

Maria Stamolis

5/3/2018

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STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF WASHTENAW

CAN IV PACKARD SQUARE LLC, a)
Delaware Limited Liability)
Company,)
)
Plaintiff,)
)
VS.) No. 16:000990-CB
)
PACKARD SQUARE, LLC, a Michigan)
Limited Liability Company,)
et al.,)
)
Defendant.)
_____)

DEPOSITION OF MARIA STAMOLIS

Los Angeles, California

Thursday, May 3, 2018

REPORTED BY:

DEBORAH L. LUNDGREN
CSR NO. 6727, RPR

JOB NO.
91608SWI

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,)

7 VS.)

8 PACKARD SQUARE, LLC, a Michigan)
Limited Liability Company,)
9 et al.,)

10 Defendant.)

11

12

13 Deposition of MARIA STAMOLIS,
14 taken on behalf of the Defendant
15 Packard Square, LLC, at Sidley
16 Austin, 1999 Avenue of the Stars,
17 17th Floor, Los Angeles, California,
18 commencing at 9:03 a.m. on Thursday,
19 May 3, 2018, before DEBORAH L.
20 LUNDGREN, CSR No. 6727, a Certified
21 Shorthand Reporter in and for the
22 County of Los Angeles, State of
23 California.

24

25

No. 16:000990-CB

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20 ALSO PRESENT:

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CRAIG SCHUBINER

22

GERALD GOLDMAN

MARCUS NEUPERT

23

BRUCE MEASON (Via Teleconference)

24 VIDEOGRAPHER:

25

CARISSA NARCISO

1 I N D E X

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5/3/2018

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1 Los Angeles, California; Thursday, May 3, 2018

2 9:03 a.m.

3

09:03:15 4 THE VIDEOGRAPHER: Good morning. We are on

09:03:17 5 the record. This is the videotaped deposition of

09:03:19 6 Maria Stamolis being taken in Can IV Packard Square

09:03:26 7 LLC, v. Packard Square, LLC, et al. Today is

09:03:36 8 Thursday, May 3, 2018, and the time is 9:03 a.m.

09:03:38 9 Would the attorneys please introduce

09:03:38 10 themselves and the court reporter will swear in the

09:03:41 11 witness.

09:03:41 12 MR. MILLER: Good morning. My name is

09:03:42 13 I. Matthew Miller, and I appear today on behalf of

09:03:45 14 the defendant/counter-plaintiff Packard Square, LLC.

09:03:48 15 MR. DOLAN: Benjamin Dolan on behalf of the

09:03:51 16 plaintiff.

09:03:52 17 MR. PASCOE: And I just lost audio.

09:03:52 18 MR. DOLAN: Someone hit the button.

09:03:55 19 Benjamin Dolan on behalf of plaintiff.

09:04:01 20 MS. PELLEGRINO: Ariana Pellegrino on

09:04:03 21 behalf of plaintiff.

09:04:05 22 MR. PASCOE: Michael Pascoe on behalf of

09:04:08 23 Quandel Construction and Western Surety.

24 MR. MILLER: Okay.

25 THE REPORTER: Okay. Please raise your

1 right hand.

2 Do you declare under penalty of perjury to
3 tell the truth, the whole truth, and nothing but the
4 truth?

09:04:15 5 THE WITNESS: I do.

09:04:15 6

09:04:15 7 EXAMINATION

09:04:15 8 BY MR. MILLER:

09:04:17 9 Q Ma'am, will you please state your name for
09:04:19 10 the record and spell it.

09:04:20 11 A Maria Stamolis, M-a-r-i-a S-t-a-m-o-l-i-s.

09:04:30 12 MR. DOLAN: Can I ask that you flip that
09:04:33 13 screen so I can see what the video is looking like,
09:04:38 14 like I did yesterday. The screen that was on the
09:04:45 15 camera was flipped. Thank you.

09:04:51 16 THE VIDEOGRAPHER: I need to go off the
09:04:53 17 record. Off the record at 9:04 a.m.

09:08:21 18 (Recess.)

09:09:51 19 THE VIDEOGRAPHER: We are back on the
09:09:53 20 record at 9:09 a.m.

09:09:55 21 MR. DOLAN: Sorry. But can you flip that
09:09:58 22 screen again? Thank you. Perfect. No. Flip it so
09:10:02 23 I can see it. Thank you.

09:10:07 24 THE VIDEOGRAPHER: If -- if I flip it that
09:10:09 25 way, I cannot record to my backup.

09:10:11 1 MR. DOLAN: That is how it was all day
09:10:13 2 yesterday.
09:10:14 3 THE VIDEOGRAPHER: It -- this was flipped
09:10:16 4 this way?
09:10:17 5 MR. DOLAN: Correct.
09:10:18 6 THE VIDEOGRAPHER: Okay.
09:10:19 7 MR. MILLER: I -- the difference was the
09:10:21 8 computer screen was facing you.
09:10:21 9 THE VIDEOGRAPHER: The computer -- if
09:10:24 10 you -- this is separate.
09:10:24 11 MR. DOLAN: No. I was looking at that all
09:10:26 12 day yesterday.
09:10:27 13 THE VIDEOGRAPHER: Okay.
09:10:28 14 MR. DOLAN: I don't know what else to tell
09:10:29 15 you.
09:10:29 16 MR. MILLER: Well, I'm more concerned
09:10:31 17 about you're making sure you got the recording than
09:10:33 18 Mr. Dolan looking at --
09:10:33 19 THE VIDEOGRAPHER: I'm -- I'm getting it --
09:10:35 20 MR. MILLER: -- his client in the mirror.
09:10:35 21 THE VIDEOGRAPHER: I'm getting it right
09:10:37 22 here. So as long as I can see this is recording, I
09:10:40 23 have one going. It -- but I just -- it is my backup
09:10:44 24 that I'm not getting any feed to. That is the --
09:10:46 25 MR. MILLER: Well, as I said --

09:10:46 1 THE VIDEOGRAPHER: Yeah.

09:10:47 2 MR. MILLER: -- I'm far more concerned

09:10:49 3 about the tape succeeding than being able to see --

09:10:54 4 Mr. Dolan being able to see his client in the

09:10:59 5 screen. There is no -- you don't -- he is not

09:10:59 6 entitled --

09:10:59 7 THE VIDEOGRAPHER: Right.

09:11:00 8 MR. MILLER: -- to see his client in the

09:11:01 9 screen. So --

09:11:01 10 THE VIDEOGRAPHER: I know that I cannot

09:11:03 11 record to my backup without this being flipped this

09:11:05 12 way.

09:11:05 13 MR. DOLAN: So you weren't recording to the

09:11:08 14 backup yesterday?

09:11:08 15 THE VIDEOGRAPHER: I absolutely was

09:11:10 16 recording to backup because if you can see here,

09:11:11 17 this is what is being fed to my DVD. So you were

09:11:11 18 looking probably --

09:11:15 19 MR. DOLAN: No, I was not.

09:11:15 20 MR. MILLER: All right. Well --

09:11:16 21 MR. DOLAN: I know exactly what I was

09:11:17 22 looking at.

09:11:17 23 MR. MILLER: I'm not arguing about it.

09:11:20 24 We're -- we're recording the deposition. We're not

09:11:22 25 going to have a situation where we're not able to

09:11:24 1 record the deposition.

09:11:25 2 MR. DOLAN: That is not even what she
09:11:27 3 merely suggested. She said there wasn't a
09:11:29 4 duplicate.

09:11:31 5 MR. MILLER: I understand. But that is
09:11:32 6 being done to make sure that there is not a failure
09:11:32 7 of the primary. And so if there is a failure of the
09:11:35 8 primary, I'm not going to damage the whole
09:11:38 9 deposition based on whether or not you can see your
09:11:40 10 client in the mirror.

09:11:41 11 MR. DOLAN: Can you put on your computer
09:11:43 12 whatever is being recorded so I can see it.

09:11:51 13 Is that what is actually being recorded?

09:11:57 14 MR. MILLER: No. The smaller version is
09:11:58 15 what is being recorded.

09:12:00 16 MR. DOLAN: All right. I'll look at the
09:12:01 17 computer screen. That is fine.

09:12:02 18 MR. MILLER: All right. Now that we've
09:12:04 19 solved some of the technical issues, Mr. Dolan,
09:12:06 20 would you please introduce the other folks who are
09:12:09 21 here today.

09:12:10 22 MR. DOLAN: Yes. Well, go ahead and
09:12:11 23 introduce yourselves.

09:12:12 24 MR. AZRAN: Allen Azran.

09:12:14 25 MR. GOLDMAN: Gerald Goldman.

09:12:16 1 MR. NEUPERT: Marcus Neupert, house counsel
09:12:18 2 for Canyon.
09:12:20 3 MR. MILLER: And who are you?
09:12:21 4 MR. SCHUBINER: Craig Schubiner.
09:12:23 5 MR. MILLER: One -- one thing I would like
09:12:25 6 to just raise at the outset is --
09:12:25 7 MR. DOLAN: We need to do the phone as
09:12:27 8 well.
09:12:27 9 MR. MILLER: We did that already.
09:12:28 10 MR. DOLAN: No. Only counsel.
09:12:32 11 MR. MILLER: Oh. Is there -- is there
09:12:32 12 someone on the phone who is attending who hasn't
09:12:36 13 introduced themselves?
09:12:36 14 MS. PELLEGRINO: Ariana Pellegrino for
09:12:38 15 plaintiff.
09:12:39 16 MR. MILLER: No. We knew that.
09:12:40 17 Is -- Bruce, are you on the phone? Hello?
09:12:47 18 He may have stepped away. I don't know.
09:12:50 19 Anyway, what I was going to say was I just
09:12:53 20 want to make a note for the record that -- and I
09:12:55 21 think I may have said something yesterday, but I
09:12:57 22 don't recall if I did -- that I've never been in a
09:13:00 23 deposition which required security checks before
09:13:02 24 entry, and I object to it.
09:13:04 25 There is no basis for Mr. Azran to be in

09:13:08 1 the room. There is no basis for my client to be
09:13:11 2 subjected to a search before coming into the room.
09:13:13 3 You didn't get court approval for that in advance.
09:13:16 4 There is nothing in the Michigan court rules that
09:13:17 5 provides for it, and I object to it.

09:13:20 6 MR. DOLAN: You can object to it, but --
09:13:21 7 I'm sorry, but Mr. Schubiner will not be allowed in
09:13:25 8 the building if he doesn't subject himself to the
09:13:25 9 security measures.

09:13:25 10 MR. MILLER: On what basis?

09:13:27 11 MR. DOLAN: On the basis that he has
09:13:28 12 threatened my client in the past.

09:13:30 13 MR. MILLER: In what manner?

09:13:31 14 MR. DOLAN: With words.

09:13:32 15 MR. MILLER: With words?

09:13:33 16 MR. DOLAN: To his face. Correct. "I'm
09:13:34 17 going to get you," and other things.

09:13:36 18 MR. MILLER: To whom did he make those
09:13:38 19 threats?

09:13:39 20 MR. DOLAN: To my client.

09:13:40 21 MR. MILLER: Your client is a corporation,
09:13:41 22 sir.

09:13:43 23 MR. DOLAN: Ms. Stamolis and Mr. Goldman.

09:13:45 24 MR. MILLER: Well, let's ask -- well, let's
09:13:46 25 ask her about that.

09:13:46 1 MR. DOLAN: No. We're not going to go into
09:13:48 2 that today. The security is going to stand. If you
09:13:49 3 don't like it, you can call off the dep. But that
09:13:51 4 is nonnegotiable.

09:13:53 5 MR. MILLER: All right. Well, in the
09:13:54 6 future, I would appreciate that when you ask for
09:13:56 7 things to change in my deposition, that you get
09:13:58 8 approval of them in advance.

09:14:00 9 MR. DOLAN: Generally speaking, lawyers
09:14:01 10 bring exhibits and hand them out. You don't do
09:14:04 11 that. So I don't understand. You're --

09:14:04 12 MR. MILLER: There is no --

09:14:07 13 MR. DOLAN: You're conducting your
09:14:08 14 deposition the way you want to. I'm conducting the
09:14:11 15 defense the way I want to.

09:14:12 16 And, by the way, the comments earlier about
09:14:14 17 passing guns back and forth, honestly, in today's
09:14:18 18 day and age, are remarkable. I'm offended that you
09:14:21 19 guys would even play that little game with my
09:14:22 20 security person. The fact that you're doing that
09:14:24 21 justifies it.

09:14:24 22 MR. MILLER: Your --

09:14:25 23 MR. DOLAN: And it is not going to end.

09:14:26 24 MR. MILLER: Your security person? I
09:14:28 25 thought it was Canyon's security person.

09:14:30 1 MR. DOLAN: He is here -- well, okay.

09:14:31 2 Fine. Yes. I'm not employing him. You're right.

09:14:34 3 MR. MILLER: Okay. Let's move on.

09:14:36 4 MR. DOLAN: I would hope so.

09:14:37 5 MR. MILLER: Would you now?

09:14:38 6 Q Ma'am, I've heard your name mentioned a

09:14:42 7 couple times. Would you please pronounce it

09:14:42 8 correctly so that I don't mess it up for the rest of

09:14:44 9 the day.

09:14:44 10 **A Maria Stamolis.**

09:14:46 11 Q Stamolis. Thank you.

09:14:48 12 Yeah. Okay.

09:14:50 13 Ma'am, where did you go to college?

09:14:54 14 **A Fordham University.**

09:14:56 15 Q And did you achieve any graduate degrees

09:14:59 16 after Fordham?

09:15:00 17 **A I achieved a graduate degree at Fordham as**

09:15:04 18 **well.**

09:15:04 19 Q Oh, okay. What did you get there?

09:15:05 20 **A An MBA.**

09:15:06 21 Q All right. Before we move on, I should

09:15:09 22 have done this, but I got sidetracked by the other

09:15:13 23 conversation. This is a deposition being taken

09:15:14 24 pursuant to the Michigan court rules, mostly, and

09:15:17 25 which can be used for any purposes pursuant to those

09:15:20 1 rules in the Michigan rules of evidence. It is
09:15:23 2 related to a court case that you're aware of called
09:15:26 3 Can IV Packard Square v. Packard Square, LLC, in the
09:15:30 4 Washtenaw County Circuit Court in Michigan.

09:15:31 5 I'm here to ask you questions and to get
09:15:34 6 information. I'm not to trying to trick you or fool
09:15:35 7 you or confuse you. I just want to get from you
09:15:38 8 your information and knowledge relative to this case
09:15:40 9 and these issues.

09:15:41 10 It is important that when I ask a question,
09:15:45 11 that you answer the question that I ask and make
09:15:47 12 sure that when you do answer the question, that you
09:15:49 13 understand the question that I did, in fact, ask.
09:15:52 14 So if, by the time I asked the question, you don't
09:15:55 15 understand the question, please ask me to rephrase
09:15:56 16 it, and I'll be happy to do so. Okay?

09:15:59 17 **A Will do.**

09:16:00 18 **Q** It is also important that because this is
09:16:03 19 being recorded, that we not talk over each other,
09:16:06 20 and so let me finish, and I'll let you finish, and
09:16:09 21 then the court reporter will be able to take a clean
09:16:12 22 record. Okay?

09:16:13 23 **A Will do.**

09:16:13 24 **Q** It is also important that you answer
09:16:15 25 audibly. Shrugs of the shoulders, while they may

09:16:18 1 show up on the videotape, don't work very well for
09:16:20 2 the court reporter, and unh-unhs and uh-huhs, and
09:16:23 3 things like that, are also not very well-received.
09:16:25 4 So please answer in real words. Okay?

09:16:28 5 **A I will do that.**

09:16:30 6 Q Thank you.

09:16:30 7 Have you had your deposition taken before?

09:16:32 8 **A Yes, I have.**

09:16:33 9 Q How many times?

09:16:34 10 **A Twice.**

09:16:35 11 Q In what cases?

09:16:37 12 **A There was a case in New York and there was
09:16:42 13 a case here in California.**

09:16:43 14 Q The case in New York -- when was that?

09:16:46 15 **A Approximately three years ago.**

09:16:48 16 Q And was the case in the New York state
09:16:52 17 court system?

09:16:53 18 **A I don't recall.**

09:16:53 19 Q Okay. But the court case was located in
09:16:58 20 New York state somewhere?

09:17:00 21 **A Yes.**

09:17:01 22 Q Okay. And what was the -- who were the
09:17:03 23 parties to that case?

09:17:05 24 **A I don't know the exact parties to the case.**

09:17:09 25 Q Well, who was the -- who were you

09:17:11 1 testifying as a representative -- were -- were you

09:17:15 2 testifying as a representative of some entity?

09:17:18 3 **A I was testifying as a representative of**
09:17:20 4 **Canyon.**

09:17:21 5 Q Was it -- what Canyon entity were you
09:17:23 6 testifying --

09:17:24 7 **A I don't know.**

09:17:25 8 Q So what was the case about?

09:17:27 9 **A It was a construction litigation case.**

09:17:31 10 Q And you don't remember the -- do you
09:17:36 11 remember the project it was around?

09:17:37 12 **A Yes, I do.**

09:17:38 13 Q What was that?

09:17:40 14 **A 20 Henry.**

09:17:42 15 Q And do you remember what the issue was in
09:17:47 16 the case?

09:17:47 17 **A There was a dispute with the contractor.**

09:17:49 18 Q And -- and how was that matter concluded?

09:18:03 19 **A It was settled.**

09:18:04 20 Q All right. And the case in Los Angeles --
09:18:07 21 was that a case -- were you deposed in Los Angeles
09:18:12 22 or was the case in Los Angeles?

09:18:14 23 **A I was deposed in Los Angeles. And the case**
09:18:16 24 **was 18 years ago, I think; so it is a long time ago.**

09:18:22 25 Q Right.

09:18:22 1 But my question was: Was the case in
09:18:25 2 Los Angeles, as well as your deposition?
09:18:26 3 **A I don't remember what county it was in.**
09:18:28 4 Q I see.
09:18:29 5 And do you recall what the project was that
09:18:31 6 the case was about?
09:18:34 7 **A Yes. It was an apartment project that was**
09:18:37 8 **sold in Garden Grove, California.**
09:18:39 9 Q And do you remember what the dispute was?
09:18:45 10 **A The dispute was between the company -- the**
09:18:50 11 **then company and Marcus & Millichap over a brokerage**
09:18:55 12 **commission.**
09:18:57 13 Q All right. Other than that, this is, then,
09:19:01 14 the third time you've been deposed?
09:19:03 15 **A Yes.**
09:19:04 16 Q All right. Have you ever testified in a
09:19:05 17 court of law?
09:19:06 18 **A Yes.**
09:19:07 19 Q When -- when did you do that last?
09:19:10 20 **A Actually, there -- there was one other case**
09:19:11 21 **in New York. I apologize.**
09:19:13 22 Q For which you were deposed?
09:19:15 23 **A For which I testified.**
09:19:17 24 Q Okay. Well, just so we're clear and the
09:19:20 25 record is clear, I originally asked you about the

09:19:22 1 cases where you provided your deposition. Were
09:19:25 2 there any other cases in which you provided your
09:19:27 3 deposition?

09:19:27 4 **A I believe that I was deposed for all three**
09:19:30 5 **and that I testified for two of the three because**
09:19:34 6 **one was settled.**

09:19:35 7 Q I see.

09:19:35 8 Okay. So let's -- so then let's talk about
09:19:39 9 the third case, being the second case in New York.

09:19:42 10 **A Correct.**

09:19:44 11 Q Okay. What -- when was that?

09:19:46 12 **A Approximately nine or ten years ago.**

09:19:50 13 Q And do you remember the -- the -- the deal
09:19:54 14 around which that case was litigated?

09:19:56 15 **A 110 Green Street.**

09:20:00 16 Q Is that in Manhattan?

09:20:03 17 **A It was Brooklyn.**

09:20:05 18 Q Brooklyn.

09:20:05 19 And what was the dispute there?

09:20:08 20 **A There was a mezzanine loan that Canyon held**
09:20:13 21 **and the borrower filed bankruptcy and we were in**
09:20:18 22 **court over those matters.**

09:20:20 23 Q So was the -- was the case in the
09:20:24 24 bankruptcy court?

09:20:26 25 **A It did end up in bankruptcy, yes.**

09:20:28 1 Q Is that where you testified in person?

09:20:30 2 A Yes.

09:20:31 3 Q In the United States bankruptcy court in
09:20:33 4 New York City?

09:20:34 5 A It was in Brooklyn.

09:20:38 6 Q In Brooklyn. Okay. Great.

09:20:39 7 Other than that -- oh, I'm sorry.

09:20:40 8 Which of the two cases did you testify in
09:20:43 9 court for that you were deposed from?

09:20:45 10 A So the California one --

09:20:46 11 Q Yes.

09:20:46 12 A -- was the -- where I testified in court,
09:20:48 13 and then the one we just discussed, 110 Green
09:20:52 14 Street, and then 20 Henry was settled.

09:20:55 15 Q I understand.

09:20:55 16 So the case that was in Garden Grove,
09:20:58 17 California, in which you testified in court -- do
09:21:01 18 you remember in which type of court you were
09:21:03 19 testifying?

09:21:03 20 A I don't.

09:21:04 21 Q State court? Federal court? Bankruptcy
09:21:05 22 court? No recollection?

09:21:08 23 A I don't.

09:21:09 24 Q Okay. What is your date of birth?

09:21:10 25 A June 11, 1963.

09:21:14 1 Q All right. And back to your education.
09:21:15 2 I'm sorry. Other than the -- I didn't ask this.
09:21:19 3 What type of degree did you get at Fordham
09:21:22 4 for your undergraduate work?
09:21:25 5 **A Economics and business.**
09:21:26 6 Q Bachelor of Science or Arts or --
09:21:29 7 **A Bachelor of Arts.**
09:21:30 8 Q Okay. And other than the two degrees at
09:21:33 9 Fordham, have you earned any other degrees?
09:21:35 10 **A No.**
09:21:35 11 Q Have you been certified or earned any
09:21:38 12 certificates or licenses or any other
09:21:40 13 non-university-based --
09:21:42 14 **A 25 years ago I had a real estate brokerage**
09:21:45 15 **license.**
09:21:48 16 Q And so you had to take a class and do
09:21:52 17 continuing education, I assume?
09:21:54 18 **A Correct.**
09:21:54 19 Q But you let that lapse it sounds like?
09:21:57 20 **A Yes.**
09:21:57 21 Q Okay. That is all?
09:21:58 22 **A That is all I can think of.**
09:22:01 23 Q Okay. How long have you been working at
09:22:02 24 Canyon?
09:22:03 25 **A Eleven years.**

09:22:04 1 Q And what is your role there now?

09:22:07 2 A I am the co-head of the Canyon Partners
09:22:12 3 Real Estate practice.

09:22:13 4 Q And who is the other co-head?

09:22:17 5 A Robin Potts.

09:22:19 6 Q And how long have you been in that
09:22:22 7 position?

09:22:22 8 A Two years. Two and a half years.

09:22:27 9 Q What did you do at Canyon prior to becoming
09:22:30 10 the co-head of the practice?

09:22:34 11 A I was the head of asset management.

09:22:38 12 Q And how long were you in that role?

09:22:41 13 A Approximately three years prior to that
09:22:44 14 point.

09:22:45 15 Q Sure.

09:22:47 16 And prior to becoming head of asset
09:22:50 17 management, what was your role at Canyon?

09:22:52 18 A I was the managing director and a senior
09:22:56 19 managing director and a vice president.

09:23:06 20 Q And is that in -- is that your way of
09:23:08 21 taking me back to how you first joined the company?

09:23:10 22 A Yes.

09:23:11 23 Q Okay. When you became head of asset
09:23:15 24 management, how did your role or responsibility
09:23:18 25 change from your prior roles as senior managing

09:23:22 1 director and managing director?

