

Jonathan Roth
10/11/2018

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF WASHTENAW

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CAN IV PACKARD SQUARE LLC, a)
Delaware limited liability)
company,)
)
Plaintiff,)
)
vs.)
)
PACKARD SQUARE LLC, a Michigan)
limited liability company,)
)
Defendant.)
_____)

Case No. 16-990-CB

DEPOSITION OF JONATHAN ROTH
Santa Monica, California
Thursday, October 11, 2018

REPORTED BY:
JEAN KIM
CSR NO. 13555, RPR
JOB NO.
93320SWI

1 STATE OF MICHIGAN
 2 IN THE CIRCUIT COURT FOR THE COUNTY OF WASHTENAW
 3
 4 CAN IV PACKARD SQUARE LLC, a)
 Delaware limited liability)
 5 company,)
)
 6 Plaintiff,)
) Case No. 16-990-CB
 7 vs.)
)
 8 PACKARD SQUARE LLC, a Michigan)
 limited liability company,)
 9)
 Defendant.)
 10 _____)
 11
 12 Deposition of JONATHAN ROTH, taken on behalf of the
 13 Defendant Packard Square, LLC, at 100 Wilshire Boulevard,
 14 Suite 1845, Santa Monica, California, commencing at
 15 11:13 a.m., on Thursday, October 11, 2018, before
 16 Jean Kim, CSR No. 13555, RPR, a Certified Shorthand
 17 Reporter in and for the County of Los Angeles, State of
 18 California.
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1 APPEARANCES:
 2
 3 FOR PLAINTIFF:
 DICKINSON WRIGHT, PLLC
 4 BY: J. BENJAMIN DOLAN
 Attorney at Law
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 6 Troy, Michigan 48084
 248.433.7200
 7 bdolan@dickinsonwright.com
 8
 9 FOR DEFENDANT PACKARD SQUARE, LLC:
 SWISTAK LEVINE, PC
 10 BY: I. MATTHEW MILLER (Via Videoconference)
 Attorney at Law
 11 30883 Northwestern Highway
 Suite 120
 Farmington Hills, Michigan 48334
 12 248.851.8000
 mmiller@swistaklevine.com
 13
 14 ALSO PRESENT:
 15
 16 ARIANA PELLEGRINO (Via Videoconference)
 17 CRAIG SCHUBINER (Via Videoconference)
 18
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1 I N D E X
 2 EXAMINATION BY: PAGE
 3 MR. MILLER 5
 4
 5
 6 E X H I B I T S
 7 (None)
 8
 9
 10 INFORMATION TO BE SUPPLIED
 11 (None)
 12
 13
 14 INSTRUCTION NOT TO ANSWER
 15 (None)
 16
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1 Santa Monica, California; Thursday, October 11, 2018
 2 11:13 a.m.
 3
 4 JONATHAN ROTH,
 5 having declared under penalty of perjury to tell the
 6 truth, was examined and testified as follows:
 7
 8 EXAMINATION
 9 BY MR. MILLER:
 10 Q Sir, my name is Matthew Miller, and I'm here on
 11 behalf of Packard Square, LLC, in a lawsuit filed in the
 12 Washtenaw County trial court in the state of Michigan,
 13 entitled CAN IV Packard Square, LLC, versus
 14 Packard Square, LLC.
 15 We've asked you to appear for your deposition
 16 today pursuant to a subpoena and a notice of taking
 17 deposition. And first, I want to -- I appreciate --
 18 thank you and tell you I appreciate your appearing here
 19 today with us.
 20 The purpose of this deposition is to get
 21 information from you and to ask you some questions and to
 22 find out what you know.
 23 If you don't understand a question, please let
 24 me know, and I'll be happy to rephrase it. If you can't
 25 hear me or we have a technical issue, please share that

1 with me as well, and I'll restate my question.
 2 Just make sure that, when you do answer the
 3 question, that you let me finish my question before you
 4 answer and that you answer audibly without shrugs of the
 5 shoulders or nods of the head. Okay?
 6 **A Yes.**
 7 Q Will you please state your name for the record.
 8 **A Jonathan Roth.**
 9 Q Thank you.
 10 This deposition may be used for any purposes
 11 under the Michigan court rules and Michigan rules of
 12 evidence.
 13 Mr. Roth, I'm not going to try to trick you or
 14 confuse you. I just want to find out some information.
 15 So let's start with some background information.
 16 Where were you educated?
 17 **A I don't mean to be an obstructionist, but your**
 18 **time is valuable. So is mine. That is all of public**
 19 **record. Why don't we just get right to it?**
 20 Q I don't have a public record in front of me,
 21 sir. So if you'd just answer the question quickly, that
 22 would really help.
 23 **A Can you repeat the question?**
 24 Q Yes.
 25 Where were you educated?

1 Q I know who's in the room with me. I'm asking
 2 the question of who's in the room with you, sir.
 3 **A There's a lovely court reporter by the name of**
 4 **Jean Kim. And there's a lovely attorney -- I'm sorry,**
 5 **but --**
 6 MR. DOLAN: Ben Dolan.
 7 **THE WITNESS: Ben Dolan.**
 8 BY MR. MILLER:
 9 Q Is Mr. Dolan representing you today, sir?
 10 MR. DOLAN: Yes, I am.
 11 **THE WITNESS: Yes, he is.**
 12 BY MR. MILLER:
 13 Q Okay. Because we have been in contact with a
 14 different attorney.
 15 That attorney is not present today; is that
 16 correct?
 17 **A There's nobody else in the room. That is**
 18 **correct.**
 19 MR. DOLAN: Who's on the phone?
 20 MR. MILLER: Okay.
 21 **THE WITNESS: Yeah. There was --**
 22 MR. MILLER: It looks like the court reporter
 23 and my client.
 24 **THE WITNESS: Oh, your client is on the phone.**
 25 MR. DOLAN: Who's Gerald -- is Gerald Hanson

1 **A At school in the state of California.**
 2 Q I meant collegiately, sir.
 3 **A UCLA.**
 4 Q Okay. And did you have any graduate work after
 5 UCLA?
 6 **A Graduate work or graduate education?**
 7 Q Graduate -- well, I don't know if you had a
 8 degree.
 9 So did you have any graduate education that led
 10 to a degree?
 11 **A Yes.**
 12 Q What was that?
 13 **A I got my juris doctorate.**
 14 Q Where did you do that, sir?
 15 **A At Loyola in Los Angeles.**
 16 Q Okay. And have you had any other graduate
 17 education other than law school since you graduated from
 18 UCLA?
 19 **A No.**
 20 Q All right. Have you had any training that would
 21 lead to a certificate of any kind other than a driver's
 22 license? I mean professional.
 23 **A No.**
 24 Q Who else is in the room today?
 25 **A With you or with me?**

1 your court reporter number?
 2 MR. MILLER: Gerald Hanson is the court reporter
 3 company.
 4 MR. DOLAN: Got it.
 5 BY MR. MILLER:
 6 Q Sir, when did you start working at Canyon
 7 Partners?
 8 **A I believe around 1997.**
 9 Q And when you started there, what were you doing
 10 professionally at Canyon Partners?
 11 **A Making real estate investments.**
 12 Q Did you have a title?
 13 **A I don't recall what my title was when I started.**
 14 Q When did you leave Canyon?
 15 **A In September of 2015.**
 16 Q And what was your role at Canyon at the time
 17 that you left?
 18 **A I oversaw the real estate investment platform at**
 19 **Canyon.**
 20 Q Did you have a title?
 21 **A Yes.**
 22 Q What was that title?
 23 **A President.**
 24 Q Of what?
 25 **A Of Canyon Capital Realty Advisors.**

