for all parties. Evidence confirming this theory, long suspected by Packard Square, was discovered through further proceedings in the United States District Court, Eastern District of Michigan, and calls into question whether the Court was misled when it granted foreclosure through a receiver, thereby depriving Packard Square of millions of dollars in value and creating a situation where Packard Square and Packard Square’s principals were left with unreasonable amounts of judgment debt.
8. Because of the gross abuse of receivership laws that should have prevented this situation, Packard Square has continued to pursue its legal remedies since the prior action was closed and has in that process discovered evidence confirming that this Court was misled.

### **History of the parties' pre-litigation relationship**

9. Packard Square is a small, independent developer of a luxury apartment and retail complex in Ann Arbor, Michigan (the "Project").

10. After approximately \$14 million was spent in acquiring the Project site, in conceptualizing and designing the Project, and in obtaining the many necessary governmental approvals for the Project, including unanimous site plan approvals at all city levels, Packard Square and Can IV negotiated a loan for construction financing of the Project.

11. On or about October 1, 2014, Can IV and Packard Square entered into a Construction Loan Agreement ("Loan Agreement"). The Loan Agreement provided that Can IV would loan to Packard Square up to \$53,783,184 to construct the Project, and in exchange, Packard Square executed a promissory note and a mortgage ("Packard Square Mortgage") on the Project in favor of Can IV.

12. Can IV is a shell entity utilized by the controlling hedge fund, Canyon Partners, LLC, which, presumably in order to hide its identity and actions, utilizes a different LLC name for virtually every commercial loan transaction.

13. Canyon Partners, LLC presents its investment strategy as a "deep value, credit intensive approach across its investment platform,"<sup>1</sup> which is another way of saying that Canyon Partners, LLC uses commercial debt to obtain assets.

14. The business model of using predatory lending in order to obtain assets for pennies on the dollar has been popularized by unscrupulous hedge funds over the last decade, with many

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<sup>1</sup> CanyonPartners.com

such funds buying up bad debt during the mortgage crash and then using the foreclosure process to execute on their investment strategy.

15. When receivers are appointed without evidentiary hearings and given broad, sweeping powers, this permits hedge funds to sidestep the due process protections inherent in the state law foreclosure process.

16. This is especially problematic where, as here, the alleged bases for foreclosure were non-monetary defaults and the property owner was (and still is) willing and able to pay off the agreed debt; but to prevent repayment, the hedge fund used a court-appointed receiver to add unconscionable amounts to the total indebtedness and make it impossible for the property owner to recover its property as permitted by foreclosure laws.

17. Receivers are supposed to be fiduciaries to all parties in the action, which theoretically protects against receivers becoming instruments of hedge funds and unscrupulous lenders.

18. However, human nature being what it is, receivers far too often simply do whatever the lender who selected them, sought their appointment, and pays their bills wants.

19. At the time the loan was entered into in 2014, Packard Square believed Canyon Partners, LLC to be a legitimate and honest lender that would simply lend money and earn income from the interest and fees attached to the loan.

20. However, in 2016, once Packard Square had completed substantial construction, approximately two-thirds of the Project, Can IV alleged Packard Square had defaulted under the Packard Square Mortgage.

21. The alleged “default” was a strategic non-monetary default of the type usually relied on by unscrupulous hedge funds seeking to utilize the commercial foreclosure process to obtain title to commercial real estate for bargain prices.

22. Further evidencing the plan, Packard Square’s endeavors to address the alleged default through reasonable means, as would typically happen with legitimate lenders making traditional commercial mortgages, were all ignored.

**Can IV files a lawsuit and misleads the Court to wrest control of the Project**

23. On or about October 21, 2016, Can IV filed a Verified Complaint for Appointment of Receiver and Other Relief (“Can IV Complaint”).

24. The Can IV Complaint requested both the appointment of a receiver and foreclosure of the Packard Square Mortgage. See *Can IV Packard Square LLC v Packard Square LLC*, Washtenaw County Circuit Court, Case No. 16-000990-CB (“2016 Litigation”).

25. Along with the Can IV Complaint, Can IV also filed an Emergency Motion for Appointment of Receiver (“Receiver Motion”).

26. Despite objections from Packard Square and multiple attorneys, on November 1, 2016, the Court appointed Can IV’s proposed receiver, McKinley, Inc. (the “Receiver”), through the Receiver’s representative, Matthew Mason (“Mason”), as receiver of the Project.

27. There was no evidentiary hearing to determine the necessity of the Receiver, and Packard Square was not permitted to present witnesses or cross examine the key “Declarant,” Tina Van Curen.

28. In the Order Appointing Receiver, the Court stated that the Receiver was given control of “all claims of Borrower related to the Property, including without limitation all claims related to any insurance or bond relating to the Property.”

29. Under Michigan law, the Receiver owed a fiduciary duty to Packard Square and was not permitted to act as an agent of Can IV.

30. MCL 570.1122 (2) states, in relevant part, “Any receiver appointed under this section shall be deemed a fiduciary for the benefit of all persons having or claiming interests in the real property, and shall exercise his or her office accordingly.”

31. At Can IV’s request, the Order Appointing Receiver stated that the Receiver was vested with the power and authority, “[p]ursuant to MCL 570.1122, *et seq.*, to borrow funds up to a maximum principal amount of \$19,691,682.86 subject to terms acceptable to [Can IV] and upon the approval of the Court to, among other things, winterize, safeguard and complete construction of the Receivership Property....”

32. MCL 570.1123(1) provides that when a receiver wants “to borrow money to complete the construction,” the following test applies:

A petition for authority to complete construction of improvements shall not be granted unless the court finds that the value added to the real property which will result from the construction is likely to exceed the cost of the additional construction, including all estimated overhead and administrative costs, together with interest on any funds that are to be borrowed for the construction.

33. Instead of immediately pursuing foreclosure of the partially completed Project, because they determined that they would make much more money by not foreclosing immediately, Can IV and the Receiver decided to complete construction of the Project under the supervision of Mason, the Receiver’s representative.

34. Because this was done with new debt secured by the Project, this in effect permitted them to charge the additional construction costs and high 16% default interest to Packard Square.

35. On November 11, 2016, Can IV and the Receiver petitioned the Court for the aforementioned \$19,691,682.86 loan (the “Receiver Loan”), and represented that this amount was

necessary for “winterizing, safeguarding, *and completing construction* of the Property.” (emphasis added).

36. In support of the joint motion filed by Can IV and the Receiver, Mason executed a November 10, 2016 affidavit stating “that the value added to the real property which will result from the construction is likely to exceed the cost of the additional construction, including all estimated overhead and administrative costs, together with interest on any funds that are to be borrowed for the construction.”

37. The Court, relying on Mason’s sworn November 10, 2016 affidavit, and over multiple objections, authorized the Receiver Loan, which added to the total indebtedness.

38. Accordingly, Can IV loaned to the Receiver the \$19,691,682.86, at 16% interest, secured by a new mortgage on the property (“Receiver Mortgage”).

39. The amount of the Receiver Loan was approximately and conveniently the balance remaining under Packard Square’s Loan Agreement to complete construction of the Project.

40. The Receiver Mortgage, per the Order Appointing Receiver, was deemed to be a “senior, first priority mortgage” and took “priority over all other interests, liens, encumbrances or claims of lien under the Construction Lien Act (recorded or unrecorded and regardless of the first date of improvement applicable to such lien claims) against the Property and enjoy a super-priority lien position on the Property.”

41. Rather than taking the Project out to the market for bidding to multiple general contractors as is customary in the industry in order to control costs and keep the Receiver’s Budget within the \$19,691,682.86 Receiver Loan amount which the Receiver represented to the Court was adequate to complete construction, Can IV and the Receiver, contrary to their representations at the initial hearing on October 27, 2016, secretly decided in advance of that hearing that they were

going to hire O'Brien Construction, and delay construction until the frost laws were removed in the spring of 2017.

42. O'Brien Construction was not required to prepare a competitive bid. It never prepared a budget which corresponded to the amount of the \$19,691,682.86 Receiver Loan and did not provide a construction contract until approximately 9 months later. In fact, no schedule and no budget for the \$19,691,682.86 Receiver Loan was ever filed with the court.

43. O'Brien charged the receivership - in actuality Packard Square, because all charges were a lien against Packard Square's property - approximately 400% more than standard market rates for its services.

44. In addition, rather than using all of the Receiver Loan funds to complete construction, Can IV directed the Receiver to use Receiver Loan funds to pay millions of dollars in legal fees for Can IV, to the detriment of opposing litigant Packard Square.

45. As a result, on or about August 30, 2017, Can IV and the Receiver filed another joint motion to amend the Receiver Loan from \$19,691,682.86 to \$37,458,498.86, based upon O'Brien Construction's contract amount ("Amended Receiver Loan"). This further added to the total indebtedness against Packard Square's property, which conveniently helped Can IV maintain that the property was too encumbered with debt to come out of receivership.

46. The motion for the Amended Receiver Loan was based upon MCL 570.1123(1) and was supported by a second, August 30, 2017, affidavit executed by Mason.

47. Mason again affirmatively represented to the Court: "that the value added to the real property which will result from the construction is likely to exceed the cost of the additional construction, including all estimated overhead and administrative costs, together with interest on any funds that are to be borrowed for the construction."



48. The Court, relying on Mason's sworn affidavit, granted the request for the Amended Receiver Loan on November 16, 2017.

49. From his appointment until the conclusion of the receivership in 2019, Mason allowed tens of millions of dollars of cost overruns on the Project.

50. During the same time period, Can IV acted to prevent Packard Square from refinancing its mortgage or purchasing the property.

51. From December 2016 through the fall of 2017, Packard Square found multiple lenders conditionally willing to refinance Can IV's loans.

52. On December 9, 2016, Packard Square formally requested a payoff letter, but Can IV withheld it and delayed it, preventing refinancing of the loan. When Can IV finally did provide payoff letters, the alleged amounts due were unsupported and the payoff letters were concocted to expire quickly and without customary per diem charges for daily interest indicated. Can IV used these unscrupulous methods to prevent refinancing of Packard Square's property.

53. On or about December 2016, Packard Square was forced to file a motion with the Court to compel Can IV to provide a payoff letter.

54. Can IV stipulated to provide payoff letters but still didn't produce payoff letters for more than a month.

55. On January 26 and 30, 2017, Can IV provided letters, backdated to January 24 and 26, 2017 requiring payment of the loan and the Amended Receiver Loan by January 31, 2017 or the letters were null and void.

56. Packard Square was of course unable to close the multimillion-dollar loan within twenty-four hours.

57. Again, on August 1, 2017, Packard Square requested in writing updated payoff letters with “supporting documentation.”

58. Two weeks later, on August 15, 2017, Can IV sent payoff letters without supporting documentation requiring payment with 72 hours before the letters were rendered null and void.

59. On or about August 2018, with construction still incomplete and after the dispositive motion cut-off date, Can IV moved for Partial Summary Disposition and sought a judgment of foreclosure.

60. On or about September 21, 2018, the Court entered its Opinion and Order Granting Can IV’s Motion for Partial Summary Disposition and entered a judgment of foreclosure, authorizing the sale of the Project at a single sheriff’s foreclosure sale at which Can IV was permitted to make a single bid for its entire indebtedness, which was calculated by Can IV combining the Receiver Mortgage balance onto the alleged balance of Packard Square’s Mortgage.

61. On November 15, 2018, at the foreclosure sale, Can IV submitted a credit bid in the amount of \$75 million.

62. Being the only bidder at the sheriff’s sale, Can IV obtained title to the Project via a Sheriff’s Deed on November 15, 2018.

63. On July 11, 2019, the Court entered an order discharging the Receiver but did so without the new evidence received in 2021 and 2022 as outlined in this Complaint.

**Packard Square discovers evidence confirming fraud on the Court**

64. Because of the egregious, multi-million dollar damages incurred through a process that should have involved a fiduciary taking all parties’ best interests into account, Packard Square

has continued since the foreclosure to determine why and how an unscrupulous hedge fund was permitted to steal their property with a court-appointed receiver's help.

65. To that end, evidence was obtained in a related court action in the United States District Court in the Eastern District of Michigan Southern Division, *Can IV Packard Square LLC v Schubiner*, Case No. 19-CV-12360. In that case, Receiver Matthew Mason was deposed on February 9, 2021.

66. Mason's deposition testimony confirmed that Can IV had colluded with Mason to mislead the Court and take control of the Project from Packard Square.

67. Throughout the Receivership, Mason acted less like a fiduciary of Packard Square, and more like an agent of Can IV, despite being a court-appointed fiduciary with an explicit legal obligation to act as a fiduciary for all parties and help ensure a fair outcome.

68. While receivers are supposed to be fiduciaries, Mason ignored his fiduciary duties and in effect took orders from the lender that sought his appointment.

69. Mason and Can IV coordinated their actions closely.

70. For example, on February 13, 2017, Mason expressly told Can IV's representatives: "We will keep working hard on your behalf and implement whatever strategy [Can IV] provides - I am at your service for whatever you need."

71. Upon information and belief, the strategy Can IV directed Mason to implement was designed to fraudulently mislead the Court into increasing the Receiver Loan, via the unnecessary Amended Receiver Loan, in order to prevent Packard Square from refinancing, repurchasing, or, post foreclosure, redeeming the Project.

72. Despite a steady trickle of evidence pointing to an improper relationship between Can IV and Mason, such as the email cited above and previously produced by Can IV, the Court

was led to believe by Can IV and Mason that no such relationship existed, and no discovery or evidentiary hearing was permitted to determine if a fraud was being perpetrated on the Court, including no deposition of Mason.

73. But Mason's deposition reflects that Can IV ensured that Mason sought the Receiver Loan on extremely onerous terms.

74. Then Can IV ensured Mason sought the Amended Receiver Loan, which was wholly unnecessary, to greatly add to the debt on the Project, in order to make it impossible for Packard Square to refinance, purchase, or redeem the Project.

75. At his 2021 deposition, Mason testified that he made no effort to negotiate the terms of either loan. [**Exhibit 1**, Dep. Tr. of M. Mason, 30:3-6; 31:13-14].

76. Mason also admitted that he had no personal knowledge that the "value added to the real property which will result from the construction" funded by the Receiver Loan "is likely to exceed the cost of the additional construction," as he swore in his November 10, 2016 affidavit, testifying that the "research" referenced in his affidavit that allegedly supported his averment consisted of him "look[ing] at" the building and walking the construction site. [*Id.* at 21:5-21:25].

77. When asked why the Receiver's attorney represented the value of the project at the time of the Receiver Loan to be \$22.5 million, Mason responded "I couldn't tell you what that number was." [*Id.* at 22:11-22:21].

78. When asked if any valuation was performed in writing, Mason testified "I don't remember, unfortunately." [*Id.* at 22:22-23:1].

79. This testimony directly contradicts his representations made under oath to this Court, and supports the position taken by Packard Square at the time in opposing the receiver's

effort to add to the total indebtedness at unreasonably high rates and to permit construction at prices far exceeding market costs.

80. Overall, Mason’s testimony reflects that he never received an appraisal or otherwise calculated the value to be added to the real property which would result from the construction, taking into account the estimated overhead and administrative costs, together with interest on any funds to be borrowed for the construction, as required by law.

81. In material reliance on Mason’s representation that his loan request was in conformance with MCL 570.1123(1), and assuming he was acting as a fiduciary to Packard Square (and all parties with an interest in the property), the Court granted Can IV and Mason’s joint motion for the Receiver Loan.

82. Likewise, despite swearing in his August 30, 2017 affidavit that the “value added to the real property which will result from the construction is likely to exceed the cost of the additional construction”, Mason’s testimony reflects that, in truth, he had no personal knowledge on which to base that claim.

83. Rather, Mason admitted that instead of the thorough calculation of values and costs required by Michigan law, he merely “bandied [numbers] around as a group trying to make sure [they] came up with a very good value.” [Ex. 1, Dep. Tr. of M. Mason at 108:6-108:20]

84. In material reliance on Mason’s representation that his loan request was in conformance with MCL 570.1123(1), and assuming he was acting as a fiduciary to Packard Square (and all parties with an interest in the property), the Court granted Can IV and Mason’s joint motion for the Amended Receiver Loan.

85. Mason’s deposition testimony establishes that Can IV exerted undue influence and control over Mason, and caused material misrepresentations to be made that misled this Court.

86. Because of Can IV and Mason's fraudulent misrepresentations, Michigan law governing the appointment of the Receiver and the making of the Receiver Loan and Amended Receiver Loan was not properly followed.

87. Packard Square also has other evidence that, as addressed *supra*, Can IV was an instrument of a hedge fund that intentionally sought to circumvent the foreclosure process through the quick appointment of a receiver who was ready and willing to do its bidding.

88. This evidence gives vital context to Mason's deposition testimony, which support's Packard Square's allegation of fraud on the Court.

89. Mason worked as essentially an agent of Can IV, but Can IV materially misled this Court to believe the Receiver was acting as an independent fiduciary of all parties.

90. Communications between Mason, Can IV's agents, and contractors selected by Mason and Can IV reflect that Can IV was treated as the property's "owner" from the moment the Receiver was appointed.

91. Throughout the receivership, Can IV's employees and agents, in stark contrast to merely behaving as a lender, continually and directly made day-to-day design, construction, marketing, leasing, management and other decisions that should have been made by the Receiver, down to the most minute details, including what model stove to install in the resident lounge and what type of carpeting to install in the units.

92. In addition to construction and design decisions, Can IV and its agents also made critical, substantive decisions with little to no input from the Receiver, including directly negotiating release of an approximately \$32 million dollar bond with former contractor Quandel, and negotiating settlement of Quandel's outstanding construction lien.

93. As part of its negotiations with Quandel, Can IV secretly sought Quandel's cooperation in any future litigation efforts against Packard Square.

94. Decisions regarding the Project, including negotiations with Quandel, should have been undertaken by the Receiver as a matter of law, who had fiduciary duties to all parties, precisely to prevent this kind of backroom dealing. Can IV intentionally misled the Court into believing the Receiver was acting independently to fulfill such duties, when in reality, Can IV alone made critical decisions, advantaging itself at Packard Square's expense.

95. Whereas the Receiver was empowered by this Court to make decisions regarding the Project and its construction for the good of all parties, including Packard Square, in actuality Mason was directed on even the most minute decisions by Can IV, who exerted complete control over the Receiver and the Project.

96. There is also evidence that reflects frequent calls, conference calls and in-person meetings—far beyond the minimal contact which customarily takes place in a lender-borrower relationship—between Can IV representatives, the Receiver's representatives, and contractors, and open collusion to act, in concert, to Packard Square's detriment.

97. Can IV hid its control of the Receiver from the Court, leading the Court to trust that the Receiver was an independent fiduciary.

98. Packard Square respectfully submits that given new evidence, specifically Mason's deposition testimony, the Court should reopen the record to determine whether and to what extent Can IV and its agents, including Mason, misled the Court during the receivership and beforehand, to allow an unscrupulous hedge fund to seize Packard Square's property, and then hold Packard Square and Packard Square's property liable for a \$37.5 million Receiver Loan (as amended) which was made without any basis in fact or law.

**Count I**  
**MCR 2.612(C)(3)**

**Request for relief from order authorizing the Receiver Loan and Receiver Mortgage**

99. Plaintiff realleges all preceding paragraphs as though each were fully set forth.

100. MCR 2.612(C)(3) permits a party to file an “independent action to relieve a party from a judgment, order, or proceedings,” including for fraud on the Court.