09:23:24 2 **A In the role of senior managing director and**
09:23:27 3 **managing director, I was responsible for a portfolio**
09:23:30 4 **of assets and managing a smaller group of people.**
09:23:33 5 **And then once I became the head of asset management,**
09:23:35 6 **I was responsible for the entire group of asset**
09:23:39 7 **management employees and activities.**

09:23:43 8 Q So how does that differentiate between your
09:23:46 9 current position as co-head of real estate practice
09:23:49 10 or -- or are they just a different title for the
09:23:53 11 same work?

09:23:54 12 **A It is not different for the same work.**

09:23:56 13 Q So what is the difference in your current
09:23:57 14 role?

09:23:58 15 **A I'm responsible for the management of the**
09:24:00 16 **entire group with Robin Potts.**

09:24:03 17 Q Okay. But maybe you can help me out.
09:24:07 18 Canyon manages assets, I'm assuming. And to me,
09:24:13 19 being head of asset management, covering all of the
09:24:17 20 assets under management, what else is there that you
09:24:23 21 do now that you're co-head of the real estate
09:24:25 22 practice that wasn't overseeing the assets under
09:24:28 23 management?

09:24:29 24 **A I'm a member of the investment committee.**
09:24:37 25 **I report to a different person. I am responsible**

09:24:40 1 **for co-managing additional people. I am managing**
09:24:45 2 **investor relations with our marketing and client**
09:24:49 3 **relations group.**

09:24:54 4 Q Okay. That is a lot of different things.
09:24:57 5 All right. Prior to joining Canyon in --
09:24:59 6 in what year did you join Canyon? Let me ask it
09:25:03 7 that way.

09:25:04 8 **A It was January 1, 19- -- I'm sorry -- 2007.**

09:25:14 9 Q All right. What were you doing prior to
09:25:15 10 joining Canyon?

09:25:16 11 **A Immediately prior, I had taken time off and**
09:25:20 12 **was home with my children.**

09:25:21 13 Q For how long?

09:25:22 14 **A Approximately six years.**

09:25:24 15 Q When you were working prior to that -- I
09:25:27 16 assume that was early 2000s -- what was your
09:25:31 17 professional role?

09:25:33 18 **A It was as the executive vice president in**
09:25:36 19 **charge of an industrial development company called**
09:25:41 20 **Karney Management Company.**

09:25:42 21 Q Karney?

09:25:42 22 **A K-a-r-n-e-y.**

09:25:45 23 Q And what did you do at Karney?

09:25:48 24 **A I ran the day-to-day operations of the**
09:25:50 25 **company.**

09:25:50 1 Q And what did Karney do?

09:25:52 2 A They were a developer and manager of
09:25:55 3 industrial real estate, primarily in California.

09:26:00 4 Q And how long were you at -- at that
09:26:01 5 company?

09:26:02 6 A Approximately two years.

09:26:03 7 Q And what did you do prior to joining
09:26:07 8 Karney?

09:26:07 9 A I was the head of asset management for R&B
09:26:13 10 Realty Group's finance division.

09:26:17 11 Q What is R&B Realty Group?

09:26:21 12 A It is an owner -- it was an owner and
09:26:25 13 operator of commercial real estate, including
09:26:30 14 multifamily and office properties.

09:26:31 15 Q Also located in California?

09:26:33 16 A Yes.

09:26:33 17 Q And when you say it "was," it is no longer
09:26:35 18 in existence?

09:26:37 19 A The company sold its real estate assets
09:26:40 20 many years ago.

09:26:41 21 Q At -- at the time you left or sometime
09:26:42 22 after you left?

09:26:42 23 A After I left.

09:26:43 24 Q Okay. Why did you leave R&B to move to
09:26:47 25 Karney?

09:26:47 1 **A** **I was offered an opportunity that suited my**
09:26:52 2 **goals at that point in time.**

09:26:53 3 **Q** All right. And how long were you at R&B
09:26:58 4 Realty?

09:26:58 5 **A** **Two years.**

09:26:59 6 **Q** All right. Where were you prior to that?

09:27:01 7 **A** **GE Capital.**

09:27:02 8 **Q** And where was that located?

09:27:04 9 **A** **Irvine, California.**

09:27:06 10 **Q** And how long were you there?

09:27:07 11 **A** **A year.**

09:27:08 12 **Q** What did you do at GE Capital?

09:27:11 13 **A** **I was a portfolio manager.**

09:27:14 14 **Q** And what -- where were you prior to GE
09:27:20 15 Capital?

09:27:20 16 **A** **Mutual Benefit Life, and it was an**
09:27:25 17 **assurance company at that point.**

09:27:29 18 **Q** Where was that located?

09:27:31 19 **A** **They were located in Los Angeles, but then**
09:27:34 20 **prior to that, I was in Newark, New Jersey, and they**
09:27:38 21 **transferred me to Los Angeles.**

09:27:39 22 **Q** And how long were you at that position?

09:27:42 23 **A** **I was there from -- in Newark from --**
09:27:47 24 **and -- Newark and -- counting L.A., from 1991 to**
09:27:50 25 **1994.**

09:27:52 1 Q What year did you get your MBA?

09:27:55 2 **A I graduated in February of 1987.**

09:27:58 3 Q So we still have more to cover. Where --

09:28:02 4 what were you doing prior to working in New Jersey?

09:28:04 5 **A I worked for a developer in New York called**

09:28:09 6 **Center for Housing Partnerships.**

09:28:13 7 Q And that is an unusual name. What does

09:28:16 8 that -- what does that company do?

09:28:18 9 **A They do multifamily management and**

09:28:21 10 **development, primarily in the northeast and**

09:28:24 11 **primarily in New York.**

09:28:25 12 Q And what was your role there?

09:28:27 13 **A I worked as a project manager.**

09:28:29 14 Q What does a project manager do?

09:28:32 15 **A I did a variety of things while I was at**

09:28:34 16 **the company. I worked as a project manager for a**

09:28:38 17 **project in Connecticut -- in Hartford, Connecticut,**

09:28:42 18 **for them.**

09:28:43 19 **I also worked directly for the principal of**

09:28:45 20 **the company and did, you know, random projects that**

09:28:49 21 **were being considered for development at that point**

09:28:52 22 **in time.**

09:28:52 23 Q And how long were you at that position?

09:28:54 24 **A Approximately four -- maybe five years.**

09:28:58 25 Q Did you have any other work experience

09:29:02 1 prior to graduating with your MBA?

09:29:04 2 **A I worked while I was in school.**

09:29:06 3 Q Where did you work while you were in
09:29:07 4 school?

09:29:08 5 **A I worked at Independent Savings Bank. I
09:29:13 6 taught dance classes at a variety of dance schools
09:29:16 7 that I probably could not all recall at this point.**

09:29:16 8 Q I'm not going to --

09:29:19 9 **A If you would like me to, I could try.**

09:29:22 10 Q I'm not going to ask about dancing.

09:29:25 11 **A Okay. And I -- there was another bank that
09:29:27 12 I worked for that I can't remember earlier on.**

09:29:29 13 Q That is fine.

09:29:30 14 So is it fair to say, in order to short
09:29:33 15 circuit this a little bit, that your experience in
09:29:35 16 the real estate business started at the Center for
09:29:41 17 Housing Partnerships, or was there something before
09:29:42 18 that that we haven't discussed?

09:29:44 19 **A That would be accurate.**

09:29:45 20 Q All right. So did somebody train you when
09:29:48 21 you were working there, or they just threw you out
09:29:50 22 there and said, "Good luck"?

09:29:52 23 **A I don't know what you mean by training.**

09:29:54 24 Q Well, your project manager and you didn't
09:29:55 25 have any experience. So either you were thrown out

09:29:59 1 there and you were told, "Good luck," or somebody
09:30:01 2 told you what to do and explained how to do your
09:30:05 3 job. Which was it? Or was there something else?

09:30:10 4 **A I don't understand the question.**

09:30:12 5 Q Well, if you had no real estate experience,
09:30:14 6 which you just testified to, and you started working
09:30:17 7 as a project manager for the building of multifamily
09:30:21 8 housing and leasing, it sounded like you said, what
09:30:24 9 knowledge and experience did you have that allowed
09:30:27 10 you to perform your job when you started?

09:30:29 11 **A I was trained on the job, and, I am**
09:30:35 12 **assuming, trusted that I was capable of thinking**
09:30:39 13 **through what needed to be done at that point in time**
09:30:41 14 **on the projects that I was working on.**

09:30:43 15 Q That is why I asked if you were trained at
09:30:45 16 that location. That was my original question.

09:30:49 17 **A My -- but my point is: What do you mean by**
09:30:51 18 **training? A formal training program, or do you mean**
09:30:53 19 **training on the job day-to-day?**

09:30:54 20 Q You may describe it either way you wish
09:30:57 21 because I wasn't there. It sounds like the latter
09:30:59 22 is what you were referring to.

09:31:01 23 **A Correct.**

09:31:01 24 Q Fine. Then that is fair.

09:31:03 25 Have you ever been convicted of a felony?

09:31:06 1 **A No.**

09:31:06 2 Q Have you ever been convicted -- I shouldn't
09:31:06 3 say ever.

09:31:07 4 In the last ten years, have you been
09:31:09 5 convicted of a misdemeanor?

09:31:12 6 **A No.**

09:31:12 7 Q Where do you reside?

09:31:13 8 **A I'm not providing my private address.**

09:31:15 9 Q Well, the problem -- the reason you have to
09:31:16 10 is because if you stop working for Canyon, then I
09:31:19 11 have to be able to find you in order to have you
09:31:22 12 testify at trial. So --

09:31:23 13 **A I'm not providing my home address.**

09:31:26 14 Q Well, then how can I find you if you aren't
09:31:29 15 working at Canyon? Because we have this problem
09:31:34 16 with another former Canyon employee that we can't
09:31:37 17 find, and so I don't want to have this problem with
09:31:39 18 you should you no longer work for Canyon in a year
09:31:40 19 from now by the time this case goes to trial.

09:31:42 20 **A I'm not providing my home address.**

09:31:44 21 Q Well, if I get an order from the court
09:31:47 22 compelling you to, then you for sure will; correct?

09:31:48 23 **A I would always comply with the court order.**

09:31:51 24 Q All right. When did you first learn about
09:31:54 25 the Packard Square deal?

09:31:58 1 **A** **When it was being considered for a**
09:32:01 2 **prospective loan.**

09:32:04 3 Q When was that?

09:32:05 4 **A** **2015.**

09:32:08 5 Q Is that a guess?

09:32:10 6 **A** **It is the year it occurred.**

09:32:12 7 Q It is not the year it occurred.

09:32:14 8 **A** **When I learned about Packard Square -- I**
09:32:22 9 **apologize. I can't remember the date.**

09:32:25 10 Q Okay. It was -- the loan was signed in
09:32:27 11 2014. So relative to the loan being signed in 2014,
09:32:35 12 how long prior to the loan being signed did you
09:32:38 13 first learn about it?

09:32:40 14 **A** **In our pipeline, I was advised in a group**
09:32:43 15 **setting, as we ordinarily do weekly.**

09:32:46 16 Q And what were you -- what were you -- do
09:32:48 17 you recall what the initial explanation of the plan
09:32:53 18 or the project was when you first learned about it?

09:32:57 19 **A** **What do you specifically mean by that?**

09:33:00 20 Q Somebody told you about the project. Who
09:33:03 21 was that somebody and what did they tell you?

09:33:05 22 **A** **Marti Page was the originator for this loan**
09:33:09 23 **and she would be the person who described the**
09:33:11 24 **project.**

09:33:12 25 Q All right. Do you recall what her

09:33:14 1 description was?

09:33:15 2 **A That it was a multifamily project located**
09:33:18 3 **in Ann Arbor, Michigan.**

09:33:20 4 Q At that time, what did you know about the
09:33:22 5 Ann Arbor, Michigan, market?

09:33:24 6 **A Very little.**

09:33:26 7 Q Okay. When did you personally get involved
09:33:30 8 in anything having to do with this deal other than
09:33:34 9 just having heard about it?

09:33:37 10 **A I was not responsible for this until 2015.**

09:33:43 11 Q All right. So sometime -- just so we're
09:33:46 12 clear, after the loan was signed. So you were not
09:33:50 13 involved in the preparation of the loan agreements,
09:33:53 14 the negotiation of the loan agreements, or any of
09:33:55 15 those sorts of things?

09:33:56 16 **A No, I was not.**

09:33:57 17 Q All right. So who at Canyon would have
09:34:01 18 been the point person on those types of issues in
09:34:04 19 2014?

09:34:05 20 **A Jonathan Roth.**

09:34:07 21 Q All right. What was Ms. Page's role?

09:34:10 22 **A She was an originator.**

09:34:12 23 Q So what is -- what is -- so "originate"
09:34:14 24 says "start," the word means to me. But she doesn't
09:34:19 25 follow through with the execution of the loan

09:34:23 1 documents? It gets -- it got transferred to
09:34:25 2 somebody else?

09:34:25 3 **A No. The way we describe an originator is**
09:34:29 4 **somebody who has the client relationship and is**
09:34:33 5 **responsible for taking the loan through closing.**

09:34:36 6 Q All right. So -- so then what was Jonathan
09:34:41 7 Roth's role?

09:34:42 8 **A Jonathan Roth was the principal in charge**
09:34:45 9 **of the group at that point in time, and Marti**
09:34:50 10 **reported to him.**

09:34:51 11 Q So at that time, you were -- what was your
09:34:55 12 role at Canyon at that time?

09:34:56 13 **A At that time I was working as the head of**
09:35:01 14 **asset management.**

09:35:02 15 Q So as the head of asset management, your --
09:35:05 16 what -- what is your role as it pertains to loans
09:35:08 17 that are being originated and then being signed? Do
09:35:11 18 you have to review them? Do you approve them? What
09:35:13 19 is your role in that? Or what --

09:35:13 20 **A It --**

09:35:15 21 Q -- was your role in that, I should say?

09:35:17 22 **A The role is different at this point. At**
09:35:19 23 **that point in time we received cursory advisories**
09:35:23 24 **throughout -- through the pipeline that we attend**
09:35:27 25 **weekly. And then other than that, at the point of**

09:35:30 1 **closing, it would be transferred to asset**

09:35:33 2 **management.**

09:35:33 3 Q I see.

09:35:34 4 So it would be Jonathan and Marti who would
09:35:38 5 have negotiated the terms in the loan agreement?

09:35:41 6 **A I assume so, yes.**

09:35:43 7 Q Well, at that time is that how they
09:35:44 8 normally did things?

09:35:45 9 **A Yes.**

09:35:46 10 Q Okay. Who did you talk to in preparing for
09:35:52 11 this deposition?

09:35:53 12 **A I talked to counsel.**

09:35:55 13 Q Anybody else at Canyon?

09:35:57 14 **A Our team.**

09:36:02 15 Q I can't -- who is on your team, ma'am?

09:36:05 16 **A Gerald Goldman, Kevin Scholz, and Marcus
09:36:11 17 Neupert.**

09:36:12 18 Q And you all discussed -- you all prepared
09:36:14 19 together? Is that what you're saying?

09:36:15 20 **A We had meetings, yes.**

09:36:17 21 Q Over the last few days?

09:36:19 22 **A Yes.**

09:36:20 23 Q Okay. Let -- let's talk a little bit
09:36:24 24 bigger picture for a moment. What does Canyon do?
09:36:31 25 The whole entity that over -- what does it do?

09:36:36 1 **A** **Could you be more specific?**

09:36:39 2 Q I don't know because I'm not the, you know,
09:36:41 3 head of the real estate practice management here at
09:36:45 4 Canyon. So what -- what is the overriding entity?
09:36:50 5 It is called Canyon Partners? Is that the main --
09:36:54 6 is that what the main -- like, General Motors
09:36:57 7 vis-a-vis, you know, Buick and Chevrolet?

09:37:02 8 **A** **Are you talking about Canyon Partners Real**
09:37:05 9 **Estate?**

09:37:05 10 Q No. I'm talking -- I'm talking top down.
09:37:08 11 So what is the top entity that oversees all of
09:37:12 12 Canyon's business?

09:37:13 13 **A** **Canyon Partners.**

09:37:16 14 Q I was right. That was good.
09:37:19 15 So Canyon Partners Real Estate practice is
09:37:23 16 one of the divisions of Canyon Partners?

09:37:26 17 **A** **It is a -- it is a component of Canyon**
09:37:30 18 **Partners.**

09:37:30 19 Q Okay. So what does Canyon Partners do?

09:37:32 20 **A** **It is an alternative asset manager.**

09:37:36 21 Q Alternative to what?

09:37:41 22 **A** **I don't understand the question.**

09:37:42 23 Q Well, you used the phrase.

09:37:44 24 **A** **It is a commonly used phrase.**

09:37:46 25 Q Well, I'm not a -- in the -- I'm not in

09:37:47 1 your business. So can you explain to me what it

09:37:50 2 means in --

09:37:50 3 **A We manage money for institutional and other**
09:37:55 4 **investors.**

09:37:56 5 Q But alternative to what?

09:38:03 6 **A I don't understand what you want me --**

09:38:05 7 Q I don't want you to do anything.

09:38:06 8 **A -- to answer. I explained to you -- what**
09:38:10 9 **do you want to know about alternative?**

09:38:13 10 Q Ah. For the third time, you used the
09:38:16 11 phrase, and so I'm trying to under- -- alternative,
09:38:20 12 by its definition, refers to something else. So I'm
09:38:23 13 asking you what it is alternative to.

09:38:25 14 MR. DOLAN: Why don't you just ask her
09:38:27 15 what she means by alternative instead of
09:38:30 16 "alternative to" because I think that is what is
09:38:34 17 unclear about the question.

09:38:34 18 MR. MILLER: Okay.

09:38:34 19 MR. DOLAN: That is all.

09:38:34 20 MR. MILLER: I didn't think that was
09:38:37 21 confusing, but if you did, that is fine.

09:38:39 22 Q What does alternative mean?

09:38:40 23 **A We are not a bank or a publicly-held**
09:38:48 24 **company. We are a privately-held company, and we**
09:38:51 25 **provide capital to different strategies that are --**

09:39:03 1 **there are a variety of strategies that the company**
09:39:06 2 **pursues. That is the easiest way --**
09:39:06 3 Q All right.
09:39:08 4 **A -- to explain it to you.**
09:39:10 5 Q So alternative to a bank that is regulated;
09:39:18 6 correct?
09:39:18 7 **A Correct.**
09:39:19 8 Q So just so we're clear, Canyon is not
09:39:21 9 regulated by any local, state, or federal authority?
09:39:24 10 **A We are SEC registered.**
09:39:27 11 Q And what do you -- what do you provide the
09:39:28 12 SEC as a public company?
09:39:30 13 **A You would have to ask our chief compliance**
09:39:32 14 **officer.**
09:39:33 15 Q Okay. Are you governed by Dodd -- the
09:39:39 16 Dodd-Frank Act?
09:39:39 17 **A We are not a bank.**
09:39:41 18 Q Well, that is what I'm asking.
09:39:42 19 So then you are not?
09:39:44 20 **A No.**
09:39:44 21 Q Okay. So what is -- to what extent is
09:39:47 22 there any regulation at all?
09:39:51 23 **A This is not a question I am able to answer.**
09:39:54 24 **It is too open-ended.**
09:39:57 25 Q Well, I have to give you an open-ended

09:40:00 1 question because I can't give you a close-ended
09:40:02 2 question.

09:40:04 3 So do you provide in -- in your position or
09:40:12 4 in -- on behalf of the real estate practice group,
09:40:16 5 do you provide information to any regulatory boards
09:40:21 6 or agencies?

09:40:22 7 **A As I said, you would need to speak to our**
09:40:26 8 **chief compliance officer in order to determine that**
09:40:29 9 **and what the submissions are because you're asking**
09:40:31 10 **very specifically what is submitted.**

09:40:33 11 Q Well, before I asked you an open-ended
09:40:34 12 question and you didn't want to answer that one. So
09:40:36 13 I tried to ask you a more pointed question. So if
09:40:39 14 you would like me to re-ask the more open-ended
09:40:42 15 question, I can do that.

09:40:43 16 **A You can do whatever you want.**

09:40:45 17 Q Well, but I need you to actually answer it.

09:40:47 18 **A I have been answering.**

09:40:47 19 Q Uh-huh.

09:40:48 20 MR. DOLAN: She didn't know the answer to
09:40:50 21 the specific question. That is what her testimony
09:40:52 22 was.

09:40:53 23 BY MR. MILLER:

09:40:53 24 Q When -- when a loan agreement is prepared,
09:40:56 25 is that loan agreement provided to any state, local,

09:41:01 1 or federal body of regulation for any purpose?

09:41:06 2 **A It is not provided to any state, local, or**
09:41:11 3 **other body for evaluation. We are a private company**
09:41:17 4 **doing private lending.**

09:41:18 5 Q That -- that is all I was trying to
09:41:21 6 confirm, ma'am. Thank you.

09:41:22 7 So who do you report to?

09:41:27 8 **A I report to Joshua Freedman and Mitch**
09:41:27 9 **Julis.**

09:41:36 10 Q And to what extent do you make decisions
09:41:49 11 and to what extent do the people to whom you report
09:41:52 12 make decisions as it pertains to your day-to-day
09:41:55 13 operations of your job?

09:41:58 14 **A There are so many aspects to my position.**
09:42:01 15 **That is impossible for me to answer.**

09:42:05 16 Q So, ultimately, if there is a decision in
09:42:13 17 the real estate arena, do you have the freedom to
09:42:23 18 decide how to proceed with, say, the signing of a
09:42:28 19 loan, or do you have to get supervised approval
09:42:31 20 before that decision is ultimately made?

09:42:34 21 **A As it specifically relates to originating a**
09:42:37 22 **loan, at this point in time, we have an investment**
09:42:39 23 **committee, and the investment committee members**
09:42:42 24 **determine whether or not a loan will or will not be**
09:42:46 25 **made.**

09:42:47 1 Q And you sit on that committee?

09:42:48 2 A I do.

09:42:48 3 Q How many people sit on that committee?

09:42:51 4 A Five.

09:42:51 5 Q And who are the other members?

09:42:51 6 A Myself, Robin Potts, Marcus Neupert, Mitch

09:42:53 7 Julis, and Joshua Freedman.

09:42:54 8 Q Was there such a committee in -- in

09:42:57 9 existence in 2014?

09:42:59 10 A No.

09:42:59 11 Q So how were the decisions -- how was the

09:43:02 12 decision made under the Canyon structure at that

09:43:05 13 time to approve the loan to Packard Square, LLC?

09:43:10 14 A I wasn't involved.

09:43:12 15 Q I didn't ask if you made the decision. I

09:43:14 16 asked how the decision was made. If there wasn't an

09:43:18 17 investment committee, was there somebody else who

09:43:22 18 made that decision?

09:43:24 19 A If I wasn't involved in the decision, I

09:43:25 20 can't tell you how that decision was made.

09:43:27 21 Q Well, how were loans approved -- regardless

09:43:29 22 of the Packard Square decision -- agreement, how

09:43:32 23 were loans approved by Canyon in 2014 in general?

09:43:37 24 A Generally speaking, that is a question you

09:43:40 25 would need to ask Jonathan Roth.

09:43:44 1 Q Does Jonathan Roth work at Canyon?

09:43:48 2 A **He does not.**

09:43:50 3 Q All right. So how -- do you know his home

09:43:51 4 address so I can subpoena him for a deposition?

09:43:54 5 A **I do not.**

09:43:55 6 Q See my problem from before?

09:43:57 7 A **I don't.**

09:43:59 8 Q You don't see that as being a problem?