1 Q Was that a partnership position?
 2 MR. DOLAN: Object to the form of the question.
 3 What does that mean?
 4 BY MR. MILLER:
 5 Q Were you a partner in the firm as well as being
 6 the president of that entity?
 7 MR. DOLAN: Same objection.
 8 Go ahead and answer if you can.
 9 **THE WITNESS: When you refer to "the firm," what**
 10 **are you referring to?**
 11 BY MR. MILLER:
 12 Q Well, I'm either referring to the Canyon
 13 real estate firm that you said you were a president of or
 14 Canyon Partners, the overarching entity. I don't know
 15 how the company is structured. And you were talking
 16 about your time being of value; so I'm trying to cut to
 17 the chase a little bit.
 18 **A Well, what's your question?**
 19 Q Were you an equity owner in any of the Canyon
 20 entities? Why don't we try it that way.
 21 **A No.**
 22 Q Did you have any accounting background?
 23 **A Does home ec count in grade school?**
 24 Q No.
 25 **A No.**

1 Q Have you communicated at all with
 2 Robin Potts since you left?
 3 **A No.**
 4 Q How about Mitchell Julis?
 5 **A Nope.**
 6 Q What was the purpose of your communications with
 7 Mr. Freedman?
 8 **A Pleasantries.**
 9 Q Are you involved in any business dealings today
 10 with any Canyon entity?
 11 **A No.**
 12 Q Okay. Let's talk about some other things I'm
 13 trying to understand because I'm not a financial expert.
 14 What is a -- do you know -- what is a commingled
 15 debt platform?
 16 **A I don't know.**
 17 Q It's not a phrase you've heard before?
 18 **A I've heard those words before, but I'm not**
 19 **sure -- what -- what was the question?**
 20 Q What is a commingled debt platform?
 21 **A If you break the words down, it sounds like a**
 22 **number of things put together to form something.**
 23 Q Do you know what the -- at Canyon, what the
 24 value mortgage separate account is?
 25 **A I know that that is a phrase that we would use**

1 Q Why did you leave Canyon?
 2 **A The circumstances around my departure from**
 3 **Canyon have been well reported, and I'm subject to a**
 4 **confidentiality agreement. So I cannot discuss my**
 5 **departure from Canyon.**
 6 Q Is a confidentiality agreement upon leaving
 7 Canyon a common occurrence for a Canyon employee?
 8 MR. DOLAN: Object to foundation. Go ahead.
 9 **THE WITNESS: I can only speak to my experience.**
 10 BY MR. MILLER:
 11 Q Are you aware of other Canyon employees who've
 12 left prior to you that also had confidentiality
 13 agreements?
 14 **A No.**
 15 Q Okay. Have you, since you left Canyon,
 16 communicated with any employees or owners of Canyon in
 17 the intervening almost three years?
 18 **A Yes.**
 19 Q Who have you communicated with?
 20 **A Josh Freedman.**
 21 Q Anyone else?
 22 **A No.**
 23 Q Had you communicated at all with
 24 Maria Stamolis since you left?
 25 **A No.**

1 **from time to time to identify a separate account.**
 2 Q And what did it mean to be a value mortgage
 3 separate account?
 4 **A A general description to describe what**
 5 **investments were made out of a separate account.**
 6 Q What's a separate account, at least at Canyon,
 7 that you're familiar with?
 8 **A It's a contractual relationship with an investor**
 9 **to invest on behalf of the investor.**
 10 Q What is a value mortgage separate account
 11 realization?
 12 **A I don't know.**
 13 Q It's not a phrase you've heard before?
 14 **A Sounds like an event. I don't know.**
 15 Q I didn't ask you this.
 16 How long did you serve as president of the
 17 Canyon real estate entity that you described earlier?
 18 **A Approximately two years.**
 19 Q What was your role at Canyon prior to assuming
 20 the role of president?
 21 **A Pretty much the same as before. It was a title**
 22 **change.**
 23 Q So prior to that title change, was there
 24 somebody else that you were reporting to?
 25 **A There was an individual by the name of**

1 Bobby Turner who had left the firm.

2 Q Okay. So let's talk about your involvement day
3 to day as president of the Canyon real estate entity you
4 described earlier.

5 What was your -- what was your day-to-day role?

6 A **Oversaw a number of individuals in various
7 capacities, our deployment of capital and asset
8 management and return of capital and everything that one
9 would do in running a sophisticated platform that is a
10 registered investment advisor.**

11 Q Did different people report to you when you were
12 president on the asset management side versus the loan
13 acquisition side, or were those jobs combined?

14 A **Can you re-ask the question, please.**

15 Q Yeah.

16 So when you were president, was there a division
17 head of loan acquisition, for example, or loan
18 origination?

19 A **Not that I recall.**

20 Q Was there a person in charge of asset management
21 who reported to you?

22 A **Yes.**

23 Q Who was that?

24 A **During which period of time?**

25 Q During the time you were president.

1 for construction loans at Canyon when you were the
2 president?

3 A **No.**

4 Q How did you -- how did you value loans without
5 considering loan to cost?

6 MR. DOLAN: Object to the form of the question.
7 Go ahead and answer if you understand.

8 **THE WITNESS: I didn't say we didn't consider
9 value. But you asked me a question that I answered
10 truthfully, that we don't use -- we didn't use those
11 terms or phrases or --**

12 BY MR. MILLER:

13 Q What terms or phrases did you use?

14 A **I don't know. I don't recall.**

15 Q You don't recall the terms that were used to
16 consider whether or not to enter into a loan agreement
17 with a borrower?

18 A **I'm not sure I understand that question.**

19 Q Okay. I'm trying to understand the framework by
20 which Canyon, while you were president, decided whether
21 or not to lend money on a particular deal.

22 MR. DOLAN: I'm just going to object.

23 BY MR. MILLER:

24 Q And I was --

25 MR. DOLAN: Go ahead. Sorry. I didn't mean to

1 A **That was Maria Stamolis.**

2 Q Okay. And there was no similar counterpart on
3 the loan origination side --

4 A **No.**

5 Q -- at that time?

6 A **No.**

7 Q Okay. When you do a -- when you did --
8 strike that. Because we'll find out what you're doing
9 now later.

10 At Canyon, what was considered an aggressive
11 loan-to-cost amount? A percentage?

12 MR. DOLAN: Object to the form of the question.

13 **THE WITNESS: I'm not sure I understand the
14 question.**

15 BY MR. MILLER:

16 Q Are you familiar with the phrase "loan to cost"
17 when Canyon made loans?

18 A **Yes.**

19 Q Okay. Were there -- was there a sliding scale
20 at which point a loan-to-cost amount was considered
21 conservative or moderate or aggressive? Have you ever
22 considered those types of considerations when figuring
23 out a loan to cost?

24 A **No.**

25 Q What would -- was there a standard loan to cost

1 interrupt.

2 BY MR. MILLER:

3 Q And so I was trying to understand what those
4 terms were. I thought one of those terms was loan to
5 cost. If there are different terms, I'd like to know
6 what they were.

7 MR. DOLAN: Okay. And I'm just going to object
8 to this question and this entire line of questioning as
9 being irrelevant.

10 Go ahead and answer if you can.

11 **THE WITNESS: When making a loan and a decision
12 to make a loan on a sizeable loan --**

13 (Telephonic interruption.)

14 **THE WITNESS: Excuse me -- the loan to cost is a
15 consideration. And that is simply a ratio of the loan
16 amount versus the cost of the underlying project.**

17 BY MR. MILLER:

18 Q Right. I understand that.

19 So was there a -- was there a standard protocol
20 at Canyon for which the loan to cost couldn't exceed a
21 certain amount or else the loan wouldn't be approved?

22 A **No.**

23 Q Do you recall the highest loan -- what was the
24 highest loan to cost that was approved while you were
25 president?