101. Because of Defendant’s collusion with Mason and the material misrepresentations, set forth above, upon which the Court relied in authorizing the Receiver Loan and Receiver Mortgage, the order ought not be enforced in equity and good conscience.

102. Absent Defendant’s fraudulent scheme and misrepresentations, the Court would not have that the value added to the real property which will result from the construction would be likely to exceed the total costs of the Receiver Loan pursuant to MCL 570.1123(1).

103. Absent Defendant’s fraudulent scheme and misrepresentations, the Court would not have authorized the Receiver Loan.

104. Defendant’s fraudulent scheme and representations prevented a full and fair adversarial proceeding.

105. Plaintiff has no adequate remedy available at law.

106. As a direct and proximate result of Defendant’s fraud, Plaintiff has suffered damages in excess of \$50,000,000.00.

**Count II**  
**MCR 2.612(C)(3)**

**Request for relief from order authorizing the Amended Receiver Loan and Receiver Mortgage**

107. Plaintiff realleges all preceding paragraphs as though each were fully set forth.



108. MCR 2.612(C)(3) permits a party to file an “independent action to relieve a party from a judgment, order, or proceedings,” including for fraud on the Court.

109. Because of Defendant’s collusion with Mason and the material misrepresentations, set forth above, upon which the Court relied in authorizing the Amended Receiver Loan and Receiver Mortgage, the order ought not be enforced in equity and good conscience.

110. Absent Defendant’s fraudulent scheme and representations, the Court would not have found that the value added to the real property which will result from the construction would be likely to exceed the total costs of the Amended Receiver Loan pursuant to MCL 570.1123(1).

111. Absent Defendant’s fraudulent scheme and representations, the Court would not have authorized the Amended Receiver Loan.

112. Defendant’s fraudulent scheme and representations prevented a full and fair adversarial proceeding.

113. Plaintiff has no adequate remedy available at law.

114. As a direct and proximate result of Defendant’s fraud, Plaintiff has suffered damages in excess of \$50,000,000.00.

**Count III**  
**MCR 2.612(C)(3)**

**Request for relief from Judgment of Foreclosure**

115. Plaintiff realleges all preceding paragraphs as though each were fully set forth.

116. MCR 2.612(C)(3) permits a party to file an “independent action to relieve a party from a judgment, order, or proceedings,” including for fraud on the Court.

117. Defendant’s collusion with Mason and material misrepresentations to this Court, set forth above, materially alter the circumstances under which Defendant obtained a Judgment of

Foreclosure from the Court, and the foreclosure judgement ought not be enforced in equity and good conscience.

118. Because of Defendant's collusion with Mason and the material misrepresentations, set forth above, upon which the Court relied in authorizing the Receiver Loan and Receiver Mortgage, and the Amended Receiver Loan and Receiver Mortgage, unconscionable amounts were fraudulently added to the total indebtedness on the Project, making it impossible for Plaintiff to recover its property as permitted by foreclosure laws.

119. Defendant intentionally sought to circumvent the normal foreclosure process through the quick appointment of a receiver who acted under its undue influence and control, and who misled this Court.

120. Defendant's fraudulent scheme and representations prevented a full and fair adversarial proceeding.

121. Plaintiff has no adequate remedy available at law.

WHEREAS, as a remedy for its alternative legal claims, Packard Square respectfully requests that the Court re-open this case and schedule an evidentiary hearing to review whether a fraud (or frauds) on the court has impacted the proceedings.

Respectfully submitted,

/s/ Samuel Estenson

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Dated: March 15, 2022

**Exhibit 1**  
**Deposition Transcript**

IN THE DISTRICT COURT OF THE UNITED STATES  
FOR THE EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

CAN IV PACKARD SQUARE, LLC,  
a Delaware limited liability company,  
Plaintiff,

vs.

Case No. 19-cv-12360

Hon. Bernard A. Friedman

CRAIG SCHUBINER,  
a New York resident,  
Defendant.

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The Video Conference Deposition of MATTHEW MASON,  
Commencing at 10:10 a.m.,  
Tuesday, February 9, 2021,  
Before Jenifer Weisman, CSR-6006,  
Taken remotely from Oakland County, Michigan.

IN THE DISTRICT COURT OF THE UNITED STATES  
FOR THE EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

CAN IV PACKARD SQUARE, LLC,  
a Delaware limited liability company,  
Plaintiff,

vs.

Case No. 19-cv-12360

Hon. Bernard A. Friedman

CRAIG SCHUBINER,  
a New York resident,  
Defendant.

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The Video Conference Deposition of MATTHEW MASON,  
Commencing at 10:10 a.m.,  
Tuesday, February 9, 2021,  
Before Jenifer Weisman, CSR-6006,  
Taken remotely from Oakland County, Michigan.

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9        Mason.

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18        Appearing remotely on behalf of the Defendant.

19

20 ALSO PRESENT:  
21 Craig Schubiner  
22 Gerald Goldman

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1 Tuesday, February 9, 2021

2 10:10 a.m.

3  
4 COURT REPORTER: The attorneys  
5 participating in this deposition acknowledge that I am  
6 not physically present in the deposition room and that  
7 I will be reporting this deposition remotely. They  
8 further acknowledge that, in lieu of an oath  
9 administered in person, the witness will verbally  
10 declare his testimony in this matter is under penalty  
11 of perjury. The parties and their counsel consent to  
12 this arrangement and waive any objections to this  
13 manner of reporting.

14 Please indicate your agreement by stating  
15 your name and your agreement on the record.

16 MR. BREDEWEG: Matt Bredeweg, I agree.

17 MS. FRIEDLAENDER: Susan Friedlaender, I  
18 agree.

19 MR. DOLAN: Ben Dolan agrees.

20 MATTHEW MASON,  
21 was thereupon called as a witness herein, and after  
22 having first been duly sworn to testify to the truth,  
23 the whole truth and nothing but the truth, was  
24 examined and testified as follows:

25 MR. BREDEWEG: Susan, for the sake of time,

1 I'm going to put a standing objection on the record to  
2 any questioning involving Mr. Mason's deliberative  
3 process as a judicially appointed receiver.

4 I understand that Judge Friedman ordered  
5 this deposition to go forward over our prior  
6 objections, but he also ruled that we were to get a  
7 list of topics ahead of time so we can determine  
8 whether any of the potential questioning was  
9 inappropriate. We did receive the list of topics but  
10 it was too broad to make any real advanced  
11 determination, so rather than waste any time with  
12 further motion practice, we're going to state our  
13 objection now and reserve the right to move to strike  
14 any testimony that impermissibly invades on the  
15 receiver's special deliberation.

16 MR. DOLAN: I'm going to join in on that  
17 objection. I think the judge also said that all  
18 relevancy objections are preserved, so I'm not going  
19 to object on those grounds either and we'll have a  
20 standing objection.

21 MS. FRIEDLAENDER: I agree with that.  
22 Thank you very much everyone.

23 EXAMINATION

24 BY MS. FRIEDLAENDER:

25 Q. Mr. Mason, thank you for being here today. I know you

1           probably didn't want to be. It's my understanding  
2           you're a lawyer, correct?

3    A.    I am.

4    Q.    All right. So I'm not going to go into any of the,  
5           you know, how do you take a deposition sort of thing  
6           so we can just get right to the matter, heart of the  
7           matter, okay?

8    A.    Okay.

9    Q.    So did you do anything to prepare for this deposition  
10           today?

11   A.    All I did was read the list of questions that were  
12           sent over and talked to Mr. Bredeweg a few times,  
13           that's it.

14   Q.    You didn't review any documents or anything?

15   A.    No.

16   Q.    Since you left McKinley, and that's where the  
17           receivership originated, did you have any of your --  
18           do you have any of your documents from the  
19           receivership?

20   A.    I probably have some limited documents related towards  
21           the tail end of the receivership, that I was involved  
22           in.

23   Q.    Okay. So when you say that I was involved in, was  
24           there a point of the receivership you were not  
25           involved?

1 A. That's correct.

2 Q. And when was that?

3 A. I believe I was no longer involved after December  
4 31st, 2017, I believe is the date.

5 Q. Okay. But you were still involved in like the sale of  
6 the property in 2018, correct?

7 A. So it would have been the end of the year in '18,  
8 sorry.

9 Q. That's okay. So maybe after the foreclosure sale you  
10 were no longer personally --

11 A. It may have actually been before that. At some point,  
12 McKinely terminated my agreement with them and I  
13 believe that they swapped out the agent of the  
14 receiver.

15 Q. So let me see if I heard that right. McKinely  
16 terminated your agreement with Canyon or with who,  
17 with them to be a receiver?

18 A. I'm not following.

19 Q. I'm not following you. I thought I heard you say that  
20 some agreement was terminated.

21 A. Well, I had an agreement with McKinely. I don't  
22 recall if it was me personally or via Conway McKenzie,  
23 my new employer, and at some point McKinely terminated  
24 that agreement and I was no longer involved in the  
25 project.

1 Q. Then you were no longer -- can I ask, why was that  
2 terminated, your agreement with McKinely?

3 A. I no longer worked there. I had been gone from  
4 McKinely for, at that point, approaching two years and  
5 I just had very limited involvement and you'd have to  
6 ask them why they terminated the services agreement.  
7 I don't know.

8 Q. Okay, that's fair. So I'm going to have to go back in  
9 time with you and, you know, I know we're going back  
10 to 2016, starting in 2016. I realize that we're kind  
11 of going back in time here, but how did you come about  
12 becoming the receiver in the first place; how did that  
13 come about?

14 A. You mean the court hearing?

15 Q. No, even before the court hearing. Weren't you  
16 contacted before the court hearing and asked if you  
17 would be a receiver in the matter?

18 A. I was, yes.

19 Q. So that's how it came about?

20 A. Yes. I received a call from an attorney that I knew  
21 or that I know at Dickinson Wright --

22 Q. And who --

23 A. I'm sorry?

24 Q. I know we shouldn't be talking over each other. I was  
25 going to ask who the attorney was.

1 A. I believe it was Jim Cunningham that contacted me.

2 Q. Okay.

3 A. And said that a colleague of his was involved in a  
4 matter that may need a receiver, and since I was based  
5 in Ann Arbor at that time asked if I would have any  
6 interest in being a receiver for it.

7 Q. And according to your resume, you've been a receiver,  
8 you were a receiver before then, correct?

9 A. Yes, many, many, many times.

10 Q. Okay. And in any prior receiverships that you had  
11 been involved in, did any of them have to do with  
12 lending, you know, between a lender and a borrower?

13 A. Almost all of them, if not all of them.

14 Q. Okay. And in any of the prior receiverships you were  
15 involved in, did the receiver complete construction of  
16 a project?

17 A. Not that I recall specifically. I'm sure there was  
18 probably some construction aspects, but none that I  
19 can recall to the level of construction as in this  
20 case.

21 Q. And in any of those prior receiverships, did you as  
22 the receiver, ever borrow money from the lender who I  
23 assume was the plaintiff in the case?

24 A. I think you have to be more specific about that,  
25 because the advances in many times come from a lender.

1 So in many cases there are -- there's insufficient  
2 cash flow to fund a project, so someone has to fund  
3 that and in almost all cases that I've been involved  
4 in it's been the lender. Is that considered a loan or  
5 a protected advance, I don't know. But yeah, it's not  
6 unusual for a lender to advance funds in some  
7 capacity.

8 Q. In any of your -- let's just focus on -- because I  
9 know I saw that you may have been a receiver in other  
10 states, but in your Michigan receiverships, in any of  
11 those did the lender actually make a separate loan to  
12 you as the receiver and enter into loan documents with  
13 you and that whole thing?

14 A. I don't recall. Nothing jumps out at me.

15 Q. That had happened before this receivership?

16 A. Correct.

17 Q. Okay. Just again, housekeeping, many times if I'm  
18 referring to you, I am referring to you as a receiver  
19 and if I'm referring to you as Matt Mason, I'll tell  
20 you. And when I'm referring to you as receiver, just  
21 to make it easy, that could include originally like  
22 McKinely, because they were basically really the  
23 receiver, you were an agent of McKinely or whatever,  
24 and there were other people at McKinely who also acted  
25 as receiver, correct?

1 A. There were other people involved, yes.

2 Q. When I'm saying you as receiver, let's, you know,  
3 imagine that I'm asking you about anything you might  
4 have personal knowledge of even if it's not you, that  
5 it was someone who you know about as part of the  
6 receiver role, just to be clear on that.

7 MR. BREDEWEG: Let me jump in and just  
8 state that I'm going to object to you asking Mr. Mason  
9 about the knowledge of other people who worked for him  
10 if it's not his independent knowledge.

11 MS. FRIEDLAENDER: Well, you can object,  
12 but okay. I'm saying if he knows about it, whether  
13 it's through hearsay, he can tell me it's hearsay or  
14 whatever, but I mean, if he has knowledge of it, if he  
15 knows. Just so that we don't have a misunderstanding,  
16 he might know about something but it wasn't, you know,  
17 he can say I don't know but I know that I heard that  
18 Jennifer dealt with that issue or someone, okay, or  
19 Chris or someone else dealt with that issue but that  
20 wasn't me, that's still something he can testify  
21 about.

22 MR. BREDEWEG: If he knows, sure.

23 MS. FRIEDLAENDER: That's what I'm saying.  
24 I'm only asking if he knows.

25 BY MS. FRIEDLAENDER:



1 Q. All right. We were starting to talk about how the  
2 receivership began. Do you know, by chance, if anyone  
3 at McKinely knew anyone at Canyon before the  
4 receivership began?

5 A. To the best of my knowledge, no.

6 Q. And when Canyon, through their lawyers, approached you  
7 about the receivership, did they ask you to enter into  
8 any kind of confidentiality agreement?

9 A. I don't recall.

10 Q. Did you ever enter into any confidentiality agreement  
11 with them?

12 A. Not that I recall.

13 Q. Do you know whether McKinely did during the time of  
14 the receivership?

15 A. Again, not that I can recall.

16 Q. Okay. And can you remember what you were told in  
17 those first conversations about the receivership,  
18 about why they wanted to hire you?

19 A. My understanding was that there was a construction  
20 loan that was partially through construction and there  
21 was a dispute, some sort of alleged default and they  
22 may need a receiver.

23 Q. Did they say upfront that they would also need to  
24 front money for the receivership?

25 A. Oh, no, that conversation would have been well after

1 the fact.

2 Q. Okay. Well, do you remember about when they contacted  
3 you, how much earlier was that than the beginning of  
4 the litigation?

5 A. I don't know when the litigation was filed. If you're  
6 asking how long was I contacted before the  
7 receivership appointment --

8 Q. Yes.

9 A. -- is that what you're asking?

10 Q. I guess so.

11 A. I don't know when the initial litigation was filed  
12 because that didn't involve me. My best guess is from  
13 the first conversation I had regarding a potential  
14 receivership to the appointment, two weeks maybe. It  
15 was pretty quick.

16 Q. Okay. I mean, I can give you a document if it would  
17 help to refresh your memory, but actually the very  
18 first emergency motion for appointment of receiver I  
19 believe happened like the same date or around the same  
20 date they filed the litigation, which was October  
21 21st, 2016. Does that ring a bell?

22 A. No. I don't think I would have been involved when  
23 they filed the litigation.

24 Q. Well, let's see what I have here and I can put it in  
25 the chat. I'm going to see if I can do this. I'm

1 going to try to put this file -- this is Canyon Ex  
2 Parte Emergency Order. We can mark this as Exhibit 1.

3 MARKED FOR IDENTIFICATION:

4 DEPOSITION EXHIBIT 1

5 10:34 a.m.

6 BY MS. FRIEDLAENDER:

7 Q. I'm scrolling through and I want to show you it is  
8 what it is, and then scroll down to an exhibit and,  
9 Matt, can you see this?

10 A. I can.

11 Q. It's dated October 21st, 2016 and then Exhibit A, Ex  
12 Parte Order, that's the proposed order that did get  
13 entered, and then Exhibit B, it's Declaration of  
14 Mathew Mason. Do you see that?

15 A. I do.

16 Q. And this is also dated October 21st, 2016, correct?

17 A. Okay.

18 Q. So I don't know if that refreshes your memory of the  
19 matter, but your affidavit was included with one of  
20 the first documents in the lawsuit, okay?

21 A. Okay.

22 Q. And in the appointment of receiver is also what states  
23 that -- it does refer to making a loan. I'm sure  
24 you're very familiar with this Order of Receiver, you  
25 have read this many times, correct?

1 A. It's been a long time, but yes, I've read it many  
2 times.

3 Q. Okay. Is it okay for me to take it off the screen now  
4 everyone?

5 A. Fine with me.

6 MR. BREDEWEG: If you're going to ask more  
7 questions about it, we might need it back.

8 MS. FRIEDLAENDER: All right, I'll keep it  
9 here while I ask questions about it.

10 BY MS. FRIEDLAENDER:

11 Q. Because what I was getting to is that -- I mean, you  
12 filed your affidavit at the same time that the lawsuit  
13 was filed so I guess the question from here is, had  
14 you discussed, prior to filing, that you would be  
15 asking the Court for a loan?

16 A. No, not to my recollection.

17 Q. Okay. But did Canyon advise you from the beginning  
18 that it wanted -- did Canyon advise you from the  
19 beginning that it wanted you to complete the  
20 construction?

21 A. That, I don't recall.

22 Q. Okay. And do you recall when they advised you that  
23 they would want you to be able to borrow funds to do  
24 that?

25 A. I don't recall any of those conversations.

1 Q. Okay. Do you remember at all what was discussed  
2 before they filed this motion, the Ex Parte motion for  
3 receiver?

4 A. Yes, what I remember mostly was that it was  
5 approaching the fall, the building wasn't completed,  
6 so windows weren't in, things like that, and that the  
7 immediate need would be to preserve the building with  
8 the winter coming up.

9 Q. So that was mostly what the discussion was about,  
10 winterizing?

11 A. From my recollection, that was the first item of  
12 business, with anything in Michigan, making sure that  
13 anything that's exposed to the elements is  
14 safeguarded.

15 Q. I'm going to leave this up because we're going to be  
16 looking at the affidavit a little bit, so I'll leave  
17 this on the screen.

18 If you look at paragraph 3, I have it on  
19 the screen now, it says there has been no contract  
20 agreement, arrangement or understanding between Can IV  
21 Packard Square, L.L.C. or any of the lenders which  
22 from time to time are parties to the loan at issue in  
23 this action, and myself as to, A, what my role as  
24 receiver will be, is that correct?

25 A. I'm reading what's there, yeah, that's what it appears

1 to say.

2 Q. Does that fit with your memory of the situation that  
3 that was the fact?

4 A. I'm sorry, I was reading while you were talking. Can  
5 you repeat that?

6 Q. Was that the fact? Is that factually correct?

7 A. Can you read the previous part, is what factually  
8 correct?

9 Q. What my role as receiver will be. Just what they're  
10 saying in paragraph 3.

11 A. Oh, yeah.

12 Q. Okay.

13 A. That is correct.

14 Q. All right. And also because D is what capital  
15 expenditures will be made at the property.

16 A. Correct.

17 Q. I think I can close that out now.

18 It looks like the next document -- I'll do  
19 a share screen -- this is actually easy -- now you see  
20 -- now, we have joint motion of the receiver and  
21 Packard Square for an Order approving receivership  
22 loan documents pursuant to the receivership Order,  
23 okay?