09:44:01 9 A **I don't think it is my place to see your**

09:44:03 10 **problem.**

09:44:04 11 Q Okay. So what types of -- strike that.

09:44:11 12 Are there any other decisions in a -- on a

09:44:15 13 regular basis that the investment committee makes

09:44:17 14 other than the decision to approve or not approve

09:44:20 15 loans?

09:44:22 16 A **The investment committee would also opine**

09:44:26 17 **on any major changes.**

09:44:29 18 Q What are major changes?

09:44:31 19 A **If there was a recommendation to make any**

09:44:34 20 **change to an investment.**

09:44:35 21 Q Would that include the decision to

09:44:38 22 foreclose on a loan perhaps?

09:44:40 23 A **It would.**

09:44:41 24 Q Okay. So as we sit here today, your

09:44:45 25 testimony is that you have no idea how loans were

09:44:48 1 approved in 2014?

09:44:54 2 **A I was not a part of the process of**
09:44:56 3 **approving loans in 2014; so I could not give you an**
09:45:00 4 **answer as to how the loans were approved in 2014.**

09:45:06 5 Q That is not particularly responsive to my
09:45:09 6 question. Whether you were involved or not wasn't
09:45:13 7 my question.

09:45:14 8 My question was: How come you're not aware
09:45:18 9 of how that process worked just four years ago?

09:45:22 10 MR. DOLAN: That is actually a different
09:45:24 11 question, but go ahead and answer if -- that one if
09:45:26 12 you can.

09:45:28 13 THE WITNESS: The process was less formal
09:45:34 14 than it is today; so I would not be able to provide
09:45:37 15 you with a road map of how the loans were reviewed
09:45:40 16 and approved at that point in time.

09:45:42 17 BY MR. MILLER:

09:45:43 18 Q Did Mr. Roth have sole authority to make
09:45:48 19 that decision on his own?

09:45:49 20 **A I don't know.**

09:45:50 21 Q Well, you were the head of asset management
09:45:53 22 at the time, were you not?

09:45:55 23 **A But I wasn't originating loans.**

09:45:57 24 Q Well, wouldn't managing the assets fall
09:46:00 25 under the purview of what loans are going to be

09:46:03 1 managed?

09:46:03 2 **A It is what loans are closed and are being**
09:46:07 3 **managed.**

09:46:08 4 Q Right.

09:46:09 5 But presumably you know who your coworkers
09:46:12 6 are and what they're doing at a high level, do you
09:46:14 7 not?

09:46:15 8 **A You're asking me a very specific question,**
09:46:17 9 **and I do not have that specific answer and,**
09:46:19 10 **therefore, I cannot answer.**

09:46:21 11 Q Well, then I'll ask a broader question.

09:46:24 12 Who decided how to -- whether to close
09:46:27 13 loans in 2014?

09:46:30 14 **A Jonathan Roth was the principal overseeing**
09:46:35 15 **the group at that point in time.**

09:46:38 16 Q Well, who else was in his group?

09:46:44 17 **A Are you asking me for a list of employees?**

09:46:50 18 Q Well, you -- I asked you who was on your
09:46:52 19 team at Packard Square, and you told me. So who was
09:46:55 20 on Mr. Roth's group for deciding whether loans would
09:46:58 21 be approved?

09:46:58 22 MR. DOLAN: Object to the form of the
09:47:00 23 question and foundation. She obviously knows who is
09:47:03 24 on her own team. You're suggesting she knows who is
09:47:05 25 on Jonathan's team and --

09:47:05 1 MR. MILLER: I'm asking her if she does.

09:47:05 2 And she had -- she said --

09:47:07 3 MR. DOLAN: Well, you asked her who was on
09:47:08 4 the team. You didn't ask her if she knows who was
09:47:10 5 on the team.

09:47:10 6 MR. MILLER: I don't have to ask her if she
09:47:10 7 knows who is on the team.

09:47:12 8 MR. DOLAN: Well, that is a proper
09:47:13 9 foundational question. And, yes, you don't follow
09:47:15 10 proper foundational questions.

09:47:16 11 But go ahead.

09:47:16 12 MR. MILLER: You know what? Every time you
09:47:19 13 make a negative comment, it doesn't really -- it
09:47:21 14 doesn't really get you anywhere, Ben.

09:47:22 15 MR. DOLAN: If it helps you ask a proper
09:47:24 16 question, which is my hope and my intent, then, you
09:47:28 17 know, that is what I'm trying to do.

09:47:29 18 BY MR. MILLER:

09:47:30 19 Q So are you aware of who was on Mr. Roth's
09:47:33 20 team?

09:47:36 21 A I am aware of the other employees who were
09:47:40 22 at Canyon at that point in time, yes.

09:47:43 23 Q Can you identify the people who were on
09:47:45 24 Mr. Roth's team at that time?

09:47:48 25 A Robin Potts, Marti Page, Charlie Rose, and

09:48:02 1 **there are multiple people. We're a large group.**

09:48:05 2 Q Did he work as part of a committee -- maybe
09:48:08 3 different than the investment committee, but a
09:48:11 4 different committee that existed at that time to
09:48:14 5 make the decisions to approve loans?

09:48:17 6 MR. DOLAN: Is "he" Jonathan Roth?

09:48:20 7 MR. MILLER: Yes, "he" is Jonathan Roth.

09:48:22 8 THE WITNESS: As I said, I was not involved
09:48:25 9 in the decision-making process, therefore, I cannot
09:48:30 10 answer the question you have asked.

09:48:32 11 BY MR. MILLER:

09:48:34 12 Q Ma'am, the question that I asked wasn't
09:48:36 13 whether you were involved with the decision-making
09:48:38 14 process. The question I asked was whether you were
09:48:42 15 aware of whether Mr. Roth was part of a committee
09:48:45 16 that made decisions to approve loans.

09:48:48 17 A Mr. Roth was involved in the decision to
09:48:51 18 make loans. I am not certain the entirety of his
09:48:56 19 process for the approval of that. And that is what
09:49:00 20 you asked and I've answered it multiple times.

09:49:03 21 Q Okay. I think, actually, this is the first
09:49:04 22 time you've answered it, but I appreciate your
09:49:06 23 having done so.

09:49:08 24 What -- what is Can IV Packard Square LLC?

09:49:17 25 A It is the entity that is the lender on this

09:49:22 1 **loan.**

09:49:23 2 Q Does Can IV Packard Square conduct any
09:49:28 3 other business than that having to do with this
09:49:33 4 project in Ann Arbor, Michigan, and this loan?

09:49:38 5 **A I'm not certain, but I don't believe so.**

09:49:40 6 Q Who makes the decisions relative to actions
09:49:45 7 taken or not taken by Can IV Packard Square?

09:49:50 8 **A In what regard?**

09:49:52 9 Q I don't know. In any regard. That is what
09:49:54 10 I'm trying to find out how -- how you're set up. I
09:49:58 11 don't know. That is why I'm asking.

09:50:00 12 **A "Decisions" is such a broad word. I need
09:50:04 13 to have a very specific question asked of me in
09:50:07 14 order to answer it accurately.**

09:50:10 15 Q Well, I'm going to open up a very broad
09:50:13 16 question that is not going to be specific at all and
09:50:16 17 just is: Who is involved in the decision-making
09:50:19 18 process for Can IV Packard Square?

09:50:23 19 **A The same members of the committee if they
09:50:28 20 are major decisions, as I said before.**

09:50:32 21 Q The investment committee?

09:50:33 22 **A Yes.**

09:50:33 23 Q What about the people on your team?

09:50:35 24 **A The people on my team who work on the
09:50:38 25 investment are also involved.**

09:50:41 1 Q Okay. So are there -- are there decisions
09:50:49 2 that are made by your team or individual members at
09:50:52 3 your -- of your team versus decisions made by the
09:51:01 4 investment committee?

09:51:02 5 **A The day-to-day activities of managing**
09:51:05 6 **investments are done by the team and the material**
09:51:08 7 **decisions are made by the investment committee.**

09:51:11 8 Q All right. I think I -- I think I
09:51:13 9 understand that distinction, but in order for me to
09:51:16 10 make sure that I do, I would appreciate if you could
09:51:17 11 tell me the types of decisions -- and it doesn't
09:51:20 12 have to be just about this particular loan. It
09:51:22 13 could be about any loan that is within your purview.

09:51:26 14 What types of decisions does the investment
09:51:31 15 committee make in addition to those that you've
09:51:34 16 described already, which included creating a loan in
09:51:35 17 the first place? What are the major decisions that
09:51:38 18 the investment committee would make that the team
09:51:40 19 would not make?

09:51:41 20 **A The team is managing the asset day-to-day**
09:51:44 21 **and would act in accordance with the loan documents**
09:51:48 22 **and the business plan. If there was anything**
09:51:52 23 **outside of that, it would ordinarily be discussed**
09:51:55 24 **with members of the investment committee.**

09:51:57 25 Q Okay. So you've been doing this for a few

09:51:59 1 years now. Can -- and it doesn't have to relate to
09:52:02 2 Packard Square. Can you give me five or six
09:52:04 3 examples of the types of decisions that the
09:52:07 4 investment committee would make relative to a loan
09:52:09 5 that would not be made solely by the team?

09:52:12 6 **A Predominantly our loans are managed in**
09:52:21 7 **accordance with what the documents provide. So**
09:52:26 8 **essentially the investment committee is going to be**
09:52:30 9 **involved in the originating of the loan, and then**
09:52:32 10 **the team and our legal counsel are entrusted with**
09:52:37 11 **administering the loan. And we administer loans in**
09:52:41 12 **accordance with those documents.**

09:52:43 13 **And to the extent that there are any**
09:52:45 14 **material changes to the status of a loan, we advise**
09:52:48 15 **the investment committee.**

09:52:51 16 **Q** So that is what I'm asking for. What
09:52:53 17 are -- what are the -- what are the examples of
09:52:54 18 material changes? That is what I'm trying to
09:52:57 19 understand.

09:52:58 20 **A Defaults, milestone misses, business plans**
09:53:02 21 **that have not been met, maturities that have not**
09:53:08 22 **been repaid.**

09:53:10 23 **Q** Okay. So the decision to start a lawsuit,
09:53:17 24 seek foreclosure, hire a receiver -- "hire" is the
09:53:22 25 wrong word -- have a receiver appointed -- those are

09:53:27 1 investment committee type-decisions?

09:53:27 2 **A Those are investment committee advisories.**

09:53:30 3 Q Okay. Who are the investors in

09:53:33 4 Can IV Packard Square LLC?

09:53:33 5 **A We don't disclose our investors.**

09:53:36 6 Q Well, let me show you what has been marked

09:53:37 7 as Exhibit 15.

09:53:44 8 (Exhibit 15 was marked for

09:53:45 9 identification.)

09:53:45 10 MR. DOLAN: Is that one you showed

09:53:46 11 yesterday or is this a new --

09:53:47 12 MR. MILLER: No. This is new.

09:53:50 13 Q Tell me if you're familiar with that

09:53:52 14 document, ma'am.

09:54:14 15 **A I see the document.**

09:54:16 16 Q Are you familiar with this document?

09:54:18 17 **A What do you mean by "familiar"?**

09:54:19 18 Q Have you ever seen it before?

09:54:20 19 **A I'm not sure.**

09:54:21 20 Q Does this document accurately reflect the

09:54:24 21 names or entities that are the investors in

09:54:28 22 Can IV Packard Square LLC?

09:54:29 23 **A I believe so.**

09:54:30 24 Q All right. On the left-hand column there

09:54:36 25 are a list of numbers that add up to 100 percent.

09:54:39 1 And on the right-hand column there are a list of
09:54:43 2 numbers that add up to 100 percent.

09:54:45 3 Can -- can you explain to me what the first
09:54:47 4 set of numbers adding up to 100 percent reflects and
09:54:51 5 what the second on the right set of 100 percent
09:54:56 6 reflects?

09:54:57 7 MR. DOLAN: I'm going to just object to
09:54:59 8 this entire line of questioning. What relevance
09:55:01 9 does it have to any issue in the lawsuit who is the
09:55:02 10 owners of the investments?

09:55:03 11 MR. MILLER: Because I'm of the belief that
09:55:05 12 there are documents that are relevant that we
09:55:08 13 haven't seen and I want to get them.

09:55:09 14 MR. DOLAN: What does that have to do with
09:55:11 15 who the investors are?

09:55:12 16 MR. MILLER: Well, we might have to ask
09:55:13 17 them to give us the documents since you won't.

09:55:15 18 MR. DOLAN: That is absolutely nonsensical
09:55:17 19 what you just said.

09:55:18 20 MR. MILLER: Really?

09:55:19 21 MR. DOLAN: Yes.

09:55:19 22 MR. MILLER: Well, I don't believe that I
09:55:22 23 have all the documents that are relevant to this
09:55:25 24 loan, and so I might have to ask somebody else to
09:55:28 25 get them for me.

09:55:30 1 Q So I'm going to ask my question, and my
09:55:31 2 question was: Can you tell me what the 100 percent
09:55:34 3 group on the left is versus the 100 percent group on
09:55:39 4 the right?

09:55:39 5 MR. DOLAN: Well, I think we're not going
09:55:40 6 to talk about the investors. That -- that issue was
09:55:43 7 addressed by the court. The court -- you -- you
09:55:44 8 asked for documents relative to them. The court --
09:55:48 9 I objected to that, and the court then sustained
09:55:51 10 that my objection through the motion to compel --
09:55:54 11 that it denied on that issue. So --

09:55:56 12 MR. MILLER: Show me the court order that
09:55:56 13 you're referring to.

09:55:58 14 MR. DOLAN: I don't need to do that here
09:55:58 15 today.

09:55:59 16 MR. MILLER: Well, I do, because there is
09:55:59 17 no order that says that.

09:55:59 18 MR. DOLAN: Oh, you do need to.

09:56:00 19 MR. MILLER: I'd like to see the order,
09:56:02 20 because I'm going to be asking these questions and
09:56:04 21 these are legitimate questions and you are in no
09:56:04 22 position to tell me that they're not. You provided
09:56:04 23 me this document --

09:56:08 24 MR. DOLAN: They're not legitimate
09:56:10 25 questions.

09:56:10 1 MR. MILLER: You provided me this document
09:56:12 2 in discovery and I'm going to ask about it.

09:56:14 3 MR. DOLAN: Well, to the extent it was
09:56:15 4 provided in discovery, it was clearly done in error,
09:56:17 5 and it will be clawed back accordingly.

09:56:20 6 MR. MILLER: Oh, I'm sorry. What about
09:56:21 7 this is privileged?

09:56:22 8 MR. DOLAN: It is not privileged.

09:56:22 9 MR. MILLER: So --

09:56:24 10 MR. DOLAN: It is irrelevant to any issue
09:56:25 11 in this lawsuit.

09:56:26 12 MR. MILLER: No. That is not how it works.

09:56:26 13 MR. DOLAN: Well, it is.

09:56:29 14 MR. MILLER: Ma'am, I'm asking the
09:56:29 15 question.

09:56:29 16 MR. DOLAN: You're going to have to get a
09:56:30 17 court order from the judge instructing her to "ask"
09:56:32 18 questions about investors because we're not going to
09:56:33 19 do that today. That is not -- that is not why she
09:56:36 20 is here.

09:56:36 21 MR. MILLER: I'm asking her as the head of
09:56:37 22 the real estate --

09:56:38 23 MR. DOLAN: I understand what you're doing.

09:56:40 24 MR. MILLER: -- that she testified she
09:56:42 25 deals with investors.

09:56:43 1 MR. DOLAN: Correct.

09:56:43 2 MR. MILLER: And I want to know what these

09:56:44 3 two boxes -- what these two columns mean.

09:56:46 4 MR. DOLAN: It has nothing to do with this

09:56:47 5 lawsuit.

09:56:48 6 MR. MILLER: Well, it might.

09:56:48 7 MR. DOLAN: No, it doesn't. You haven't

09:56:50 8 established anything.

09:56:51 9 MR. MILLER: I don't have to prove anything

09:56:53 10 to you, Mr. Dolan.

09:56:54 11 MR. DOLAN: I know you don't, but I'm

09:56:56 12 telling you you're going to have to get a court

09:56:57 13 order to talk about the investors.

09:56:58 14 MR. MILLER: And then when we do --

09:56:58 15 MR. DOLAN: That is fine.

09:56:59 16 MR. MILLER: -- Ms. Stamolis will fly back

09:57:01 17 to Detroit for this deposition?

09:57:03 18 MR. DOLAN: We can do it by Facetime. It

09:57:05 19 would be a lot more efficient.

09:57:05 20 MR. MILLER: Well, then I'm not going to.

09:57:07 21 So I'm asking the question, and my question is -- I

09:57:10 22 haven't even asked who these investors are. I'm

09:57:13 23 asking what the two boxes mean. There is nothing

09:57:16 24 improper about that question.

09:57:17 25 MR. DOLAN: Well, actually, she -- you

09:57:18 1 haven't even established she is familiar with this
09:57:19 2 document. So it is improper, but --

09:57:21 3 BY MR. MILLER:

09:57:22 4 Q Ma'am, can you tell me what the two columns
09:57:25 5 represent?

09:57:26 6 **A I already answered that. I'm not providing**
09:57:29 7 **information about our investors.**

09:57:31 8 MR. DOLAN: Okay.

09:57:32 9 BY MR. MILLER:

09:57:32 10 Q And on what basis are you making that
09:57:34 11 statement?

09:57:35 12 **A Our investors are private investors.**

09:57:37 13 Q But that is not my question. My question
09:57:39 14 isn't about the investors. My question is about the
09:57:42 15 boxes.

09:57:42 16 What is the reference of the 100 percent on
09:57:44 17 the left and the 100 percent on the right? There
09:57:47 18 would only be one 100 percent investment; isn't that
09:57:51 19 true?

09:57:51 20 **A I'm not answering the question. I've said**
09:57:58 21 **already I'm not answering questions as it relates to**
09:58:01 22 **our investors, who are private, and this is marked**
09:58:04 23 **confidential.**

09:58:05 24 Q Ma'am, every document I've received from
09:58:07 25 your lawyer is marked confidential. We're going to

09:58:11 1 be talking about a lot of documents that are marked
09:58:14 2 confidential. That doesn't make them confidential.
09:58:17 3 That doesn't make them not discoverable. There is a
09:58:19 4 difference between what you choose to have --
09:58:19 5 MR. DOLAN: Okay.
09:58:21 6 MR. MILLER: -- confidential and what you
09:58:21 7 choose --
09:58:21 8 MR. DOLAN: Mr. Miller --
09:58:21 9 MR. MILLER: I'm talking, Ben.
09:58:22 10 MR. DOLAN: No. You're arguing.
09:58:23 11 MR. MILLER: I'm making a record.
09:58:23 12 MR. DOLAN: You're lecturing my witness --
09:58:23 13 MR. MILLER: I am making a record.
09:58:23 14 MR. DOLAN: -- and we're not going to do
09:58:26 15 that -- we're not going to do that here today.
09:58:27 16 MR. MILLER: We're not.
09:58:28 17 MR. DOLAN: You don't get to lecture. You
09:58:29 18 get to ask her questions and she gets to give you
09:58:31 19 answers if they're appropriate. That is how a
09:58:33 20 deposition works. So when you -- we're not going to
09:58:36 21 lecture today. I mean, seriously, that is so
09:58:39 22 inappropriate.
09:58:40 23 MR. MILLER: Mr. Dolan, whether you think
09:58:42 24 I'm inappropriate or not is really not my concern
09:58:45 25 because virtually everything you've --

09:58:45 1 MR. DOLAN: It is my concern.

09:58:46 2 MR. MILLER: Virtually everything you've

09:58:47 3 done in the four cases we've had together I have

09:58:49 4 thought has been inappropriate, but that is not the

09:58:52 5 purpose of today's deposition.

09:58:52 6 The purpose of today's deposition is for me

09:58:54 7 to get information based on the documents and the

09:58:56 8 information that has been provided to me.

09:58:58 9 MR. DOLAN: Right.

09:58:58 10 MR. MILLER: And there is no --

09:58:59 11 MR. DOLAN: Not to lecture my witness.

09:59:01 12 MR. MILLER: There is no reason under -- on

09:59:04 13 God's green earth except that Ms. Stamolis chooses

09:59:07 14 not to -- without any basis for doing so -- to not

09:59:10 15 tell me why there is two 100 percent lines on this

09:59:10 16 page.

09:59:14 17 MR. DOLAN: You asked for that information

09:59:15 18 in interrogatories and document requests. We

09:59:18 19 objected to it. You filed a motion to compel, and

09:59:21 20 the judge denied it. So that information is not

09:59:23 21 coming out through a witness. You can't backdoor

09:59:26 22 the information through a witness that the judge

09:59:27 23 refused to give you.

09:59:29 24 MR. MILLER: That is not true.

09:59:30 25 MR. DOLAN: Well, I disagree.

09:59:30 1 BY MR. MILLER:

09:59:32 2 Q So, ma'am, your -- your position is you're
09:59:34 3 not going to answer what these two columns
09:59:37 4 represent?

09:59:37 5 **A That is correct.**

09:59:38 6 Q And you're not going to tell me why there
09:59:41 7 are two columns of 53 million?

09:59:44 8 **A That is correct.**

09:59:45 9 Q So how much money did -- how much money did
09:59:50 10 Canyon raise for this loan?

09:59:52 11 **A 53 million.**

09:59:56 12 Q So why are there -- why does it look like
09:59:58 13 there is 53 million raised twice?

10:00:05 14 **A I am not disclosing information about our
10:00:09 15 investors.**

10:00:09 16 Q I didn't ask a question about your
10:00:11 17 investors. I asked you why there is a page that
10:00:14 18 makes reference to 53 million having been raised
10:00:17 19 twice.

10:00:18 20 MR. DOLAN: Why don't you just ask
10:00:19 21 her how -- you asked her how much money was raised.
10:00:22 22 She said 53 million. Now you're arguing with her.

10:00:22 23 MR. MILLER: No. I'm asking --

10:00:25 24 MR. DOLAN: You like to argue with
10:00:25 25 witnesses because you think -- I don't know what you

10:00:26 1 think. But the point is she has given you an
10:00:28 2 answer. Now you're saying "Your answer must be
10:00:32 3 wrong because of this document." That is
10:00:34 4 argumentative. There is -- there is no purpose to
10:00:35 5 that except to argue.

10:00:36 6 MR. MILLER: I'm not arguing. I'm asking a
10:00:38 7 question. If 53 million --

10:00:39 8 MR. DOLAN: No, you are arguing. You're
10:00:40 9 saying, "I don't like your answer 53 million because
10:00:43 10 I think this document indicates something else."
10:00:45 11 That is an argument, not a question.

10:00:45 12 BY MR. MILLER:

10:00:48 13 Q All right. Ms. Stamolis --

10:00:50 14 A I'm ready for a break.

10:00:52 15 MR. MILLER: I'm not ready for one.

10:00:54 16 MR. DOLAN: Well, there is no question
10:00:55 17 pending. So we can take a break.

10:01:03 18 THE REPORTER: Off the record?

10:01:03 19 Counsel, off the record?

10:01:04 20 MR. MILLER: It doesn't seem like it is up
10:01:07 21 to me, ma'am.

10:01:07 22 MR. DOLAN: It is not.

10:01:07 23 THE REPORTER: So off the record?

10:01:08 24 MR. MILLER: No. We're not off the record.
10:01:11 25 The record should reflect what just happened, which

10:01:14 1 is that they got up and walked out.

10:01:17 2 Now we can go off the record.

10:01:19 3 THE VIDEOGRAPHER: Off the record at
10:01:20 4 10:01 a.m.

10:17:14 5 (Recess.)

10:17:19 6 THE VIDEOGRAPHER: We are back on the
10:17:20 7 record at 10:17 a.m.

10:17:24 8 THE WITNESS: I wanted to make a
10:17:25 9 clarification.