1 **A I don't recall.**
 2 Q What was the lowest loan to cost that you
 3 approved while you were president?
 4 **A I don't recall.**
 5 Q Do you recall any loan to costs that were used
 6 in any deals while you were president?
 7 **A No.**
 8 Q But regardless of that fact, would you agree
 9 with me that some loan to cost would be more conservative
 10 based on the amount of the loan versus the value of the
 11 project and some would be more aggressive based on the
 12 amount of the loan and the value of the project? Right?
 13 **A I don't know what you mean by the term**
 14 **"aggressive."**
 15 Q Well, if it were a \$9 million loan and a
 16 \$10 million project, that would be a 90 percent loan to
 17 cost, would it not?
 18 **A I'll let you do the math.**
 19 Q Okay. Well, would you consider that to be an
 20 aggressive loan to cost?
 21 MR. DOLAN: Object to the form of the question.
 22 Go ahead.
 23 **THE WITNESS: It depends on your perspective.**
 24 BY MR. MILLER:
 25 Q Well, will you explain to me the perspective

1 **prior written consent would be inappropriate.**
 2 Q That wasn't my question.
 3 My question was: Did you ever communicate
 4 directly with investors?
 5 **A Yes.**
 6 Q Did you ever make any statements to any
 7 investors that were misleading or exaggerated?
 8 **A Can you repeat that, please.**
 9 Q Did you ever make any statements or any
 10 communications to investors which were misleading or
 11 exaggerated?
 12 **A You would have to ask the investor that.**
 13 Q Well, you're the one who made the statement. So
 14 I'm asking you if you believe you've ever misled an
 15 investor in a written or oral statement.
 16 **A My communication with investors is privileged**
 17 **communication. So, again, you'll have to seek their**
 18 **consent to have a discussion about communications with**
 19 **investors.**
 20 Q What's the privilege you're referring to?
 21 **A It's confidentiality.**
 22 Q There's no privilege.
 23 You're a lawyer. You know there's no
 24 investor/investment privilege; right?
 25 **A My knowledge of the law ended about 20 years**

1 because I don't understand the perspective.
 2 **A That is definitely a higher loan to cost than**
 3 **you would typically see a senior lender make. But there**
 4 **needs to be the discussion of value.**
 5 Q So what would be involved in the discussion of
 6 value?
 7 **A I don't understand the question.**
 8 Q I'm just repeating what you said to me.
 9 There would be a discussion of value. I don't
 10 know what that means. I'm trying to understand what your
 11 answer means.
 12 **A There are a number of data points that one**
 13 **considers when making a loan. One is certainly the ratio**
 14 **of loan to cost. The other is loan to value. And value**
 15 **is a number that is derived upon by a number of factors.**
 16 Q What is deal abstract?
 17 **A I don't know.**
 18 Q You're not familiar with a Canyon document
 19 entitled "deal abstract"?
 20 **A No, sir.**
 21 Q Had you ever communicated anything while you
 22 were at Canyon to investors of any Canyon deals?
 23 **A My communication with investors is regulated by**
 24 **the SEC as a registered investment advisor. And any**
 25 **communications I would have with investors without their**

1 ago.
 2 Q Okay. So when you use the word "privilege," did
 3 you mean it in a legal sense or some other sense?
 4 MR. DOLAN: I'm just going to object to the form
 5 of the question. Are you asking for --
 6 **THE WITNESS: It's -- it's -- sorry.**
 7 MR. DOLAN: -- a legal opinion?
 8 Go ahead.
 9 **THE WITNESS: Ask the question again.**
 10 BY MR. MILLER:
 11 Q When you used the word "privilege" just now, did
 12 you mean that there's a legal privilege that you believe
 13 protects communications between you and a potential
 14 investor?
 15 **A I'm not drawing any legal conclusions. I would**
 16 **say that those communications are confidential by**
 17 **agreement with investors and as promulgated under rules**
 18 **of -- by the SEC.**
 19 Q So my question originally was: Do you believe
 20 you've ever exaggerated any claims to any investors?
 21 **A No.**
 22 Q Do you believe you've ever misled any investors?
 23 **A No.**
 24 Q Do you believe you've ever lied to any
 25 investors?

1 A No.
 2 Q Okay. When did you first hear the phrase
 3 Packard Square?
 4 A I don't recall.
 5 Q Do you recall who brought the subject to you?
 6 A Who brought the subject to me --
 7 What is the subject?
 8 Q Packard Square.
 9 Who first mentioned Packard Square to you?
 10 A I don't recall.
 11 Q Might his name be Marti Page?
 12 A You're asking me to speculate. It could have
 13 been.
 14 Q No. I'm trying to refresh your recollection,
 15 actually. I'm not asking you to speculate anything.
 16 A Well, when you say could it have been, that's
 17 asking me to speculate.
 18 Q Well, now that we've talked about it, do you
 19 believe it was Marti Page who brought the concept of
 20 Packard Square to you the first time?
 21 A It might have been.
 22 Q Okay. What do you -- what do you recall about
 23 the Packard Square deal from the first time you heard
 24 about it?
 25 A That it was an opportunity to provide a

1 committee's meetings.
 2 MR. DOLAN: I'm just going to object. You
 3 actually did ask if Marti Page's testimony was truthful.
 4 But your second question is fine.
 5 Go ahead.
 6 MR. MILLER: Okay. Thank you.
 7 THE WITNESS: It would be standard practice to
 8 have minutes of investment committees.
 9 BY MR. MILLER:
 10 Q Were those kept electronically or in a
 11 written -- handwritten form or some other form?
 12 A Ultimately, they would be electronic.
 13 Q Were you involved as president in investor calls
 14 with any investors at Canyon?
 15 A Yes.
 16 Q Were those calls quarterly or more frequently
 17 than that?
 18 A There were no set times.
 19 Q There weren't quarterly calls?
 20 A Not necessarily.
 21 Q How often did such investor calls take place,
 22 then, if not quarterly?
 23 A From time to time.
 24 Q Let's talk about Robin Potts.
 25 Do you know Ms. Potts?

1 construction loan for the ground-up construction of
 2 multifamily units in Ann Arbor.
 3 Q And how did you consider whether it was a deal
 4 worth pursuing?
 5 A I would have been provided information by the
 6 loan originator that identified the opportunity, and that
 7 information would have been assessed by me and others in
 8 reaching a decision as to whether to pursue or not.
 9 Q Who ultimately would have been involved in that
 10 decisionmaking process other than yourself?
 11 A There was an investment committee.
 12 Q Who sat on the investment committee?
 13 MR. DOLAN: Are you asking him during a
 14 particular time or just any time?
 15 MR. MILLER: Relative to Packard Square.
 16 THE WITNESS: I would have been on the
 17 committee. Josh Freedman would have been on the
 18 committee. Mitch Julis would have been on the committee.
 19 And that's all I can recall.
 20 BY MR. MILLER:
 21 Q Marti Page testified that there were minutes
 22 kept of investment committee meetings. Is that true?
 23 A I don't know what Marti Page testified to.
 24 Q I'm not asking if her testimony was truthful.
 25 I'm asking you if there were notes kept of investment

1 A Yes.
 2 Q What was your working relationship with
 3 Ms. Potts?
 4 MR. DOLAN: Object to relevance. What
 5 difference does it make?
 6 MR. MILLER: I'm trying to lay a foundation,
 7 Mr. Dolan. But thank you.
 8 MR. DOLAN: For what? It's a ridiculous
 9 question. I guess if you want to waste everybody's time,
 10 go ahead.
 11 MR. MILLER: I'm not wasting everyone's time.
 12 THE WITNESS: My working relationship with
 13 Ms. Potts was cordial.
 14 BY MR. MILLER:
 15 Q How did you consider her as an employee?
 16 A Adequate.
 17 Q How would you rate her?
 18 A Adequate.
 19 Q Simply adequate and nothing exceptional?
 20 A I'm sure Ms. Potts has exceptional qualities,
 21 but as her colleague, I would rate her as adequate.
 22 Q What were her exceptional qualities?
 23 A I don't know.
 24 Q Do you recall any exceptional qualities?
 25 A No.