24 A. Yes.

25 Q. This is Exhibit 2.

1 MARKED FOR IDENTIFICATION:

2 DEPOSITION EXHIBIT 2

3 10:42 a.m.

4 BY MS. FRIEDLAENDER:

5 Q. And Matt Mason, and the other Matt too, I want to -- I  
6 can go slowly in order to refresh your memory, if  
7 needed, so you have a background here of what we're  
8 doing of the next questions.

9 A. Okay.

10 Q. I'll read paragraph 2. It says, after considering the  
11 party's briefing and entertaining lengthy oral  
12 argument at a hearing on October 27, 2016, the Court  
13 granted plaintiff's request for a receiver and entered  
14 an Order appointing receiver on November 1st, 2016.

15 Pursuant to the receivership Order, the  
16 receiver took immediate possession and control of the  
17 property and was directed to take any and all  
18 necessary steps to prevent waste and to preserve,  
19 secure, safeguard, winterize and complete construction  
20 of the property.

21 And I'm reading this aloud just to make it  
22 easier.

23 And then it says, to enable the receiver to  
24 satisfy its duties under the receivership Order, the  
25 receivership Order permits the receiver to borrow

1 funds up to a maximum principal amount of -- you see  
2 the number -- 19 million and change. Subject to terms  
3 acceptable to plaintiff and upon approval of this  
4 Court for the purpose of, among other things,  
5 winterizing, safeguarding, completing the construction  
6 of the property. Here the borrower must borrow funds  
7 to fulfill its obligation under the receivership  
8 Order, blah, blah, blah.

9 All right. Now, here's paragraph 6. Do  
10 you recall this, Matt Mason?

11 A. Vaguely. It looks familiar, yes.

12 Q. Okay. Just for timeline, so this was filed -- the  
13 motion to appoint receiver and the lawsuit was filed  
14 on October 26, 2016, just to give us a picture to put  
15 things in perspective, and then we can tell from these  
16 pleadings that on October 27 there was a hearing held  
17 on the motion to appoint receiver, Court approved it.  
18 So then following that we have this joint motion for  
19 entry of the Order and I think it's here where a  
20 receiver is asking the Court can I borrow this money.

21 Do you see on paragraph 6 it says, based on  
22 the receiver's research regarding the property and its  
23 experience, the contemplated construction will  
24 increase the value of the property in excess of the  
25 cost of the additional construction including all



IN THE DISTRICT COURT OF THE UNITED STATES  
FOR THE EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

CAN IV PACKARD SQUARE, LLC,  
a Delaware limited liability company,  
Plaintiff,

vs.

Case No. 19-cv-12360

Hon. Bernard A. Friedman

CRAIG SCHUBINER,  
a New York resident,  
Defendant.

---

The Video Conference Deposition of MATTHEW MASON,  
Commencing at 10:10 a.m.,  
Tuesday, February 9, 2021,  
Before Jenifer Weisman, CSR-6006,  
Taken remotely from Oakland County, Michigan.

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19

20 ALSO PRESENT:  
21 Craig Schubiner  
22 Gerald Goldman

23

24

25

1 estimated overhead and administrative costs together  
2 with interest on any funds that are to be borrowed for  
3 the construction. Did I read that correctly?

4 A. Sounds correct.

5 Q. Okay. And it references an Exhibit B. So my question  
6 to you on this is, do you know what research they're  
7 referring to in this paragraph? What research did you  
8 do regarding the property?

9 A. What I recall is we looked at the building, how it sat  
10 in a vacant shell, and looked at what we thought the  
11 building in receivership with pretty limited  
12 construction would sell for as of that date and what  
13 the value of the building would be if the construction  
14 was furthered.

15 Q. When you said we, who is the we that you're referring  
16 to?

17 A. Well, I mean there was several people at McKinely  
18 involved.

19 Q. So were you just there when you went to the property  
20 and looking at what was there, were you just there  
21 with people from McKinely?

22 A. You'd have to say which point. I know we walked the  
23 building with various contractors and the current  
24 construction group that was there, as well as  
25 replacement general contractors as well.

1 Q. I guess, if you can remember, it would be prior to  
2 this pleading being drafted. And this was done for --  
3 this was done after you were appointed.

4 A. What date, can you tell me what date this was? It  
5 will help me in my head piece together the time.

6 Q. Sure. This is dated November 10, 2016.

7 A. Okay.

8 Q. This was the motion for approving the receivership  
9 loan.

10 A. Okay.

11 Q. That's when this is referring to research, and so when  
12 you're trying to determine -- because I can tell you  
13 that later on, and it's been actually -- it is in the  
14 transcript of this hearing that it -- there is  
15 actually something even more specific that was -- a  
16 more specific number, and I can get the transcript if  
17 you want, but in the transcript, I believe, it's one  
18 of the receiver's attorneys who used a much more  
19 specific number saying you valued the number as-is at  
20 22.5 million. Does that ring a bell?

21 A. No, I couldn't tell you what that number was.

22 Q. Okay. And the only reason I ask is I've never seen  
23 any writing from you saying this is what I value the  
24 property to be. So do you recall, did you ever put  
25 anything in writing?

1 A. I don't remember, unfortunately.

2 Q. Okay. And I understand, it was a long time ago.

3 So when you were looking, had Canyon -- did  
4 anyone at Canyon tell you, prior to filing this motion  
5 for the entry of Order approving the receivership  
6 loan, how much had been spent on the property at that  
7 point?

8 A. I would think. I don't remember specifically, but I  
9 would assume that we would have an understanding of  
10 how much had been spent at that point. If nothing  
11 else, just looking at whatever construction contracts  
12 were in place and trying to understand how much had  
13 been spent.

14 Q. Okay. And I guess the reason I ask that question  
15 is -- maybe I should do a little bit of a foundation  
16 here -- do you have -- tell me what the CCIM means in  
17 your title.

18 A. Certified commercial investment member.

19 Q. Okay. And you took courses to get that designation?

20 A. I did.

21 Q. Do any of those courses concern the value of real  
22 estate?

23 A. They do.

24 Q. And are there any -- is there any coursework regarding  
25 how to value real estate?

1           involved. Yeah, I'm sure I was involved in the  
2           discussions.

3       Q.    As far as the terms of the loan, did you have an  
4           ability to negotiate what the terms of the loan would  
5           be?

6       A.    Not really.

7       Q.    Why was that?

8       A.    Well, to my recollection, how I remember it is the  
9           Order essentially said the receiver can borrow the  
10          money from one source and in my world, that's not much  
11          of a negotiation.

12      Q.    But you were the receiver and you were the only one  
13           who could ask for the loan, so you asked the Court for  
14           that?

15      A.    Yes, I asked for the loan but I could only borrow it  
16           from one source.

17      Q.    Well, I mean, so you're saying you had no  
18           independence; once you were appointed the receiver,  
19           you had no independent agency at that point to look  
20           around for a loan from another source?

21      A.    If you want to pull up the Order, my recollection is  
22           the Order was very specific that the receiver can only  
23           borrow money from the plaintiff, that's my  
24           understanding and recollection.

25      Q.    And I agree with you.



1 A. If you want to pull up the Order, we can go through  
2 that.

3 Q. No, I agree with you, and I guess where we're having a  
4 disconnect here is like what comes first, cause and  
5 effect. What comes first is the receiver under the  
6 law has to petition the Court for permission to borrow  
7 money, so that's up to the receiver to tell the Court  
8 under what terms it wants -- it's asking the Court to  
9 allow it to borrow money, that's up to the receiver,  
10 correct?

11 A. No, I disagree.

12 Q. Why is it not up to the receiver?

13 A. The receiver doesn't get to dictate the terms of the  
14 loan.

15 Q. But the receiver is allowed to ask for the loan?

16 A. Yes, but the receiver doesn't dictate that someone has  
17 to make the loan.

18 Q. Right. Let's say that this lender wasn't going to  
19 make the loan but wanted you to complete the  
20 construction and you had to go borrow money and had to  
21 find a different lender, you would be allowed to do  
22 that, right, as the receiver?

23 A. Are you saying that if -- can you repeat that because  
24 it's not making sense.

25 Q. Okay. If you're a receiver, you're appointed to be a

1           you think you were still there in 2019 --

2       A.    No.

3       Q.    -- or still being receiver?

4       A.    No, I'm almost certain it was December of '18 when I  
5           was done.

6       Q.    When we were earlier discussing the affidavits that  
7           were filed -- that you filed, you know, that talked  
8           about the added value to the property from the loan  
9           and we talked about that you had discussed with other  
10          people coming to that conclusion that there was added  
11          value, do you recall who the other people were who you  
12          discussed that with?

13      A.    I believe I would have worked with Chris Allen on that  
14          because we were pulling comparable -- sales comps and  
15          where we thought values would be. Jim Fink I remember  
16          was part of that conversation, because he was helping  
17          to draft the correspondence. Not specifically, no, I  
18          don't. I know we would have bandied this around as a  
19          group trying to make sure we came up with a very good  
20          value, but I don't recall specifically.

21      Q.    Okay. And was there anybody who negotiated the loan  
22          with you?

23      A.    Again, it would have been kind of a group effort along  
24          with counsel.

25      Q.    And you remember the bankruptcy proceedings, of

1 estimated overhead and administrative costs together  
2 with interest on any funds that are to be borrowed for  
3 the construction. Did I read that correctly?

4 A. Sounds correct.

5 Q. Okay. And it references an Exhibit B. So my question  
6 to you on this is, do you know what research they're  
7 referring to in this paragraph? What research did you  
8 do regarding the property?

9 A. What I recall is we looked at the building, how it sat  
10 in a vacant shell, and looked at what we thought the  
11 building in receivership with pretty limited  
12 construction would sell for as of that date and what  
13 the value of the building would be if the construction  
14 was furthered.

15 Q. When you said we, who is the we that you're referring  
16 to?

17 A. Well, I mean there was several people at McKinely  
18 involved.

19 Q. So were you just there when you went to the property  
20 and looking at what was there, were you just there  
21 with people from McKinely?

22 A. You'd have to say which point. I know we walked the  
23 building with various contractors and the current  
24 construction group that was there, as well as  
25 replacement general contractors as well.

1 Q. I guess, if you can remember, it would be prior to  
2 this pleading being drafted. And this was done for --  
3 this was done after you were appointed.

4 A. What date, can you tell me what date this was? It  
5 will help me in my head piece together the time.

6 Q. Sure. This is dated November 10, 2016.

7 A. Okay.

8 Q. This was the motion for approving the receivership  
9 loan.

10 A. Okay.

11 Q. That's when this is referring to research, and so when  
12 you're trying to determine -- because I can tell you  
13 that later on, and it's been actually -- it is in the  
14 transcript of this hearing that it -- there is  
15 actually something even more specific that was -- a  
16 more specific number, and I can get the transcript if  
17 you want, but in the transcript, I believe, it's one  
18 of the receiver's attorneys who used a much more  
19 specific number saying you valued the number as-is at  
20 22.5 million. Does that ring a bell?

21 A. No, I couldn't tell you what that number was.

22 Q. Okay. And the only reason I ask is I've never seen  
23 any writing from you saying this is what I value the  
24 property to be. So do you recall, did you ever put  
25 anything in writing?

1 A. I don't remember, unfortunately.

2 Q. Okay. And I understand, it was a long time ago.

3 So when you were looking, had Canyon -- did  
4 anyone at Canyon tell you, prior to filing this motion  
5 for the entry of Order approving the receivership  
6 loan, how much had been spent on the property at that  
7 point?

8 A. I would think. I don't remember specifically, but I  
9 would assume that we would have an understanding of  
10 how much had been spent at that point. If nothing  
11 else, just looking at whatever construction contracts  
12 were in place and trying to understand how much had  
13 been spent.

14 Q. Okay. And I guess the reason I ask that question  
15 is -- maybe I should do a little bit of a foundation  
16 here -- do you have -- tell me what the CCIM means in  
17 your title.

18 A. Certified commercial investment member.

19 Q. Okay. And you took courses to get that designation?

20 A. I did.

21 Q. Do any of those courses concern the value of real  
22 estate?

23 A. They do.

24 Q. And are there any -- is there any coursework regarding  
25 how to value real estate?

1 A. Yes, there is several different approaches.

2 Q. Okay. So I mean, you learn like the appraisal  
3 approaches, is that what we're talking about?

4 A. Appraisals are done from a different perspective.  
5 Typically, I'm looking at it from either a replacement  
6 cost approach, income approach, or in a lot of times  
7 what a performa is, which would be the case in this  
8 project.

9 Q. Now, would performa be different than an income  
10 approach?

11 A. Yeah, because the building didn't have any income, so  
12 I would have nothing to go on but a performa; what we  
13 thought the income may be in the future.

14 Q. Right. But that's kind of like an appraiser does  
15 that, too, you know, when they do an income approach,  
16 like if this thing was leased -- anyway, we're talking  
17 about the same thing I believe.

18 Just about the 22.5 million, I was  
19 wondering if that was the existing construction,  
20 because obviously the property had some value -- you  
21 know, there were predevelopment costs, there was  
22 acquisition costs, I was just wondering if any of that  
23 was factored into any initial value determination?

24 MR. BREDEWEG: I'm going to object to lack  
25 of foundation. He already testified he didn't

1 remember anything specific about that number.

2 MS. FRIEDLAENDER: Well, I'm asking again.

3 BY MS. FRIEDLAENDER:

4 Q. You can answer anyway, Matt.

5 A. Can you repeat the question?

6 Q. I was just wondering if you considered at all the  
7 acquisition costs of the property in determining what  
8 any existing value the property would have?

9 A. To the extent we came up with a value, it likely would  
10 have been based on the land cost and any of the -- the  
11 value of any improvements on the land.

12 Q. But I guess you don't remember specifically?

13 A. No, sorry.

14 Q. Okay. Did you have any role in -- let me back up.  
15 Are you familiar with the Construction Lien Act?

16 A. Somewhat. Not overly. It's not something I know  
17 in-depth.

18 Q. Okay. Do you recall when getting the loan that there  
19 was a certain provision of the Construction Lien Act,  
20 you can see in paragraph 10, MCL 57011.23, that under  
21 that -- there is a standard in there for receivers to  
22 obtain loans? Are you familiar with that standard?

23 A. I'm sure I looked at it at that point. I don't recall  
24 right now what it means.

25 Q. I'll read it to you and see if that helps. Well, the

1 standard is -- I'm on two different computers and  
2 they're not syncing as they should be. Okay. What  
3 the statute says in relevant part is, a petition for  
4 authority to complete construction of improvements  
5 shall not be granted unless the Court finds that the  
6 value added to the real property which will result  
7 from the construction is likely to exceed the cost of  
8 the additional construction including all estimated  
9 overhead and administrative costs together with  
10 interest on any funds that are to be borrowed for the  
11 construction. Does that ring a bell?

12 A. Yeah, I think that was in the section you read a few  
13 minutes ago.

14 Q. Did I read that a few minutes ago? Okay, I didn't  
15 think I did, but okay.

16 This is the section that gives the receiver  
17 the authority to petition the Court to complete  
18 construction and to borrow money, grant security,  
19 otherwise for further borrowing. What the section  
20 also refers to is that the priority of the security  
21 shall be determined by the Court.

22 So when we go back to this motion,  
23 paragraph 8, here's it says, the parties further agree  
24 that in accordance with the receivership Order and the  
25 Construction Lien Act, the lien securing the



1 receivership loan will have super priority over all  
2 other interest, liens, encumbrances, blah, blah, blah.  
3 You see that?

4 A. Yep.

5 Q. This is more -- I'm going to get to the actual  
6 question. So prior to filing this motion, you had to  
7 have had discussions with the lender, correct?

8 A. As far as the receiver's ability to take over the  
9 loan, yes, I would think we did. I couldn't  
10 specifically recall any of those, but I can't imagine  
11 that we would have done this without speaking with the  
12 lender who is going to have to advance the funds.

13 Q. Right. But you understand, don't you, because you're  
14 a lawyer, too, that the statute doesn't -- it doesn't  
15 say that the lender can come in and petition the Court  
16 for the loan on its own, the receiver has to come in  
17 and ask the Court to approve the loan, correct?

18 MR. BREDEWEG: I'm going to object to his  
19 understanding, his interpretation of the statute, that  
20 is a legal question and not a factual issue.

21 MS. FRIEDLAENDER: Well, he's a lawyer. I  
22 don't know, I think it's important to know.

23 MR. BREDEWEG: Do you want to ask him his  
24 understanding of what the statute says?

25 MS. FRIEDLAENDER: Yes, that's what I'm

1           trying to do.

2   BY MS. FRIEDLAENDER:

3   Q.   Matt, do you understand the statute to mean that it's  
4       the receiver who petitions the Court for the loan?

5   A.   I guess I don't really have a response to that.  I  
6       mean, you're showing this on a screen.

7   Q.   Do you want me to show you the statute?

8   A.   Sure, that would be great.  You're asking what my  
9       understanding is today or what my understanding was  
10      four or five years ago?

11   Q.   Well, if you can remember what your understanding was  
12      four or five years ago -- I mean, did you understand  
13      when you were participating in this, that you, the  
14      receiver, you were asking the Court, can I borrow  
15      money?

16   A.   Yes, I knew that we needed Court approval to borrow  
17      money to winterize and safeguard the property.

18   Q.   And how about to complete the construction?

19   A.   I don't know that -- as I sit here today, I don't know  
20      that the thought was to complete the construction.  I  
21      don't recall that.  I'm looking at the document you  
22      have in front of me.  It looks as if we're seeking  
23      authorization to borrow the \$19 million number for  
24      winterizing, safeguarding and completing construction.  
25      So yeah, that looks like what the request was for.

1 Q. All right. And just to help, I will get -- I have the  
2 statute here, too. I don't know how many things I can  
3 put on the screen at one time, because if you want to  
4 see what the Construction Lien Act says --

5 A. If you want me to see it, I'm happy to look at it.

6 Q. Well, I read it to you, but if you want to see it, I  
7 can show it to you, too. I'm trying to -- it says  
8 what it says and whether your understanding of what it  
9 said, which is -- I'll just put it up here for a  
10 second if that helps.

11 I'm trying to determine, and you can say  
12 yes or no, is whether you understood when joining in  
13 this motion that it was the receiver who had to ask  
14 the Court for permission to borrow the money and I can  
15 put -- let me see if I can get this up here now --

16 A. If I can save you some time and tell you that while I  
17 don't recall specifically if we were making the motion  
18 to have the Court approve the borrowing of those  
19 funds, that the receiver had to make that request.

20 Q. Okay, that's all I'm trying to establish. Now I have  
21 lost -- I'm trying to get my menu back in case I need  
22 it again. I don't need to put that up and I can get  
23 to the questions.

24 So did you negotiate the loan?

25 A. I'm trying to recall. There were several of us

1 involved. Yeah, I'm sure I was involved in the  
2 discussions.

3 Q. As far as the terms of the loan, did you have an  
4 ability to negotiate what the terms of the loan would  
5 be?

6 A. Not really.

7 Q. Why was that?

8 A. Well, to my recollection, how I remember it is the  
9 Order essentially said the receiver can borrow the  
10 money from one source and in my world, that's not much  
11 of a negotiation.

12 Q. But you were the receiver and you were the only one  
13 who could ask for the loan, so you asked the Court for  
14 that?