10:17:27 10 BY MR. MILLER:

10:17:27 11 Q Sure.

10:17:27 12 A So earlier I said that I didn't recall an
10:17:30 13 investment committee specifically for this
10:17:33 14 investment, and there was an investment committee
10:17:36 15 for this investment.

10:17:37 16 Q Are you talking about back in 2014?

10:17:39 17 A Yes.

10:17:40 18 Q Okay. So who was on that committee?

10:17:41 19 A Marcus Neupert, Josh Freedman, Jonathan
10:17:45 20 Roth, and myself.

10:17:48 21 Q So you were on the committee that approved
10:17:52 22 the loan?

10:17:52 23 A Yes.

10:17:53 24 Q Even though you didn't remember that you
10:17:54 25 had been on that committee?

10:17:56 1 **A** **I did not remember that the committee had**
10:17:58 2 **formally convened.**

10:17:59 3 **Q** I see.

10:18:01 4 And that committee goes by the same name as
10:18:03 5 the current investment committee, or it had a
10:18:07 6 different name at the time?

10:18:08 7 **A** **There is -- there is not a name for the**
10:18:11 8 **investment committee. It is just the investment**
10:18:14 9 **committee for, at the time, separate accounts.**

10:18:17 10 **Q** Maybe my question wasn't clear. You -- you
10:18:21 11 originally -- "originally" is a bad word.

10:18:23 12 You earlier defined the investment
10:18:26 13 committee on which you sit as a member. My question
10:18:29 14 is: The committee that you just described a moment
10:18:31 15 ago with Jonathan Roth on it -- what was that
10:18:36 16 committee called?

10:18:37 17 **A** **There was no name for it.**

10:18:38 18 **Q** I see.

10:18:40 19 Okay. Why are the investors in my client's
10:18:43 20 deal a secret?

10:18:44 21 **A** **I did not say they were a secret.**

10:18:48 22 **Q** Okay. Then why won't you discuss it with
10:18:50 23 me?

10:18:50 24 **A** **Because we don't disclose information about**
10:18:53 25 **our investors. It is a private company.**

10:18:55 1 Q Okay. So my question is: Why is it -- why
10:18:58 2 is it a secret that you don't disclose anything
10:19:01 3 about the investments in my client's deal? What --
10:19:04 4 what -- why is -- is there a confidentiality
10:19:06 5 agreement with these investors? I don't understand.

10:19:08 6 **A I've answered the question.**

10:19:10 7 Q You haven't answered the question as to why
10:19:12 8 it is a secret. You've just said you're not telling
10:19:15 9 me. You haven't told me what makes it a secret.

10:19:18 10 **A We don't disclose information about our**
10:19:21 11 **investors.**

10:19:22 12 Q Why not?

10:19:25 13 **A Because we don't.**

10:19:28 14 Q Right. That is like saying -- that is not
10:19:31 15 even a real answer, ma'am. And I'll -- and yes. It
10:19:33 16 is argumentative. I admit it.

10:19:38 17 My question is: What -- what is the
10:19:39 18 harm -- what is the downside -- what is the problem
10:19:42 19 in telling my client who the investors in his deal
10:19:48 20 is?

10:19:48 21 **A I am not assessing harm.**

10:19:52 22 Q You're just refusing to even explain what
10:19:55 23 the reason for the confidentiality is.

10:19:57 24 **A I don't have to give a reason.**

10:20:00 25 Q Well, actually, you're under oath and

10:20:01 1 you're sworn to tell the truth.

10:20:02 2 **A And I am telling the truth.**

10:20:02 3 Q Well, then, what --

10:20:04 4 **A We don't disclose information about our**

10:20:07 5 **investors. That is the truth.**

10:20:09 6 Q I believe that. But my question is why.

10:20:11 7 **A I'm not answering the question again.**

10:20:13 8 Q You never answered the question.

10:20:15 9 **A I did.**

10:20:15 10 MR. DOLAN: Okay.

10:20:16 11 BY MR. MILLER:

10:20:16 12 Q You answered the question why --

10:20:16 13 MR. DOLAN: Hold on.

10:20:16 14 BY MR. MILLER:

10:20:17 15 Q -- you're not telling me?

10:20:20 16 Your answer of why you're not telling me is

10:20:21 17 because you're not telling me. That is not an

10:20:22 18 answer. That is circular --

10:20:22 19 MR. DOLAN: Okay.

10:20:23 20 MR. MILLER: -- ma'am.

10:20:24 21 MR. DOLAN: We really have to do

10:20:26 22 question/answer and not telling the witness you

10:20:29 23 don't like the way she is answering questions and

10:20:30 24 telling her she is wrong. That is argumentative and

10:20:31 25 it is not question and answer. It is just not

10:20:33 1 appropriate for a deposition. You don't like that.

10:20:35 2 I understand. You have recourse. You can take it,

10:20:37 3 and if the judge disagrees with us, then so be it.

10:20:40 4 MR. MILLER: I'm just trying to understand
10:20:42 5 the reason for the confidentiality.

10:20:44 6 Q What is the reason for the confidentiality?

10:20:49 7 A I am not -- we keep our investors

10:20:58 8 confidential. We are a private company. That is

10:21:02 9 the answer to your question. That is it.

10:21:09 10 Q And has Can IV Packard Square LLC, or any
10:21:15 11 other Canyon entity, sent any correspondence to any
10:21:19 12 of the investors on this loan?

10:21:21 13 A We update our investors.

10:21:24 14 Q How often do you do that?

10:21:26 15 A Typically quarterly and then as needed.

10:21:30 16 Q And how many investor letters have been
10:21:32 17 sent on this deal?

10:21:34 18 A I don't know.

10:21:35 19 Q Well, if it is quarterly, it is at least 15
10:21:40 20 or 16 that you would --

10:21:41 21 A You said "how many," and that is a very
10:21:43 22 specific request. And I cannot tell you the number.

10:21:47 23 Q Okay. Approximately how many do you
10:21:49 24 believe have been sent?

10:21:50 25 A I don't know.

10:21:51 1 Q What types of information is provided in
10:21:57 2 that correspondence?

10:22:01 3 A The information that we share with our
10:22:09 4 investors is also confidential.

10:22:12 5 Q Ma'am, I didn't ask you about the
10:22:13 6 information.

10:22:13 7 A You said what type of information.

10:22:14 8 Q I asked -- that is exactly right. I asked
10:22:16 9 you what type of information. I didn't ask you --

10:22:21 10 MR. DOLAN: Confidential information.

10:22:21 11 Please don't lecture the witness. Why do
10:22:22 12 you feel the need to do that every time you get an
10:22:24 13 answer you don't like?

10:22:24 14 MR. MILLER: I'm asking the question. My
10:22:26 15 question is what type of information. I didn't
10:22:26 16 ask --

10:22:29 17 MR. DOLAN: Which is confidential
10:22:31 18 information.

10:22:31 19 MR. MILLER: Well --

10:22:32 20 MR. DOLAN: That is an answer.

10:22:34 21 MR. MILLER: State secrets, Mr. Dolan?

10:22:36 22 MR. DOLAN: I don't know.

10:22:37 23 MR. MILLER: That is not an answer, then,
10:22:39 24 because you don't even know what she meant by it.

10:22:41 25 MR. DOLAN: Well, I know confidential

10:22:42 1 information is an answer. You don't like the
10:22:44 2 answer, but it is a -- it is actually a really good
10:22:46 3 answer.

10:22:46 4 MR. MILLER: Oh, if you're hiding
10:22:47 5 something, of course it is.

10:22:48 6 MR. DOLAN: Every -- everything is hiding
10:22:50 7 to you.

10:22:51 8 Okay. Keep going.

10:22:52 9 BY MR. MILLER:

10:22:53 10 Q Ms. Stamolis, your -- the type of
10:22:58 11 information you sent to your investors is something
10:23:02 12 you feel that I should not be able to even ask
10:23:06 13 about?

10:23:06 14 **A I don't have feelings.**

10:23:08 15 Q I'm learning that as we go through this
10:23:10 16 day.

10:23:10 17 MR. DOLAN: I really think that the
10:23:13 18 personal attacks are inappropriate, and this is
10:23:15 19 going to be a very short deposition if that
10:23:18 20 continues.

10:23:18 21 MR. MILLER: You've already attacked me and
10:23:21 22 my client and --

10:23:21 23 MR. DOLAN: Lawyers --

10:23:22 24 MR. MILLER: -- and the video recorder.

10:23:23 25 MR. DOLAN: I haven't said one word to your

10:23:25 1 client.

10:23:25 2 MR. MILLER: You've attacked my client. By

10:23:27 3 looking at me, you attacked my client. You

10:23:27 4 denigrate --

10:23:30 5 MR. DOLAN: How is that --

10:23:30 6 MR. MILLER: Okay.

10:23:31 7 MR. DOLAN: How is that attacking your

10:23:31 8 client?

10:23:32 9 MR. MILLER: Okay.

10:23:32 10 MR. DOLAN: You and I can have all the

10:23:34 11 fights we want, and that is fine.

10:23:34 12 MR. MILLER: Can you just stop talking?

10:23:36 13 All you're doing is wasting time.

10:23:38 14 MR. DOLAN: Well, I -- I'd argue that

10:23:39 15 you're wasting time by lecturing my witness and

10:23:43 16 treating her in a fashion that is inappropriate in a

10:23:44 17 deposition.

10:23:44 18 Ask her questions. If you get answers you

10:23:47 19 don't like, I don't know what to tell you.

10:23:49 20 MR. MILLER: Are you done?

10:23:51 21 Q Have you provided the investor letters to

10:23:53 22 your attorney in discovery?

10:23:55 23 **A I did not provide the discovery.**

10:23:58 24 Q Who provided the discovery?

10:23:59 25 **A Our legal counsel.**

10:24:04 1 Q Did you oversee what documents were
10:24:05 2 provided and what documents were not provided?

10:24:08 3 **A I did not.**

10:24:09 4 Q So if there was a decision made not to
10:24:11 5 produce the entity information sent to your
10:24:15 6 investors, you don't know who made that decision?

10:24:17 7 **A I don't know of any decisions being made in
10:24:19 8 that regard.**

10:24:20 9 Q Well, is there an explanation as to why I
10:24:22 10 don't have copies of the investor correspondence?

10:24:26 11 **A Our investor correspondence is
10:24:30 12 confidential.**

10:24:31 13 Q So somebody made a decision not to produce
10:24:32 14 it?

10:24:32 15 **A You asked me who.**

10:24:32 16 Q Yeah.

10:24:34 17 **A I don't know who that is.**

10:24:35 18 Q Okay. Fine.

10:24:37 19 Do you have an explanation as to why we
10:24:40 20 don't have copies of the quarterly internal
10:24:43 21 valuations that Canyon has produced on this
10:24:47 22 agreement -- on this -- on this project?

10:24:48 23 **A Our internal work product is our product.
10:24:51 24 I have not made any decisions in regard to
10:24:56 25 production, as I said already.**

10:24:57 1 Q Okay. So it would be counsel that would
10:24:59 2 have made that determination, as far as you know?
10:25:01 3 **A As far as I know.**
10:25:01 4 Q Okay. Is your compensation based at all by
10:25:05 5 how much Canyon earns on the deals you oversee?
10:25:09 6 **A I am not aware that it is part of this to**
10:25:13 7 **discuss my compensation.**
10:25:14 8 Q I didn't ask about your compensation. I
10:25:16 9 asked about --
10:25:16 10 **A You did. You asked about the structure of**
10:25:19 11 **my compensation.**
10:25:20 12 Q That -- that I did ask, but I didn't ask
10:25:23 13 how much. I didn't ask what percent. I just asked
10:25:23 14 if you are compensated based on how well or how much
10:25:29 15 money Canyon earns on the projects you oversee.
10:25:31 16 **A I don't know what you mean by "earns."**
10:25:34 17 Q Well, presumably, Canyon is in a business
10:25:37 18 to make money.
10:25:38 19 **A Uh-huh.**
10:25:38 20 Q So assuming that, if there is money that
10:25:42 21 comes back as return on investment or profit to
10:25:45 22 Canyon based on the deals that are part of your
10:25:50 23 division, are you compensated based on how
10:25:52 24 successful those deals turn out?
10:25:55 25 **A Unless I'm instructed to answer this, I'm**

10:25:58 1 **not prepared to discuss the compensation of myself**
10:26:01 2 **or our group, which is a part of a private company.**

10:26:04 3 Q Ma'am, I'm not asking you -- ma'am, my
10:26:07 4 question is simply if you receive a bonus or
10:26:11 5 compensation or anything based upon -- on how well
10:26:16 6 your outcomes are -- I mean, that is common. I
10:26:21 7 mean, I -- I do that. Probably Mr. Dolan does that.
10:26:25 8 I mean, what -- what is -- what -- why is that --
10:26:26 9 why is that a difficult question to answer?

10:26:27 10 A I didn't say it was difficult. I said I
10:26:29 11 wasn't answering it.

10:26:30 12 Q Why not?

10:26:31 13 A Because it is private.

10:26:33 14 Q This is a court of law. You filed a
10:26:36 15 lawsuit against my client knowing that there would
10:26:40 16 be possibilities that you would have to answer
10:26:42 17 questions.

10:26:42 18 A What does my compensation have to do with
10:26:44 19 your client defaulting on his loan?

10:26:46 20 Q Because you might have had an incentive to
10:26:48 21 have that happen. So I would like to know the
10:26:51 22 answer to my question.

10:26:53 23 MR. DOLAN: If the witness doesn't want to
10:26:57 24 answer, the witness doesn't have to answer.

10:26:59 25 MR. MILLER: Can you cite a court rule that

10:27:02 1 allows for that?

10:27:02 2 MR. DOLAN: No. I mean she can literally
10:27:03 3 not answer. What do you -- what do you want me to
10:27:07 4 say?

10:27:08 5 MR. MILLER: It -- yeah.

10:27:13 6 Q Let's just talk about the -- the roles that
10:27:18 7 people play for Can IV Packard Square just so we're
10:27:20 8 clear on this.

10:27:21 9 What is your role as it pertains to
10:27:25 10 Can IV Packard Square LLC? What -- what is your
10:27:27 11 day-to-day, everyday role as it relates to that
10:27:30 12 entity?

10:27:31 13 **A In my role I monitor our investments,**
10:27:34 14 **including this one, and interact with the team to**
10:27:38 15 **determine status and interact with counsel when**
10:27:43 16 **needed in order to understand the status of our**
10:27:45 17 **activities as it relates to any particular**
10:27:47 18 **investment.**

10:27:47 19 Q On a day-to-day basis, do you have a role
10:27:50 20 as it pertains to Can IV Packard Square?

10:27:52 21 **A I don't understand what you mean by**
10:27:54 22 **"day-to-day."**

10:27:55 23 Q Every day of your workday -- of your
10:27:58 24 workweek, do you have some involvement in the
10:28:05 25 Can IV Packard Square project on a daily basis?

10:28:09 1 **A** **I have updates on a regular basis. It is**
10:28:13 2 **not daily.**

10:28:14 3 **Q** **So for Gerald Goldman -- what is his role**
10:28:18 4 **as it pertains to Can IV Packard Square?**

10:28:20 5 **A** **Gerald is the senior asset manager who is**
10:28:24 6 **assigned to this investment.**

10:28:26 7 **Q** **And what does that mean on -- what does he**
10:28:30 8 **do in that -- in that capacity?**

10:28:32 9 **A** **He oversees the investment and the**
10:28:34 10 **activities related to the investment.**

10:28:36 11 **Q** **And does he have a day-to-day involvement**
10:28:39 12 **in this project, or is this something that he**
10:28:41 13 **receives notifications about from time to time?**

10:28:43 14 **A** **You'll have to ask Gerald.**

10:28:46 15 **Q** **Well, he reports to you. So what is your**
10:28:48 16 **understanding of his role in that regard?**

10:28:50 17 **A** **His role is to monitor the investments and**
10:28:52 18 **to report any activities that need to be reported to**
10:28:56 19 **me as needed.**

10:28:59 20 **Q** **What is John Plaga's role as it pertains to**
10:29:03 21 **Can IV Packard Square?**

10:29:04 22 **A** **I don't know what it is with respect to**
10:29:09 23 **Can IV Packard Square, but John Plaga is the CFO for**
10:29:13 24 **Canyon Partners.**

10:29:15 25 **Q** **So in that role, can you explain to me what**

10:29:17 1 it is that he does as it pertains to an individual
10:29:22 2 deal such as Packard Square?
10:29:23 3 **A No.**
10:29:24 4 Q Do you know why he made a site visit to the
10:29:28 5 property?
10:29:29 6 **A I think he was in Michigan.**
10:29:31 7 Q On other business?
10:29:33 8 **A It might have been personal.**
10:29:34 9 Q Might have been personal.
10:29:37 10 What was Marti Page's role as it pertains
10:29:42 11 to Can IV Packard Square?
10:29:44 12 **A Marti was the originator of the**
10:29:48 13 **Can IV Packard Square loan.**
10:29:50 14 Q Other than that, no other role?
10:29:54 15 **A That was her role.**
10:29:57 16 Q Okay. Once the agreement was signed that
10:30:00 17 she originated, did her role then end?
10:30:04 18 **A Her role would change.**
10:30:07 19 Q What would it change to?
10:30:08 20 **A Not being the primary coverage for that**
10:30:13 21 **investment.**
10:30:14 22 Q Okay. Well, what -- what would she do,
10:30:19 23 then, as not being the primary coverage for the
10:30:23 24 investment? What would she -- what would her role
10:30:24 25 be at all? I don't understand your answer.

10:30:27 1 **A** We collaborate as a team, and so we would
10:30:33 2 ordinarily involve originators with updates. We
10:30:39 3 have asset management meetings where it is all hands
10:30:42 4 and people get updates. So she would be aware
10:30:44 5 through those mechanisms of the ongoing activities
10:30:46 6 of the loan she originated.

10:30:48 7 **Q** Would she be expected to communicate with
10:30:51 8 the borrower?

10:30:53 9 **A** She may or may not be. It depends on the
10:30:56 10 circumstance.

10:30:57 11 **Q** In what circumstance would she -- would it
10:31:01 12 have been her role to communicate with the borrower?

10:31:04 13 **A** You asked the question. I don't know what
10:31:05 14 circumstance you were thinking about.

10:31:07 15 **Q** Well, you just said that she would
10:31:11 16 testify -- you just testified that she would
10:31:13 17 communicate in some regard after the loan was closed
10:31:16 18 even though her job was origination. So I'm trying
10:31:19 19 to understand in what scenario would -- would that
10:31:21 20 normally happen.

10:31:22 21 **A** I said that she may, and I said it would be
10:31:25 22 in the capacity internally of understanding the
10:31:27 23 day-to-day activities on the larger updates that
10:31:30 24 were done in our asset management updates that
10:31:34 25 included all hands. And whether or not Ms. Page

10:31:37 1 interacted directly with the client, I am not aware
10:31:40 2 of how she would make that determination.

10:31:44 3 Q What is Jonathan Roth's -- or what was
10:31:48 4 his -- what was Jonathan Roth's role as it pertained
10:31:52 5 to Can IV Packard Square?

10:31:53 6 A Jonathan Roth was leading the real estate
10:31:58 7 practice at that point in time and would have been
10:32:00 8 involved in overseeing the origination of the
10:32:04 9 Can IV Packard Square loan, as well as understanding
10:32:08 10 the post-closing activities.

10:32:11 11 Q What would Joshua Freedman's role be as it
10:32:16 12 pertains to Can IV Packard Square?

10:32:18 13 A Joshua Freedman's role relates to his
10:32:23 14 investment committee position, as well as being the
10:32:25 15 cofounder and the co-CEO of the entire Canyon
10:32:31 16 Partners enterprise.

10:32:32 17 Q So is it different than his role as a
10:32:35 18 member of the investment committee or the same?

10:32:37 19 A Please clarify your question.

10:32:39 20 Q Well, you -- you testified that he was on
10:32:41 21 the investment committee. And based on your answer
10:32:43 22 that you just provided, I'm asking if there is a
10:32:46 23 difference -- if there is a different role that he
10:32:49 24 plays other than his role on the investment
10:32:52 25 committee, which you described as the body that made

10:32:55 1 those decisions.

10:32:55 2 **A He is also the leader of our group. So he**
10:32:58 3 **has management oversight of the real estate group in**
10:33:03 4 **its entirety. So the interaction would occur**
10:33:06 5 **through that mechanism.**

10:33:07 6 Q I see. I was confused. I thought you and
10:33:10 7 Ms. Potts were the leaders of that group. I
10:33:10 8 apologize. Thank you.

10:33:15 9 So Mitchell Julis -- what is his role with
10:33:23 10 Can IV Packard Square?

10:33:24 11 **A Mitch Julis is the cofounder and co-CEO of**
10:33:30 12 **Canyon Partners, which is the umbrella for all of**
10:33:33 13 **our investments, including Can IV.**

10:33:38 14 Q Okay. So is his involvement different than
10:33:42 15 that of Mr. Freedman vis-a-vis the real estate
10:33:45 16 practice group?

10:33:46 17 **A No.**

10:33:47 18 Q It is the same?

10:33:47 19 **A It would be the same.**

10:33:48 20 Q I -- okay. Just checking.

10:33:50 21 Jonathan Kaplan -- what is his role as it
10:33:54 22 pertains to Can IV Packard Square?

10:33:56 23 **A As it pertains to Can IV Packard Square,**
10:33:59 24 **there isn't a specific role. He is general counsel**
10:34:02 25 **for Canyon Partners.**

10:34:03 1 Q And Marcus Neupert, you mentioned, was on
10:34:06 2 the team. What is his role as it pertains to
10:34:08 3 Can IV Packard Square?

10:34:08 4 **A He is chief real estate counsel for our**
10:34:13 5 **real estate practice.**

10:34:13 6 Q So his -- his involvement goes into
10:34:16 7 other -- into other projects, not just this one?

10:34:19 8 **A There is nobody who is just assigned to**
10:34:21 9 **this project in its entirety.**

10:34:24 10 Q Very good. Thank you.

10:34:30 11 Do you know why Jonathan Roth left Canyon?

10:34:34 12 **A I don't.**

10:34:35 13 Q Do you know why Marti Page left Canyon?

10:34:38 14 **A No.**

10:34:39 15 Q Have you communicated with either of them
10:34:40 16 in the last six months?

10:34:42 17 **A No.**

10:34:43 18 Q Are you aware of the Broomfield Park
10:34:46 19 project?

10:34:47 20 **A I am.**

10:34:51 21 Q What do you know about it as it pertains to
10:34:54 22 my client?

10:34:55 23 **A Very little.**

10:34:57 24 Q Okay. Were you aware of the fact that the
10:35:02 25 construction of the project commenced and ceased

10:35:08 1 after my client sold the property?

10:35:10 2 **A I was not specifically aware of anything**
10:35:13 3 **other than what was in one news article that I read.**

10:35:17 4 Q What did you -- what was in the one news
10:35:19 5 article that you read?

10:35:20 6 **A That the project had been stalled.**

10:35:23 7 Q Okay. But you didn't know what my client's
10:35:25 8 involvement in the project was at that time?

10:35:27 9 **A I did not have a reason to know that.**

10:35:42 10 MR. MILLER: Can you mark this as 48,
10:35:44 11 please.

10:35:44 12 (Exhibit 48 was marked for
10:36:07 13 identification.)

10:36:07 14 BY MR. MILLER:

10:36:07 15 Q Ma'am, I'm going to show you what has been
10:36:09 16 marked as Exhibit 48. Would you take a look at
10:36:13 17 that, please.

10:39:53 18 MR. MILLER: What was the question?

10:39:57 19 (Record read.)