1 Q How was her -- how was her memory for facts and
2 details?

3 MR. DOLAN: Object to the form of the question.

4 **THE WITNESS: I am not qualified to opine on the
5 quality of Ms. Potts's memory.**

6 BY MR. MILLER:

7 Q Would you ever have meetings with Ms. Potts to
8 discuss deals?

9 A Yes.

10 Q Was she, at those meetings, able to speak
11 intelligently with recall about the deals she was working
12 on?

13 MR. DOLAN: Object to the form of the question.

14 **THE WITNESS: I believe so.**

15 BY MR. MILLER:

16 Q Did you consider her to be bright or smart?

17 A Yes.

18 Q Okay. Did you ever work with Kevin Schol?

19 A Yes.

20 Q What was his involvement at Canyon when he
21 was -- when you were president?

22 A **He was a member of the asset management group.**

23 Q Did you work directly with him?

24 A **From time to time.**

25 Q How was he as an employee?

1 A **Adequate.**

2 Q Is it normal for Canyon just to have adequate
3 employees, or does Canyon seek to hire topnotch
4 employees?

5 MR. DOLAN: Object to relevance.

6 Go ahead.

7 **THE WITNESS: I think there are other people
8 that are better suited to answer that question.**

9 BY MR. MILLER:

10 Q Well, you were the president of the
11 organization. So I have to ask you that question.

12 A **At the time that I was president and in charge
13 of hiring people, I always sought to hire people that
14 were exceptional.**

15 Q And you don't believe that either Ms. Potts or
16 Mr. Schol fit that mold?

17 A **I'm not sure why you would conclude that.**

18 Q Well, because you used the word "adequate" and
19 not the word "exceptional" to describe them --

20 A **Well, they were adequate --**

21 Q -- that's why.

22 A **They were adequate within our exceptional
23 standard.**

24 Q Okay. So you considered them to be exceptional
25 as it would pertain to the general public? Is that how

1 you're describing them?

2 A **At the time. I can't speak to them today.**

3 Q I'm not asking you to speak to them today. I'm
4 asking you just to speak to your --

5 A **Okay. So we're clear --**

6 Q I'm sorry. What did you say?

7 A **Just so we're clear.**

8 Q Okay. Did you hire either Mr. Schol or
9 Ms. Potts?

10 A **I was involved in the hiring process of
11 Ms. Potts.**

12 Q And what about her did you find to be
13 exceptional or adequate based on the exceptional nature
14 of Canyon?

15 A **I don't recall any specifics when I interviewed
16 her. That was many years ago.**

17 Q Were you -- did you work with -- directly with
18 Maria Stamolis?

19 A Yes.

20 Q How would you describe her as a coworker or
21 employee?

22 A **Adequate.**

23 Q Again, simply adequate? Nothing exceptional?

24 A **No.**

25 Q What about Gerald Goldman? Did you work with

1 Mr. Goldman?

2 A Yes.

3 Q How would you describe him as a coworker and
4 employee?

5 A **Adequate.**

6 Q Was there anybody that you found to be
7 exceptional at Canyon while you were working there who
8 worked for you?

9 A **Not particularly.**

10 Q You started a new company; correct?

11 A Yes.

12 Q And that company is 365 REIT; is that correct?

13 A **No.**

14 Q What's it called?

15 A **Well, you seem to have information. It's
16 3650 REIT.**

17 Q Yes. I misread that. I apologize, sir.

18 Can you tell me what that name references?

19 A **There's a -- if you go to our website, you can
20 read all about it. I will not do it justice.**

21 Q Okay. Speaking of your website, I did go there,
22 and there's a quote on your website. It says "Borrowers
23 deserve a relationship with a lender committed to the
24 outcome they seek."

25 Do you recall that statement on your website?

1 A Yes.

2 Q Is that a quotation that you came up with or

3 somebody else originated?

4 A I don't recall.

5 Q What did -- what did you mean by that?

6 A I think it speaks for itself.

7 Q Well, are you comparing -- would you say that

8 Canyon was also a company that acted as a lender

9 committed to the outcome borrowers seek?

10 THE WITNESS: If you're not going to object to

11 this line of questioning --

12 MR. DOLAN: I'm objecting to the whole line of

13 questioning.

14 THE WITNESS: -- I'm going to. Because this

15 is not why --

16 MR. DOLAN: It's so ridiculous.

17 THE WITNESS: -- I need to sit here and have you

18 waste my time.

19 If there are specific questions you want to ask

20 me about the relationship of the loan, of your borrower,

21 anything of that, please do.

22 MR. DOLAN: Yeah.

23 BY MR. MILLER:

24 Q What I'm asking you about --

25 MR. DOLAN: You're asking him about a quote on

1 different corporate culture at your new company that's

2 different from the other culture at Canyon's company?

3 MR. DOLAN: What difference does corporate

4 culture --

5 BY MR. MILLER:

6 Q Do you agree that your new company's culture is

7 different than that of Canyon?

8 MR. DOLAN: What difference does it make what

9 his corporate culture is at this company that's unrelated

10 to Canyon? What possible relevance to anything could

11 that have?

12 I mean this is really frustrating, Matt. And

13 that's saying a lot.

14 BY MR. MILLER:

15 Q Sir, I'm just trying to understand you. I think

16 your -- I think your quote is appropriate. I think it's

17 to be celebrated. I'm just trying to understand.

18 Do you think that Canyon considered its business

19 in the same fashion that 3650 REIT does?

20 A Is that a question?

21 Q Yes.

22 MR. DOLAN: You're asking him what a company

23 thought?

24 THE WITNESS: Yeah. I don't know what a company

25 thinks.

1 his website for his current company and whether Canyon

2 somehow -- it applies to Canyon. I mean why don't -- we

3 have such a limited amount of time here. Why don't you

4 ask him questions that relate to something in this

5 lawsuit? Anything?

6 MR. MILLER: I am. I'm asking him --

7 MR. DOLAN: No, that's not. That does not

8 relate to this lawsuit at all. What he has on his --

9 MR. MILLER: Yes, it does.

10 MR. DOLAN: What he has on his -- what he has on

11 his current client's website? No, it doesn't. And it's

12 ridiculous if you think that. It's insulting that you

13 think that. It's actually frightening to me that you

14 think that.

15 MR. MILLER: Okay. I'm neither insulting

16 Mr. Roth -- I'm trying to praise him. And I'm certainly

17 not --

18 MR. DOLAN: You are absolutely insulting him

19 because you're wasting his time asking him inane

20 questions. Please get to something that relates to this

21 lawsuit.

22 MR. MILLER: All right, sir, I will.

23 Q You went on, and you started your own company;

24 right? I'm trying to understand what the ramifications

25 were about your starting your own company, if there's a

1 I don't mean to be argumentative, but I just --

2 honestly, ask a question that is going to evoke

3 information that is actually going to be useful and that

4 I possess, not about my new company because that's

5 irrelevant. But about what you are representing

6 Mr. Schubiner on.

7 BY MR. MILLER:

8 Q I'm not representing Mr. Schubiner, number one,

9 and I'm not here to get into an argument with you.

10 I'm trying to understand whether you believe

11 there are competitive differences between your current

12 company that you founded and the company that you left.

13 A I don't understand --

14 Q Are there --

15 A First of all, if you're not representing

16 Mr. Schubiner, why is he on this call?

17 Q You don't get to ask me questions, sir.

18 MR. DOLAN: Well, I think it's a fair question

19 to wonder why somebody is listening to this deposition.

20 MR. MILLER: He's the corporate representative

21 of my client.

22 Q Would you please answer my questions instead of

23 asking me questions. That'll certainly make things go

24 faster.