15 A. Yes, I asked for the loan but I could only borrow it  
16 from one source.

17 Q. Well, I mean, so you're saying you had no  
18 independence; once you were appointed the receiver,  
19 you had no independent agency at that point to look  
20 around for a loan from another source?

21 A. If you want to pull up the Order, my recollection is  
22 the Order was very specific that the receiver can only  
23 borrow money from the plaintiff, that's my  
24 understanding and recollection.

25 Q. And I agree with you.

1 A. If you want to pull up the Order, we can go through  
2 that.

3 Q. No, I agree with you, and I guess where we're having a  
4 disconnect here is like what comes first, cause and  
5 effect. What comes first is the receiver under the  
6 law has to petition the Court for permission to borrow  
7 money, so that's up to the receiver to tell the Court  
8 under what terms it wants -- it's asking the Court to  
9 allow it to borrow money, that's up to the receiver,  
10 correct?

11 A. No, I disagree.

12 Q. Why is it not up to the receiver?

13 A. The receiver doesn't get to dictate the terms of the  
14 loan.

15 Q. But the receiver is allowed to ask for the loan?

16 A. Yes, but the receiver doesn't dictate that someone has  
17 to make the loan.

18 Q. Right. Let's say that this lender wasn't going to  
19 make the loan but wanted you to complete the  
20 construction and you had to go borrow money and had to  
21 find a different lender, you would be allowed to do  
22 that, right, as the receiver?

23 A. Are you saying that if -- can you repeat that because  
24 it's not making sense.

25 Q. Okay. If you're a receiver, you're appointed to be a

1 receiver in a case. Let's say the lender hadn't  
2 approached you before and said you're going to need  
3 money and we're the -- first of all, did the lender  
4 say to you we're the only entity you can borrow money  
5 from?

6 A. Not that I recall. It was written in the Order that  
7 way.

8 Q. But what came -- but the petition comes before the  
9 order, right?

10 A. What petition?

11 Q. The petition to ask the Court whether the receiver  
12 could borrow money.

13 A. Now you're confusing me. So yeah, we would've made  
14 the motion for approval to borrow the funds from the  
15 one source the receiver was allowed to borrow the  
16 funds from.

17 Q. Okay. So when the plaintiff filed the motion for an  
18 appointment of receiver and in that order it  
19 referenced that the receiver could borrow money, are  
20 you saying that in the receiver Order it said it could  
21 only borrow money from the lender?

22 A. That's my recollection. If I'm wrong, why don't we  
23 pull up the Order and see. But that's my  
24 recollection, that we can only borrow it from one  
25 source. We were prohibited from taking out additional

1 debt.

2 Q. Okay. So are you saying though as the receiver, that  
3 you had -- if you had decided that you didn't think  
4 that the loan was, you know, in the best interest of  
5 all parties at that point you would have no power to  
6 effect any change?

7 A. Correct. I've been in that situation with other  
8 receiverships, that a lender chooses not to advance  
9 additional funds and we're left with whatever funds we  
10 have.

11 Q. Do you have the right to ask the Court if you can  
12 borrow other funds, if you can find a source to borrow  
13 them from?

14 A. That would have been against the receivership Order.

15 Q. You could not have asked the Court to amend the  
16 receivership Order?

17 A. I suppose going in and asking the -- the receiver  
18 asking the judge to change the terms of the Order,  
19 sure, I could have gone in and asked for any number of  
20 things. But as a receiver, we operate under what is  
21 the charge in the judge's Order, and that's what we  
22 operate under. As a receiver, I don't just make up  
23 rules as I go along. I follow what the judge ordered.

24 Q. Okay. So if I'm understanding your testimony then is  
25 that you knew before going in and joining -- I mean,

1 joining the petition to ask the Court to borrow money,  
2 that you really had no power to effect what those  
3 terms of the loan were?

4 A. When I can -- when I'm only authorized to borrow money  
5 from one source, I don't have a lot of leverage in  
6 that conversation. I was authorized to borrow it from  
7 one source, and correct me if I'm wrong, I don't  
8 believe there was anything in the Order that required  
9 the one party that I can borrow money from to make  
10 that loan.

11 Q. Right, they were not required to make the loan. So if  
12 they had said, well, forget it, we don't want to make  
13 the loan, would the receivership just end?

14 A. It effectively would have, because unlike a  
15 traditional receivership, it's an operating property,  
16 I would have had -- I have some level of cash flow to  
17 sustain operations. As the receiver in a property  
18 with no revenue and being a long way away from having  
19 any revenue, if there were not funds available to  
20 build the property, I don't know what the receivership  
21 would have looked like at that point, because I would  
22 have been the receiver over a building that is wasting  
23 in the winter with no ability to do anything about it.

24 Q. So you didn't believe as a receiver you could go find  
25 another bank to make a loan?



1 A. We can cover this ground yet again, but what I'm  
2 saying is the Order said I can borrow the funds from  
3 one source. So my understanding was that no, I could  
4 not borrow it from someone else, the Order did not  
5 allow it.

6 Q. No, what I'm saying to you is -- this is more of a,  
7 you know, hypothetical, okay? Because you mentioned,  
8 as you mentioned correctly, the Order said that the  
9 lender did not have to loan the money, they were under  
10 no obligation to. So here you're the receiver, the  
11 lender is saying, you know what, we changed our mind,  
12 we'll give you the money to do the winterization but  
13 after that we don't want to loan you any more, so  
14 you're the receiver at that point, do you feel like  
15 well maybe I ought -- maybe this construction should  
16 be completed because if it's not, that's not going to  
17 be good for these construction lien claimants and  
18 other people and the borrower because to have an  
19 unfinished project on the receiver and under the  
20 Construction Lien Act I can petition for a loan so  
21 maybe I can go shop for another loan if this lender is  
22 saying I don't want to give you the money to complete  
23 construction?

24 A. But again, you keep going back to I'm going to go find  
25 another lender. I didn't have that authority.

1 Everything you say is predicated on getting another  
2 lender, which was not an option.

3 Q. All right. So that's fine, you're saying you had no  
4 authority to do -- obtain a loan from anybody else.

5 A. Yes.

6 Q. Okay. Before petitioning for the loan, did you have  
7 any discussions with the lender that you recall about  
8 it becoming a super priority loan?

9 A. Not specifically. I mean, I'm familiar with the  
10 concept.

11 Q. What does that mean that it would become a super  
12 priority loan?

13 A. Well, similar to in a bankruptcy, that loan would be  
14 the first one that gets paid off, whenever there are  
15 funds available.

16 Q. Okay. Even if the same lender has an original loan on  
17 the property?

18 A. That super priority loan and my understanding means  
19 it's the very first funds that get repaid back.

20 Q. Were you involved in negotiating the receiver loan  
21 documents?

22 A. I'm sure I looked at them, but I wasn't primarily  
23 negotiating the documents.

24 Q. Okay. Do you recall any provision in those documents  
25 that said that the original loan was a permitted

1 encumbrance on the receiver loan?

2 A. I don't remember. Counsel would have been reviewing.

3 Q. Okay. So that really wouldn't have been up to you.

4 I'm sure you were told that there would be  
5 a 16 percent interest rate on the receiver loan?

6 A. Yeah, my understanding and my recollection was that  
7 those were -- that's the rate at which the one party I  
8 could obtain funds from was willing to lend and it's  
9 my recollection that that was the interest rate that  
10 was in place on the existing loan, which we were  
11 inheriting.

12 Q. Okay. So you believed you were inheriting the  
13 existing loan as well?

14 A. Again, my recollection is that that 19.6 million  
15 number, from my recollection is that's what was  
16 remaining under the existing loan.

17 Q. Were you aware that the 16 percent was a default  
18 interest?

19 A. That's my recollection, that was the interest rate  
20 that was currently in place.

21 Q. Okay. As the receiver, is there a concern because, as  
22 you know, the receiver is the fiduciary for all the  
23 parties in the case, right?

24 A. Uh-huh.

25 Q. And in this case, we had the lender, we had the

1 borrower and we had construction lien claimants,  
2 correct?

3 A. Sounds right.

4 Q. And as a receiver, is that something you think about  
5 is I have all these parties who are involved in this  
6 property?

7 A. In this receivership as with every receivership, I  
8 view the receiver's role to maximize the value of the  
9 property, to generate as much value of the property at  
10 that point. How those dollars get distributed, it  
11 really -- that's not the role of the receiver. My job  
12 is to maximize proceeds. How those waterfalls get  
13 distributed, I'll be honest, is not something that  
14 affects -- that I even really pay attention to,  
15 because those are contractual issues and outside the  
16 scope of the receivership.

17 Q. I understand. But let's follow through with that, you  
18 feel your job -- and tell me if I'm not saying this  
19 the way you just said it to me -- you're trying to  
20 maximize the value of the property, the proceeds that  
21 could eventually come from the property?

22 A. Yes, because that is to the benefit of all the  
23 stakeholders.

24 Q. Right. So did you have an understanding that the  
25 receiver loan and the original loan were all secured

1 by the same collateral?

2 A. That sounds reasonable.

3 Q. Okay. So by taking on -- well, you're right, the  
4 original loan amount came from what was left from the  
5 original loan. The original receiver loan was what  
6 was left, but you got to add -- do you agree you have  
7 to add the cost of the funds to the funds that you're  
8 borrowing, correct?

9 MR. BREDEWEG: Susan, I don't understand  
10 the question. Having to do what?

11 MS. FRIEDLAENDER: We were talking about  
12 the value of the property and the -- and increase it,  
13 you know, that the receiver's role is maximizing the  
14 value of the property.

15 BY MS. FRIEDLAENDER:

16 Q. And I guess if it was eventually sold, the maximizing  
17 the proceeds that would come from the property,  
18 correct?

19 A. Our goal is to create as much value for all the  
20 stakeholders as possible, that's what I already said.

21 Q. The reason for that is -- if they're owed any money,  
22 they can get their money back if the property is sold  
23 or foreclosed upon?

24 MR. BREDEWEG: The question is vague. I'm  
25 not sure the they you're talking about is.

1 MS. FRIEDLAENDER: We were talking about  
2 the people who are part of the lawsuit. We're talking  
3 about the parties in the lawsuit, the stakeholders.

4 BY MS. FRIEDLAENDER:

5 Q. Who are you trying to maximize the value for?

6 A. All of the stakeholders and the equity, everybody  
7 involved. Again, I'm not looking at what's best for  
8 each individual property. My job is to maximize the  
9 overall value. Whatever outside agreements there are  
10 of how those proceeds get divvied up isn't my  
11 responsibility. It's nothing that I -- that I  
12 control. My job is to create as much value for  
13 everybody involved as possible.

14 Q. I understand that. I'm not talking about divvying up.  
15 That really wasn't my question. I can understand how  
16 you would think that because we're talking about  
17 priority before. I'm really talking about when you're  
18 trying to maximize the value so you take out a loan,  
19 okay, the loan has a 16 percent interest so there is a  
20 cost that gets added to that base cost of the loan,  
21 correct?

22 A. Yes, that gets -- my understanding in this case that  
23 would be capitalized and repaid at some point in the  
24 future. Since there was no income at the property,  
25 there was no ability to make debt service.

1 Q. Okay. I guess I'm going back to that language in the  
2 statute that we were just -- let's see if I can still  
3 have it here.

4 MR. BREDEWEG: Susan, if you're going to  
5 ask him if he thinks he violated the statute, I think  
6 that goes way beyond the scope of what is a  
7 permissible topic in this deposition.

8 MS. FRIEDLAENDER: No, I wasn't going to  
9 ask him that, not at all.

10 BY MS. FRIEDLAENDER:

11 Q. Let me just read the language to you, that would be so  
12 much easier because I'm having a problem with getting  
13 this screen up right now.

14 What I'm focusing on is the language of the  
15 statute, which we talked about before. All right,  
16 quickly, it just says, the petition for authority to  
17 complete construction of improvements shall not be  
18 granted unless the Court finds that the value added to  
19 the real property which will result from the  
20 construction is likely to exceed the cost of  
21 additional construction, including all estimated  
22 overhead and administrative costs together with  
23 interest on any funds that are to be borrowed for the  
24 construction.

25 So all I'm trying to understand and whether

1 it was in your mind at all, and believe me I'm not --  
2 this isn't judging, all right, because I understand  
3 what you testified to earlier about what your ability  
4 to enter the loan or to negotiate the loan term, but  
5 when we're talking about whether the value added --  
6 the way they word this -- which will result from the  
7 construction is likely to exceed the additional  
8 construction. So you're borrowing money for  
9 additional construction, 19 something million and then  
10 16 percent interest on that, so you're actually  
11 borrowing more, there is more money, that's all I'm  
12 saying.

13 So the question is what you have to go  
14 through, I guess the analysis is, all right, the value  
15 added by the construction we're doing, you know, will  
16 it exceed the amount of the loan plus the interest;  
17 that's something that is considered, correct?

18 A. Correct.

19 Q. All right, that's all I'm asking. That was all that  
20 question was.

21 When you have a 16 percent interest, I  
22 guess the further question is that -- so that's really  
23 more debt that is needed -- that's going to have to be  
24 offset by the value added in order to ensure that  
25 there's a sufficient amount of proceeds or the maximum



1 amount of proceeds for all the stakeholders at the end  
2 of the game?

3 A. Are you asking when we said here's what the value is  
4 today, if we spend this 19 million to increase the  
5 value of the project, that the terminal value of the  
6 project including the interest is (inaudible) in  
7 value, is that what you're asking?

8 Q. I think so.

9 A. Then the answer is yes.

10 Q. Okay. So I mean, I guess what I was asking is when  
11 you have like a higher interest rate, 16 percent  
12 rather than 8 percent, you have to create -- you have  
13 to create more value in order to pay for that extra  
14 amount that you're investing?

15 A. Yeah, I mean, it's common sense, right? If your  
16 finance costs are higher, it affects your yield. So  
17 it might cost you more money to buy that, yes, you  
18 need more proceeds to achieve the same level of yield,  
19 yes.

20 Q. Did you ever feel that -- or did you ever discuss with  
21 anyone before doing the deal or any time during the  
22 deal whether there could ever be a conflict of  
23 interest between -- and now I'm talking not just you,  
24 Matt Mason, this is McKinely, they're the ones that  
25 have the agreement for the receivership or maybe there

1 was no agreement, but if there could ever possibly be  
2 a conflict of interest between being the receiver in  
3 the case and also being the borrower, having that --  
4 borrowing money from the plaintiff in the case?

5 A. So could there be a conflict of the receiver and  
6 borrowing money?

7 Q. Yes, from one of the plaintiffs in the case, from the  
8 plaintiff.

9 A. No, I don't see it as a conflict. We saw it as in the  
10 best interest of the property and maximizing value.

11 Q. Okay. Did Canyon ever explain to you who was actually  
12 lending the money?

13 A. Where Canyon gets their money?

14 Q. That it was their investors who were putting -- who  
15 were fronting the money, was that your understanding?

16 A. I mean --

17 MR. DOLAN: I'm going to object to the form  
18 of the question.

19 Go ahead and answer, if you can.

20 A. I have no idea who Canyon's investors are.

21 BY MS. FRIEDLAENDER:

22 Q. I'm not asking you who their investors are. I'm sorry  
23 if I didn't ask that clearly enough. I'm asking, did  
24 you know that the plaintiff was an investment group?

25 MR. DOLAN: Object to the form of the

1 question. That's not accurate, but if Mr. Mason can  
2 answer --

3 A. I'm confused. Are you asking me that the lender whose  
4 loan was already in receivership was a lender; yes,  
5 that was my understanding.

6 BY MS. FRIEDLAENDER:

7 Q. No, what I'm asking is, did you understand -- you knew  
8 you weren't dealing with a bank, right?

9 A. Yeah, my understanding was they're not a bank.

10 Q. Okay. Did you know anything about who Canyon was?

11 A. Not necessarily. I wasn't familiar with them prior to  
12 in any meaningful way prior to this matter.

13 Q. Okay. Did you become more familiar with who they were  
14 during the matter?

15 A. I got to understand that they were a large fund that  
16 has a lot of different investments.

17 Q. Right. And this loan was an investment, correct?

18 A. I would assume that every loan is an investment.

19 Q. But did you know that this loan was a particular  
20 investment?

21 A. I knew it was a loan. I guess I'm not following what  
22 your question is. Investment for who?

23 Q. For a group of investors who might not be Canyon  
24 Realty.

25 MR. DOLAN: Object to the form of the

1 question, to the extent it's a question.

2 A. You're asking me whoever Canyon's investors are if I  
3 knew this was an investment for them; I have no idea.

4 BY MS. FRIEDLAENDER:

5 Q. Well, did Canyon ever discuss with you that they had  
6 any concerns about the project and getting the money  
7 back from the project?

8 A. Not anything I can recall specifically. I would think  
9 any lender, when they advance funds, are always  
10 concerned about getting paid back. I think that's a  
11 reasonable --

12 Q. I'm asking you if you had any substantive  
13 conversations with them about how much was -- you  
14 know, what they were looking for in terms of returns,  
15 what their --

16 A. I can stop you right there. I don't recall ever  
17 having any conversations with them as far as what  
18 their return objectives or requirements were, no.

19 Q. That's what I'm asking you. So you're saying you  
20 don't recall any conversations?

21 A. I don't recall having any understanding of what  
22 investment returns Canyon was looking for, no.

23 Q. Okay. Do you recall, did Canyon ever supply you with  
24 any of their internal valuations about the property?

25 A. I don't recall specifically, but it wouldn't be

1 unusual for the receiver to ask for an appraisal  
2 because it's going to give me background on the  
3 property in any number of ways such as environmental  
4 and zoning and all those types of things, but I don't  
5 recall specifically if I ever asked or received an  
6 appraisal.

7 Q. Did you ever talk to them about any internal  
8 valuations that they did that was not necessarily a  
9 full-blown appraisal, just in-house, their own  
10 valuations?

11 A. Nothing that I can recall.

12 Q. From time to time, did you ever do any valuations of  
13 the property?

14 A. The only times I can really think of where we looked  
15 at the value would have been in preparing the  
16 affidavit about the lending, what the as-is value was  
17 versus the future value, and then probably not again  
18 until the -- we solicited broker opinions of value  
19 some years later.

20 Q. Okay, and I'm going to get to that. I know this  
21 question may sound like one that was already asked but  
22 we haven't looked at that particular affidavit yet.  
23 Give me a second so I can find it and put it on the  
24 screen. What I'm putting on the screen now will be  
25 Exhibit 3.

1 MARKED FOR IDENTIFICATION:

2 DEPOSITION EXHIBIT 3

3 11:35 a.m.

4 BY MS. FRIEDLAENDER:

5 Q. We'll look at paragraph 9 first just to give you  
6 context. It starts the projected cost to complete the  
7 project and operate it through disposition is going to  
8 be 28 million plus, which exceeds the approved  
9 receiver loan by 17 million plus. Do you see that?

10 A. I do.

11 Q. Do you recall this?

12 A. It sounds familiar, yes.

13 Q. Okay. So you had to go back and ask for more funds;  
14 yes?

15 A. Yes.

16 Q. This is your affidavit, Matt. It's the affidavit of  
17 Matthew Mason in support of joint motion. And then we  
18 start with the reasons for this requested increase and  
19 borrowing, okay? And for the first paragraph, I'll  
20 give you a few seconds. Can you read it okay, because  
21 I don't know how it looks on your screen.