10:39:57 20 BY MR. MILLER:

10:39:57 21 Q Ah, okay. Have you had an opportunity to
10:39:58 22 review Exhibit 48?

10:40:00 23 **A I did.**

10:40:00 24 Q Do you know what it is?

10:40:01 25 **A It is an investment committee memo.**

10:40:05 1 Q And who would have -- who -- not who would
10:40:05 2 have.

10:40:07 3 Who created this document?

10:40:08 4 **A It would have been the responsibility of
10:40:10 5 the originator.**

10:40:13 6 Q Does that person have a name?

10:40:15 7 **A Marti Page.**

10:40:16 8 Q Okay. And what was the purpose of this
10:40:19 9 document?

10:40:20 10 **A This document overviews the opportunity and
10:40:26 11 is presented to the investment committee.**

10:40:28 12 Q Does this same document get submitted to
10:40:32 13 potential investors?

10:40:39 14 **A We -- if it -- if it is requested, we would
10:40:41 15 provide it to our investors, but typically no.**

10:40:46 16 Q So this is strictly an internal Canyon
10:40:51 17 document?

10:40:51 18 **A This is an internal Canyon document.**

10:40:55 19 Q All right. Do you know what the NOI
10:40:57 20 reference in this document for the project was?

10:40:58 21 **A Are you asking me to read it?**

10:41:00 22 Q Yeah, to point out to me if you can.

10:41:28 23 **A In what year would you like to have me read
10:41:32 24 this?**

10:41:32 25 Q I just want to make sure -- you don't have

10:41:33 1 to read it. I just want you to point out -- is
10:41:34 2 it -- is it what is listed on the top of page 8?

10:41:37 3 **A The chart on the top of page 8 does**
10:41:40 4 **represent NOI for the first four years of the**
10:41:43 5 **project.**

10:41:43 6 Q Okay. And I'd like to direct your
10:41:45 7 attention to page 18, please. At the bottom and
10:41:57 8 going on to page 19, there is a description of the
10:42:00 9 Bloomfield Park project. Would you just take a
10:42:05 10 moment and read that to yourself.

10:42:22 11 Have you had the opportunity to read the
10:42:24 12 summary of Bloomfield Park in this investment
10:42:27 13 summary?

10:42:28 14 **A I have.**

10:42:28 15 Q Would you agree with me that pursuant to
10:42:31 16 the language on page 19, that it says, quote, "A
10:42:35 17 year before construction commenced in 2007, the
10:42:38 18 property was sold to Coventry Real Estate Advisors
10:42:42 19 and Developers Diversified Realty for \$68 million in
10:42:46 20 August of 2006"?

10:42:46 21 **A That is what it says.**

10:42:48 22 Q So would you also, then, agree that Canyon
10:42:51 23 knew and has known since 2014 that my client had
10:42:55 24 sold the property a year before construction
10:42:57 25 commenced?

10:42:58 1 **A** **What Canyon was informed of is what you**
10:43:01 2 **read, and they would be aware of it as of the**
10:43:05 3 **investment committee date in 2014.**

10:43:06 4 Q Okay. So any subsequent statement that was
10:43:12 5 not consistent with this statement would have been
10:43:19 6 false?

10:43:20 7 MR. DOLAN: Object to the form of the
10:43:21 8 question.

10:43:21 9 MR. MILLER: All right. I'll ask it a
10:43:22 10 different way.

10:43:23 11 Q If someone from Canyon later said that
10:43:30 12 Canyon believed that my client commenced the
10:43:33 13 construction, that would not have been a true
10:43:37 14 statement --

10:43:37 15 MR. DOLAN: Still object to the form of the
10:43:39 16 question.

10:43:39 17 BY MR. MILLER:

10:43:39 18 Q -- based on the fact that Canyon knew that,
10:43:41 19 in fact, that is not what occurred?

10:43:46 20 **A** **I don't know what other people know.**

10:43:50 21 Q Canyon -- just so we're clear, Canyon knew
10:43:52 22 when it entered into this loan about the history of
10:43:54 23 the Bloomfield Park project?

10:43:57 24 **A** **Canyon knew what has been provided in these**
10:44:01 25 **two very short paragraphs about the Bloomfield Park**

10:44:05 1 **project.**

10:44:06 2 Q Would it be a surprise if Canyon would have
10:44:10 3 put misinformation in their own investment summary?

10:44:15 4 **A It would be unfortunate, but humans prepare**
10:44:20 5 **these; so sometimes there are errors.**

10:44:22 6 Q So as we sit here today, are -- do you have
10:44:25 7 an opinion as to whether or not this is a true
10:44:27 8 statement?

10:44:28 9 **A I don't have an opinion.**

10:44:30 10 Q Wouldn't -- didn't Canyon perform due
10:44:34 11 diligence prior to entering into this loan with my
10:44:36 12 client?

10:44:37 13 **A I did not perform that due diligence; so I**
10:44:40 14 **personally cannot state an answer to that question.**

10:44:42 15 Q Is -- does Canyon often make mistakes such
10:44:47 16 as suggesting that construction was -- that a
10:44:50 17 property was sold before construction commenced
10:44:53 18 when, in fact -- if, in fact, the property had not
10:44:56 19 been sold before construction had commenced?

10:45:00 20 **A Can you rephrase your question.**

10:45:02 21 Q Sure.

10:45:04 22 Is it -- is it consistent for Canyon to
10:45:08 23 provide incorrect information relative to a material
10:45:11 24 fact discovered in due diligence in an investment
10:45:16 25 summary form like this?

10:45:17 1 **A** **As I said, it is not customary for**
10:45:22 2 **incorrect information to be included in our**
10:45:25 3 **investment summaries.**

10:45:26 4 Q Would it be fair to say that the decision
10:45:28 5 to provide the loan was based on the statements that
10:45:32 6 were set forth in this exhibit?

10:45:34 7 **A** **In which exhibit?**

10:45:37 8 Q The only exhibit we're talking about,
10:45:39 9 ma'am. Exhibit 48.

10:45:41 10 **A** **This is one component of what is performed**
10:45:46 11 **by the team and it is an assimilation of diligence**
10:45:50 12 **and information that is garnered by the originator**
10:45:53 13 **and the team members that work on it. This is what**
10:45:57 14 **is presented to the investment committee.**

10:45:59 15 Q And so that committee would have reviewed
10:46:01 16 Exhibit 48 in determining whether to provide the
10:46:04 17 loan?

10:46:04 18 **A** **As a part of it, yes.**

10:46:06 19 Q What else would be a part of it?

10:46:07 20 **A** **The presentation.**

10:46:09 21 Q An oral presentation?

10:46:10 22 **A** **Yes.**

10:46:11 23 Q Okay. Does the oral presentation usually
10:46:13 24 differ from the written presentation significantly?

10:46:16 25 **A** **It provides additional information and**

10:46:19 1 **details.**

10:46:20 2 Q Do you remember any of those additional
10:46:21 3 information or details from that meeting?

10:46:24 4 **A I don't.**

10:46:26 5 Q I'm going to show you, ma'am, what has been
10:46:37 6 marked as Exhibit 5.

10:46:37 7 Here, I'll take that back and give it to
10:46:38 8 the reporter?

10:46:38 9 (Exhibit 5 was marked for
10:46:38 10 identification.)

10:46:38 11 BY MR. MILLER:

10:46:39 12 Q Would you take a look at that, please.

10:47:24 13 **A I've read it.**

10:47:26 14 Q Okay. Can you tell me what you meant in
10:47:29 15 your e-mail to Mr. Goldman of March 14, 2016, that
10:47:33 16 says that you were very glad you were able -- I
10:47:36 17 don't care so much about complete the visit -- but
10:47:39 18 to "further build the relationship with Craig"?

10:47:43 19 **A Because this was early on and Marti was the**
10:47:46 20 **relationship manager prior to closing, Gerald had**
10:47:52 21 **not had the opportunity to spend time in Ann Arbor**
10:47:54 22 **or with Craig. That is all it means.**

10:47:56 23 Q You know this wasn't early on, though;
10:47:59 24 right?

10:47:59 25 **A This is -- I mean, early on in the**

10:48:02 1 **development. Not a lot had been accomplished by**
10:48:04 2 **this point.**

10:48:06 3 Q How much had been -- how much had been --
10:48:11 4 how much had been developed by this point?

10:48:13 5 **A The project had come out of the ground and**
10:48:15 6 **it was partially complete.**

10:48:19 7 Q In the e-mail, it says, "Almost all of the
10:48:21 8 windows are in and the framing is nearly complete.
10:48:25 9 The work is progressing on scale and on budget."

10:48:27 10 **A I think it says that Craig reports this.**

10:48:30 11 Q No, that is not what it says. Read it
10:48:32 12 again, if you would.

10:48:33 13 "We walked the asset and also toured
10:48:36 14 the market. The work is progressing
10:48:38 15 on schedule and on budget."

10:48:40 16 **A Yes.**

10:48:41 17 Q "Almost all of the windows are in and
10:48:43 18 the framing is nearly complete.

10:48:45 19 Craig reports that the milestone to
10:48:47 20 complete framing will be met."

10:48:50 21 So there is -- there is -- there is two
10:48:50 22 different things in Mr. Goldman's e-mail. There is
10:48:53 23 what he saw and then what my client reported. So it
10:48:58 24 is still your position that things were behind at
10:49:02 25 that time?

10:49:02 1 **A Did I state a position?**

10:49:04 2 MR. DOLAN: Yeah. Object to the form of

10:49:06 3 the question. She never testified --

10:49:06 4 BY MR. MILLER:

10:49:07 5 Q I thought you just said -- I thought you

10:49:10 6 just said that at this point that -- that things

10:49:13 7 were behind and not much had been done. No?

10:49:15 8 **A No. I said -- I did not say that. You**

10:49:17 9 **could ask her to read it back.**

10:49:19 10 Q Okay. I'm not going to ask her to read it

10:49:22 11 back. This -- the answer will speak for itself.

10:49:24 12 But my question is: What was the reason to

10:49:27 13 build the relationship with Craig?

10:49:30 14 **A We like having nice relationships with our**

10:49:35 15 **clients that are productive.**

10:49:38 16 Q Let's look at Exhibit 14, shall we?

10:49:49 17 (Exhibit 14 was marked for

10:49:49 18 identification.)

10:49:49 19 BY MR. MILLER:

10:49:50 20 Q Can you tell me if you've seen that before.

10:50:43 21 **A I've read the exhibit.**

10:50:44 22 Q Have you familiarized yourself with it?

10:50:46 23 **A I have.**

10:50:48 24 Q Are you -- do you recognize this as being

10:50:50 25 e-mails with which you were involved?

10:50:52 1 **A Yes.**

10:50:52 2 Q Can you tell me in the very top e-mail that
10:50:55 3 is dated March 1, 2016, at 4:00 a.m. what SAM stands
10:51:03 4 for?

10:51:04 5 **A Senior asset manager.**

10:51:06 6 Q So can you tell me what the policies set in
10:51:12 7 fourth quarter for senior asset managers regarding
10:51:16 8 site visits was?

10:51:18 9 **A We established a minimum site visit policy.**
10:51:23 10 **I can't recall at this point if it was once or twice**
10:51:26 11 **a year, but that was the point of that statement.**

10:51:28 12 Q Has the policy changed since the, I guess,
10:51:35 13 fourth quarter of 2015 in position of this policy?

10:51:38 14 **A We review all of our policies regularly.**
10:51:42 15 **And it was 2016 that we're referring to this, and**
10:51:46 16 **fourth quarter 2015 was the reference in the e-mail.**

10:51:49 17 Q Right. That is what I said. I asked you
10:51:52 18 if there had been a change in the policy since
10:51:55 19 fourth quarter 2015 when, I'm assuming, the initial
10:51:59 20 policy went into place.

10:52:01 21 **A I can't recall whether or not there was any**
10:52:03 22 **specific changes to this policy over the last, you**
10:52:06 23 **know, two and a half years.**

10:52:08 24 Q Okay. Are you aware of whether there was a
10:52:11 25 construction consultant assigned to the Packard

10:52:13 1 Square project from its commencement?

10:52:13 2 **A Yes.**

10:52:14 3 Q Do you know who that construction
10:52:16 4 consultant was?

10:52:17 5 **A Newbanks.**

10:52:19 6 Q And was there a point in time at which they
10:52:23 7 were removed as construction consultant from the
10:52:26 8 project?

10:52:27 9 **A They were removed and replaced.**

10:52:29 10 Q Do you know why they were removed?

10:52:31 11 **A At that point in time, the milestones were
10:52:37 12 not being met, there were defaults under the loan,
10:52:41 13 and we were in need of additional expertise.**

10:52:49 14 Q Newbanks was not -- did not have the
10:52:51 15 expertise to be the construction consultant any
10:52:55 16 longer?

10:52:56 17 **A We determined at that point in time we
10:52:58 18 needed somebody with more expertise.**

10:53:02 19 Q What type of expertise does Newbanks have?

10:53:09 20 **A They are construction oversight and often
10:53:11 21 review project status and draws. And at this point
10:53:15 22 in time, we made the determination to make a change.**

10:53:19 23 Q Because they didn't have enough expertise?

10:53:24 24 **A Because we preferred somebody with more
10:53:27 25 expertise in the -- the area we were entering**

10:53:30 1 **because the project was not being delivered on time**
10:53:34 2 **and on budget.**

10:53:37 3 Q I see.

10:53:38 4 Did Canyon terminate Newbanks on all the
10:53:42 5 projects in which Newbanks was being used?

10:53:45 6 **A I don't recall, but I don't believe so.**

10:53:49 7 Q So it is just on this particular project?

10:53:52 8 **A I don't know if they have been terminated**
10:53:56 9 **on any other projects.**

10:53:57 10 Q Who was hired to replace them?

10:54:01 11 **A Hourglass.**

10:54:03 12 Q And who is that -- do you know who the
10:54:05 13 person who runs that company is?

10:54:06 14 **A Tina Van Curen.**

10:54:08 15 Q And what was her expertise that was more
10:54:14 16 significant than that of Newbanks?

10:54:16 17 **A We find Tina to have an in-depth knowledge**
10:54:22 18 **of the architecture and the engineering aspects, as**
10:54:25 19 **well as sequencing and, you know, assessing project**
10:54:28 20 **completion and being able to do more in-depth**
10:54:33 21 **project visits.**

10:54:34 22 Q Is there a reason why Ms. Van Curen isn't
10:54:38 23 the construction consultant on the majority of the
10:54:42 24 Canyon projects?

10:54:43 25 **A We select our third-party vendors based**

10:54:46 1 upon geography and need.

10:54:50 2 Q Are you aware of the fact that

10:54:52 3 Ms. Van Curen got her start in this business working
10:54:54 4 for Newbanks?

10:54:56 5 A I am.

10:54:58 6 Q So how does that go with the idea that they
10:55:00 7 had less experience than she if she got her
10:55:04 8 experience from them?

10:55:05 9 A I don't know that the entirety of her
10:55:09 10 experience was gotten from them.

10:55:11 11 Q Do you know her experience background?

10:55:12 12 A I am familiar with her experience.

10:55:15 13 Q How are you familiar with her experience?

10:55:18 14 A I've worked with her on other projects.

10:55:20 15 Q On what other projects have you worked with
10:55:23 16 her?

10:55:23 17 A I can't name off the top of my head the
10:55:30 18 other projects that she has worked on, but there
10:55:33 19 were projects in New York City that she has worked
10:55:36 20 on for us.

10:55:38 21 Q Anywhere else?

10:55:39 22 A She predominantly focuses in the northeast.

10:55:47 23 Q And to whom does Tina report?

10:55:51 24 A In her current --

10:55:52 25 Q On behalf of --

10:55:52 1 A -- role?

10:55:55 2 Q -- Packard Square, yeah.

10:55:55 3 A She reports to the asset management team
10:55:59 4 for the activities related to progress and draw
10:56:02 5 review.

10:56:05 6 Q And has that been her role since she joined
10:56:09 7 the Packard Square project?

10:56:12 8 A She has been responsible for that scope of
10:56:16 9 work.

10:56:17 10 Q Who is Janine Getler?

10:56:22 11 A Janine Getler is a legal consultant.

10:56:26 12 Q What does -- why was she hired at the same
10:56:28 13 time as Ms. Van Curen on this project?

10:56:34 14 A She has expertise in construction.

10:56:35 15 Q How is her expertise in construction
10:56:37 16 different than Ms. Van Curen's expertise in
10:56:42 17 construction?

10:56:42 18 A Project management for construction is
10:56:45 19 different than just the construction management
10:56:47 20 component. And there were other elements of this
10:56:50 21 project that needed to, you know, be evaluated in
10:56:53 22 order for us to assess the collateral for our loan.

10:56:57 23 Q So can you describe for me what kind of
10:57:01 24 information Ms. Getler provides to your team?

10:57:08 25 A She is -- she is under our legal counsel.

10:57:12 1 **So she provides information to our legal team.**

10:57:16 2 Q She doesn't ever provide information
10:57:18 3 directly to you?

10:57:20 4 **A She may provide information directly to us**
10:57:25 5 **on updates.**

10:57:26 6 Q What -- what legal services does she
10:57:28 7 provide?

10:57:29 8 **A She provides legal review and strategy as**
10:57:35 9 **it relates to the construction of the project.**

10:57:38 10 Q What -- what did you ask her to do when you
10:57:40 11 hired her?

10:57:44 12 **A To provide oversight for the legal review**
10:57:50 13 **and strategy for the construction components of this**
10:57:54 14 **project in short.**

10:57:57 15 Q Let's -- let's look at Exhibit 1.

10:58:11 16 (Exhibit 1 was marked for
10:58:13 17 identification.)

10:58:13 18 BY MR. MILLER:

10:58:46 19 Q Ma'am, you're not copied on Exhibit 1; so
10:58:49 20 I'm not sure if you've seen this. And I'm not

10:58:52 21 really asking you if you have. My question to you

10:58:54 22 is based on Kevin's discussion with Ms. Van Curen

10:58:59 23 about the status of your amended engagement letters.

10:59:03 24 Do you -- do you know what the terms of the
10:59:04 25 engagement letters for Ms. Van Curen and Ms. Getler

10:59:09 1 were on September 26, 2016?

10:59:12 2 **A I did not handle that.**

10:59:15 3 Q Who would have negotiated those terms?

10:59:21 4 **A Our -- our counsel.**

10:59:23 5 Q Without oversight from you or anybody else
10:59:25 6 on your team?

10:59:26 7 **A It would normally be overseen by the asset
10:59:36 8 management team assigned by me, and that would have
10:59:39 9 been, you know, Gerald and Kevin.**

10:59:42 10 Q But not you?

10:59:42 11 **A Not me. And that would have also been
10:59:45 12 coordinated with Marcus.**

10:59:47 13 Q Sure.

10:59:57 14 Let's look at Exhibit 2.

10:59:58 15 (Exhibit 2 was marked for
10:59:59 16 identification.)

10:59:59 17 BY MR. MILLER:

11:00:02 18 Q Have you seen that document before?

11:00:23 19 **A Yes.**

11:00:23 20 Q Are you familiar with this e-mail string?

11:00:26 21 **A I am.**

11:00:26 22 Q And you are the author of two of the three
11:00:30 23 e-mails, it looks like, on this page; correct?

11:00:32 24 **A Yes.**

11:00:33 25 Q On October 20, 2016, why had the last

11:00:39 1 couple of days or weeks demanded a lot of Janine and
11:00:43 2 Tina's time?
11:00:45 3 **A I don't recall.**
11:00:45 4 Q What -- what was the basis of your e-mail
11:00:51 5 that, quote, "this mission critical"?
11:00:55 6 **A We needed attention to the Packard Square**
11:00:58 7 **matter.**
11:00:58 8 Q What type of attention?
11:01:00 9 **A Engagement through counsel for both Tina**
11:01:03 10 **and Janine in order to conduct an evaluation for us.**
11:01:07 11 Q What type of evaluation?
11:01:09 12 **A A status of the construction and the --**
11:01:19 13 **basically the conditions of the in-place work.**
11:01:23 14 Q Well, hadn't they been brought on the job
11:01:28 15 at least three weeks earlier, pursuant to Exhibit 1?
11:01:33 16 **A I didn't look at the dates. I don't know**
11:01:46 17 **that the engagement letters were signed at this**
11:01:50 18 **point. That is not what it says.**
11:01:52 19 Q I know that is not what it says.
11:01:54 20 My question is: Do you know when they were
11:01:58 21 brought -- do you know when Newbanks was fired and
11:02:01 22 they were hired?
11:02:02 23 **A I don't remember the dates.**
11:02:03 24 Q Okay. Relative to the Exhibit 2, do you
11:02:08 25 have any recollection as to how long prior to

11:02:10 1 Exhibit 2 they started working on the Packard Square
11:02:15 2 project?

11:02:15 3 **A I don't know.**

11:02:16 4 Q Well, it does say, "The last couple of days
11:02:22 5 or weeks have demanded a lot of your time." So it
11:02:25 6 sounds like from your e-mail, they may have been --
11:02:28 7 they must have been doing some type of work for at
11:02:31 8 least the last couple of weeks prior to this e-mail.
11:02:33 9 Wouldn't you agree?

11:02:34 10 **A Not necessarily.**

11:02:35 11 Q Well, what did you mean by that?

11:02:36 12 **A They could have been doing work on other
11:02:38 13 matters.**

11:02:39 14 Q Well, then, how would you know that it
11:02:42 15 demanded a lot of their time?

11:02:44 16 **A Because I am aware through the team updates
11:02:47 17 on what other matters they're working on.**

11:02:49 18 Q What other matters were Tina and Janine
11:02:51 19 working on at that time?

11:02:53 20 **A I don't recall.**

11:02:54 21 Q Do you know that there were even any?

11:02:56 22 **A I don't, but I am -- as I said earlier, we
11:02:58 23 have engaged them and do engage them for projects
11:03:03 24 throughout our portfolio that makes sense for their
11:03:06 25 expertise and the geography.**

11:03:08 1 Q And do you believe after reading this
11:03:10 2 e-mail that as of October 20, 2016, neither Tina nor
11:03:16 3 Janine had set foot on the Packard Square and been
11:03:19 4 there yet?

11:03:20 5 **A I don't know.**

11:03:22 6 Q Okay. "We are now in a super
11:03:26 7 time-sensitive place," you say.
11:03:28 8 What -- what did you mean by that?

11:03:30 9 **A We needed attention to this project.**

11:03:33 10 Q Why was it super time sensitive?

11:03:35 11 **A Because by October 20, 2016, the project
11:03:39 12 was incomplete.**

11:03:43 13 Q Okay. But what made the directive to Tina
11:03:47 14 and Janine super time sensitive?

11:03:49 15 **A Because we are fiduciaries to our investors
11:03:51 16 and we need to know what is going on with our
11:03:57 17 collateral when it is in default.**

11:03:58 18 Q Well, why couldn't you find out two days
11:04:01 19 later? What made it super time sensitive? That is
11:04:04 20 what I am trying to understand.

11:04:05 21 **A We believe it is our job to know what we
11:04:08 22 can know as soon as possible in order to represent
11:04:11 23 our investors in the best way possible.**

11:04:14 24 Q Do you know that Ms. Van Curen was actually
11:04:17 25 on the property five weeks earlier?

11:04:19 1 **A** **You asked me that, and I said I did not**
11:04:22 2 **know her schedule.**

11:04:23 3 Q Well, I'm asking you now if -- telling you
11:04:24 4 that -- if she was there five weeks earlier
11:04:26 5 refreshes your recollection --

11:04:26 6 **A** **It does not.**

11:04:27 7 Q -- in any way, shape, or form.

11:04:30 8 Okay. Up above, it says from Ms. Getler
11:04:33 9 that "Tina and I spoke," quote, "about our
11:04:37 10 assignment earlier this evening."