25 A Okay. What's your question?

1 MR. MILLER: Will you please read back the
 2 question.
 3 (Record read.)
 4 BY MR. MILLER:
 5 Q I'm waiting for an answer.
 6 MR. DOLAN: That's not a question.
 7 BY MR. MILLER:
 8 Q It is.
 9 Do you believe there are competitive differences
 10 between your company and the company that you left?
 11 That's my question.
 12 MR. DOLAN: Okay.
 13 **THE WITNESS: I don't know how to answer that**
 14 **because it's really comparing apples and oranges. So --**
 15 BY MR. MILLER:
 16 Q Well, is your -- is your current business
 17 different than the realty investment business you were
 18 doing when you were working at Canyon?
 19 **A Yes.**
 20 Q It is different.
 21 Can you describe in 30 seconds how it's
 22 different?
 23 **A Let me answer by this.**
 24 **It's similar in that we represent -- it's**
 25 **similar in that we are a lender to owners and operators**

1 **was unethical?**
 2 Q Might be. I might be suggesting that. We do
 3 have a claim for bad faith, yes.
 4 **A I can only speak to the ethics with which we run**
 5 **our company.**
 6 Q Except that you can also speak to the ethics in
 7 which you were involved when you were at Canyon for all
 8 those years.
 9 **A And I would say that my ethics, Jonathan Roth's**
 10 **ethics, have not changed one iota.**
 11 Q When you were working at Canyon, were there any
 12 strategies used to try to increase returns on deals after
 13 they had already been made?
 14 **A No.**
 15 Q At Canyon, were there protocols relating to
 16 including attorneys on e-mails?
 17 **A None that I recall.**
 18 Q Was there a protocol by which Joshua Freedman or
 19 Mitchell Julis would not send an e-mail unless an
 20 attorney was already -- was also copied on the e-mail?
 21 **A Not that I'm aware.**
 22 Q When asset managers would visit sites when they
 23 were working for you at Canyon, were there written
 24 protocols for site visits?
 25 **A Not that I'm aware.**

1 of real estate. It's similar in that we, out of certain
 2 pools of capital, provide dollars for the ground-up
 3 construction of real estate. It is similar that, when we
 4 make a loan, we use documents that evidence the loan and
 5 documents that secure the loan.
 6 **It is different because the people who are in**
 7 **charge making the decision are different. So it's a**
 8 **different --**
 9 Q Right.
 10 **A It's just a different entity. And it's like**
 11 **Ford Motor versus Chrysler.**
 12 Q So can you, in a nutshell, tell me the
 13 difference between 3650 REIT with you and your partners
 14 in charge versus how Canyon operated during the same or
 15 similar type of business?
 16 **A No.**
 17 Q You can't describe the difference?
 18 **A No.**
 19 Q Would you say that your approach is more lender
 20 focused -- I'm sorry. Strike that -- more borrower
 21 focused based on your e-mail than Canyon was?
 22 **A No.**
 23 Q Do you think your manner of operating is more
 24 ethical than Canyon's was?
 25 **A Are you suggesting that the behavior at Canyon**

1 Q Well, who would have created such a protocol if
 2 there were one?
 3 **A The head of asset management.**
 4 Q So Ms. Stamolis, in other words?
 5 **A Perhaps.**
 6 Q Well, did you have other heads of asset
 7 management when you were the president?
 8 **A Her predecessor was a fellow by the name of**
 9 **Dan Millman. He may have created protocol if it existed.**
 10 Q Okay. Did the people working under you receive
 11 compensation based on how well deals they worked on did?
 12 **A Not necessarily.**
 13 Q So compensation was never based upon -- well,
 14 strike that.
 15 Was compensation ever based upon the returns of
 16 particular deals for particular people working under you?
 17 **A No.**
 18 Q How were bonuses developed, then?
 19 **A Bonuses were a function of several factors,**
 20 **including profitability of the overall real estate group,**
 21 **including the individual production or productivity and**
 22 **general market conditions.**
 23 Q Were those bonuses decided solely by you, or
 24 were other people involved in that decisionmaking
 25 process?

1 A **During what period of time?**
 2 Q The time that you were president.
 3 A **Bonuses were decided by Josh Freedman and**
 4 **myself.**
 5 Q I want to ask you about some deals at Canyon.
 6 Okay?
 7 Were you involved in Vallambrosa?
 8 A **Yes.**
 9 Q Were you involved in Greek Isles?
 10 A **Yes.**
 11 Q Were you involved in Intracoastal Mall?
 12 A **Yes.**
 13 Q Were you involved in East Coast Fisheries?
 14 A **Yes.**
 15 Q Were you involved in Cal Neva?
 16 A **Yes.**
 17 Q Were you involved in Coconut Plantation?
 18 A **Yes.**
 19 Q Were you involved in Royal Kunia?
 20 A **Yes.**
 21 Q Were you involved in the Hooters Project?
 22 A **Yes.**
 23 Q Were you involved in the Shops at
 24 Shelby Crossing?
 25 A **Yes.**

1 time that you think is appropriate?
 2 A **It would be based upon all the factors going**
 3 **into a particular credit.**
 4 Q Would you think 30 days as a per diem would be
 5 appropriate?
 6 A **I'm unable to answer your question because I**
 7 **don't have enough facts.**
 8 Q Are you familiar with a company called Newbanks?
 9 A **Yes.**
 10 Q What was your direct involvement with Newbanks
 11 when you were at Canyon?
 12 A **You're assuming I had direct involvement with**
 13 **Newbanks.**
 14 Q Okay. Did you have any direct involvement with
 15 Newbanks?
 16 A **Not that I recall.**
 17 Q Were you aware of Newbanks having been
 18 terminated from their position as it pertained to the
 19 Packard Square project?
 20 A **No, I was not.**
 21 Q Who negotiated the contract on behalf of Canyon
 22 for the Packard Square project?
 23 A **What -- what contract are you referring to?**
 24 Q The loan agreement.
 25 A **Who negotiated on behalf of who?**

1 Q Were you involved in 845 South Flower Street?
 2 A **I don't recall.**
 3 Q Okay. Were you involved in Corona Summit?
 4 A **I don't recall.**
 5 Q Were you involved in the US Capital Fashion
 6 Mall?
 7 A **Yes.**
 8 Q Were you involved in CJUF Green Pointe?
 9 A **Yes.**
 10 Q How much time, in your opinion, should a
 11 borrower get to repay a loan after receiving a payout
 12 letter for tens of millions of dollars?
 13 MR. DOLAN: Object to the form and foundation.
 14 Go ahead and answer if you can.
 15 **THE WITNESS: As a courtesy or as a matter of**
 16 **contract, as a matter of state law?**
 17 BY MR. MILLER:
 18 Q As a matter of, you know, working with a
 19 borrower committed to the outcome they seek.
 20 How much time is reasonable for a payoff letter
 21 amount to be paid off?
 22 A **I would have to have a lot more facts to make a**
 23 **judgment call on something outside of a contract or state**
 24 **law.**
 25 Q Is there a commercially reasonable amount of

1 Q Canyon.
 2 A **Well, there's a number of people that would have**
 3 **provided input, but I would assume that the loan**
 4 **originator, in this case, probably Marti Page, probably**
 5 **took the lead.**
 6 Q Who else would she have worked with to complete
 7 the loan contract negotiation?
 8 A **Likely Marcus Neupert and outside counsel,**
 9 **likely Bruce Fraser at Sidley.**
 10 Q Are you familiar with the litigation involved in
 11 this case?
 12 A **I know that it exists, but I have not taken any**
 13 **time to understand.**
 14 Q And you left in fall of 2015; correct?
 15 A **That's correct.**
 16 Q So this case didn't start until a year after you
 17 had gone.
 18 So was there any communication while you were
 19 there as president about the prospect of commencing
 20 litigation against Packard Square?
 21 A **Not that I recall.**
 22 Q Have you spoken with Marti Page since either of
 23 you left Canyon?
 24 A **Yes.**
 25 Q When did you speak with Ms. Page?

1 A I don't recall the date. But it was on or
 2 around the time that she departed Canyon.
 3 Q And did she leave before you, or did you leave
 4 first?
 5 A I believe she left after I did.
 6 Q Okay. So your testimony is that you left
 7 Canyon, then she left Canyon, and she contacted you after
 8 she left Canyon; is that correct?
 9 A You're assuming a lot of things I didn't just
 10 say.
 11 I said I believe she left afterwards. And
 12 you're assuming that she contacted me. That was not my
 13 testimony.
 14 Q Okay. So please tell me what happened.
 15 A I don't recall.
 16 Q Do you recall the subject of the communication?
 17 A Yes.
 18 Q What was that?
 19 A Pleasantries.
 20 Q Not about the fact that either one of you had
 21 left Canyon?
 22 A I don't recall.
 23 Q Did she have any negative comments to make about
 24 her having left Canyon?
 25 A I don't recall.