22 A. I can see it.

23 Q. Read that to yourself, you can read that to yourself  
24 and tell me when you're done.

25 A. Okay.

1 Q. In the first sentence, the cost overruns are a direct  
2 result of the unrealistic original construction budget  
3 by the defendant and its agent, right?

4 A. That's what it says.

5 Q. Now, were you aware -- did you draft this affidavit  
6 yourself?

7 A. I'm sure I worked with counsel on it.

8 Q. Okay. So were you aware when drafting this or working  
9 on it, that when the defendant, this was Packard  
10 Square the defendant in this case, had established the  
11 original budget that Canyon had approved that budget?

12 A. Are you asking me if I know that?

13 Q. If you were aware of that at this time when you were  
14 drafting this.

15 A. I don't recall, but I would assume sitting here today  
16 that a lender approves the budget of a borrower,  
17 that's realistic.

18 Q. Were you aware that it had its own construction  
19 consultant who examined the budget and that they did  
20 their own due diligence, they weren't just relying on  
21 the defendant?

22 A. Okay. I'm not sure if there is a question in there  
23 for me.

24 Q. Yeah, were you aware of that?

25 A. Not that I can recall.

1 Q. Pardon?

2 A. I said not that I can recall.

3 Q. Okay. Because you're saying this is the unrealistic  
4 original budget by the defendant but it's not  
5 something -- it wasn't their unilateral budget. I  
6 mean, there was an approval of the budget.

7 A. I'm not sure how that relates to me.

8 Q. Well, because you seem to be, and correct me if I'm  
9 wrong, you're blaming cost overruns on an unrealistic  
10 original budget.

11 A. What I'm saying is when we looked at the original  
12 construction budget and bid all of the items, that it  
13 didn't seem realistic to us that the project could be  
14 completed at that budgeted amount.

15 Q. When you were looking at it in October, November,  
16 December 2016 and 2017?

17 A. Yeah, probably.

18 Q. All right. Did O'Brien get its first bids in January  
19 of 2017?

20 A. That sounds reasonable. I don't know.

21 Q. It's possible that the budget wasn't unrealistic when  
22 it was first -- when it was first drafted and approved  
23 by Canyon?

24 A. I can't opine as to what Canyon and Packard Square  
25 thought was a realistic budget. When we looked at it,



1 we thought it was unrealistic.

2 Q. Okay. And you read that the project is supposed to be  
3 a luxury building with fine finishes, right?

4 A. That's what it says.

5 Q. Do you believe that there could have been a savings, a  
6 substantial savings if maybe at that point the project  
7 was re-imagined?

8 A. Could have been.

9 Q. Okay. Did you have any idea about, you know, like in  
10 a range of how much more the luxury finishes added?

11 A. No. I know that there were cost-cutting measures that  
12 were undertaken prior to the receivership.

13 Q. But did you ever consider that while -- when you were  
14 looking at the project -- maybe I should have -- I  
15 think I got ahead of myself there and I'll go back.

16 When you took over and you examined the  
17 property and I mean, you didn't know from day one how  
18 much it would cost to complete it, correct?

19 A. From the day we took over the project?

20 Q. Right.

21 A. No, we wouldn't have known the cost to complete.

22 Q. That was a process --

23 A. Correct.

24 Q. -- to come to that conclusion?

25 Why don't you walk me through that process,

1 kind of what did you go through?

2 A. The budgeting process?

3 Q. Yes.

4 A. My recollection is O'Brien was engaged to rebid the  
5 project with several different contractors to  
6 determine what the cost to finish the project was and  
7 to look at other cost-saving initiatives and just the  
8 prudent course of action moving forward.

9 Q. Okay. And I have something here, another exhibit that  
10 might help to put this timeline together.

11 A. Okay.

12 Q. Can you see this now?

13 A. Yes, I see the e-mail, yes.

14 Q. Good, that makes it much easier. This should be  
15 Exhibit 4.

16 MARKED FOR IDENTIFICATION:

17 DEPOSITION EXHIBIT 4

18 11:44 a.m.

19 BY MS. FRIEDLAENDER:

20 Q. There is a Bates stamp number on it, CanIV072392.

21 Now, this starts -- it's a message from Gerald Goldman  
22 dated 10/25/2016 to you, Mathew Mason, correct?

23 A. That's what it says.

24 Q. He's asking for an estimate of immediate cash needs,  
25 specifically amount of cash to winterize, blah, blah,

1           blah. I'm trying to set the stage here.

2       A.    Uh-huh.

3       Q.    And then there is an e-mail from you to Gerald and  
4           that's what I'm going to really look at now. Do you  
5           see that?

6       A.    Yep.

7       Q.    All right. And what you're saying here is that  
8           basically over the weekend the McKinely team led by  
9           our CEO worked together to outline her initial steps  
10          upon appointment, and here's a quick outline of our  
11          plan. You have the number 1, and number 2 is complete  
12          technical engineering evaluation of asset. I'm going  
13          to give you a few minutes to read over this to  
14          familiarize yourself with it.

15      A.    Number 2 or the entire document?

16      Q.    Why don't we look at number 2 first.

17      A.    Okay. This appears to be a note drafted by the CEO of  
18          McKinely.

19      Q.    Did you ever hire forensic engineers to do the  
20          technical engineering evaluation?

21      A.    I believe, yeah, I believe that McKinely did.

22      Q.    Do you remember the outcome of that analysis?

23      A.    What I recall was that there was a concern about the  
24          suitability of the structure and so that there -- I  
25          can't remember which -- I can picture it in my head --

1           there was a group brought in to monitor the movement  
2           in the building.

3       Q.    Okay.  And I'm going to -- there will be a little more  
4           on that but I wanted to go through that first.  Number  
5           3, detailed evaluation of lenders inspecting  
6           architect/engineers work.  I'll just read that, it's  
7           short.

8                         We need to secure from the lender all bids  
9           and inspection reports completed today to include all  
10          budgets/draw request submissions by the (inaudible) --  
11          we need to review this information and we need to  
12          quickly schedule an on-site meeting with the  
13          lenders/architects/engineer to review all of the  
14          material and to set the stage for restarting the  
15          process.  All right, do you recall doing that?

16       A.   No, I don't, no.

17       Q.    Okay.  Do you recall anything about there being a Paul  
18           Marcus suggesting that you do a forensic accounting  
19           analysis?

20       A.    Forensic accounting?

21       Q.    Yes.

22       A.    Oh, yeah, that sounds familiar.  I believe Paul, what  
23           he wanted to do, was given that so much of the  
24           construction had been damaged both by contractor,  
25           vandalism and being exposed to the elements, that the

1 best thing to do was to review what work had been paid  
2 for up to that point to truly understand what work had  
3 been done.

4 Q. Okay. And do you remember him -- I believe O'Brien  
5 hired someone called Resolution X or Res X?

6 A. That doesn't sound familiar to me.

7 Q. Here, maybe this will help. Here it is. Do you see  
8 this e-mail, this will be the next deposition number,  
9 whatever exhibit number we're working on.

10 MARKED FOR IDENTIFICATION:

11 DEPOSITION EXHIBIT 5

12 11:50 a.m.

13 BY MS. FRIEDLAENDER:

14 Q. Do you see this is from Paul Marcus to Mathew Mason,  
15 June 1, 2017?

16 A. I see that, yes.

17 Q. I'm going to read it just for the record. It says,  
18 hello Matt, just want to touch base with you regarding  
19 the forensic accounting efforts Resolution Experts,  
20 Res X, was engaged to assemble. At the start of this  
21 process we believed that the desired outcome would be  
22 a report that produced a variance between the physical  
23 and financial percent complete that would accurately  
24 depict on a schedule of values basis the physical  
25 performance of each trade compared to what they were

1 actually paid.

2 I'm going to stop there. What does that  
3 mean, do you know?

4 A. No.

5 Q. Okay. Then it says, this data, along with our  
6 physical inspection, could be used to further extract  
7 out the amount in value of rework required by each  
8 trade. We believe this information would be critical  
9 to you during the process to close out liens and while  
10 negotiating future contracts to complete the work.

11 A. Okay.

12 Q. Does that ring a bell?

13 A. Yeah, now it does a little bit. One of the issues was  
14 there were so many liens for unpaid work on this  
15 property and the building, again, had been diminished  
16 by sitting vacant, that trying to determine what  
17 amounts were accurately owed to vendors, because my  
18 recollection is there was some liens out there that  
19 the defendant was saying some were overinflated and  
20 some were inaccurate and we didn't have the  
21 background. So what I recall is this was trying to  
22 determine what work was actually done and paid and to  
23 identify, you know, were the liens correct or what  
24 work was done.

25 Q. Do you recall ever getting a report from Res X on

1 this?

2 A. I don't remember.

3 Q. You don't remember ever seeing that there is any  
4 product?

5 A. I don't remember if there was or was not.

6 Q. In the next paragraph he talks about, in the efforts  
7 to guide Res X certain assumptions had to be made.  
8 I'm not reading it all exactly. But then here it is,  
9 it says, that all that said, the purpose of this  
10 e-mail is to provide a picture of the impediments that  
11 Res X has experienced in assembling a fully analytical  
12 report, and it asks is there still a possibility of  
13 receiving certain information from Canyon. So that's  
14 the beginning of this is your writing to Kevin, Kevin  
15 Schultz, you know who is he is, correct?

16 A. Yes.

17 Q. He worked for Canyon, right?

18 A. Yes.

19 Q. Asset manager, one of the asset managers of the  
20 project?

21 A. Yes, I interacted with him on occasion.

22 Q. You had a lot of dealings with him?

23 A. Yes.

24 Q. It says Kevin is part of the forensic accounting  
25 audit, it would be very helpful to have the list of

1 all Canyon payments, blah, blah, blah. You see what  
2 this says. Do you know, did you ever -- did Kevin  
3 ever give you these items?

4 A. I can't recall.

5 Q. And so you can't recall whether there was any -- ever  
6 any actual report from Res X?

7 A. No, I don't remember.

8 Q. Because I see in some of the documents it says that  
9 they were charging -- they had about 32,000 for the  
10 report.

11 A. Is that a question?

12 Q. Yeah, I mean, do you recall that?

13 A. I don't remember -- I don't recall whether they issued  
14 a report, I don't recall if they billed for it; no, I  
15 don't.

16 Q. Okay. But this is pretty important stuff, wasn't it,  
17 to try to determine these issues?

18 A. Yeah, I'm sure it was. It has no bearing on whether I  
19 recall if a report was issued.

20 Q. Let me ask it a different way: Were you involved in  
21 negotiating payment of liens?

22 A. I cannot -- not really. I believe I may have attended  
23 one -- maybe a meeting upfront with all of the  
24 contractors, but I don't recall specifically being  
25 involved in those negotiations.



1 Q. Were you involved at all in analyzing or did you get  
2 information from the people who were analyzing the  
3 existing construction and whether there was rework  
4 that needed to be done?

5 A. I don't recall being involved in that.

6 Q. Okay. Just because in your affidavit, we've got --  
7 back to the affidavit. First, you have the cost  
8 overruns about the budget issue, okay? And then in  
9 the second is the amount spent to correct defendant's  
10 deficient work has significantly driven up the cost of  
11 finishing the project. Do you see that?

12 A. Yes, I see that's what it says, yes.

13 Q. Do you have any idea what that amount was?

14 A. Specifically?

15 Q. Yes.

16 A. I don't have numbers in my head, no.

17 Q. Because it says significantly driven up the cost. So  
18 you don't know if that was \$5 million?

19 A. Not as we sit here four years, five years later, no, I  
20 don't.

21 Q. Okay. I may have some documents to refresh, but first  
22 there's a question I want to ask about this: This  
23 goes to managing a construction project. Let me go  
24 back for just a second.

25 This kind of relates to what we were just

1 talking about, that Resolution X analysis would be  
2 looking at these issues, correct?

3 A. I would assume so.

4 Q. Okay. So let's put this in context. Let's say you're  
5 overseeing O'Brien and their construction. If you  
6 learn that there has been some mistake made and  
7 there's some issue with the construction that a  
8 subcontractor has provided, how do you deal with that?

9 A. I would -- I wasn't the one that was managing the  
10 construction on a day-to-day basis, so I don't know  
11 that I have a good answer for you of how that was  
12 handled.

13 Q. Okay. So let me ask this a different way: When you  
14 were involved in the process, you were given  
15 information that -- I suppose it came from O'Brien --  
16 I guess I'm not laying a foundation for this. Did  
17 O'Brien give you any information after they examined  
18 the property and said we found all these deficiencies?

19 A. Yeah, I recall that there was some identification of  
20 issues, yes.

21 Q. Okay. So do you know, did anybody pursue the -- I  
22 mean, you would know, O'Brien would know which  
23 subcontractor had performed the deficient work,  
24 correct?

25 A. I would imagine, yeah, that they would know that

1 information.

2 Q. Did you ever know that information, who would have  
3 performed the deficient work?

4 A. Not that I can recall.

5 Q. If a subcontractor has produced deficient work and you  
6 find that out, in your experience do they ever provide  
7 any insurance for their work?

8 A. I don't know. I'm not sure I'm following your  
9 question.

10 Q. Okay. Because you said it and there are, you know,  
11 exhibits where you provide a whole -- I think it's in  
12 here, too. This starts Exhibit D. Packard Square  
13 list of issues and defects encountered to date. It's  
14 hard to read.

15 A. I see it.

16 Q. There is a page of 11 items and now this is up to 23  
17 items, and then here is another page, 35 items,  
18 another page, 48 items. Do you recall -- did you put  
19 together this Exhibit D?

20 A. Did I? No.

21 Q. Do you know who put it together?

22 A. I can speculate to the best of my recollection, but I  
23 would imagine it was probably O'Brien in conjunction  
24 with McKinley people that were leading the  
25 construction efforts.

1 Q. Did anyone ever advise you that we discovered all  
2 these deficiencies, did anybody go back to the subs  
3 who provided the deficient work and say this is  
4 unacceptable, do you have any insurance for any of  
5 this work, are you going pay us anything for this?

6 A. I can't recall.

7 Q. You don't know if there was any attempt to get any  
8 funds from -- to offset what you had to pay to correct  
9 the work from the subs who provided the deficient  
10 work?

11 A. Again, I don't remember.

12 Q. Do you know if Canyon had any -- let's step back.

13 I know you said you weren't involved in the  
14 lien settlements. I believe your lawyers were and  
15 maybe they just didn't advise you whether any of the  
16 people who had liens were the same people who provided  
17 deficient work.

18 A. Was that a question?

19 Q. Yes. Do you know?

20 A. Can you repeat?

21 Q. Yes.

22 A. You seem to be talking without putting it in the form  
23 of a question. Can you rephrase that, please?

24 Q. I'm sorry. Do you know whether any of the lien  
25 claimants were the same subcontractors who provided,

1           what you discovered, to be deficient work?

2           A.    I don't recall.

3           Q.    And do you know whether any of the lien claimant  
4           settlements were for -- was it for the full amount of  
5           the claims? I would imagine not, if it was a  
6           settlement.

7           A.    Again, I don't remember.

8           Q.    You don't know, all right. If you don't know you  
9           don't know.

10          A.    Yeah, I don't.

11          Q.    Okay. This is in your affidavit talking about the  
12          amounts spent to --

13          A.    At that point, I may have known. As I sit here today,  
14          I don't remember.

15          Q.    Do you recall that there was a surety on the original  
16          project?

17          A.    Yeah, I do, there was a surety bond out there.

18          Q.    What do you recall about that?

19          A.    That there was a bond, I believe, prior to our  
20          engagement, that there was either litigation and there  
21          was some dispute about that and I seem to recall,  
22          receiver's counsel looking into that to determine if  
23          it was collectable, that's about as much as I  
24          remember.

25          Q.    Do you remember what they told you about that?

1 MR. BREDEWEG: Objection, that's  
2 privileged.

3 MS. FRIEDLAENDER: Well, not really,  
4 because there are a letters actually -- I can dig that  
5 up.

6 MR. BREDEWEG: That's fine. You're asking  
7 what his attorney told him.

8 MS. FRIEDLAENDER: All right, I agree.

9 BY MS. FRIEDLAENDER:

10 Q. Do you remember looking at -- do you have any  
11 information otherwise on whether it was collectable,  
12 whether the surety was collectable, or the bond?

13 A. I don't remember specifically. All I can remember was  
14 that it appeared to be it wasn't going to be an easy  
15 matter to prove, there were disputes.

16 Q. Do you recall that Canyon sued Western Surety?

17 A. No, I don't remember.

18 Q. You don't remember that?

19 A. No.

20 MS. FRIEDLAENDER: Does anybody want to  
21 take a break?

22 MR. DOLAN: Sure.

23 (Off the record at 12:05 p.m.)

24 (Back on the record at 12:23 p.m.)

25 BY MS. FRIEDLAENDER:

1 Q. I'm trying to share my screen again. This is a letter  
2 dated March 4, 2017 via e-mail, overnight e-mail. I  
3 guess it's an e-mail and letter. At the end, you'll  
4 see it's from you. I'll give you a second to see if  
5 this refreshes your memory about the surety.

6 A. I skimmed it.

7 Q. Do you remember this at all?

8 A. I remember some correspondence, yeah.

9 Q. Did you actually write this letter?

10 A. I would imagine no. I would imagine that it was  
11 primarily drafted by counsel.

12 Q. And maybe it will be helpful, did your duties as  
13 receiver change over time, rather than duties, your  
14 day-to-day activities as the receiver?

15 A. At McKinely?

16 Q. Yes.

17 A. You mean specific to this case or in general?

18 Q. This case.

19 A. Yeah, I typically did a lot of the interactions with  
20 the court and if there were any party interactions, I  
21 would interact with the parties. I would attend the  
22 construction meetings, typically, on Fridays. And  
23 that was pretty consistent until my agreement was  
24 terminated.

25 Q. When did you leave McKinely?

1 A. April of '17.

2 Q. But then you continued to be the receiver for another  
3 year or more?

4 A. I was the agent for the receiver.

5 Q. Okay. But after you left McKinely, did your  
6 day-to-day activities change as far as your role as  
7 receiver?

8 A. No, I still reviewed and prepared the report for  
9 monthly filing. I attended the court hearings. At  
10 that point, it was much more construction oriented, so  
11 there was less going on from a court perspective and  
12 operational and construction.

13 Q. Who prepared like the draw request to the lender?

14 A. That, to the best I can remember, that would have been  
15 a couple of different people at McKinely. I believe  
16 it was initially Chris Allen and those would be  
17 approved through Trey Caswell and I believe Jennifer  
18 took that over when Chris left.

19 Q. Okay. I'm trying to -- were you like more of a  
20 relationship guy, you had the relationship like with  
21 the asset managers from the lender and the  
22 construction people?

23 A. No, I wouldn't say I was a relationship person with  
24 anybody. I was obviously much further away from the  
25 day-to-day construction that was going on. Again, I



1 would sit through the construction meetings and  
2 updates, but as far as being on site for construction  
3 every day, that wasn't me. My role was really more  
4 geared around the court interactions.

5 Q. Okay. The construction meetings, where were those  
6 held?

7 A. On site.

8 Q. And you also would have like telephone meetings with  
9 the Canyon people weekly?

10 A. If I recall -- I don't remember the frequency, but I  
11 can remember lender calls where we would provide some  
12 update as far as the budget and review the draw  
13 requests and things like that, the typical kind of  
14 interactions when it came to funding construction.