11:04:40 11 Having read your e-mail and her e-mail, do
11:04:42 12 you know what her assignment was?

11:04:47 13 **A** **I don't recall what she would have been**
11:04:49 14 **referring to specifically by "assignment."**

11:04:52 15 Q Well, the next sentence refers to something
11:04:54 16 that requires "the finishing touches on it."

11:04:57 17 Does that give you an understanding?

11:04:59 18 **A** **It sounds to me that she is discussing the**
11:05:04 19 **scope of her engagement with our counsel and just**
11:05:07 20 **giving us an update.**

11:05:10 21 Q Do you recall making any specific
11:05:23 22 assignment to either Tina or Janine in
11:05:26 23 mid-October 2016?

11:05:29 24 **A** **I don't.**

11:05:30 25 Q Okay. Let's look at Exhibit 3, shall we?

11:05:45 1 Take a look at that if you would.

11:06:20 2 **A I've read it.**

11:06:20 3 **(Exhibit 3 was marked for**
11:06:20 4 **identification.)**

11:06:20 5 BY MR. MILLER:

11:06:22 6 Q Are you familiar with this e-mail string?

11:06:24 7 **A I have just read it.**

11:06:26 8 Q Well, it was sent to you the day following
11:06:28 9 Exhibit 2.

11:06:29 10 **A Among others.**

11:06:31 11 Q I'm sure.

11:06:33 12 It says, "Tina" -- Janine says, "Tina and I
11:06:36 13 have been working on this diligently. Enclosed is
11:06:40 14 our draft." This was at 1:37 the day following your
11:06:48 15 e-mail -- well, actually, it was -- it was later the
11:06:52 16 same day because your e-mail was after midnight if
11:06:54 17 you look at Exhibit 2.

11:06:56 18 So do you have any idea now what she was
11:06:58 19 referring to as "working on diligently"?

11:07:01 20 **A It looks like the engagements for her and**
11:07:05 21 **Tina.**

11:07:06 22 MR. DOLAN: And by the way, the dates are
11:07:08 23 screwed up because of the time change.

11:07:12 24 THE WITNESS: Exactly.

11:07:13 25 MR. DOLAN: That is neither here nor there.

11:07:16 1 BY MR. MILLER:

11:07:16 2 Q Well, but there is an attachment, ma'am.

11:07:18 3 So maybe not.

11:07:19 4 **A Maybe not what?**

11:07:19 5 Q Maybe not what you thought it was.

11:07:22 6 Do you see where it says there is an

11:07:23 7 attachment?

11:07:24 8 **A Okay. Yes.**

11:07:25 9 Q What does the attachment say it provided

11:07:28 10 you as their -- her draft?

11:07:29 11 **A "Declaration for Tina Van Curen."**

11:07:32 12 Q What is that?

11:07:33 13 **A This was handled by counsel.**

11:07:37 14 Q Well, you just said a moment ago you

11:07:40 15 thought it was the engagement later. Are you now --

11:07:42 16 **A I didn't see the attachment.**

11:07:44 17 Q Right. That is why I pointed it out to

11:07:47 18 you.

11:07:48 19 So do you believe now that the conversation

11:07:50 20 via e-mail in Exhibit 2 had to do with the

11:07:53 21 declaration --

11:07:54 22 **A I don't know.**

11:07:55 23 Q -- from -- from -- from 12 hours earlier?

11:08:01 24 MR. DOLAN: Talking about?

11:08:02 25 MR. MILLER: Exhibit 2.

11:08:05 1 MR. DOLAN: Okay.

11:08:05 2 THE WITNESS: There is no reference here;

11:08:06 3 so there would be no way of me knowing with two

11:08:09 4 separate e-mail strings whether or not they were

11:08:12 5 correlated.

11:08:13 6 BY MR. MILLER:

11:08:14 7 Q Well, the re line of Exhibit 2 is "PACKARD

11:08:18 8 URGENT," all caps, and the re line of Exhibit 3 is

11:08:22 9 "Packard Square." Janine is replying to you that

11:08:27 10 "Tina and I have been working on this diligently."

11:08:30 11 In Exhibit 2 she refers to an assignment that she

11:08:35 12 "has required," in all caps, "to please coordinate

11:08:37 13 with our local counsel and be in communication about

11:08:42 14 logistics tomorrow."

11:08:44 15 Do you see that in Exhibit 2 in your e-mail

11:08:47 16 in all caps?

11:08:48 17 A Yes.

11:08:48 18 Q So --

11:08:50 19 A It says "Logistics" now.

11:08:55 20 Q It makes reference to an affidavit, ma'am,

11:08:58 21 in your e-mail.

11:08:59 22 MR. DOLAN: Where?

11:09:00 23 THE WITNESS: Where?

11:09:01 24 BY MR. MILLER:

11:09:01 25 Q Right above the all caps part.

11:09:06 1 **A Yes, I see that.**

11:09:08 2 Q Would you like to change your answer from
11:09:10 3 your prior testimony at this point?

11:09:12 4 MR. DOLAN: Change her answer? Her answer
11:09:15 5 was she didn't know.

11:09:15 6 MR. MILLER: No. Her answer was it was the
11:09:17 7 enga- -- she believed it to be the engagement letter
11:09:19 8 for Ms. Van Curen and Ms. Getler. So I'm trying to
11:09:23 9 ask her if maybe it might have been something
11:09:25 10 different.

11:09:25 11 MR. DOLAN: Oh.

11:09:26 12 THE WITNESS: Sure.

11:09:26 13 MR. DOLAN: Well, that is --

11:09:26 14 THE WITNESS: Yes. Now that you've shown
11:09:28 15 me the exhibits, I see that that was related to the
11:09:33 16 affidavit.

11:09:33 17 BY MR. MILLER:

11:09:34 18 Q Why did you assign Tina and Janine to
11:09:37 19 prepare an affidavit?

11:09:39 20 **A I didn't assign it. Counsel did.**

11:09:42 21 Q Let's -- ma'am, let's go back and look at
11:09:45 22 Exhibit 2 where it says,

11:09:46 23 "Tina's affidavit must be finalized
11:09:48 24 and completed tonight or super early
11:09:49 25 tomorrow."

11:09:50 1 **A** **I did not assign it. I was following up.**

11:09:55 2 Q Following up.

11:09:56 3 Even though Tina is -- and Janine writes to

11:10:00 4 you in Exhibit 2,

11:10:01 5 "Tina and I spoke to" -- "spoke about

11:10:04 6 our assignment earlier this evening.

11:10:07 7 We are going to turn this in the

11:10:08 8 morning and are scheduled to speak

11:10:10 9 about it first thing tomorrow to put

11:10:12 10 the finishing touches on it. We are

11:10:16 11 both working on it and both sensitive

11:10:18 12 to the timeline."

11:10:20 13 So it sounds like it came from you since

11:10:22 14 she was responding to you.

11:10:24 15 **A** **She was giving me an update. It did not**

11:10:28 16 **come from me.**

11:10:30 17 Q What -- is there a reason -- I mean --

11:10:31 18 okay.

11:10:33 19 Do you know what travel arrangements Janine

11:10:38 20 is authorized to make to travel to the site?

11:10:41 21 **A** **I don't.**

11:10:42 22 Q Do you know why she always flies first

11:10:45 23 class and takes an \$800 car service?

11:10:50 24 **A** **As I said, I don't.**

11:10:51 25 Q Is that normal Canyon policy for vendors to

11:10:55 1 travel in that luxurious manner?

11:10:59 2 **A I am not in charge of Canyon's policy.**

11:11:02 3 Q Who would be in charge of Canyon's travel
11:11:07 4 policies for -- for vendors who bill their charges
11:11:09 5 back to the company?

11:11:10 6 **A They -- I -- I am assuming it is involved**
11:11:13 7 **in their engagement letter, which would have been**
11:11:17 8 **done by counsel.**

11:11:18 9 Q So is it normal for Canyon to -- strike
11:11:23 10 that.

11:11:24 11 When -- when Canyon employees travel to
11:11:29 12 sites, do they always travel first class?

11:11:32 13 **A It depends.**

11:11:33 14 Q Depends on what?

11:11:34 15 **A Upon where they're going and who it is.**

11:11:37 16 Q Right.

11:11:38 17 So if Janine is flying for an hour from
11:11:41 18 New York City to Detroit and then taking a 20-minute
11:11:44 19 car service to Ann Arbor, would it be expected that
11:11:48 20 she would also fly first class?

11:11:50 21 **A As I said, I am not in charge of Janine's**
11:11:53 22 **practice or her engagement letter.**

11:12:03 23 Q Let's look at Exhibit --

11:12:25 24 MR. MILLER: Can you mark this as 59,
11:12:28 25 please.

11:12:28 1 MR. DOLAN: Is there a rhyme or reason to
11:12:31 2 the numbers of the exhibits?

11:12:33 3 MR. MILLER: There is in my mind, but it is
11:12:35 4 not worth explaining to you.

11:12:36 5 MR. DOLAN: Okay. Well, there is two
11:12:36 6 Exhibit 2s, one from yesterday and one from today,
11:12:38 7 that are different.

11:12:38 8 MR. MILLER: This is today's deposition's
11:12:40 9 exhibits.

11:12:40 10 MR. DOLAN: Okay. So there are exhibits
11:12:42 11 particular to the depositions?

11:12:43 12 MR. MILLER: Today. That is correct. Yes.

11:12:45 13 MR. DOLAN: That is all I'm asking.

11:12:47 14 MR. MILLER: Yes.

11:12:59 15 (Exhibit 59 was marked for
11:13:00 16 identification.)

11:13:00 17 BY MR. MILLER:

11:13:00 18 Q Ma'am, I'm going to show you what has been
11:13:02 19 marked as Exhibit 59. If you would review it,
11:13:06 20 please.

11:13:06 21 A Thank you.

11:13:40 22 Q Have you had a chance to do that, ma'am?

11:13:42 23 A I have.

11:13:43 24 Q Are you familiar with this e-mail?

11:13:45 25 A I've read the e-mail you've put in front of

11:13:48 1 me.

11:13:50 2 Q Have you -- do you recall seeing it before?

11:13:50 3 A I don't recall.

11:13:51 4 Q All right. In the top it makes reference
11:13:53 5 to the word "scrub." What is that referring to?

11:13:59 6 A Just to edit and clean it up to make sure
11:14:03 7 that it is accurate. We do that on all of our
11:14:07 8 reports.

11:14:08 9 Q "Scrub" means edit?

11:14:12 10 A It means review, edit, clean up, and ensure
11:14:17 11 accuracy.

11:14:18 12 Q Okay. I'm going to show you now what has
11:14:23 13 been marked as Exhibit 63, please.

11:14:27 14 (Exhibit 63 was marked for
11:14:27 15 identification.)

11:15:43 16 THE WITNESS: I've read it.

11:15:46 17 BY MR. MILLER:

11:15:47 18 Q Can you describe what Tammy Ho's e-mail to
11:15:50 19 you that you approved was about?

11:15:54 20 A This is for our quarterly reporting, and
11:15:59 21 there is a section related to the status of the
11:16:01 22 business plan. And that is what the section is that
11:16:03 23 she asked me to review.

11:16:05 24 Q And was there anything about what she --
11:16:10 25 about which she informed you that caused you concern

11:16:13 1 at that time?

11:16:14 2 **A I don't recall.**

11:16:18 3 Q Well, you said it was approved; so --

11:16:21 4 **A It was approved for submission in our**
11:16:24 5 **quarterly reports. This is information that is**
11:16:27 6 **included in our quarterly reports. There was no**
11:16:30 7 **approval of anything other than that.**

11:16:33 8 Q Do you have any reason to believe that the
11:16:37 9 facts as she set them forth were not accurate?

11:16:41 10 **A I don't have any reason to believe that**
11:16:43 11 **they are inaccurate, but they also don't represent**
11:16:48 12 **all the entirety of all the facts that were known at**
11:16:51 13 **that point in time. This was intended to provide a**
11:16:53 14 **synopsis.**

11:16:54 15 Q Were there additional facts of which you
11:16:57 16 were aware at this point in time that were different
11:17:01 17 than these facts?

11:17:02 18 **A I don't recall.**

11:17:02 19 Q Well, if there were different facts, would
11:17:04 20 they be recorded somewhere?

11:17:06 21 **A I don't know what you mean.**

11:17:07 22 Q Well, this is the information you got from
11:17:10 23 Tammy Ho. If there were additional facts that are
11:17:15 24 not referenced in this e-mail, where would those be
11:17:18 25 kept?

11:17:19 1 **A** **Company notes, meetings, in-person**
11:17:27 2 **discussions, telephone calls.**

11:17:30 3 Q Okay. So -- but is it your recollection
11:17:33 4 that in April or May 2 of 2016 that there was some
11:17:40 5 problem with the project?

11:17:41 6 **A** **I don't recall.**

11:17:42 7 Q Okay. What is -- what is lender approval?

11:17:49 8 **A** **Are you referring to something specific in**
11:17:52 9 **this?**

11:17:52 10 Q No. Just in general.
11:17:55 11 In a -- in a loan agreement that Canyon
11:17:58 12 would provide, what is lender approval?

11:18:00 13 **A** **It means that the lender has the right and**
11:18:05 14 **ability to review and approve.**

11:18:09 15 Q What?

11:18:10 16 **A** **Whatever it is associated with.**

11:18:12 17 Q Typically what types of items do the loan
11:18:15 18 documents at Canyon require lender approval?

11:18:18 19 **A** **They're all negotiated very specifically**
11:18:22 20 **within each transaction; so I could not give you a**
11:18:26 21 **list of customary. Every project is different.**
11:18:30 22 **Every borrower is different.**

11:18:33 23 Q Okay. So what -- what considerations do
11:18:35 24 you include when you make decisions as to what
11:18:41 25 borrowers require which lender approvals?

11:18:45 1 **A What do you mean?**

11:18:46 2 Q Well, you just said every borrower is
11:18:49 3 different, every deal is different. So I'm trying
11:18:52 4 to understand what are the factors that allow you to
11:18:55 5 make those differentiating decisions regarding the
11:18:57 6 level of approval that is required.

11:18:58 7 **A These are negotiated --**

11:18:58 8 MR. DOLAN: Object to the form.

11:19:00 9 Go ahead, please.

11:19:00 10 THE WITNESS: These are negotiated
11:19:02 11 documents.

11:19:02 12 BY MR. MILLER:

11:19:04 13 Q I -- you said that. I understand that.

11:19:06 14 I'm -- I got you there.

11:19:07 15 What I'm asking is: What -- when -- what
11:19:12 16 are the different items that are negotiated and what
11:19:17 17 are the criteria upon which Canyon decides whether
11:19:22 18 to negotiate on this particular item or on that
11:19:25 19 particular item?

11:19:26 20 **A There is no specific criteria. It is**
11:19:28 21 **dependent upon the transaction and the circumstances**
11:19:31 22 **of each loan.**

11:19:32 23 Q All right. So in this loan, for example,
11:19:34 24 are you aware of what items required lender
11:19:37 25 approval?

11:19:37 1 **A** **No.**

11:19:38 2 Q Was this loan negotiated differently than a
11:19:44 3 standard Canyon loan?

11:19:47 4 **A** **What does "differently" mean?**

11:19:48 5 Q I don't know. I don't know.

11:19:50 6 **A** **You asked the question.**

11:19:51 7 Q I don't know. I don't know what is
11:19:53 8 a standard Can- -- is there a standard Canyon loan
11:19:55 9 agreement?

11:19:56 10 **A** **There is not.**

11:19:57 11 Q What types of lender approvals
11:20:01 12 differentiate from one agreement to another?

11:20:04 13 **A** **They are all customized based upon risk,
11:20:08 14 the transaction, the type of transaction.**

11:20:12 15 Q Right.

11:20:12 16 But that is -- my question was what types
11:20:14 17 of items are negotiated, not -- that wasn't -- you
11:20:18 18 didn't answer the question I asked.

11:20:20 19 My question was: What types of items are
11:20:23 20 negotiated for lender approval?

11:20:25 21 **A** **It depends upon the transaction.**

11:20:27 22 Q I understand, but what -- are there 50
11:20:29 23 things that might require lender approval in -- in a
11:20:32 24 contract?

11:20:32 25 **A** **It depends.**

11:20:33 1 Q Okay. Well, can you name 50 things that
11:20:35 2 would require a lender approval in a contract?

11:20:36 3 **A No.**

11:20:37 4 Q Can you name ten things that you might
11:20:39 5 require -- that Canyon might require as lender --
11:20:42 6 requiring lender approval in a contract?

11:20:43 7 **A No. They're --**

11:20:43 8 Q Can you --

11:20:44 9 **A -- customized and crafted for each
11:20:48 10 transaction individually.**

11:20:50 11 Q I understand, ma'am, but everybody starts
11:20:53 12 with a framework.

11:20:54 13 **A They do.**

11:20:55 14 Q Right.

11:20:55 15 So I'm trying to understand what is in the
11:20:58 16 basic Canyon agreement as it pertains to lender
11:21:04 17 approval before we start negotiating different
11:21:06 18 items.

11:21:07 19 **A There are typical items that are
11:21:12 20 underwritten for any project. And if you would like
11:21:16 21 me to be specific about a construction project, you
11:21:19 22 can ask me that question.**

11:21:20 23 Q Well, I asked you about this one and you
11:21:22 24 couldn't answer it. I asked you what requir- --

11:21:23 25 **A Because you're asking me whether or not I**

11:21:25 1 know, without a document in front of me, what is in
11:21:28 2 a -- how many pages is the loan agreement in the
11:21:32 3 note?

11:21:33 4 Q I'm not sure.

11:21:34 5 A Right. So I don't know off the top of my
11:21:36 6 head.

11:21:36 7 Q Right.

11:21:36 8 So that is why I asked you in a more
11:21:38 9 general fashion if you could tell me the types of
11:21:41 10 items that are often or usually or most of the time
11:21:47 11 utilized by Canyon to require lender approval in
11:21:52 12 their -- in their agreements.

11:21:52 13 A And I am going to say the same thing. What
11:21:55 14 type of loan are you referring to?

11:21:58 15 Q Okay. That is a fair question.

11:22:00 16 Construction -- a ground-up construction
11:22:02 17 loan for a multifamily property.

11:22:04 18 A We would, as an example only, look at the
11:22:10 19 guaranteed maximum price contract, bonding -- we
11:22:13 20 would look at the form of the agreements with
11:22:17 21 respect to the contractor and the subcontractors,
11:22:20 22 and we would want approval over those items. We
11:22:23 23 would look at third-party managers, if they were
11:22:26 24 coming in later on, to operate the project. We
11:22:29 25 would have approval over draws, obviously, because

11:22:34 1 we're funding. Those are the type of things that a
11:22:36 2 construction loan would consider.

11:22:38 3 Q That is very helpful. Thank you.

11:22:41 4 So with -- with that, how does it work at
11:22:49 5 Canyon if a borrower seeks lender approval on one of
11:22:55 6 those issues? How -- how is that supposed to
11:22:58 7 happen?

11:22:58 8 A It depends upon what is written in the loan
11:23:02 9 documents.

11:23:02 10 Q It -- doesn't the request always have to be
11:23:05 11 in writing in some fashion? I mean, you're not
11:23:07 12 going to take a lender approval question over the
11:23:08 13 telephone, are you?

11:23:09 14 A That is not what you asked.

11:23:10 15 Q What did I -- it is not?

11:23:12 16 A Unh-unh.

11:23:13 17 Q I asked you: How does a borrower discuss
11:23:15 18 with Canyon the issue of whether to provide -- to
11:23:17 19 receive loan -- to receive lender approval?

11:23:19 20 A They would follow the provisions in the
11:23:21 21 loan document, and we would respond in accordance
11:23:24 22 with the provisions in the loan document.

11:23:27 23 Q Does Canyon always respond to every
11:23:30 24 request?

11:23:31 25 A Canyon responds to all requests that are

11:23:34 1 **provided when it is required to respond.**

11:23:36 2 Q When is it not Canyon's requirement to
11:23:39 3 respond to a request?

11:23:40 4 MR. DOLAN: Object to the form of the
11:23:41 5 question.

11:23:43 6 MR. MILLER: Well, she just -- okay. Let's
11:23:43 7 try it a different way.

11:23:44 8 Q You said Canyon is required -- will respond
11:23:46 9 when Canyon is required to respond.

11:23:49 10 **A Correct.**

11:23:49 11 Q In what scenario is Canyon not required to
11:23:53 12 respond to --

11:23:54 13 **A When there are submissions that don't**
11:23:56 14 **require our approval or if our approval is required**
11:24:00 15 **but all of the submissions have not been provided.**

11:24:03 16 Q So in a scenario where the submissions have
11:24:06 17 all been provided and it is done in accordance with
11:24:10 18 the agreement, your position is that Canyon is then
11:24:16 19 obligated to respond?

11:24:18 20 **A To respond, not approve.**

11:24:20 21 Q Oh, I under- -- I agree you have no
11:24:22 22 obligation to approve. I just want to make sure
11:24:24 23 that there is an obligation to respond.

11:24:26 24 **A Yes.**

11:24:28 25 Q Okay. If -- in that scenario where the

11:24:35 1 borrower is complying with those requirements and
11:24:41 2 Canyon does not respond, what recourse, then, would
11:24:46 3 a borrower have --

11:24:48 4 **A I don't know.**

11:24:49 5 Q -- if it is just met with silence?

11:24:52 6 **A It depends on what the loan documents say**
11:24:55 7 **and whether or not the submission was considered**
11:24:58 8 **complete.**

11:24:59 9 Q Right. Right. I got that.

11:25:01 10 I'm saying assume for the moment that the
11:25:04 11 request is in compliance with the loan documents,
11:25:06 12 the submission is complete, the borrower makes a
11:25:12 13 request for lender approval, and Canyon doesn't
11:25:15 14 respond. What, then, is the borrower expected to
11:25:20 15 do?

11:25:21 16 **A It depends on what the loan documents say.**

11:25:23 17 Q And your position is that the loan
11:25:25 18 documents would say, "If Canyon doesn't respond, do
11:25:27 19 this"?

11:25:28 20 **A I think I said at the very beginning of**
11:25:31 21 **this line that our documents are negotiated deal by**
11:25:33 22 **deal.**

11:25:33 23 Q Uh-huh.

11:25:34 24 **A So it would depend upon what was contained**
11:25:36 25 **in that specific loan agreement with respect to that**

11:25:39 1 **type of provision.**

11:25:41 2 MR. MILLER: Let's do this. Let's go off
11:25:42 3 the record for five minutes and take a break right
11:25:45 4 now so that I can look at the loan agreement so
11:25:47 5 we're not spending time on the record doing that.
11:25:50 6 And we'll come back and we'll talk about it some
11:25:52 7 more.

11:25:54 8 MR. DOLAN: Okay.

11:25:54 9 THE VIDEOGRAPHER: Off the record at
11:25:56 10 11:25 a.m.

11:41:23 11 (Recess.)

11:41:25 12 THE VIDEOGRAPHER: This marks the beginning
11:41:35 13 of Media No. 2. We are back on the record at
11:41:39 14 11:41 a.m.

11:41:40 15 MR. MILLER: What time did we go off the
11:41:42 16 record?

11:41:43 17 THE VIDEOGRAPHER: 11:25.

11:41:46 18 MR. MILLER: Okay. So five minutes becomes
11:41:48 19 15.

11:41:48 20 (Exhibit 17 was marked for
11:41:50 21 identification.)

11:41:50 22 BY MR. MILLER:

11:41:50 23 Q Okay. Ms. Stamolis, I have presented to
11:41:54 24 you Exhibit 17. Can you familiarize yourself with
11:41:59 25 that document, please.

11:42:00 1 **A** **That would be impossible.**

11:42:02 2 Q Well, can you read the title and tell me
11:42:04 3 what it is.