1 A I put on a tie.
 2 Q You didn't have to do that, sir.
 3 Anything else?
 4 A It's just in my nature.
 5 No. Honestly, no.
 6 Q Okay. Did you talk to anybody at Canyon in
 7 preparation of today's deposition?
 8 A No.
 9 Q Have you ever been deposed before?
 10 A Yes.
 11 Q How many times?
 12 A Fewer than ten.
 13 Q And were these involving cases while you were
 14 working at Canyon?
 15 A Yes.
 16 Q What were the cases that you were deposed upon?
 17 A I don't recall.
 18 Q Can you name any of them?
 19 A It would cause -- I would have to speculate.
 20 No.
 21 Q Were they any of the deals that I'd mentioned
 22 that we went through previously?
 23 A I don't -- I don't recall.
 24 Q Were any of them foreclosure actions?
 25 A I don't recall.

1 Q Have you spoken with her or otherwise
 2 communicated with her since?
 3 A No.
 4 Q So just the one communication?
 5 A Yes.
 6 Q What about -- do you know why she left? Did she
 7 tell you why she had left?
 8 A I don't recall.
 9 Q Have you spoken since -- since Roshan Sonthalia
 10 left Canyon? Have you spoken with him?
 11 A Who?
 12 Q The name Roshan Sonthalia? Does that name ring
 13 a bell?
 14 A Oh, right. Yeah. No. I have not spoken with
 15 him.
 16 Q How about Chris Stanley?
 17 A What about him?
 18 Q Have you spoken with him since he had left
 19 Canyon?
 20 A No.
 21 Q Have you communicated via e-mail with
 22 Mr. Sonthalia or Mr. Stanley?
 23 A No.
 24 Q What, if anything, did you do to prepare for
 25 today's deposition?

1 Q So you don't -- you can't tell me about a
 2 single -- can you tell me about any facts about any of
 3 the cases about which you were deposed?
 4 A Honestly, I don't recall. It's been many years.
 5 Q Approximately how long ago would you say the
 6 last deposition was?
 7 A Seven.
 8 Q It's a long time.
 9 Okay. Have you ever testified in court?
 10 A Yes.
 11 Q How long ago did you do that?
 12 A You mentioned a matter of Vallambrosa. It was
 13 in connection with that.
 14 Q And what was -- what was that case about?
 15 A We had originated a land loan on land in
 16 Savannah, Georgia, and the borrower filed bankruptcy, and
 17 it was in connection with the bankruptcy.
 18 Q And you testified in open court in Georgia or
 19 somewhere else?
 20 A In Savannah, Georgia.
 21 Q It's a nice town to visit. That's for sure.
 22 Are there any other courts in which you've
 23 testified?
 24 A I don't recall.
 25 Q Well, do you recall testifying in another open

1 court proceeding?
 2 **A No.**
 3 Q So you believe that Vallambrosa was the one and
 4 only time you testified in open court?
 5 **A To the best of my recollection, yes.**
 6 Q Have you personally been a party to any lawsuit?
 7 **A Yes.**
 8 Q What lawsuits have you personally been a party
 9 to?
 10 **A I'm not going to answer that.**
 11 Q What privilege would prevent you from answering
 12 that question?
 13 MR. DOLAN: I'm just going to object on the
 14 grounds of relevance.
 15 MR. MILLER: I'm entitled to know if he's been
 16 sued.
 17 Q Have you been sued, sir?
 18 MR. DOLAN: Why are you entitled to know if he's
 19 been sued? There's nothing in the lawsuit --
 20 **THE WITNESS: You can search the public records.**
 21 BY MR. MILLER:
 22 Q For the United States of America, sir?
 23 **A Yes.**
 24 Q Well, there are no -- there are no public
 25 records for the entire United State of America; so I

1 having to do with fraud or theft?
 2 **A No.**
 3 Q When you left Canyon, did you keep any files or
 4 notes or other tangible documents?
 5 **A No.**
 6 Q What happened to the documents that you had in
 7 your possession?
 8 **A I left everything in my office at Canyon.**
 9 Q When you were at Canyon and you were president
 10 of the real estate division, what exactly was your role
 11 in Packard Square?
 12 **A I would have ultimately been part of the**
 13 **decisionmaking process to make the loan. I, from time to**
 14 **time, communicated with the officer of your client,**
 15 **Mr. Craig Schubiner, and from time to time --**
 16 Q Anything else?
 17 **A -- would deal with the workings of the loan.**
 18 **Sizing, pricing, terms.**
 19 Q Did you ever authorize or send yourself default
 20 letters?
 21 **A I'm not sure I understand the question. Why**
 22 **would I send myself a default letter?**
 23 Q I will rephrase that. Thank you.
 24 Did you yourself ever authorize sending of
 25 default letters to Packard Square, LLC?

1 can't do that.
 2 Why don't you tell me in which courts these
 3 lawsuits existed. Then I can search those public
 4 records.
 5 MR. DOLAN: I'm going to object to the whole
 6 line of questioning on his personal involvement of
 7 lawsuits that have nothing to do with this lawsuit.
 8 MR. MILLER: I don't know if they do or they
 9 don't if he doesn't answer the question. That's the
 10 problem.
 11 **THE WITNESS: Okay. Well, you should just move**
 12 **on because I'm not going to answer that question on the**
 13 **grounds that it's offensive and irrelevant.**
 14 **What's your next question?**
 15 BY MR. MILLER:
 16 Q Do you believe that offensive and irrelevant is
 17 a legal objection, sir?
 18 **A It's the objection I'm making right now.**
 19 **So what's your next question?**
 20 Q So if I ask a court to compel you to answer the
 21 question, then you'll answer it?
 22 **A If I'm compelled to answer it, I will answer it.**
 23 Q Have you ever been convicted of a felony, sir?
 24 **A No.**
 25 Q Have you ever been convicted of a misdemeanor

1 **A It certainly would be within my scope of duties,**
 2 **but I don't recall specifically with respect to**
 3 **Packard Square whether I ever authorized or did not**
 4 **authorize.**
 5 Q Did you ever send default letters under your --
 6 above your signature to Packard Square?
 7 **A I don't recall.**
 8 Q Are you aware of the company called McKinley,
 9 Incorporated?
 10 **A No.**
 11 Q Have you ever heard of a person by the name of
 12 Ronald Weiser?
 13 **A No.**
 14 Q How about Albert Berriz?
 15 **A No.**
 16 Q Did anybody tell you what to say or what not to
 17 say in today's deposition?
 18 **A No.**
 19 Q In December 2014, there was an appraisal done
 20 for Packard Square in the name of Reliance Standard Life,
 21 Philadelphia Indemnity Insurance Company, and Safety
 22 National Casualty Corp.
 23 Why would that have been?
 24 MR. DOLAN: Object to foundation. You haven't
 25 established that he knows about it.