15 Q. Okay. And would there be discussions at that meeting  
16 with the lender that wouldn't normally show up in your  
17 receiver reports?

18 A. I wouldn't think so. Nothing jumps out at me.

19 Q. But you actually prepared the receiver reports on your  
20 own?

21 A. No, it was a team of people. Everyone did their part  
22 as far as the portion of the project they were working  
23 on.

24 Q. Okay. And they would have -- everybody would bring  
25 the information and there was somebody who would

1 assemble the information to provide to the Court?

2 A. Correct. I would do the review, looking at my piece  
3 and the overall review of the operations, and then  
4 submit it for court filing.

5 Q. Okay. We started talking a little about when you --  
6 well, let me put it in better context here. I have  
7 here, which I'm showing on the screen now -- can you  
8 see this okay? Do you see this e-mail from Matthew  
9 Mason? I would like this to be an exhibit.

10 MARKED FOR IDENTIFICATION:

11 DEPOSITION EXHIBIT 6

12 12:32 p.m.

13 BY MS. FRIEDLAENDER:

14 Q. An e-mail from Matthew dated 2/13/2017 to Gerald  
15 Goldman, subject, construction numbers?

16 A. Yep.

17 Q. And for efficiency sake I'll read it: Gentlemen, I  
18 know the construction numbers do not come in where any  
19 of us hoped. Please know we will continue to  
20 negotiate the costs down wherever possible. While the  
21 news was not overly positive, my commitment to you is  
22 to provide you with the real information, not what you  
23 have been fed in the past few years. We will keep  
24 working hard on your behalf and implement whatever  
25 strategy Canyon provides -- I am at your service for

1           whatever you need. Thank you.

2                       Did I read that correctly?

3   A.   Sounds like it, yes.

4   Q.   So what do you recall about this e-mail?

5   A.   Not much, but what I gleaned from this was when they  
6       ran the initial construction numbers, what it's going  
7       to cost to complete it, I was wildly over what was  
8       available on the budget and it was going to be  
9       difficult to finish the project for the funds  
10      available. I think the numbers came in higher than we  
11      anticipated.

12   Q.   So even higher than the extra 17.9 million or 8  
13      million that you eventually went to the Court to  
14      increase the loan by?

15   A.   I don't think -- I'd have to look at the timing but in  
16      my reading of this, this would have been in response  
17      to the initial construction bids that were received.  
18      Because once we made the motion to the Court to  
19      approve the additional funds, that was a GMP price, so  
20      that had already been flushed out. This looks to me  
21      that it was more of like a first blush of what it was  
22      going to cost, everyone was sticker shocked.

23   Q.   I'm trying to understand because this would have been  
24      -- I do know that it seems that -- and there's  
25      testimony like from Paul Marcus, which, unless you

1 need to see it, says the bidding was ended at about  
2 January 2017, so this would be consistent that you  
3 would have these costs by February 2017. So would  
4 this probably be based upon the bids that O'Brien  
5 received?

6 A. Oh, yeah, I would think this is based on the bids  
7 because in the e-mail, I believe it says continue to  
8 negotiate the costs down. So to me, this looks like  
9 it's a work in progress.

10 Q. Would that be your role to negotiate the costs down?

11 A. No, I wasn't actively negotiating the construction  
12 costs.

13 Q. Who was doing that?

14 A. Typically, it's your general contractor.

15 Q. But you would have to ask the contractor to do that,  
16 right?

17 A. Ask the contractor to negotiate contracts?

18 Q. To negotiate the costs down. The contractor comes  
19 back to you and says here's what it's going to cost,  
20 right? Is that what happened here after the bidding?

21 A. I can't tell you what happened exactly here, but it's  
22 not unusual for a contractor to get bids and then go  
23 try to negotiate those costs down, that's pretty  
24 standard.

25 Q. Right. But it says, please note, we will continue to

1 negotiate the costs down. So who is we? What are you  
2 telling him?

3 A. We, as in the receiver, O'Brien -- I don't --

4 Q. You recall those discussions but you're saying you  
5 weren't involved in them?

6 A. Not to any -- not to a level that I recall. No, I  
7 don't recall actively negotiating individual  
8 construction agreements; no, I do not.

9 Q. Do you remember when the GMP was finally executed?

10 A. I don't.

11 Q. If I told you it was in August of 2017, does that  
12 refresh your memory?

13 A. No.

14 Q. Do you have any idea? I mean, do you have a memory  
15 that it took some time, there was some time lag  
16 between, you know, getting the numbers and getting the  
17 GMP in place?

18 A. Oh, yeah, I remember that because I remember that  
19 O'Brien was very, very concerned about agreeing to any  
20 GMP because they were uncertain and very scared of  
21 what they would be stepping into, so I know there was  
22 a lot of negotiations around that.

23 Q. Well, can you elaborate that a little bit? What were  
24 they expressing to you, what was going on?

25 A. That a project was built by somebody else, actually

1 two previous general contractors had been responsible  
2 for building a building to some level, and then for  
3 them to agree to a GMP to finish a building that they  
4 didn't get to that point, they were assuming the risk  
5 of delivering at a certain price and that gave them a  
6 lot of consternation.

7 Q. So you're saying that's partly what took time to  
8 negotiate with them, why it took some time?

9 A. Yeah, I know they had a lot of concern about that and  
10 I think other parts of it were them -- where everyone  
11 going through the process of trying to negotiate from  
12 the individual trades to better pricing.

13 Q. Okay. But then they did eventually agree on a  
14 contract, correct?

15 A. Yeah, I believe the GMP was executed.

16 Q. I'm going to put up here to see if this -- this is a  
17 little difficult to -- we were talking about the  
18 reworking costs before, do you recall that?

19 A. Reworking in what regard?

20 Q. Pardon?

21 A. What do you mean by reworking?

22 Q. O'Brien telling you that there were deficient --  
23 construction deficiencies and they had to -- you know  
24 the Paul Marcus thing, why he wanted to get the  
25 forensic analysis and determine how much needs to be

1 done and how much it would cost, all that?

2 A. Are you referring to that list of 50 or so deficient  
3 items?

4 Q. Yes.

5 A. Okay, yeah.

6 Q. All right. So what I have here -- can you see this --  
7 is O'Brien Construction and it says rework allocation,  
8 rework breakdown. This is dated February 23, 2017.

9 Do you see this?

10 A. I do.

11 Q. Do you recall ever seeing this before?

12 A. Not specifically. I'm sure that I did.

13 Q. Okay. Showing you what seems to be a bottom line of  
14 532,500.

15 A. That's what it says.

16 Q. From your understanding of working on this matter and  
17 seeing O'Brien's documents and that sort of thing,  
18 does this -- would that number suggest to you that's  
19 how much it cost to cure those deficiencies, what they  
20 were calling the deficiencies?

21 A. If that's what the document says, then yeah, looks  
22 like that's O'Brien's -- looks like it says O'Brien's  
23 rework amount allocation.

24 Q. So that's what that extra expense would be. This  
25 looks like this would have come right after your

1 e-mail to Gerald, from the timeline.

2 A. Is that a question?

3 Q. Yes, that was a question. I'm trying to make it a  
4 question.

5 A. That says -- I don't know what I'm looking at there.

6 Q. It's okay. I took it off. It's fine. I think we --  
7 it says what it says, as you mentioned.

8 I had a question about this -- for some  
9 reason it has the wrong title to it. Do you recall  
10 Premiere Equities making an unsolicited bid on the  
11 property?

12 A. Premiere Equities, I don't recall who that group is.

13 Q. Friedman.

14 A. Oh, yeah, I think at some point they made an  
15 unsolicited offer on the property. Sounds vaguely  
16 familiar.

17 Q. But you don't know what happened with that? Was it  
18 ever looked at?

19 A. I don't remember. I believe they were part of the  
20 process. I believe that they later were part of the  
21 sales process. I remember meeting with them at that  
22 point, but I don't remember if they put anything prior  
23 to.

24 Q. Okay. Getting back to something I brought up before  
25 about when you discovered how much it would cost to



1 complete the building, whether there was any  
2 discussion, even internally with the McKinely people,  
3 about would there be some way to redo this, like  
4 change the plans or whatever to make it a more  
5 affordable project to complete?

6 A. My recollection was that it was talked about, but  
7 given the permits that were in place, that changing  
8 the overall complexion of the facility was going to be  
9 very difficult and time consuming.

10 Q. Okay. And McKinely, they have a lot of multi-family  
11 rentals in the Ann Arbor area?

12 A. Yeah, all over the country.

13 Q. I'm more concerned about Ann Arbor now. So they had a  
14 very deep knowledge, would you say, of the Ann Arbor  
15 market?

16 A. Oh, absolutely.

17 Q. You too, did you have a pretty good knowledge of the  
18 Ann Arbor multi-family market; is that part of what  
19 you did?

20 A. No, I typically wasn't involved on the operations side  
21 of apartments as often. I focused a lot of my efforts  
22 on the commercial spaces.

23 Q. What was your job at McKinely other than doing  
24 receiver-type work?

25 A. I did everything from oversaw and managed the owned

1 commercial portfolio around the country and then  
2 handled a lot of receiverships around the country as  
3 well.

4 Q. Okay. For McKinely, when they had property that was  
5 in like foreclosure or something?

6 A. No. I was a court-appointed receiver.

7 Q. Okay. By other companies?

8 A. Yes.

9 Q. So were you party to any discussions at McKinely  
10 regarding the marketability of the property in terms  
11 of as a multi-family apartment in Ann Arbor?

12 A. Can you be more specific when you talk about  
13 marketability; in what sense?

14 Q. Well, would you agree that the rental rates were  
15 higher than a lot of products in Ann Arbor, a lot of  
16 multi-family products that's outside the campus area?

17 A. Yeah, it was on the high rent for sure, yes.

18 Q. And did anybody talk about, you know, did you have a  
19 specific market that you believed that existed there  
20 for that type of product?

21 A. Oh, yeah, there's a market for that development for  
22 sure. It was something that was going to be of  
23 interest to people for sure.

24 Q. Have you kept up with the leasing of that building at  
25 all?

1 A. Not since I was discharged from working on the  
2 project.

3 Q. Okay. And when you were discharged at the time, do  
4 you know how much occupancy there was at that time?

5 A. No. In fact, I'm trying to remember if there was any  
6 occupancy at that point. I don't recall. Because the  
7 building was constructed and permitted for occupancy  
8 in phases, so I can't recall if there was a TCO for  
9 any of it at that point.

10 Q. So you have no idea how much is leased today?

11 A. Not a clue.

12 Q. Well, if I told you it was about 80 percent leased,  
13 what would you think about that?

14 A. That I would say that's a -- it's below where I would  
15 hope to be if I were the owner.

16 Q. Right.

17 A. But I don't know what the overall Ann Arbor vacancy is  
18 either, so I don't have anything to compare it to.

19 Q. Do you have any information on -- have you heard  
20 anything like the pandemic, did that have an effect on  
21 non-campus?

22 A. I don't know. I'm not doing anything in that market.

23 Q. What are you doing now? Like what is your business  
24 now, what do you do with your current firm?

25 A. Any number of things. I probably spend the majority

1 of my time advising retailers, many of which are in  
2 some form of distress, and I'm the receiver for other  
3 projects around the country as well as asset manager  
4 for projects around the country, and I handle any  
5 number of real estate matters that pop up in a 700  
6 person firm of consultants.

7 Q. Right. Did you have any private conversations with  
8 the judge about the case?

9 A. I don't think I ever had a private conversation with  
10 the judge about anything. Not that I can recall.

11 Q. Around the time -- you testified earlier for the first  
12 loan you did look at various factors to determine  
13 whether the loan would add value to the property for  
14 the -- that the construction would not exceed the  
15 value added by the construction, the loan amount, so  
16 did you do that same sort of analysis for the  
17 increased loan, increased amount?

18 A. Yeah, I can recall when we looked at it -- had we not  
19 been able to obtain a loan for the increased costs  
20 above and beyond the initial receiver's loan and we  
21 were going to have -- once those funds ran out, then  
22 we would have been - essentially done at that point,  
23 there wouldn't have been anything else we could have  
24 done. We looked at the value of a receiver, even if  
25 we went to a sale, what that would be worth, a

1 partially constructed, you know, building in  
2 receivership versus a fully permitted building and we  
3 looked at that analysis.

4 Q. Okay. Do you remember how that came about, like  
5 number-wise?

6 A. I don't remember specifically. I remember our numbers  
7 were that it was going to increase value to not have  
8 to sell a partially finished building. Very similar  
9 analysis as the first time.

10 Q. Okay. So is it fair to say that you believed it  
11 increased value to a point that it would pay for the  
12 extra amount of the loan?

13 A. Yeah, I think our position was that it would've  
14 created a value to finish the construction as opposed  
15 to selling it unfinished.

16 Q. Did you ever consider -- was part of your calculation  
17 at all or the thinking at all could this happen that  
18 you could spend the extra money on it and then it  
19 wouldn't really be able to sell for the amount of  
20 construction costs that were put into it?

21 A. It's always a risk.

22 Q. Right. I mean, but did you discuss that at all; do  
23 you remember discussing that risk at all?

24 A. I think that we looked at it and said here's what we  
25 think it's worth today, here's what it would be worth

1 in the future, there's a risk there. As with anything  
2 looking into the future, you never know what that's  
3 going to look like. Luckily we weren't dealing with  
4 the pandemic at that point because there's things that  
5 happened in the future.

6 Q. Okay. I'm going to direct your attention now to the  
7 sale of the property. You were involved in selling  
8 the property, correct?

9 A. I was involved in trying to sell the product, not  
10 selling it.

11 Q. Trying to sell it, right. Was it your idea to sell it  
12 at that point?

13 A. What we looked at was it went along with should the  
14 construction be completed, which was -- we looked at  
15 it a bunch of different ways, and what we thought  
16 maximized the value would be to deliver the project  
17 with full permitting and sell it quickly thereafter,  
18 because there is a long lead time of leasing it that  
19 would require additional carry costs that we just  
20 didn't think was to the benefit of the property.

21 Q. Okay. And so did you present that to Canyon and say I  
22 think we should try to market the property before a  
23 certain point?

24 A. Well, at some point I believe we went to Canyon and  
25 said in anticipation of the construction being

1 completed at some point in the future, I don't  
2 remember the exact dates, but we think it's prudent to  
3 try to market this property now so that it can be sold  
4 as soon as the construction is done.

5 Q. Okay. But do you recall that the sale process was  
6 started before the construction was completed?

7 A. Oh, yeah. Yes.

8 Q. Okay. And did that -- so as part of the process, what  
9 you did was you first went out and found some brokers  
10 who would help to market the property, was that the  
11 first part of the process?

12 A. Yeah, we interviewed several brokers, as we always do,  
13 and decided to try to determine which is the best  
14 broker to assist with the sale and then we engaged  
15 that group.

16 Q. And that was ARA Newmark?

17 A. Correct.

18 Q. And as part of that process, you obtained values from  
19 the brokers, BOVs, the brokers opinion of value?

20 A. Typically, that's what we do. I don't have those in  
21 front of me, but I would be very surprised if their  
22 proposals to sell the property did not include their  
23 valuations.

24 Q. As we're sitting here today, you don't recall those  
25 valuations?

1 A. I don't.

2 Q. All right. Let's see if I can help at all, because I  
3 wanted to ask you some questions here in case you had  
4 -- if you remembered some of this. Right now I'm just  
5 like opening it up on my computer and then I will  
6 share them as soon as I find them. I'm sorry, I'm not  
7 finding one of the things I wanted to find. All  
8 right, I found it, just wait a second.

9 I'm going to ask you, do you remember  
10 dealing with Marcus & Millichap, some brokers from  
11 that firm?

12 A. Yeah.

13 Q. Do you remember they didn't get the job but they kept  
14 following up with you afterwards, do you recall that?

15 A. I don't recall that, but it wouldn't surprise me.

16 Q. Do you remember why you choose ARA over the other  
17 brokers?

18 A. Yeah, from what I can remember, what resonated for us  
19 was they had the right group to handle both  
20 traditional multi-family as well as a very strong  
21 student housing person they brought to the project.

22 Q. Okay.

23 A. Because of just the nature of this project, we wanted  
24 to open it up to as many people as possible, and the  
25 student housing developer may have paid more for it so



1 that was the largest factor.

2 Q. Did you think it was possible to sell it to a student  
3 housing developer based on the location?

4 A. I thought it was a stretch, but at that point student  
5 housing developers were paying a premium for it, so we  
6 didn't want to preclude any potential buyer. We  
7 wanted to expose it to the broadest group possible.

8 Q. And did you attract some buyers who were just student  
9 housing?

10 A. I don't remember. I'd have to go back and look at the  
11 various offers, but I do remember there was some  
12 interest. I don't remember if any of them gave --  
13 came down to making an actual offer or not.

14 Q. Because you weren't that far from campus, right?

15 A. I think it was three miles, maybe. And there were  
16 some students in the building, so it wasn't a true  
17 student housing but our -- again, our goal was to  
18 expose it to as many people as possible to get as high  
19 a price as possible.

20 Q. Of course. I'm going to share now. The first thing  
21 here -- can you see it?

22 A. Yes.

23 Q. This is from you to Kevin dated March 19, 2018 and  
24 you're saying, I just confirmed with ARA their  
25 pre-stabilized number is 73 million, their stabilized

1 value is still 76 million on the high end.

2 A. Uh-huh.

3 Q. Does that ring a bell?

4 A. I'm reading that e-mail.

5 Q. Okay. Because then -- let's see if I'm reading all  
6 this history right -- maybe this isn't the one --  
7 yeah, here it is. This is an e-mail from you -- I'm  
8 trying to make it bigger -- looks like you're sending  
9 this e-mail to your colleagues at Conway. I'll give  
10 you a second to read it.

11 MS. FRIEDLAENDER: Jenifer, this should be  
12 marked as an exhibit, too.

13 MARKED FOR IDENTIFICATION:

14 DEPOSITION EXHIBIT 7

15 1:00 p.m.

16 BY MS. FRIEDLAENDER:

17 Q. Are you done, Matt?

18 A. Yes.

19 Q. Okay. Now, this says the expectation is that the  
20 project will trade upwards of 90 million. Can you --  
21 what's the difference in the two estimates?

22 A. Well, at 90 million, that would be a very, very  
23 aggressive (inaudible). In that market, was it out of  
24 the realm of possibility, no. Could it trade there,  
25 yes, it could have. It's a number I put out there in

1 a great -- in a great scenario, it could be somewhere  
2 up to 90 million.

3 Q. Okay. So is it possible that -- because I think also  
4 ARA, I think I may have something from them here, too.  
5 Yeah, here they are. Also, I'll give you a second to  
6 look at it. Susan Lawson, she was from ARA?

7 A. Uh-huh.

8 Q. Yes? The court reporter needs you to say yes rather  
9 than uh-huh.

10 A. What am I saying yes to?

11 Q. That Susan Lawson is from ARA.

12 A. Yes.

13 Q. Did you know Susan Lawson?

14 A. Not from before this project. It rings a bell now,  
15 yes.

16 Q. And she's also saying stabilized pricing is 90  
17 million, correct?

18 A. Yes.

19 Q. But she thinks that it will trade in the 80 million  
20 range, correct, that's what she says?

21 A. Yes.

22 Q. I guess what my question is, because the first e-mail,  
23 ARA is saying stabilized at the high end 76 million,  
24 then you have 90 million and 80 million, do you  
25 remember any reason for these different stabilization

1 numbers?