11:42:05 4 **A** **"Construction loan agreement."**

11:42:07 5 Q For what?

11:42:08 6 **A** **"Packard Square, LLC, a Michigan limited
11:42:10 7 liability company, as a borrower, dated October 1,
11:42:10 8 2014."**

11:42:13 9 **Would you like me to continue?**

11:42:15 10 Q No.

11:42:15 11 **A** **Okay.**

11:42:15 12 Q Do you have any reason to believe this
11:42:17 13 isn't the construction loan agreement that Canyon
11:42:20 14 entered into with my client on October 1, 2014?

11:42:22 15 **A** **I don't.**

11:42:23 16 Q Okay. When we were talking before the
11:42:26 17 break, we were talking about Canyon's responsibility
11:42:28 18 to provide a response. And I'd like to direct your
11:42:30 19 attention to section 6.4 of this agreement.

11:44:43 20 **A** **So just that paragraph, 6.4?**

11:44:46 21 Q For -- for now.

11:44:48 22 Approximately how many construction loan
11:44:49 23 agreements at Canyon have you reviewed during your
11:44:53 24 career?

11:44:53 25 **A** **I don't know.**

11:44:54 1 Q Can you approximate?

11:44:59 2 **A It would be hard, but a few dozen.**

11:45:05 3 Q That is all? Just a few dozen? Okay.

11:45:09 4 Do they generally have construction

11:45:12 5 contract language like this agreement has in

11:45:15 6 paragraph -- in section 6.4?

11:45:17 7 **A As I said before, these are negotiated**

11:45:21 8 **within the confines of each transaction and every**

11:45:25 9 **transaction is customized.**

11:45:29 10 Q I understand.

11:45:30 11 But based on your experience having

11:45:32 12 reviewed section 6.4, is this substantially similar

11:45:35 13 to other similar language and other similar

11:45:38 14 construction loan agreements, or is there anything

11:45:41 15 that jumps out at you from section 6.4 as being

11:45:44 16 different as it pertains to my client?

11:45:44 17 **A That it is there.**

11:45:46 18 Q That what is there?

11:45:47 19 **A That 6.4 is in the agreement.**

11:45:50 20 Q It is -- there is usually not an agreement

11:45:52 21 about a construction contract?

11:45:53 22 **A No. Because ordinarily it is done**

11:45:55 23 **concurrent with closing and you don't need language**

11:45:56 24 **like this.**

11:45:57 25 Q Well, what if somebody wanted to change the

11:45:59 1 contractor?

11:45:59 2 **A This is specifically related, as I read it,**
11:46:03 3 **to the construction contractor and the GNP not being**
11:46:07 4 **in place at the closing. That is what this specific**
11:46:11 5 **paragraph -- paragraph relates to.**

11:46:12 6 Q Well -- but there is -- there is -- there
11:46:13 7 is language in this -- in the middle about "if
11:46:16 8 borrower has not achieved the construction contract
11:46:19 9 requirements but has been and continues to
11:46:22 10 diligently pursue such construction contract
11:46:25 11 requirements, has identified to lender in writing a
11:46:28 12 replacement contractor satisfactory to lender in its
11:46:33 13 sole discretion," there is anticipation here that
11:46:36 14 there is a possibility that the construction
11:46:37 15 contractor could be replaced, is it not?

11:46:38 16 **A That part is, but the -- the entirety of**
11:46:41 17 **this that you asked about, which really starts with**
11:46:44 18 **what was required as a result of the borrower not**
11:46:47 19 **having his general contract in place at the time of**
11:46:49 20 **closing, that is what I was referring to.**

11:46:52 21 Q Okay. Well, now let's move further down
11:46:54 22 and talk about this idea of changing out the
11:46:56 23 contractor. You've read the whole paragraph, I
11:46:59 24 know.

11:46:59 25 Is that -- is that standardized language in

11:47:02 1 most Canyon construction contracts?

11:47:05 2 **A I don't have other language here to compare**
11:47:08 3 **it to; so I couldn't say.**

11:47:09 4 Q Well, I'm asking just to compare it to your
11:47:12 5 knowledge of having received -- reviewed dozens of
11:47:15 6 these agreements.

11:47:16 7 **A I would have to see them.**

11:47:18 8 Q Okay. Where in this section 6.4 does it
11:47:20 9 say anything about what will happen if lender
11:47:23 10 doesn't respond to a request as set forth in written
11:47:27 11 notice by the borrower?

11:47:29 12 **A I don't know if there are any other**
11:47:31 13 **paragraphs or components of this that would interact**
11:47:34 14 **with that; so that would be impossible for me to**
11:47:37 15 **answer.**

11:47:37 16 Q Well, I'm just simply noting for you right
11:47:39 17 now -- is there anything in section 6.4 that
11:47:43 18 provides that requirement to the lender?

11:47:45 19 **A Which requirement?**

11:47:47 20 Q That they respond to a request from the
11:47:50 21 borrower to receive lender approval.

11:47:56 22 MR. DOLAN: Object to the form of the
11:47:57 23 question.

11:47:57 24 Go ahead and answer if you can.

11:47:58 25 THE WITNESS: I don't really think the

11:48:00 1 question is very clear.

11:48:02 2 BY MR. MILLER:

11:48:02 3 Q Okay. I'll try it again.

11:48:04 4 We were talking before the break about the

11:48:06 5 fact that the lender has the right to provide

11:48:08 6 approval and that the contract provides that the

11:48:13 7 borrower has to achieve lender approval for certain

11:48:17 8 things. We discussed this.

11:48:19 9 And my question before was: Well, what

11:48:22 10 happens if the lender doesn't respond? And your

11:48:25 11 testimony was something to the effect of, "Well, I'm

11:48:28 12 sure it is provided for in the agreement."

11:48:30 13 So I'm just asking you: Is there anything

11:48:33 14 in section --

11:48:33 15 **A My testimony related specifically to the**

11:48:36 16 **general question of whether or not if a lender**

11:48:40 17 **response is required, it would be outlined. And so**

11:48:45 18 **it was a very general response. It was not**

11:48:47 19 **responding specifically to this.**

11:48:49 20 Q I didn't ask for you to respond

11:48:51 21 specifically to this. Now I'm directing you to this

11:48:54 22 particular section, and this particular section

11:48:56 23 talks about what a borrower has to do if it wants to

11:49:00 24 change the contractor.

11:49:02 25 Would you agree with me there?

11:49:03 1 A In part.

11:49:05 2 Q What -- what part don't you agree with?

11:49:07 3 A I don't know what else in the agreement
11:49:09 4 might pertain to that.

11:49:10 5 Q Okay. Well, based solely on -- this is
11:49:12 6 entitled "Construction Contract" and talks about
11:49:16 7 changing out the contractor. Is there anything in
11:49:20 8 section 6.4 that makes a requirement of the lender
11:49:25 9 to respond to the written request provided by the
11:49:29 10 borrower?

11:49:30 11 MR. DOLAN: Just going to object to the
11:49:32 12 extent it mischaracterizes the paragraph, which I
11:49:35 13 think it does.

11:49:35 14 But go ahead and answer if you can.

11:49:35 15 BY MR. MILLER:

11:49:37 16 Q Tell me if I'm wrong. Point out to me
11:49:40 17 where I'm mistaken. That is what I'm asking for?

11:49:42 18 MR. DOLAN: This paragraph, as the witness
11:49:43 19 testified to earlier --

11:49:43 20 MR. MILLER: Uh-huh.

11:49:45 21 MR. DOLAN: -- relates to the fact that at
11:49:46 22 closing, there was no G.C. in place.

11:49:49 23 MR. MILLER: No. That -- I'm past that.
11:49:50 24 I'm talking about the middle portion where it
11:49:53 25 talks --

11:49:53 1 MR. DOLAN: That --

11:49:54 2 MR. MILLER: -- about switching out the
11:49:55 3 contractor.

11:49:55 4 MR. DOLAN: Again, if you let me finish,
11:49:56 5 that -- that contractor is not yet signed up. What
11:49:59 6 that refers to is if they switch the contractor that
11:49:59 7 they're planning to sign --

11:49:59 8 THE WITNESS: Exactly.

11:50:04 9 MR. DOLAN: -- before signed up, then this
11:50:06 10 controls. It doesn't mean after you have a GNP in
11:50:10 11 place and you're six months, a year or two down the
11:50:10 12 road and you want to change contractors -- that is
11:50:13 13 not what this paragraph --

11:50:13 14 THE WITNESS: And that was my point from
11:50:15 15 the beginning. This particular paragraph relates
11:50:17 16 specifically to the closing condition not having
11:50:19 17 been met and an accommodation having been made to
11:50:23 18 allow for the general contractor to be identified
11:50:26 19 and signed up within a time period specific as
11:50:29 20 outlined here. That is all this relates to.

11:50:32 21 MR. MILLER: So is -- is --

11:50:32 22 MR. DOLAN: In fact, that is what happened.
11:50:34 23 The original contractor they were trying to sign up
11:50:37 24 didn't sign and they had to switch.

11:50:38 25 MR. MILLER: I understand.

11:50:39 1 Q But I'm -- we have a contract that governs
11:50:41 2 this loan. And so in reviewing the contract, this
11:50:44 3 is the only section that I could find that talked
11:50:47 4 about changing the contractor.

11:50:49 5 There is another section, section 8.7,
11:50:53 6 which talks about contracts in general --

11:50:53 7 A Well --

11:50:56 8 Q -- which also requires lender's consent.

11:50:59 9 A I haven't had an opportunity to review
11:51:02 10 the -- I don't know. How many pages is this? So I
11:51:04 11 would have to read every single page here to
11:51:07 12 determine whether or not you're correct that there
11:51:08 13 is nothing else in here that would pertain to that.
11:51:11 14 So if you'd like to ask a more specific question,
11:51:13 15 I'm happy to answer it. But this specifically and
11:51:16 16 only relates to the contract, which was a GNP
11:51:21 17 requirement, that was not completed by closing.

11:51:23 18 Q Okay. So putting that aside because that
11:51:25 19 wasn't the point of my question, are you familiar
11:51:28 20 with any language in -- in this standard
11:51:32 21 construction loan agreement or this construction
11:51:36 22 loan agreement -- and you can look in the table of
11:51:38 23 contents -- that has a requirement for the lender to
11:51:41 24 respond to a written request by the borrower?

11:51:47 25 A I would need to review the entire

11:51:49 1 **agreement.**

11:51:49 2 Q All right. Well, let's look instead at
11:51:52 3 10.1, which is on page 61. Assuming for the
11:52:16 4 moment --

11:52:16 5 **A Do you want me to read it?**

11:52:17 6 Q No. I'm just directing your attention to
11:52:19 7 it.

11:52:20 8 Assuming for the moment that there is
11:52:22 9 language in this contract that requires the borrower
11:52:27 10 to make a request and then requires the lender to
11:52:31 11 respond and the lender fails to respond, I then
11:52:39 12 turned to -- well, there is "Events of Default,
11:52:43 13 Article 10." Is there anything in "Events of
11:52:46 14 Default" that would provide my client with a
11:52:48 15 direction as to what to do in that situation?

11:52:52 16 **A I don't understand the point of your
11:52:55 17 question.**

11:52:57 18 Q You said that there would be something that
11:53:00 19 the borrower should do if the lender didn't do what
11:53:03 20 the lender was supposed to do.

11:53:04 21 **A That is not what I said.**

11:53:07 22 MR. DOLAN: Yeah. For the third time --

11:53:07 23 THE WITNESS: For the third time, I said
11:53:09 24 that in negotiated agreements, often there are
11:53:13 25 requirements to respond, but that they are

11:53:16 1 negotiated independently each time a transaction is
11:53:21 2 negotiated. Your client was represented by counsel
11:53:24 3 and negotiated these agreements. So whatever he
11:53:27 4 negotiated in this agreement, he negotiated.

11:53:27 5 BY MR. MILLER:

11:53:31 6 Q Right.

11:53:31 7 A So I don't understand the point of your
11:53:34 8 question to me.

11:53:36 9 Q Okay. Have you ever said anything to my
11:53:45 10 client or any representative of my client that
11:53:47 11 wasn't 100 percent true?

11:53:49 12 A What does that mean?

11:53:51 13 MR. DOLAN: Object to the form of the
11:53:53 14 question.

11:53:53 15 BY MR. MILLER:

11:53:53 16 Q Have you ever said anything to my client or
11:53:54 17 any representative of my client that when you said
11:53:56 18 it, wasn't 100 percent true?

11:53:59 19 A No.

11:54:00 20 Q Okay. Does Canyon record telephone calls
11:54:05 21 or meetings?

11:54:08 22 MR. DOLAN: I'm going to object to the
11:54:10 23 question. I need to figure out whether that
11:54:14 24 question is proper under California law. I'm not a
11:54:18 25 California lawyer, but there is one over there.

11:54:20 1 But I need to --

11:54:20 2 MR. MILLER: It is a really simple
11:54:23 3 question. If it is -- I'm not asking whether it is
11:54:25 4 done legally. I'm asking whether it is done. I
11:54:26 5 don't know what the California law is either. I'm
11:54:28 6 just simply asking a question.

11:54:29 7 Q Does -- is that -- does Canyon record
11:54:34 8 telephone calls?

11:54:34 9 MR. DOLAN: It could be an objectionable
11:54:35 10 question, though.

11:54:35 11 MR. MILLER: Well, only if it were illegal
11:54:38 12 and they lied about it, then it would be an
11:54:40 13 appropriate question.

11:54:40 14 MR. DOLAN: No. Then it would be an
11:54:42 15 objectionable question.

11:54:42 16 MR. MILLER: Oh, because you're allowed to
11:54:44 17 object to break the law?

11:54:46 18 MR. DOLAN: You can't ask somebody who is
11:54:48 19 here pursuant to a deposition notice whether they
11:54:51 20 did something that was unrelated to this that might
11:54:54 21 be illegal. What -- what are you talking about?

11:54:56 22 MR. MILLER: Well, I suppose Ms. Stamolis
11:54:57 23 could take the fifth amendment in that situation.

11:55:00 24 MR. DOLAN: Yes, of course she should. I'm
11:55:01 25 not going to waive any rights here because --

11:55:01 1 MR. MILLER: Okay.

11:55:04 2 MR. DOLAN: -- the question is so odd and
11:55:05 3 weird.

11:55:06 4 MR. MILLER: How many -- isn't there a --
11:55:08 5 okay. I don't care if there is a California law.

11:55:10 6 MR. DOLAN: I'm not a California lawyer. I
11:55:10 7 don't know the answer to that question.

11:55:12 8 MR. MILLER: I'm not asking you to. I'm
11:55:13 9 asking a very simple question.

11:55:15 10 Q Does Canyon record telephone calls?

11:55:17 11 **A I'm not able to answer that question.**

11:55:21 12 Q Because you don't know?

11:55:22 13 **A I -- I am not able to answer a question I'm
11:55:25 14 not in charge of.**

11:55:26 15 Q Well, do you have the ability to push a
11:55:29 16 button on your phone that allows you to record
11:55:31 17 telephone calls?

11:55:32 18 **A I have never recorded a telephone call.**

11:55:34 19 Q Okay.

11:55:34 20 MR. DOLAN: There you go.

11:55:36 21 BY MR. MILLER:

11:55:36 22 Q Thank you.

11:55:38 23 Does Canyon -- did -- does Canyon have a
11:55:40 24 policy about recording meetings by electronic or
11:55:45 25 recording means?

11:55:49 1 **A Be more specific.**

11:55:51 2 Q Does Canyon have a policy by which it --
11:55:55 3 are you aware of any meetings that Canyon has
11:55:58 4 recorded?

11:55:58 5 **A I'm not aware of anything in that regard.**

11:56:01 6 Q Okay. When -- I'm trying to figure out how
11:56:16 7 to make the timing work here. Let's see.

11:56:20 8 Are you aware of requests that my client
11:56:25 9 made relative to switching out the general
11:56:28 10 contractor on the job?

11:56:31 11 **A At which time?**

11:56:34 12 Q After construction had commenced, not
11:56:36 13 before construction.

11:56:39 14 **A Can you be more specific.**

11:56:40 15 Q Are you aware of any requests my client
11:56:42 16 made to replace the construction contractor called
11:56:45 17 Quandel at the project called Packard Square?

11:56:48 18 **A I believe he requested the ability to
11:56:52 19 change, yes.**

11:56:54 20 Q Did you review that request?

11:56:58 21 **A I did not review that request.**

11:57:00 22 Q Did somebody else review that request?

11:57:03 23 **A That request would have been reviewed by
11:57:05 24 the team if it came in.**

11:57:07 25 Q Well, aren't you a member of the team?

11:57:09 1 **A** **It is not my role to review that. It would**
11:57:12 2 **be another person's role to review that and make a**
11:57:14 3 **recommendation to me.**

11:57:16 4 **Q** **Do you recall receiving a recommendation?**

11:57:17 5 **A** **I recall only being told that a replacement**
11:57:22 6 **contractor had been submitted that did not meet the**
11:57:27 7 **requirements but that the submission was not**
11:57:29 8 **complete.**

11:57:29 9 **Q** **What about the submission was not complete?**

11:57:32 10 **A** **You would have to ask the person reviewing**
11:57:34 11 **that.**

11:57:35 12 **Q** **And who was that?**

11:57:36 13 **A** **That would be Gerald.**

11:57:37 14 **Q** **Okay. And do you recall what the problem**
11:57:40 15 **with the contractor was?**

11:57:42 16 **A** **I don't.**

11:57:43 17 **Q** **Okay. Do you recall what the complaints**
11:57:47 18 **were about the existing contractor in place?**

11:57:50 19 **MR. DOLAN: Just object to the form. What**
11:57:53 20 **complaints? Complaints of whom?**

11:57:56 21 **MR. MILLER: Of my client.**

11:57:56 22 **MR. DOLAN: Okay. It wasn't clear.**

11:58:00 23 **THE WITNESS: Be specific.**

11:58:01 24 **BY MR. MILLER:**

11:58:01 25 **Q** **Do you recall any complaints that my client**

11:58:03 1 made about the construction contractor Quandel which
11:58:07 2 was the basis of the reason why he wanted to replace
11:58:09 3 them?

11:58:11 4 **A I was aware that at a certain point, it**
11:58:14 5 **seemed that -- that your client and the contractor,**
11:58:17 6 **you know, were not of the same mind about the**
11:58:21 7 **project and that there was a dispute that was**
11:58:24 8 **potentially brewing.**

11:58:25 9 Q Do you recall what the dispute was?

11:58:28 10 **A Specifically? No.**

11:58:30 11 Q Do you recall generally what the dispute
11:58:33 12 was?

11:58:33 13 **A Nope.**

11:58:34 14 Q You don't recall anything about the
11:58:36 15 dispute?

11:58:36 16 **A I recall that there was a dispute.**

11:58:40 17 Q Okay. Do you recall telling my client and
11:58:44 18 the construction contractor that you were not taking
11:58:47 19 sides in the dispute?

11:58:48 20 **A Yes.**

11:58:49 21 Q Why was that?

11:58:50 22 **A Because I'm the lender.**

11:58:52 23 Q Well, don't you have a contractual
11:58:54 24 relationship with my client?

11:58:56 25 **A It is your client's relationship with his**

11:59:00 1 contractor that he was asking for us to opine on,
11:59:03 2 and that is not our role as the lender.

11:59:06 3 Q Right.

11:59:06 4 But wouldn't it be your role to support the
11:59:10 5 borrower in helping the borrower to complete the job
11:59:14 6 to the best of the borrower's ability?

11:59:14 7 A We are not the equity here. We are the
11:59:16 8 lender. We are here to provide funds in compliance
11:59:21 9 with our loan agreement to the extent that those
11:59:25 10 requirements are met.

11:59:26 11 Q Okay. But that -- that is -- my question
11:59:27 12 was about not taking sides. Why -- if the -- if the
11:59:34 13 borrower was coming to you and asking you for your
11:59:37 14 support and the contractor was coming to you,
11:59:40 15 wouldn't your -- wouldn't it be necessary for you to
11:59:46 16 take the side of the party with whom you have a
11:59:48 17 contract?

11:59:49 18 A Absolutely not. Why would that be the
11:59:51 19 case?

11:59:51 20 Q Because you don't have a contractual
11:59:54 21 relationship with the other party.

11:59:55 22 A I am -- my contractual relationship with
11:59:59 23 your client is for them to provide to us what
12:00:01 24 they're obligated to provide. It is not my role or
12:00:05 25 Canyon's role to take a side on anything. That

12:00:07 1 **is -- that is -- our relationship is right here.**

12:00:10 2 Q Uh-huh. Well, were there any requests ever
12:00:14 3 made to -- strike that.

12:00:18 4 Are you aware of any response that was
12:00:19 5 provided to my client relative to this request to
12:00:22 6 change the contractor?

12:00:24 7 **A I have not had a chance to research that.**

12:00:27 8 Q And you don't have any independent
12:00:29 9 recollection of that?

12:00:30 10 **A I don't.**

12:00:31 11 Q Okay. When you talk about what Canyon is
12:00:36 12 trying to accomplish, what is Canyon's goal on a
12:00:40 13 construction loan?

12:00:40 14 MR. DOLAN: Object to the form of the
12:00:42 15 question.

12:00:42 16 Go ahead and answer if you can.

12:00:44 17 THE WITNESS: It is our objective to
12:00:46 18 provide funds for approved draws for a construction
12:00:51 19 loan after they have been reviewed and to see a
12:00:56 20 project completed and to have the business plan of
12:00:59 21 the borrower realized so that we can be repaid.

12:01:05 22 BY MR. MILLER:

12:01:07 23 Q What -- what efforts have Canyon or you
12:01:10 24 made to pursue the objective of seeing the project
12:01:14 25 completed?

12:01:16 1 **A** **Be more specific.**

12:01:17 2 Q Those are your -- that was your phrase.

12:01:20 3 See, I wrote it down. You want to see the project

12:01:23 4 completed.

12:01:24 5 **A** **You asked me for a general --**

12:01:25 6 Q I know.

12:01:26 7 **A** **-- question --**

12:01:26 8 Q Uh-huh.

12:01:28 9 **A** **-- right?**

12:01:29 10 Q Yeah.

12:01:29 11 **A** **And that general question was: What do we**

12:01:33 12 **do when we make construction loans; correct?**

12:01:35 13 Q Right.

12:01:35 14 But now my follow-up question is: What has

12:01:38 15 Canyon done to -- on this project to attempt to

12:01:42 16 ensure to see the project to its completion?

12:01:45 17 **A** **We petitioned the court for a receiver so**

12:01:47 18 **that the collateral could be protected and that the**

12:01:51 19 **project could be completed.**

12:01:52 20 Q When would the project be completed?

12:01:54 21 **A** **At the point in time that it could be**

12:01:56 22 **completed.**

12:01:57 23 Q Two years later?

12:01:58 24 **A** **I don't think anybody's initial expectation**

12:02:03 25 **was that the project wouldn't be complete at the**

12:02:06 1 **substantial completion date in 2016.**

12:02:10 2 Q Right.

12:02:10 3 But now it is 2018 and there is no plan for
12:02:13 4 the project to be completed until December of this
12:02:16 5 year.

12:02:17 6 **A I am not aware of that schedule.**

12:02:20 7 MR. DOLAN: Object to the form of the
12:02:21 8 question.

12:02:21 9 BY MR. MILLER:

12:02:21 10 Q Yeah.

12:02:21 11 The receiver issued a report just yesterday
12:02:24 12 moving the date from November to December of 2018.
12:02:27 13 So by the time it will have been completed, if it
12:02:31 14 even is completed, then the receiver will have been
12:02:34 15 on the job for two full years.

12:02:36 16 Are you aware of that?