1 BY MR. MILLER:
 2 Q Are you aware of the existence of an appraisal
 3 done in December of 2014 for these entities having to do
 4 with Packard Square?
 5 A **For which entities?**
 6 Q Reliance Standard Life, Philadelphia Indemnity
 7 Insurance Company, and Safety National Casualty Corp.
 8 A **I have a vague recollection, yes.**
 9 Q What was the purpose of that appraisal?
 10 A **That particular investor had several different**
 11 **platforms from which they invested, and depending upon**
 12 **certain loan to values, it would go into one or the**
 13 **other. So in connection with that, I believe that's why**
 14 **those appraisals were commissioned.**
 15 Q But why would there be an appraisal done for a
 16 particular investor as opposed to an appraisal done for
 17 Canyon, let's say?
 18 A **Because those are -- that particular investor**
 19 **needed an appraisal.**
 20 Q After they've already made their investment?
 21 A **I can't recall the timing before or after, but**
 22 **I'm sure there was a reason.**
 23 Q So the investment closed October 1 of 2014, and
 24 the appraisal was dated December of 2014.
 25 Does that help refresh your recollection as to

1 testimony?
 2 A **I don't recall.**
 3 Q Is there a basis by which Canyon would track
 4 loans that were in default when you were the president?
 5 A **Is there a basis by which it would track --**
 6 **that's a broad question. I --**
 7 Q All right. Let me try a different way.
 8 Was there, like, a document or a list or some
 9 periodic statement put out by Canyon relative to loans
 10 that were in default at a particular time?
 11 A **If a loan were in default, it would be treated**
 12 **internally no differently than a loan that was not in**
 13 **default. There were asset management reports that were**
 14 **produced from time to time. And it would be -- any**
 15 **defaults would be stated in the asset management reports.**
 16 Q Did you ever meet with anybody from Reliance
 17 Standard Life relative to the Packard Square loan?
 18 A **No.**
 19 Q Did you ever meet with anybody from Philadelphia
 20 Indemnity Insurance Company relative to the
 21 Packard Square loan?
 22 A **No.**
 23 Q Did you ever meet with anybody from Safety
 24 National Casualty Corp relating to the Packard Square
 25 loan?

1 why there might be an appraisal after the loan closing?
 2 A **No.**
 3 Q Is it common for there to be investor appraisals
 4 after loans closed at Canyon?
 5 A **I wouldn't say it was common, but not unusual.**
 6 Q Why did it occur in this instance?
 7 MR. DOLAN: You asked him, and he answered it.
 8 He said he didn't know.
 9 MR. MILLER: Okay.
 10 Q When an investor seeks an appraisal or sought an
 11 appraisal at Canyon, was that because there was a problem
 12 with the deal generally, or for what other reasons would
 13 there be such an appraisal done?
 14 A **I don't recall the circumstances other than what**
 15 **I told you before.**
 16 Q Well, for the moment, other than investor
 17 appraisals that you just described earlier, why else --
 18 what would be the reasons why those would be done for
 19 other investors on other deals?
 20 A **I don't recall any other investor having that --**
 21 **an appraisal request.**
 22 Q So this was a unique scenario, then?
 23 A **It was not a common scenario.**
 24 Q Well, what other -- so you believe that there
 25 were other times that this happened? Is that your

1 A **No.**
 2 Q Did you ever meet with anybody from Duke
 3 University's endowment related to the Packard Square
 4 loan?
 5 A **No.**
 6 Q Was the University of Michigan endowment an
 7 investor in Packard Square loan?
 8 A **I don't believe so.**
 9 Q Did you ever discuss the Packard Square loan
 10 with anybody at the University of Michigan endowment?
 11 A **Yes.**
 12 Q Who did you discuss the Packard Square loan
 13 with?
 14 A **I don't recall.**
 15 Q Felicia David-Visser. Does that name ring a
 16 bell?
 17 A **That name rings a bell.**
 18 Q Do you believe you discussed the Packard Square
 19 loan with her at any time?
 20 A **It is possible.**
 21 Q Did you ask the University of Michigan to
 22 participate in the Packard Square loan?
 23 A **It is possible that I did.**
 24 Q And do you recall what the response was?
 25 A **I believe that they declined.**

1 Q Did you ever meet with representatives from the
2 University of Michigan relative to the Packard Square
3 loan?

4 A No.

5 Q Are you aware of -- sir, do you mind if we take
6 a five-minute break, please?

7 A **How much longer do you think you have?**

8 MR. MILLER: Probably about 30 minutes, maybe
9 not even.

10 **THE WITNESS: Okay. Sure. Five minutes?**

11 MR. MILLER: All right. Let's go off the
12 record.

13 (Recess.)

14 BY MR. MILLER:

15 Q Mr. Roth, thank you.

16 Mr. Roth, you testified earlier about the
17 University of Michigan endowment having not directly
18 invested in the Packard Square deal.

19 But would the University of Michigan endowment
20 as an investor in a different Canyon fund have indirectly
21 invested in the Packard Square deal?

22 A No.

23 Q So how -- so the investors in the Packard Square
24 deal only invested directly in the Packard Square deal?

25 A **I don't understand the question.**

1 been one of those investors?

2 A No.

3 Q How do you know that they were not?

4 A **Because I know what they were invested in within
5 Canyon.**

6 Q I see.

7 So who were the investors in the Packard Square
8 deal if not the University of Michigan?

9 A **I don't recall.**

10 Q You know about -- well, we know about Reliance
11 Standard Life. We know about the Indemnity Safety
12 National Casualty. Correct?

13 A **That's correct.**

14 Q What about Gothic?

15 A **I don't recall.**

16 Q So the Vallambrosa project, that resulted in a
17 foreclosure; correct?

18 MR. DOLAN: I'm just going to object to this
19 line of questioning. This is not discovery that's
20 allowed in this case. It's clearly designed to seek
21 discovery in the New York case, and there's a stay in
22 that case. There was a motion today denying you this
23 information. So I'm going to object and instruct him not
24 to answer.

25 MR. MILLER: What do you mean there's a -- the

1 Q Well, my understanding is that, from talking to
2 other former Canyon employees, that there are a number of
3 Canyon funds into which people and entities invest and
4 that those Canyon funds then invest in particular deals.

5 Is that a true statement?

6 A **Not that I'm aware of.**

7 Q Oh. So can you describe for me, then, if that's
8 your thinking, how the investment into the Packard Square
9 deal worked.

10 A **I'm not sure I understand the question.**

11 Q Was there a VRF for the investment into
12 Packard Square?

13 A **A VRF?**

14 Q Yeah. Isn't that an acronym -- value
15 realization fund?

16 A **It might be the case. But I don't recall that
17 VRF would have had a participation in the loan or the
18 Packard Square loan. But I don't recall specifically --**

19 Q So who did?

20 A **I don't recall.**

21 Q If the VRF did have a position in the
22 Packard Square loan, who would the investors in the VRF
23 have been?

24 A **Oh, I don't know.**

25 Q Would the University of Michigan possibly have

1 motion's been decided?

2 MR. DOLAN: Yes.

3 MR. MILLER: Well, I hadn't heard that.

4 Q The question -- that just means that I can't --
5 well, I haven't seen the order, and I haven't seen the
6 motion, but our claim for bad faith and fair dealing
7 allows me to ask these questions. I'm going to ask them.

8 MR. DOLAN: No, no. Well -- no.

9 MR. MILLER: Until you win your motion for
10 summary disposition, I have to defend it. And this is
11 how I'm going to have to do it.

12 MR. DOLAN: No. The request about a foreclosure
13 in another -- on another mortgage or another asset has
14 nothing to do with your bad faith claim that Canyon
15 didn't perform under the loan documents in this case. I
16 mean I know you think it does, but the judge said today
17 that it doesn't. And the court in New York has said you
18 can't take discovery on that action in this action or any
19 action in this matter. I mean how does that relate to
20 this case?

21 I mean it doesn't matter. The judge said you
22 can't have that information. So I'm instructing him not
23 to answer.

24 MR. MILLER: No. First of all, the motion --
25 sir, the motion today was whether we could ask

1 information of your client. It has nothing to do with
2 asking information of other people. So that's not true.

3 So I'm going to ask the question because I'm
4 trying to lay a foundation for a question here.

5 MR. DOLAN: About a foreclosure --

6 MR. MILLER: He already testified that he's
7 familiar with these deals.

8 MR. DOLAN: Well, okay. I think you're
9 mischaracterizing his testimony, but -- I'll let a
10 question or two go. But I'm not -- this is not proper
11 discovery in this case. I know you think it is. But
12 it's not.