2 A. Well, I think it depends on the definition of  
3 stabilization. So I don't recall why ARA underwrote  
4 to a different number. Obviously, this e-mail -- what  
5 was the date of the other e-mail you were trying to  
6 read to me, the other one?

7 Q. The first one?

8 A. Yes.

9 Q. Wait a second. The first -- the first one is March  
10 19th, 2018 and then yours is in April, and let's find  
11 Susan's again. Hers is from May. So it was over  
12 time.

13 A. So I don't know why they changed their evaluation.  
14 Could have been the -- you know, what they underwrote  
15 rents differently, the market could have changed,  
16 lower interest rates, I don't recall what changed in  
17 those two months.

18 Q. Okay. Do you remember getting any offers in that  
19 range?

20 A. In the range of which range?

21 Q. I'm sorry, 80 to 90 million.

22 A. I don't recall any of the actual numbers. I know  
23 there were -- there was a wide spread. Some we viewed  
24 as realistic and some not.

25 Q. You're saying that you didn't think some of the offers

1 from some of the people were realistic?

2 A. With any kind of sales process, there are offers that  
3 you have to dig into a little bit further to assess  
4 their willingness to close at an offer number. It's  
5 not a binding offer. There's a process of vetting the  
6 numbers.

7 Q. Okay. I have this e-mail here where you are asking --  
8 this is March 27th, 2018 from you to Amanda Gardner,  
9 Debbie Corson, Susan Lawson, do you see this?

10 A. I do.

11 Q. And it says Debbie and Susan, I noticed Craig  
12 Schubiner, the defendant, completed the CA. Please do  
13 not include him on the OM distribution or any future  
14 distributions. Also please be on the lookout for any  
15 other Schubiner name (inaudible). Do you remember  
16 writing this?

17 A. I don't recall, but I see the e-mail right there.

18 Q. So you don't know why you wanted them blocked from the  
19 list?

20 A. Because they were a party to the litigation. So I  
21 didn't -- my perspective was they weren't a third  
22 party buyer of this, that if they were to be buying  
23 the property, there's other avenues for that, and also  
24 that given what I had experienced, that it was going  
25 to create problems if providing information to one

1 party of the litigation but not the other and this was  
2 going to be problematic. I didn't see a benefit.

3 Q. But the other party was the lender and they were  
4 getting all the information.

5 A. As lenders are entitled to.

6 Q. But they're also party to the litigation.

7 A. In a different capacity. I wasn't providing  
8 information as a litigant. I was providing because I  
9 had to under the loan docs.

10 Q. As the receiver, and this is actually -- I mean,  
11 Craig's affiliate still owned the property at this  
12 time that you were trying to sell.

13 A. Is there a question there?

14 Q. Yeah, were you advised by Canyon to block them from  
15 the list?

16 A. Not at all. Not at all.

17 Q. So I'm trying to understand your reasoning for you're  
18 the receivership, there are the plaintiffs and the  
19 defendant, plus the construction lien claimants, but  
20 you're saying you didn't want to give another party to  
21 the litigation, have them have any of this  
22 information?

23 A. Because in a lot of this litigation in the court  
24 hearings that any information that is provided is part  
25 of the sale process. One of the concerns that

1 potential buyers express was that all this was going  
2 to do is meant to drive up the price for a short sale,  
3 an agreement between the lender and the borrower. So  
4 we had to show that this was an open market process.  
5 This was not setting up where it was going to be a  
6 sale between those parties. This was truly a market  
7 sale.

8 Q. Okay. I guess I have to -- you cut out a little bit  
9 so I missed one word. You were saying that you were  
10 afraid that prospective buyers would think what?

11 A. One of the concerns that was raised by the brokers was  
12 that this was -- the process was being run to drive up  
13 the price and a deal was going to happen between the  
14 borrower and the lender.

15 Q. Okay. Like drive up the price, I guess I'm not --  
16 between them?

17 A. And basically waste everybody's time. And if I  
18 remember correctly, the ARA listing agreement excluded  
19 them from earning a commission if there was a sale or  
20 a foreclosure between those parties.

21 Q. Okay. So they wouldn't want that because they would  
22 lose their commission?

23 A. Well, it's about the integrity of the process.

24 Q. I got it. I understand what you're saying. I just  
25 wanted to understand completely what you were saying.

1                   And during this process I noticed that --  
2                   do you recall that Papa Joe's was inquiring about the  
3                   property?

4           A.     Well, I believe that they had expressed an interest  
5                   prior to the receivership is my recollection.

6           Q.     I mean, as to rent space, right, is that what you're  
7                   recalling or to buy it?

8           A.     To rent space.

9           Q.     Why are you laughing?  What's amusing?

10          A.     What's amusing, I just --

11                   MR. BREDEWEG:  I didn't hear any laughter.

12                   MS. FRIEDLAENDER:  Oh, I'm sorry, I didn't  
13                   mean to mischaracterize.

14                   MR. BREDEWEG:  I don't think there is any  
15                   statement that there's anything amusing.  Go ahead and  
16                   ask your question.

17          BY MS. FRIEDLAENDER:

18          Q.     Okay.  You recall -- what do you recall about Papa  
19                   Joe's?

20          A.     I believe that there was an expressed interest in  
21                   leasing space at the property.

22          Q.     Do you recall any actual lease agreement?

23          A.     I believe, from my recollection, there was -- there  
24                   wasn't an executed agreement, but there may have been  
25                   a draft lease that was out there or a letter of



1 intent. I don't recall.

2 Q. Do you remember what -- that happened while you were  
3 the receiver, you saw that?

4 A. Yeah, but I believe it predated the receiver.

5 Q. Right. And did you ever discuss leasing the retail  
6 portion of the property with Papa Joe's during your  
7 receivership?

8 A. Yeah, I recall speaking with somebody over there, but  
9 the economics were atrocious so we decided not to move  
10 forward with it.

11 Q. What do you mean by the economics were atrocious, if  
12 you can explain that to me?

13 A. That the cost of doing that deal -- if I recall  
14 correctly, it was a 15 year lease deal that took 13  
15 years to get the money back in that it cost to do the  
16 deal.

17 Q. Okay. For whoever the owner of the property was?

18 A. Yeah. Whoever did that deal, whether it was a future  
19 owner or whatever, that would be the economics of that  
20 deal.

21 Q. Was that based on the improvements that would be  
22 required?

23 A. All of the costs associated with the deal.

24 Q. Okay. Now, I just want to ask you, this is -- I have  
25 to find the particular place in the document. I

1 recognize these are other people's statements who are  
2 attributing something to you, so I want you to have a  
3 chance to tell me whether you believe you ever said  
4 anything like this. This is also -- these are the  
5 brokers, the ARA brokers, and I'm trying to get this  
6 on my screen. The broker -- I guess these notes are  
7 notes they kept on phone calls and things that they,  
8 you know, people that they heard from and this looks  
9 like it's from -- I'm not going to pronounce the name  
10 correctly, Ara Darakjian. Do you see that?

11 A. I see it on there. I don't know who it is.

12 Q. It says 4/2/18, and he was saying he didn't want  
13 Schubiner in the deal, he's concerned he'll find his  
14 way back in the deal. It says that ARA told him the  
15 lender and receiver have done everything possible to  
16 ensure this does not happen. Is there truth in that  
17 statement?

18 A. No, I don't know what it's referring to.

19 Q. Okay.

20 A. I don't know what they're -- who is that e-mail or  
21 comment coming from?

22 Q. That's either Debbie Corson, it's one of the brokers  
23 from ARA who is keeping notes of everybody she talks  
24 to and what they write about, who they talk to, what  
25 they said, and these are her notes.

1 A. I don't know what these refer to. I can speculate but  
2 I don't know what she's talking about.

3 Q. You say you can speculate, did you have any kind of  
4 conversations with her that she could draw that  
5 conclusion?

6 A. No, the only conversations we ever had were about  
7 running an honest process to make it a third party or  
8 a true market sale. And as I said earlier, there was  
9 a lot of skepticism in the market this was just being  
10 done and end up with a deal between the borrower and  
11 lender and everybody is wasting their time.

12 Q. Now, I'm sorry for being like dumb on this point, but  
13 just explain to me again what the fear is of what  
14 would happen between -- how this would help the lender  
15 and the borrower come to some agreement and  
16 settlement.

17 A. Well, I've seen in the past where a lot of buyers in  
18 receivership have been burned. There's a process to  
19 sell the property and all it ends up doing is driving  
20 up the price for a settlement between the borrower and  
21 the lender and that potential buyers spend a lot of  
22 time and money underwriting deals that never actually  
23 happen, it's a buyer's concern it's just a ruse to  
24 extract better settlement terms between the parties.

25 Q. Okay. This is one of those messages, again. This one

1 starts -- can you see the highlighting?

2 A. I can.

3 Q. Okay. Here's another one. You want to just read that  
4 to yourself for a second.

5 A. Yes, I see it.

6 Q. Okay. I don't understand -- do you understand what  
7 the broker is saying here? Do you know being charged  
8 16 default interest, what that has to do with  
9 anything?

10 MR. BREDEWEG: Object to the form of the  
11 question.

12 But you can answer, if you can.

13 A. I don't think her comment makes sense because I think  
14 it's mixing different things. I think the  
15 conversations we had was because the question would  
16 always be asked, why aren't you just holding the  
17 property through true stabilization, through a full  
18 lease up, which takes some time, and the property  
19 today sits at 80 percent occupancy which is below a  
20 stabilization. It wasn't in the best interest of the  
21 property to hold it for years to get to a true  
22 stabilization when the receiver's loan had a 16  
23 percent interest rate and that loan was coming to  
24 maturity.

25 BY MS. FRIEDLAENDER:

1 Q. I'm still missing something. I'm just really trying  
2 to understand it, because I didn't understand what  
3 this -- what she was meaning and I'm not sure I  
4 totally understand what you're telling me either.  
5 Maybe you can try again.

6 What is the significance of there being a  
7 loan that's accruing at 16 percent in terms of trying  
8 to sell the property now or later?

9 MR. BREDEWEG: Again, object to the form of  
10 the question.

11 MS. FRIEDLAENDER: Okay. Do you have a  
12 better way of asking it? I'm truly trying to  
13 understand this.

14 BY MS. FRIEDLAENDER:

15 Q. Matt, do you understand what I'm asking you?

16 A. I mean, I can try to explain again what I said, which  
17 is given that the receiver's loan had 16 percent  
18 interest and was maturing, as this says, at the end of  
19 July, the better option was to maximize the price and  
20 sell it than to hold it for the longer term because  
21 interest was accruing and the loan was expiring.

22 Q. Okay. And is there some impact on value if the  
23 interest is accruing?

24 MR. BREDEWEG: Object to the form of the  
25 again. Go ahead.

1 A. Not to a buyer. The buyer doesn't care.

2 BY MS. FRIEDLAENDER:

3 Q. Right. So who would it -- it would impact the lender  
4 or debtor?

5 A. I would assume interest rate would impact both.

6 Q. Right. So this -- you knew that the property was --  
7 after the sale process didn't happen, you were aware  
8 that the property would be foreclosed upon?

9 A. I don't know that there was any other option.

10 Q. I'm just asking you.

11 A. I don't know what --

12 Q. That's what happened.

13 A. I wasn't around through that period of time.

14 Q. When it came to the foreclosure, you were gone by  
15 then?

16 A. I believe so.

17 Q. Okay. Because the judgment of foreclosure, just to  
18 give you context, was September 2018.

19 A. Yes, so with the redemption period, it wasn't  
20 effective into '19 and I was already gone.

21 Q. Okay. The redemption period for the borrower?

22 A. Correct.

23 Q. The original borrower?

24 A. Correct.

25 Q. Because do you recall that the receiver waived any

1 redemption rights?

2 A. The receiver waived redemption rights?

3 Q. Yes, in its mortgage. If you don't remember, you  
4 don't.

5 A. Yeah, I'm not understanding the question. Why the  
6 receiver -- what redemption rights the receiver would  
7 have.

8 Q. I'm just -- well, you said redemption rights, so I  
9 thought you were saying that -- suggesting that maybe  
10 the receiver had a redemption period. So we're on the  
11 same page, okay.

12 Did you talk to any of the people who had  
13 submitted offers and let them know there would be a  
14 foreclosure sale?

15 A. Not specifically. I don't recall that.

16 Q. Do you know if there were any other buyers at the  
17 receiver sale -- I mean, at the foreclosure sale?

18 A. I don't know.

19 Q. You just don't have any information about that.

20 So there was an offer made by the Filman  
21 Group, correct?

22 A. Yes.

23 Q. And that was an offer that was accepted?

24 A. My recollection, yes, is that the lender approved a  
25 sale at that price.

1 Q. At the price that was originally offered?

2 A. I'm looking at the e-mail right there that says, I  
3 believe, 72.5 million.

4 Q. Right. But then if you want to continue reading the  
5 e-mail.

6 A. Yes, I see it.

7 Q. I don't know if this -- this started out, this e-mail,  
8 apparently it looks like, and do you remember doing  
9 this, that you asked Goldman to -- I think it starts  
10 -- here is your e-mail, I'm sorry. There's another  
11 part of this e-mail, I don't have the whole part on  
12 the screen here.

13 A. I can see it.

14 Q. But even before this e-mail apparently, do you recall  
15 sending Gerald an e-mail saying -- asking him for his  
16 formal rejection of the offer, I think?

17 A. No, I don't recall that specifically.

18 Q. So do you recall anything about this -- about the  
19 e-mail, what's being discussed here?

20 A. Yeah. What I recall is in getting the lender to  
21 accept the offer at 72.5, they didn't like the offer  
22 but were very clear that they would approve an offer  
23 at that amount but they will not move one penny off  
24 that number. So when a buyer came back with a  
25 different offer, I knew it was going to be rejected.



1 Q. Okay. And do you know why you were asking him --  
2 asking Gerald to, you know, provide a formal response?

3 A. Probably just so I could provide a formal response,  
4 you know, to the proposed buyer, prospective buyer,  
5 whether they were willing to accept it or not.

6 Q. Give me a second here, I'm sorry, because I wanted to  
7 find the other --

8 A. Can you give me two minutes while you look for that?

9 Q. Yes, absolutely.

10 (Off the record at 1:26 p.m.)

11 (Back on the record at 1:30 p.m.)

12 BY MS. FRIEDLAENDER:

13 Q. All right. So was it up to you to go back to them and  
14 say we reject your offer or whatever?

15 A. Yes, I was looking to provide a more formal response  
16 back to the prospective buyer. It was just something  
17 that was more informal. I didn't have a formal  
18 rejection.

19 Q. Okay. I'm going to go back to -- I'm sorry, I'm  
20 having technical difficulties right now.

21 Do you remember anything about this  
22 particular e-mail from Janine Getler to you and you  
23 back to her?

24 A. Yes, I do. I do remember that.

25 Q. What was this about?

1 A. My understanding with that was that I was not on some  
2 sort of lender update call, that I missed it, and I  
3 can remember either getting a phone call, maybe a  
4 phone call, that I didn't appreciate, of my commitment  
5 to the project or something like that. That's what I  
6 recall about this.

7 Q. Was it Janine who called you?

8 A. No. I believe I -- I believe I sent this to Janine to  
9 be an intermediary of -- to avoid any additional  
10 issues.

11 Q. Who called you, do you remember?

12 A. No, I don't remember specifically.

13 Q. Was it Gerald or Kevin?

14 A. It wasn't Kevin. I don't remember specifically.

15 Q. You don't know if it was Gerald or Maria?

16 A. I think it was either one of those two. That's what I  
17 don't remember. I know it wasn't Kevin but I don't  
18 remember if it was Gerald or Maria, and so I chose to  
19 go through Janine.

20 Q. Okay. Because they were questioning your commitment  
21 to the project, is that what you're saying?

22 A. Something like that. That's what I'm reading in  
23 looking at this and I can see from my e-mail that I  
24 didn't necessarily appreciate it.

25 Q. Sure. But you didn't send any e-mail directly to

1 Gerald or Maria about this issue?

2 A. I don't believe so.

3 Q. Okay. And they just called you, they didn't send you  
4 an e-mail?

5 A. That would be my -- the best of my recollection.

6 Q. Okay, got it. So were you involved at all in the  
7 apartment leasing?

8 A. No. Maybe I met the apartment leasing agent once or  
9 twice but not an actual leasing of the apartment.

10 Q. Did you ever talk to Trey about the leasing efforts?

11 A. I'm sure it came up as part of our weekly reviews of  
12 where leasing stood.

13 Q. And was there a problem with the leasing or did it  
14 feel like there was a problem with the leasing in  
15 terms of proceeding as you hoped or believed it would?

16 A. You know, I don't recall.

17 Q. I'm sorry, I'm having a problem with my screen, it  
18 keeps moving on me. Am I on screen?

19 A. You're on screen.

20 Q. Never mind then, this is just happening on my side.

21 In your experience, did you ever try to  
22 sell a project that wasn't finished?

23 A. Nothing jumps out at me as to the scale of this. It's  
24 very unique, at least in my experience, for a project  
25 to go into receivership at this phase. I've had other

1 redevelopment projects but typically didn't get as far  
2 into the construction redevelopment as this one did.

3 Q. But those were ones that were sold in your memory?

4 A. Yes.

5 Q. I'm just trying to understand if I heard you. Those  
6 projects, it wasn't of the scale of this one and the  
7 construction wasn't as far along as this one, is that  
8 what you said? Am I characterizing that correctly?

9 A. The scale issue, I wouldn't say that's the case, I've  
10 had some that were bigger development projects in kind  
11 of higher markets. But typically, when they go bad,  
12 it's not in the construction phase. It's either, in  
13 my experience, the default occurs prior to breaking  
14 ground or after it's completed, not in the middle of  
15 construction. That's an anomaly in my experience.

16 Q. But in your experience when it's happened  
17 pre-construction or when the construction was done,  
18 those were projects that you may have worked on that  
19 were sold?

20 A. Oh, yeah.

21 Q. Okay. And you're saying the anomaly here is that it  
22 happened right in the middle of construction?

23 A. Correct, that's the unique part of it.

24 Q. Did you put any feelers out there at all to see if  
25 there was anyone who would have been interested in a

1 project that was half done?

2 A. Well, when we went to market, we priced this or told  
3 buyers that we would consider any of the alternatives.  
4 We would consider someone that was willing to buy it  
5 in its existing condition and finish the construction  
6 themselves, and we didn't get -- we didn't get  
7 anybody, to my recollection, that seriously  
8 entertained that.

9 Q. I thought there was an e-mail like from the end of  
10 2017 from Redico or that you were writing an e-mail  
11 saying you had a meeting with Redico like in late  
12 2017. Do you recall that at all?

13 A. Yeah, I can remember walking the property with the  
14 CEO.

15 Q. What was that all about, why did they contact you and  
16 what did they --

17 A. Well, I think that they knew about the project and  
18 thought it might be an interesting project to acquire.  
19 I don't recall ever seeing -- ever receiving an offer  
20 from them.

21 Q. Okay. So you never like heard from them again after  
22 talking with them?

23 A. I think maybe they toured twice. I think there was  
24 someone else that came back a second time but what I  
25 remember, there was not an offer from them.

1 Q. Right. Before you started the sales project, did  
2 Canyon give you any information regarding what they  
3 were looking for in terms of a price of return that  
4 they needed?

5 A. Not a return specifically.

6 Q. Okay.

7 A. No.

8 Q. Well, did they talk about like any amount of money  
9 that they were looking for in the sale and --

10 A. No, not specifically which is why we looked at it from  
11 different options. If someone wanted to finish the  
12 construction, I think that whatever price the lender  
13 was willing to accept was predicated on how much they  
14 had into it at any point in time. A number they would  
15 accept before they put construction dollars into it is  
16 one thing, a number they would accept once they put  
17 the construction dollars into it was another. So my  
18 understanding was they were not -- they weren't overly  
19 interested in selling unless it was the right time to  
20 do so based on what the construction timing was and  
21 the amount of dollars that were put into it.

22 Q. So was it your understanding, again, I don't want to,  
23 you know, mischaracterize anything, so was it your  
24 understanding that what they were looking for to get  
25 out of it was to get their -- what they had invested

1 so far back into the construction?

2 A. Yeah, I think that's probably fair. And that number  
3 changed on almost a daily basis given how much was  
4 invested. But my recollection was that they were not  
5 willing to sell below what they had into it during the  
6 construction phase.

7 Q. Okay. And do you know what they were -- did they ever  
8 tell you what their alternative was if this didn't  
9 sell during the sale period and they had to foreclose,  
10 what they were going to do beyond that?

11 A. No. I still don't know what they actually did, let  
12 alone what the plan was to do before. I have no idea  
13 where the building sits today.

14 Q. Okay. Can we just take a ten minute break. I want to  
15 review notes and things like that and come back and  
16 see where we are.

17 A. Okay.

18 Q. I think we're close.

19 A. Okay.

20 (Off the record at 1:44 p.m.)

21 (Back on the record at 1:59 p.m.)

22 BY MS. FRIEDLAENDER:

23 Q. I know I kind of asked this question before, but I  
24 don't know if I asked it completely, which was what  
25 other role did other people at McKinely play in the

1 receivership other than you, if you know?

2 A. Well, there were several different people in several  
3 different roles. From a project management  
4 perspective, Chris Allen and Jennifer Van Dolkinberg  
5 (phonetic), I know that. Trey Casell was very  
6 involved. Albert, the CEO, was involved more upfront.  
7 And then there were other -- I think some leasing  
8 people maybe that may have helped out, but I would say  
9 that's the core group.

10 Q. Okay. When you said that Albert was involved upfront,  
11 you mean at the beginning of the receivership?

12 A. Yes, more from an overall getting the process kicked  
13 off.

14 Q. And then he didn't -- he wasn't as involved after that  
15 from your memory?

16 A. No. Once we got into the execution part of the  
17 construction, I'd say his role diminished.

18 Q. And were you contacted rather than him being contacted  
19 for the receivership in the beginning?

20 A. Yes.

21 Q. It was you?

22 A. Correct.

23 Q. They contacted you, and then you had to go to him and  
24 say are we interested in this?

25 A. Yeah, not necessarily ask the question, but just say,



1           hey, we have this opportunity and just leverage his  
2           knowledge of the market.

3       Q.    And do you know, does he have any relationship with  
4           the judge in Washtenaw County?

5       A.    Not that I'm aware of.

6       Q.    After you left, who took on your role?

7       A.    No one, I don't believe.

8       Q.    I mean, as far as going to court and that sort of  
9           thing.

10      A.    My understanding, I believe, because they had to swap  
11           out who the agent was, I believe, for that and I  
12           believe that became Trey Caswell.

13      Q.    Okay. Why did they have to swap out the agent? I'm  
14           not following.

15      A.    Because I was no longer involved.

16      Q.    Okay. And in your memory, you think that it was  
17           before the foreclosure that you stopped being  
18           involved?

19      A.    Yeah, because I don't think I was there post  
20           foreclosure and I'm including the redemption period  
21           within that, that's still part of the foreclosure  
22           process.

23      Q.    Because the foreclosure would have been September, the  
24           sale was in November 2018, and then the receivership  
25           ended May 2019, that was the redemption period. Do

1           you think you were still there in 2019 --

2       A.    No.

3       Q.    -- or still being receiver?

4       A.    No, I'm almost certain it was December of '18 when I  
5           was done.

6       Q.    When we were earlier discussing the affidavits that  
7           were filed -- that you filed, you know, that talked  
8           about the added value to the property from the loan  
9           and we talked about that you had discussed with other  
10          people coming to that conclusion that there was added  
11          value, do you recall who the other people were who you  
12          discussed that with?

13      A.    I believe I would have worked with Chris Allen on that  
14          because we were pulling comparable -- sales comps and  
15          where we thought values would be. Jim Fink I remember  
16          was part of that conversation, because he was helping  
17          to draft the correspondence. Not specifically, no, I  
18          don't. I know we would have bandied this around as a  
19          group trying to make sure we came up with a very good  
20          value, but I don't recall specifically.

21      Q.    Okay. And was there anybody who negotiated the loan  
22          with you?

23      A.    Again, it would have been kind of a group effort along  
24          with counsel.

25      Q.    And you remember the bankruptcy proceedings, of

1 course?

2 A. I do.

3 Q. And did you prepare for your testimony there at  
4 Dickinson's office?

5 A. I believe we met at Dickinson's office before the  
6 hearing, yes.

7 Q. And that was for trial preparation -- hearing  
8 preparation?

9 A. I know we met there and walked to the courthouse  
10 together, that's about all I really recall.

11 Q. Okay. So you don't recall going over possible  
12 testimony or anything like that?

13 A. No, nothing jumps out at me.

14 Q. Okay. Did you talk to anybody from Canyon, Canyon or  
15 their attorneys, prior to this deposition?

16 A. This one right now?

17 Q. Yes.

18 A. I thought you were talking about the bankruptcy.

19 Q. Yes.

20 A. No, I haven't talked to anybody in quite some time.

21 Q. And so you recall Mr. Eisenbraun, the appraiser, who  
22 testified at the bankruptcy proceeding?

23 A. There were a couple appraisers there, I don't know who  
24 represented -- I can remember that the debtor had one  
25 and I believe Canyon had an appraiser as well. I

1 don't remember who.

2 Q. You don't remember him? Do you remember ever meeting  
3 him before the bankruptcy proceedings?

4 A. Right now I don't know who he is.

5 Q. Eisenbraun I think is his last name.

6 A. Like I said, there were multiple appraisers. I don't  
7 know names of who was who.

8 Q. The one from Canyon, I'm sorry.

9 A. I don't believe I ever met him before.

10 Q. Okay. Do you remember who else was at the meeting  
11 before the bankruptcy hearing?

12 A. No. I can remember some Dickinson attorneys.

13 Q. Was Kevin there?

14 A. I remember Kevin being in the courtroom because I  
15 remember him leaving directly from the court, I  
16 believe, to go to the airport, that's what I remember.  
17 I don't recall if he walked over to the courthouse  
18 with us or not. I believe Paul Marcus may have been  
19 there as well, too.

20 Q. But you don't remember this Eisenbraun, the appraiser?

21 A. I don't, no.

22 Q. So was there -- when McKinely, I forgot how you put it  
23 and I don't want to mischaracterize -- when your  
24 relationship with McKinely ended per the receivership  
25 because you obviously left their employ before that,

1 was there something that triggered that?

2 A. Triggered the?

3 Q. Them telling you --

4 A. Me leaving McKinely?

5 Q. No, what triggered McKinely saying, you know, you can  
6 be excused from being the receiver on this project.

7 A. No. I just remember I got a FedEx and it was just a  
8 30-day termination notice.

9 Q. Okay. What was in the FedEx, just a letter basically?

10 A. Yeah, a termination of the agreement.

11 Q. Did you call anyone and ask them about it?

12 A. I don't recall that I did. If anything, I recall  
13 being relieved I was out of this circus.

14 Q. Okay.

15 A. I shouldn't say that. The receivership with the  
16 redemption period was winding down. It was kind of a  
17 natural time. So it was -- I viewed it that my role  
18 was diminishing pretty quickly.

19 Q. But were you surprised to get the FedEx?

20 A. No, not necessarily, because I had -- again, my role  
21 had been diminishing more and more as kind of things  
22 started to wind down so I wouldn't say I was really  
23 surprised.

24 Q. Okay. Did you ever provide advice to Canyon regarding  
25 the construction or, you know, and proceeding with the

1 construction that they rejected?

2 A. There is nothing that jumps out at me. As with  
3 anything, I'm sure there are times you make  
4 recommendations and whether it's budgetary or timing  
5 or whatever that may be, I'm sure there was difference  
6 of opinions but nothing that jumps out at me  
7 necessarily.

8 Q. Nothing that you recall specifically?

9 A. No, nothing specifically.

10 Q. How about during the sales process, did you make any  
11 recommendations to them during the sales process that  
12 they rejected?

13 A. Sorry, my earbuds just cut off after five hours. Can  
14 you repeat that?

15 Q. Sure. During the sales process, were there any  
16 recommendations you made that were rejected?

17 A. Nothing I can think of, no.

18 Q. Like did you go over the offers, did you review them  
19 all?

20 A. Oh, yeah, yes. I put them in a matrix and summarized  
21 them.

22 Q. Were there any offers that, other than the Filman  
23 offer, that you were higher on or that you thought  
24 seemed like a good deal?

25 A. I don't remember what the other offers were at this

1 point. I know that we had conversations with various  
2 groups trying to get the offer up. The Filman Group  
3 came in ultimately with the strongest offer.

4 Q. And did you provide any input when Filman came back  
5 with the -- what did they call it, the re-brand or the  
6 re-something --

7 A. Re-trade.

8 Q. That's it. With the re-trade, when they came back  
9 with the re-trade, what was your opinion of that?

10 A. That I knew it was going to be difficult to get a deal  
11 done at that number. They walked me through their  
12 additional underwriting and where they came to that  
13 value, and ultimately that's a buyer decision of how  
14 they got there. So I knew at that point it was going  
15 to be tough to move forward with the sale.

16 Q. Did you try to sell it to Canyon?

17 A. I don't know that I tried to sell any of them. It was  
18 here's the offers, because ultimately they had to  
19 approve any sale. So I think I presented it as this  
20 is the offer that they -- that they approved -- that  
21 Canyon approved was the best offer that was out there  
22 so that's when I sent the summary and requesting or  
23 seeking approval to incorporate the sale that  
24 ultimately didn't happen.

25 Q. Did they ask you for your opinion on it?

1 A. No, not that I can recall.

2 Q. I'm looking at my documents here. There is another  
3 one here in case you have any knowledge of. I'm going  
4 to get it up on the screen.

5 I'm wondering -- this isn't something you  
6 did, but I'm wondering if you recognize or, you know,  
7 you'd seen it before. I'll give you a chance to kind  
8 of read it.

9 A. Can you scroll up a little bit?

10 Q. Up a little bit?

11 A. Yes, if you can.

12 Q. I can give you a little bit more background on it. It  
13 was not actually signed by you as the receiver. You  
14 can see the date.

15 A. Yep.

16 Q. I'll ask you this question which is, do you recall  
17 during this process we talked about from like February  
18 2017 until August 2017 when the GMP was finalized that  
19 there were negotiations going on between the receiver  
20 and O'Brien, that an idea came up which was let's do  
21 like a phased construction. You remember that, right?

22 A. Yes.

23 Q. Do you agree with me that's what this amendment seems  
24 to be referring to?

25 A. I don't know that specifically was referring to that.



1 I remember the pods that he referenced later in the  
2 document when they talk about the tranche of funding.  
3 I don't know if that tied to the pods specifically.  
4 That, I don't know.

5 Q. What do pods mean?

6 A. There were essentially five construction pods of what  
7 we can get open and move people into to generate cash  
8 flow as quickly as possible.

9 Q. Okay. And do you have any idea whether the cash  
10 flowing at that time, when you were still there during  
11 this phased construction, was there anything there to  
12 pay for any expenses?

13 A. There may have been enough to pay for some expenses,  
14 but I can't imagine it was nearly enough to pay for  
15 the total operating costs.

16 Q. Sure. Because there weren't that many. That's a fair  
17 answer.

18 In the red square, the receiver  
19 acknowledges the release of multiple tranches may  
20 reduce or eliminate efficient and economical  
21 implementation of the work which may increase the  
22 contract sum and contract time generally typical to  
23 industry standards. Do you remember anything about  
24 this?

25 A. No, I don't.

1 Q. Do you have any idea what it means?

2 A. In reading this, what I see is that because the  
3 project had to be developed in phases and without  
4 having a full approved, whether it's budget or  
5 construction drawings or a full scope like you  
6 typically have in a construction process, that you  
7 have to work in phases and that's more inefficient  
8 than if you can go sign all the trades up at one  
9 particular time.

10 MS. FRIEDLAENDER: I'm checking my notes.  
11 I need to take another little break. Can we get back  
12 at 2:30?

13 MR. DOLAN: Sure.

14 (Off the record at 2:21 p.m.)

15 (Back on the record at 2:33 p.m.)

16 BY MS. FRIEDLAENDER:

17 Q. I have some follow up on an earlier question and I  
18 don't know if I asked about this: Did you look at any  
19 other general contractors besides O'Brien before  
20 hiring them?

21 A. I believe so. I believe we talked to the contractor  
22 that was in place. I remember having a conversation  
23 with them early on.

24 Q. Anybody else? I think that was Gleason, anybody  
25 besides Gleason?

1 A. I don't recall.

2 Q. Okay. And as far as the retail, I know we talked  
3 about Papa Joe's, but did you have any -- were there  
4 any discussions about trying to find any other user  
5 for the retail space?

6 A. Yes, we had some discussions about it and ultimately  
7 given the limited amount of funds that were available  
8 and how expensive it was going to be to complete the  
9 construction for the retail wing, relative to the rent  
10 it would produce, it wasn't a good use of the limited  
11 funds that we had. And the other thought process with  
12 that is that the retail is as much of an amenity for  
13 the building as anything, that the ultimate  
14 owner/buyer may want to control that. It's really  
15 more, I view it, as an amenity to the larger project.

16 Q. What do you mean by that, amenity to the larger  
17 project?

18 A. Typically, in something like a project like that, a  
19 lot of your customers are going to be the residents  
20 living in the building.

21 Q. Right.

22 A. So different buyers, different owners may have  
23 different visions for the best use of that space. And  
24 unlike an apartment, if you lease an apartment, the  
25 lease is generally only one year. If you lease say

1 Papa Joe's, you're tying that space up with potential  
2 options for 15 to 30 years. So whoever is going to  
3 own this long term, the flexibility to put the --  
4 their chosen tenant in there was a factor as well,  
5 too.

6 Q. Okay. When you were saying, we discussed, were you  
7 talking about other people within McKinely, the  
8 receiver group?

9 A. Correct.

10 Q. Okay. I'm doing a last little go through of my  
11 outline here. I know there was one other thing. I'm  
12 sorry, there was something I didn't understand. Let  
13 me open it up. I'm going to share this.

14 This is a document obtained from Marcus and  
15 these are personal notes of a broker. I don't know,  
16 do you recall, Matt, the Marcus broker opinion of  
17 value?

18 A. I don't.

19 Q. Okay. If you look at this first paragraph 10/25/18  
20 and read it and see if that refreshes your memory at  
21 all.

22 A. He's talking about a different property. I think he's  
23 trying to connect someone in his office with me about  
24 a different property.

25 Q. He says you're a nice guy.

1 A. That's nice of John.

2 Q. He is talking about The George in the first sentence.

3 A. Yes.

4 Q. I think he's saying we proposed 57 to 60 million.

5 A. I do recall in their BOV, their number was  
6 significantly lower than the other BOVs we received.

7 Q. Did you not agree with their BOV?

8 A. Not entirely. I don't know that I ever entirely agree  
9 with how somebody underwrites a property. Everyone  
10 has their own opinions.

11 Q. Was that fully your authority to hire the broker or  
12 did Canyon have to approve the broker?

13 A. I don't think Canyon had to or did approve the broker.  
14 I know that rather than waste time engaging a broker  
15 for a sale that Canyon had no intention of going  
16 forward with, that I did reach out to see if they  
17 would be supportive of a sale, because ultimately it's  
18 a waste of time if they weren't interested in  
19 exploring a sale.

20 Q. Okay. I just had one more thing on the broker notes.  
21 I'm trying to get this so you can see. Can you see  
22 what's in caps?

23 A. A little bit of it.

24 Q. Let me get it in the center. Can you see that now?

25 A. Yes.

1 MR. BREDEWEG: I think it's still cut off  
2 on both sides.

3 MS. FRIEDLAENDER: I'm trying to make it  
4 bigger. There we go.

5 BY MS. FRIEDLAENDER:

6 Q. Now can you see it?

7 A. Yes.

8 Q. If you can read that to yourself.

9 A. Yes.

10 Q. Have you finished reading the caps?

11 A. Yes.

12 Q. Can you explain this to me?

13 A. Yeah, my recollection is John reached out to me well  
14 after I was long gone from the project and wanted to  
15 know what was happening at the property and I told him  
16 I believe they foreclosed and if anyone at Canyon is  
17 still involved, Gerald would be the person closest to  
18 it, and we talked about his valuation compared to some  
19 underwriting performa. When we were going through our  
20 underwriting we discovered a pretty significant  
21 discrepancy in the taxes that had a pretty substantial  
22 impact on the overall value.

23 Q. Okay. And when you're saying we, McKinely, in doing  
24 some valuation that they were doing. I'm a little  
25 confused.

1 A. When we looked at the valuation that the brokers  
2 provided and their underwriting, we looked at how they  
3 underwrote it, and if I recall, we looked at that  
4 against the original performa or budget, whatever you  
5 want to call it that the borrower and lender entered  
6 into, and there was a huge discrepancy between what  
7 the taxes were going to be.

8 Q. Okay.

9 A. So when it came time to sell it, everyone -- I think  
10 every buyer underwrote taxes at a different number  
11 because in construction you don't know what that  
12 number is going to be.

13 Q. Okay. And are you familiar with the TIF funds  
14 associated with the project?

15 A. Somewhat, yes.

16 Q. Would they offset any of the tax?

17 A. My recollection is there was a finite amount of  
18 dollars available for that, but once that burned off  
19 you were stuck paying the full rate. Buyers  
20 underwrote that differently. A lot of them underwrote  
21 it as taking a smaller amount of dollars and spreading  
22 it out over time versus taking it all upfront, but  
23 everyone was trying to underwrite you what's the  
24 stabilize -- the true real estate taxes going forward.

25 Q. Then it looks like in October 2018 that McKinely, the

1 receiver engaged Mark Barnes from HFF to do a  
2 valuation. Do you recall that?

3 A. I think HFF provided a broker opinion of value. I  
4 think they were trying to -- one of the people  
5 pitching to get the disposition work.

6 Q. Right. But you don't remember them being engaged  
7 after the sale process was over to provide a  
8 valuation?

9 A. I don't remember that.

10 MS. FRIEDLAENDER: Well, I think I'm at the  
11 end.

12 MR. BREDEWEG: I have no questions.

13 MR. DOLAN: I have no questions.

14 (The deposition was concluded at 2:46 p.m.  
15 Signature of the witness was not requested by  
16 counsel for the respective parties hereto.)  
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