13 So you can ask him a question or two, I guess,
14 about what he remembers, and we'll see where it goes.

15 MR. MILLER: Well, it won't take very long, sir.

16 Q The Vallambrosa case you testified that you were
17 involved in litigation, that was a case -- that was a
18 situation where a Canyon loan ended up in foreclosure;
19 correct?

20 A **The case that the loan ended up to be part of
21 the bankruptcy.**

22 Q Oh. So there was no foreclosure in the
23 Vallambrosa case that you recall?

24 A **I don't recall whether there was a 363 sale or a
25 foreclosure sale. I just don't recall.**

1 a foreclosure?

2 A **I believe that was a bankruptcy.**

3 Q What about the 845 South Flower Street? What
4 happened with that deal?

5 A **I don't recall that deal.**

6 Q How about the Corona Summit deal? You
7 weren't -- forget it. You said you don't recall that
8 one.

9 Did Canyon try to put its borrowers into
10 default?

11 A **Never.**

12 Q Was Canyon's goal to put borrowers into
13 foreclosure?

14 A **Never.**

15 Q Why are there seemingly so many foreclosures
16 that we've just discussed?

17 MR. DOLAN: Object to the form of the question.
18 Go ahead and answer if you can.

19 **THE WITNESS: You're making a judgment call that
20 that is a large number of foreclosures.**

21 BY MR. MILLER:

22 Q Well, how many -- you don't believe it's a large
23 number of foreclosures?

24 A **As a percentage of all the loans ever made by
25 Canyon, I think it's a very small number.**

1 Q All right. What about the Greek Isles project?

2 Did that end in a foreclosure?

3 A **Yes.**

4 Q What about the Intracoastal Mall deal? Did that
5 end in a foreclosure?

6 A **I don't recall.**

7 Q Did the River Drive Partners deal end in
8 foreclosure?

9 A **I don't recall.**

10 Q Did the Cal Neva deal end in foreclosure?

11 A **Yes.**

12 Q Did the Coconut Plantation deal end in
13 foreclosure?

14 A **Yes.**

15 Q Did the Royal Kunia deal end in foreclosure?

16 A **I don't recall.**

17 Q Did the Hooters deal end in foreclosure?

18 A **I don't recall.**

19 Q Did the Shops at Shelby Crossing end in
20 foreclosure?

21 A **I don't recall.**

22 Q Did the US Capital Fashion Mall have a
23 foreclosure?

24 A **I don't recall.**

25 Q How about the CJUF Green Pointe? Did that have

1 Q How many loans did Canyon make while you were
2 there for real estate loans?

3 A **Hundreds.**

4 Q Hundreds plural?

5 A **That's correct.**

6 Q And how many -- how many ended up in
7 foreclosure?

8 A **I don't recall.**

9 Q Is it Canyon's policy to commit to a receiver
10 prior to filing suit for foreclosure?

11 A **I don't recall any particular policy.**

12 Q Do you recall ever having that happen while you
13 were president where Canyon instituted a lawsuit either
14 for a receiver for a foreclosure and the receiver was
15 selected in advance?

16 A **That's a compound question. If you want to
17 break it down, I'd be happy to try to answer it.**

18 Q Sure.

19 Were there situations in which Canyon filed
20 lawsuits for foreclosure for the appointment of a
21 receiver?

22 MR. DOLAN: Other than this one?

23 MR. MILLER: Yes. Other than this one.

24 **THE WITNESS: I don't recall.**

25 BY MR. MILLER:

1 Q Well, we just went through a whole bunch that
 2 were foreclosures. So certainly you do recall some of
 3 them; right?
 4 A **No. I don't recall. These are -- all those**
 5 **transactions that you just identified are well over five,**
 6 **six, seven years old, and I don't recall.**
 7 Q So you're not -- you don't recall whether any of
 8 them ended up in litigation?
 9 A **That wasn't your question.**
 10 Q Okay. I'm asking you a new question now.
 11 A **Okay.**
 12 Q Did any of those -- did any of the cases that I
 13 described result in litigation?
 14 A **Is bankruptcy litigation, in your parlance?**
 15 Q Yes.
 16 A **Yes. Then the answer is yes.**
 17 Q In any of those cases, were receivers appointed?
 18 A **I don't recall.**
 19 Q Was there any situation whereby -- in any case,
 20 where a receiver may have been appointed where the
 21 receiver was selected prior to the filing of the lawsuit
 22 seeking the receivership?
 23 A **If I don't recall whether a receiver was**
 24 **appointed, how would I ever recall the timing of the**
 25 **appointment or lack of appointment of a receiver?**

1 A **Oh, yes, yes, yes. Yes.**
 2 Q Okay. What was your involvement with
 3 Tina Van Curen professionally while you were at Canyon?
 4 A **I had no involvement.**
 5 Q Do you know what works she performed for Canyon?
 6 A **I'm going to assume construction consulting**
 7 **work.**
 8 Q Do you recall any particular deals on which she
 9 acted as a construction consultant?
 10 A **No.**
 11 Q Are you familiar with whether Tina Van Curen
 12 ever worked directly for Canyon?
 13 A **No.**
 14 Q As an employee, I should say.
 15 A **No.**
 16 Q Are you familiar with Jeanine Getler?
 17 A **No. I'm smiling because, now that you mention**
 18 **Tina and Jeanine, I would have thought that they were the**
 19 **same person. But I believe that they worked together.**
 20 **But I don't -- I don't have any -- I had no direct**
 21 **relationship with them.**
 22 Q What's your -- what's your understanding of what
 23 they did as they were working together, if any?
 24 A **I just believe that they were both construction**
 25 **consultants.**

1 Q I'm just asking you if you know. If that's your
 2 answer, that's your answer.
 3 What is Canpartners Realty Holding Company IV,
 4 LLC?
 5 A **Restate the question.**
 6 Q What is Canpartners Realty Holding Company IV,
 7 LLC?
 8 A **Corporate entity within Canyon.**
 9 Q And what was its relationship to CAN IV
 10 Packard Square, LLC?
 11 A **I don't recall.**
 12 Q When you say it's a company in Canyon, what did
 13 that company do?
 14 A **I don't recall.**
 15 Q Are you familiar with Tina Van Curen?
 16 A **Say that again.**
 17 Q Are you familiar with Tina Van Curen?
 18 A **Was that the character in Young Frankenstein**
 19 **that caused the horse to rear up?**
 20 Q I don't believe so.
 21 Tina, T-i-n-a, Van, V-a-n, Curen, C-u-r-e-n.
 22 You have a familiarity with that name?
 23 A **No.**
 24 Q She's a construction consultant in New York.
 25 Does that help you remember her at all?

1 Q Okay. All right, sir. I think I'm just about
 2 finished. If you give me one last chance to review my
 3 notes -- you can take a break for another five minutes.
 4 I think I'm just about done. But if not, I do have a
 5 couple -- I'll just have a couple of follow-up questions,
 6 and then I'll be able to set you free. Okay?
 7 So we'll go off the record for five more
 8 minutes. Thank you.
 9 **THE WITNESS: Okay.**
 10 (Recess.)
 11 MR. MILLER: Mr. Roth, I have no further
 12 questions. Thank you for your time today.
 13 **THE WITNESS: Okay.**
 14 MR. DOLAN: No questions.
 15 MR. MILLER: All right. We'll be in touch.
 16 Thank you, sir.
 17 (Ending time: 12:49 p.m.)
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REPORTER'S CERTIFICATE

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I, Jean Kim, CSR No. 13555, RPR, a Certified Shorthand Reporter in and for the State of California, do hereby certify:

That prior to being examined, the witness named in the foregoing proceedings declared under penalty of perjury to testify to the truth, the whole truth, and nothing but the truth;

That said proceedings were taken by me in shorthand at the time and place herein named and was thereafter transcribed into typewriting under my direction, said transcript being a true and correct transcription of my shorthand notes.

I further certify that I have no interest in the outcome of this action.

October 25, 2018

Jean Kim

CSR No. 13555, RPR

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