12:02:37 17 **A I'm aware that the receiver needs to be on
12:02:39 18 the job in order to complete an incomplete job.**

12:02:42 19 Q For two full years?

12:02:44 20 **A For the period of time that it has taken --
12:02:45 21 and there was a tremendous interruption due to your
12:02:48 22 client's bankruptcy. The project was basically put
12:02:51 23 on hold.**

12:02:52 24 Q How long -- how long was that interruption
12:02:54 25 for?

12:02:54 1 **A** **I'm guessing between 90 and 120 days.**

12:02:58 2 Q That is more like 45.

12:03:00 3 **A** **No.**

12:03:01 4 MR. DOLAN: That is your opinion.

12:03:02 5 BY MR. MILLER:

12:03:02 6 Q September 5 to October 13. That is how

12:03:05 7 long the bankruptcy was.

12:03:06 8 **A** **Understood. But I think -- since you're**

12:03:09 9 **aware of construction --**

12:03:10 10 Q I'm not.

12:03:11 11 **A** **-- that -- okay. Well, you would be aware**

12:03:14 12 **that the project doesn't start the next day because**

12:03:17 13 **the project was put on hold. So the receiver then**

12:03:20 14 **had to completely remobilize and reactivate a**

12:03:25 15 **construction site. That did not happen on the 46th**

12:03:29 16 **day. And I know that you're aware of that.**

12:03:31 17 Q And you know the whole history of how

12:03:33 18 construction was working when my client was

12:03:35 19 operating construction and then how it stopped after

12:03:37 20 the receiver was appointed and then how it slowly

12:03:41 21 moved at a snail's pace over the -- over the

12:03:44 22 two-year period it is going to take to --

12:03:46 23 **A** **That is your opinion. That is not my**

12:03:49 24 **opinion.**

12:03:49 25 Q What is your opinion?

12:03:49 1 **A** My opinion is that the court approved a
12:03:52 2 receiver to protect the collateral. We agreed to
12:03:55 3 make a loan to the receiver in order to facilitate
12:03:59 4 the project being completed and that every effort to
12:04:03 5 complete the project has been made by the receiver
12:04:06 6 within the confines of his -- his approved scope.

12:04:11 7 Q Have you reviewed the approved scope?

12:04:14 8 **A** Today? No.

12:04:15 9 Q No.

12:04:15 10 In -- when it was -- when it was prepared,
12:04:18 11 did you approve it?

12:04:19 12 **A** I was not the approver of the scope. I
12:04:23 13 participated in the scope.

12:04:24 14 Q Did you approve the construction loan
12:04:26 15 agreement that was entered into with the receiver?

12:04:29 16 **A** Our counsel and our team approved the
12:04:32 17 construction loan agreement with the receiver.

12:04:33 18 Q Okay. We'll talk about all that after
12:04:36 19 lunch.

12:04:36 20 MR. MILLER: Why don't we take a break now.
12:04:37 21 It is 12:05.

12:04:37 22 MR. DOLAN: Okay.

12:04:39 23 MR. MILLER: Start back at 1:00 o'clock.
12:04:41 24 And we'll talk about all that stuff then.

12:04:43 25 MR. DOLAN: Okay.

12:04:44 1 MR. MILLER: But 1:00 o'clock means 1:00

12:04:46 2 o'clock.

12:04:46 3 THE VIDEOGRAPHER: Off the record at

12:04:49 4 12:04 p.m.

5 (Lunch recess taken at 12:04 p.m.)

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1 Los Angeles, California; Thursday, May 3, 2018;

2 1:02 p.m.

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13:02:13 4 THE VIDEOGRAPHER: We are back on the
13:02:14 5 record at 1:02 p.m.

13:02:14 6

13:02:16 7 EXAMINATION (CONTINUED)

13:02:16 8 BY MR. MILLER:

13:02:17 9 Q Good afternoon, Ms. Stamolis. I wanted to
13:02:22 10 show you what has been marked as Exhibit 18, please.

13:02:25 11 (Exhibit 18 was marked for
13:02:25 12 identification.)

13:02:25 13 BY MR. MILLER:

13:03:11 14 Q Have you had an opportunity to review
13:03:13 15 Exhibit 18?

13:03:14 16 A No. What would you like me to review on
13:03:18 17 this?

13:03:18 18 Q I just want to make sure that you can
13:03:19 19 identify it as what it is.

13:03:22 20 A I can do that.

13:03:24 21 Q Okay. What is it?

13:03:25 22 A Receiver construction loan agreement by and
13:03:27 23 between McKinley and Packard Square.

13:03:33 24 MR. DOLAN: For the record, it is an
13:03:35 25 unsigned document.

13:03:36 1 MR. MILLER: Well, I don't know that we've
13:03:37 2 ever received the signed document. Part- --
13:03:42 3 actually partially signed.

13:03:44 4 MR. DOLAN: Then you have a different
13:03:46 5 exhibit than what the witness does.

13:03:49 6 MR. MILLER: The last two pages didn't
13:03:51 7 copy?

13:03:51 8 THE WITNESS: No. I don't know how many
13:03:52 9 pages, but it -- that is not -- there are no
13:03:54 10 signature pages on the last page.

13:03:56 11 MR. MILLER: That is weird. That is odd.
13:04:07 12 My copy is signed. I don't know how that happened.

13:04:09 13 Q But, anyway, let's just look at it for the
13:04:12 14 moment. How did -- how did the receiver loan -- and
13:04:16 15 one more thing. You said it was with it -- with
13:04:18 16 McKinley and Packard Square -- it was with McKinley
13:04:22 17 and Can IV --

13:04:22 18 A And then --

13:04:22 19 Q -- Packard Square, LLC; correct?

13:04:24 20 A Yes.

13:04:25 21 Q How did the construct- -- the receiver
13:04:27 22 construction loan get negotiated?

13:04:30 23 A Through counsel.

13:04:32 24 Q Who from Canyon oversaw the terms of the
13:04:36 25 agreement?

13:04:38 1 **A** **Gerald.**

13:04:38 2 Q What was your involvement?

13:04:40 3 **A** **In -- just being advised of progress as it**

13:04:46 4 **was proceeding.**

13:04:48 5 Q Is it normal for Canyon to enter into a

13:04:51 6 contract that doesn't have a completion date?

13:04:55 7 **A** **What is normal?**

13:04:56 8 Q I don't know.

13:04:58 9 Is it normal for Canyon to enter into a

13:05:01 10 construction loan contract that doesn't have a

13:05:03 11 completion date?

13:05:04 12 MR. DOLAN: Object to the form of the

13:05:06 13 question.

13:05:08 14 Go ahead if you understand it.

13:05:09 15 THE WITNESS: The receiver loan was made, I

13:05:13 16 believe, before the receiver was able to complete

13:05:17 17 the GNP and the timeline and the budget. So it

13:05:21 18 would be difficult to include that in here.

13:05:21 19 BY MR. MILLER:

13:05:26 20 Q Has Canyon, to your knowledge, ever entered

13:05:29 21 into a construction contract without a completion

13:05:32 22 date in it?

13:05:33 23 **A** **This isn't a normal construction contract.**

13:05:36 24 Q I didn't -- that wasn't my question.

13:05:37 25 **A** **But it is --**

13:05:37 1 Q No.

13:05:38 2 **A -- because you asked has Canyon ever.**

13:05:40 3 Q Yeah. That is my question.

13:05:41 4 Has Canyon ever entered into a construction

13:05:44 5 contract that doesn't include a completion date?

13:05:46 6 **A I haven't reviewed every construction**

13:05:48 7 **contract; so I wouldn't know how to answer that with**

13:05:50 8 **"ever" being the qualifier.**

13:05:52 9 Q Are you familiar with any construction

13:05:54 10 contracts that Canyon has entered into that you have

13:05:56 11 reviewed that do not include a completion date?

13:05:59 12 **A Again, we don't typically have receiver**

13:06:03 13 **construction loans.**

13:06:05 14 Q Have you ever seen a construction contract

13:06:08 15 that Canyon has entered into that doesn't have a

13:06:11 16 completion date?

13:06:14 17 **A I don't know. I haven't -- I am not able**

13:06:19 18 **to answer the broad question that you're asking.**

13:06:22 19 Q Are you -- can you recall, in your time at

13:06:26 20 Canyon, ever reviewing a construction loan agreement

13:06:28 21 that did not include a completion date?

13:06:32 22 **A I can't recall.**

13:06:33 23 Q You can't recall?

13:06:35 24 Under what circum- -- how about -- let's

13:06:39 25 turn to page 3 -- I'm sorry -- not 3 -- 4 of

13:06:45 1 Exhibit 18.

13:06:51 2 Do you see where it says, "Final completion
13:06:54 3 date means the date on which final completion
13:06:56 4 occurs"?

13:06:57 5 **A Yes, I see that.**

13:06:58 6 Q Is that language that you've ever noticed
13:07:01 7 in a different Canyon construction contract?

13:07:02 8 **A I would have to review the contracts.**

13:07:05 9 Q I'm sorry. It is a loan agreement.

13:07:07 10 Have you ever -- have you ever reviewed
13:07:08 11 that -- have you ever seen language such as that,
13:07:13 12 "The final completion date means the date on which
13:07:17 13 final completion occurs," in any other construction
13:07:20 14 loan agreement?

13:07:20 15 **A I can't answer that question because you're
13:07:22 16 asking whether or not I can recall any other --
13:07:25 17 which implies every other -- construction agreement
13:07:27 18 I may have ever read. So I cannot answer that
13:07:30 19 question.**

13:07:30 20 Q Can you name even one in which there have
13:07:33 21 been a final completion date that means the date on
13:07:36 22 which final completion occurs?

13:07:38 23 **A I cannot name one because I don't know one
13:07:40 24 off the top of my head, which is what you're asking
13:07:43 25 me to do here.**

13:07:44 1 Q Is it -- is it consistent with Canyon's
13:07:47 2 policies about construction loans that we've talked
13:07:50 3 about earlier to enter into construction loan
13:07:53 4 agreements without milestone dates like the date it
13:07:56 5 should be completed?

13:07:57 6 A This is not a normal construction loan
13:07:59 7 agreement because it was a situation where we were
13:08:02 8 forced because your client did not complete his
13:08:04 9 obligations under his loan, or the milestones, to
13:08:07 10 request the court to appoint a receiver so that our
13:08:11 11 project collateral could be protected -- our loan
13:08:14 12 collateral could be protected. So this is not a
13:08:17 13 customary circumstance that can be compared.

13:08:20 14 Q When you say "forced," how -- how is it
13:08:22 15 forced?

13:08:23 16 A We are a lender who has investors and we
13:08:27 17 are obligated to do everything possible to protect
13:08:31 18 the collateral of our loans to ensure that our
13:08:34 19 investors are protected.

13:08:36 20 Q And why -- why did -- why was it required
13:08:42 21 that there was a receiver construction loan
13:08:44 22 agreement entered with Canyon?

13:08:47 23 A Please rephrase that question.

13:08:49 24 Q Yeah.

13:08:49 25 What was the necessity of entering into

13:08:52 1 this receiver construction loan agreement?

13:08:55 2 **A In order for us to facilitate the project**
13:08:58 3 **completion through the receiver.**

13:09:00 4 Q Well, couldn't the receiver have gotten
13:09:02 5 lending somewhere else?

13:09:03 6 **A I don't know.**

13:09:04 7 Q What was the construction loan agreement
13:09:07 8 rate of interest?

13:09:09 9 **A I would have to look.**

13:09:11 10 Q Would it surprise you if it were
13:09:13 11 16 percent, the default interest rate, on my
13:09:16 12 client's agreement?

13:09:16 13 **A That wouldn't surprise me at all.**

13:09:18 14 Q Okay. How many loans are outstanding at
13:09:20 15 Canyon that you're aware of where Canyon is charging
13:09:25 16 16 percent interest other than the receiver loan and
13:09:28 17 my client's loan?

13:09:29 18 **A I have not had an opportunity to review the**
13:09:31 19 **portfolio. I wouldn't be able to give you that**
13:09:34 20 **answer.**

13:09:34 21 Q Are you aware of any?

13:09:36 22 **A I don't know of -- I don't -- I cannot give**
13:09:37 23 **you an answer to that without reviewing the**
13:09:40 24 **portfolio.**

13:09:41 25 Q Are you aware of any contracts currently in

13:09:46 1 the Canyon portfolio where default interest is being
13:09:51 2 charged to any other borrower?

13:09:55 3 MR. DOLAN: Can you -- I don't understand
13:09:55 4 your question. Object to form.

13:09:57 5 BY MR. MILLER:

13:09:58 6 Q Are you aware of any other contracts where
13:10:02 7 the -- the borrower is paying default interest right
13:10:08 8 now?

13:10:08 9 A That would require me to provide
13:10:10 10 information about other borrowers, which we don't
13:10:14 11 do.

13:10:15 12 Q No, it wouldn't. I'm asking if you're
13:10:18 13 aware of any other borrowers who are paying default
13:10:24 14 interest. Does not ask you who they are.

13:10:27 15 A I can't speak to that. I haven't reviewed
13:10:29 16 our reports.

13:10:30 17 Q Well, it sounded like from your last answer
13:10:30 18 that you might have been aware of some --

13:10:30 19 A No.

13:10:31 20 Q -- that you just didn't want to tell me
13:10:33 21 about.

13:10:35 22 A That is not what I said.

13:10:36 23 Q Well, why did it matter about whom I was
13:10:38 24 speaking when I asked you if there were any and --

13:10:40 25 A Because "any" is a very broad word, like

13:10:43 1 **I've said many times today.**

13:10:43 2 Q So --

13:10:45 3 **A "Any" implies every.**

13:10:47 4 Q No. "Any" does not imply every.

13:10:49 5 **A For you to answer the "any" question, you
13:10:51 6 have to know the every.**

13:10:52 7 Q Well, how come you don't know as the head
13:10:55 8 of asset management how many loans are currently
13:10:56 9 paying default interest right now? Isn't that an
13:10:57 10 important fact to know?

13:10:59 11 **A It is an important fact to know.**

13:11:02 12 Q Well, how -- well, how -- how is it that
13:11:04 13 you're not aware of it?

13:11:06 14 **A I haven't reviewed those reports before
13:11:08 15 coming in here.**

13:11:09 16 Q Well, don't you review the reports on a
13:11:12 17 regular basis?

13:11:12 18 **A You're asking me to do it off the top of my
13:11:14 19 head and I'm not going to do that.**

13:11:16 20 Q So you're not familiar off the top of your
13:11:19 21 head of any, or there might be some but you'd have
13:11:24 22 to review documents --

13:11:24 23 MR. PASCOE: The audio is completely out.

13:11:28 24 THE VIDEOGRAPHER: Counsel on the phone,
13:11:29 25 please mute your phones.

13:11:32 1 MR. PASCOE: It was muted. I'm just
13:11:33 2 saying I needed to communicate -- that is better.
13:11:35 3 Thank you.
13:11:35 4 MR. MILLER: Can you hear me now?
13:11:39 5 MR. PASCOE: Yes, I can. Thank you.
13:11:39 6 MR. MILLER: Okay.
13:11:53 7 Debbie, can you read that back? I'm sorry.
13:11:53 8 (Record read.)
13:11:54 9 BY MR. MILLER:
13:11:54 10 Q You're not familiar off the top of your
13:11:56 11 head of any other loan agreements for which the
13:12:02 12 borrower is paying default interest at this time?
13:12:04 13 **A I am not aware off the top of my head.**
13:12:07 14 Q Would there be documents that would
13:12:09 15 reference that information?
13:12:11 16 **A There would be reports that would reference**
13:12:15 17 **the status of our portfolio.**
13:12:17 18 Q And how often do you review such reports?
13:12:20 19 **A Monthly.**
13:12:23 20 Q When was the last time you reviewed such a
13:12:26 21 report?
13:12:27 22 **A With our last set of reports, which would**
13:12:30 23 **have been, probably, three or four weeks ago.**
13:12:33 24 Q So the new set is coming out -- what? --
13:12:35 25 today or tomorrow? Now it is the new month; right?

13:12:39 1 **A The new set would be coming out within the**
13:12:42 2 **next week.**

13:12:43 3 Q Probably we should have had your deposition
13:12:45 4 next week. Okay.

13:12:51 5 You talked briefly about the property.
13:12:55 6 Maybe -- I don't want to put words in your mouth
13:12:58 7 because I've been awful at that today, certainly.

13:13:03 8 What was your concern about the condition
13:13:04 9 of the property at the time of the receiver being
13:13:06 10 appointed?

13:13:07 11 **A The property was to have been substantially**
13:13:13 12 **complete by that point in time pursuant to the**
13:13:16 13 **milestones that were in your client's loan**
13:13:19 14 **agreement, and although I'm sure there are differing**
13:13:22 15 **opinions, it would have been somewhere between 50**
13:13:25 16 **and 60 percent, best case.**

13:13:25 17 Q Would it --

13:13:28 18 **A That -- that would be my concern.**

13:13:31 19 Q Sorry.

13:13:35 20 And were there any extensions of milestones
13:13:38 21 provided to my client through the term of the loan
13:13:41 22 agreement?

13:13:42 23 **A I would have to review those documents.**

13:13:44 24 Q Do you know if there were any extensions of
13:13:47 25 milestones if the final and substantial completion

13:13:52 1 date were ever extended?

13:13:53 2 **A I would have to review the documents.**

13:13:56 3 Q You don't have any personal recollection of
13:13:57 4 that?

13:13:58 5 **A I don't have a personal recollection of
13:14:01 6 that specific question.**

13:14:02 7 Q Uh-huh.

13:14:02 8 What was -- what was Canyon's options at
13:14:07 9 the time it sued to appoint the receiver under
13:14:13 10 the -- under the agreement with my client? Do you
13:14:15 11 know?

13:14:15 12 **A Could you be more specific.**

13:14:15 13 Q Yeah.

13:14:16 14 What options did Canyon have based on the
13:14:19 15 fact that you're alleging that there was this
13:14:22 16 default situation? What -- what could Canyon have
13:14:25 17 done?

13:14:26 18 **A I don't think the default is alleged.
13:14:29 19 Wasn't that decided upon already by the court?**

13:14:33 20 Q No. The court dec- -- I'm not arguing the
13:14:33 21 law with you, ma'am. That wasn't my question.

13:14:34 22 Will you please answer my question.

13:14:35 23 **A Can you rephrase it.**

13:14:35 24 Q No.

13:14:37 25 MR. MILLER: Will you read it back, Debbie,

13:14:39 1 please.

13:14:39 2 (Record read.)

13:14:54 3 THE WITNESS: We'd have to go through the
13:14:55 4 loan agreement, and I can recite all the rights and
13:14:56 5 remedies if you would like.

13:14:56 6 BY MR. MILLER:

13:14:57 7 Q Well, how many -- how many rights and
13:14:59 8 remedies were there?

13:15:00 9 A I don't know. I'd have to look at the loan
13:15:01 10 agreement.

13:15:02 11 Q Well, if you'd like to look at Chapter 10,
13:15:04 12 you're certainly welcome to do that, of Exhibit 17.

13:15:06 13 A That is not the entirety of the agreement.

13:15:09 14 Q What is that -- what do you mean?

13:15:10 15 A All of these covenants relate to each
13:15:13 16 other. So if you want a fulsome answer to that
13:15:17 17 specific question, I would need to read the loan
13:15:19 18 agreement.

13:15:20 19 Q How often do you read full hundred-page
13:15:23 20 loan agreements?

13:15:24 21 A That is not the point. The point is you're
13:15:27 22 asking me for a very specific question.

13:15:29 23 Q No. I'm asking you how often you review
13:15:31 24 entire loan agreements in your position.

13:15:34 25 A Each loan agreement is different.

13:15:38 1 Q I've heard that. I've heard that.
13:15:39 2 So -- but my question remains the same.
13:15:41 3 What other options were there? How is -- how is
13:15:44 4 this option: Pick up the phone and call my client
13:15:47 5 and say, "Hey, we need to finish up the project.
13:15:51 6 When is it going to be done"? Did anybody do that
13:15:55 7 that you know of?

13:15:56 8 **A This is a project where there was**
13:15:58 9 **continuous discussion about the status of the**
13:16:01 10 **project for quite a while before the receiver was**
13:16:04 11 **appointed.**

13:16:05 12 Q Okay. So let's start with those.
13:16:06 13 When was the first time you had one of
13:16:08 14 those discussions?

13:16:09 15 **A The team predominantly handled those**
13:16:12 16 **discussions.**

13:16:12 17 Q Well, how do you know they occurred?

13:16:14 18 **A Because I have a recollection in our**
13:16:17 19 **updates that they were in contact with the borrower.**

13:16:20 20 Q So tell me what -- what do you recall
13:16:22 21 from -- and from when?

13:16:23 22 **A I recall that the borrower was having**
13:16:27 23 **problems with their contractor, that the project was**
13:16:31 24 **significantly behind schedule, that it was**
13:16:35 25 **undercapitalized, that the substantial completion**

13:16:39 1 date was upcoming, that the interest reserve was
13:16:42 2 being depleted, and that there wasn't a clear path
13:16:46 3 to completion of the project.

13:16:49 4 Q Were you aware of the fact that there were
13:16:52 5 draws that had been approved that weren't paid by
13:16:55 6 Canyon?

13:16:55 7 A I am not aware that Canyon approved any
13:16:59 8 draws that it did not fund.

13:17:02 9 Q You're not aware of having approved draws
13:17:05 10 in July -- June, July, and August 2016 that were not
13:17:09 11 paid?

13:17:09 12 A I am not.

13:17:10 13 Q You -- did you believe that you paid all --
13:17:12 14 did you believe you paid all the draws?

13:17:14 15 A That is not what I said. You asked me --

13:17:14 16 Q Uh-huh.

13:17:17 17 A -- what I was aware of.

13:17:19 18 Q So you're -- as we sit here today, you're
13:17:21 19 not aware of any situation in which Canyon didn't
13:17:25 20 pay approved draws?

13:17:27 21 A I said that in all cases when Canyon
13:17:32 22 approves a draw, it funds. I am not aware of
13:17:37 23 anything specific here because I am not reviewing
13:17:40 24 and funding those draws, typically.

13:17:44 25 Q Well, let's assume for the moment that

13:17:46 1 there were draws that weren't funded. Might that
13:17:50 2 cause a problem?

13:17:51 3 MR. DOLAN: Object to the form of the
13:17:52 4 question.

13:17:56 5 MR. MILLER: I'm sorry?

13:17:56 6 THE WITNESS: He objected.

13:17:58 7 MR. DOLAN: I object --

13:17:58 8 MR. MILLER: Yeah.

13:18:00 9 MR. DOLAN: -- to the form of the question.

13:18:00 10 BY MR. MILLER:

13:18:00 11 Q The objection is just to note for the
13:18:02 12 record. That doesn't mean you don't answer the
13:18:04 13 question.

13:18:04 14 MR. DOLAN: No. It means the question was
13:18:07 15 mis- -- in my view, an improper form.

13:18:10 16 MR. MILLER: Okay. Whatever.

13:18:13 17 Q Is there any -- is there any indication
13:18:15 18 that if draws were approved and were not funded, how
13:18:19 19 that -- to you that that might cause a problem for
13:18:22 20 the developer and the contractor?

13:18:24 21 **A We don't fund unless it is safe to fund.**
13:18:28 22 **And to the extent that the requirements for funding**
13:18:32 23 **have not been met or if there is a dispute between**
13:18:36 24 **the borrower and the contractor, it is our**
13:18:40 25 **obligation to fund only when our requirements have**

13:18:43 1 **been fully satisfied.**

13:18:45 2 Q Well, what does "safe to fund" mean?

13:18:48 3 **A That the project is operating in accordance**
13:18:52 4 **with the loan agreement and the milestones and that**
13:18:55 5 **there aren't any defaults, for instance.**

13:18:58 6 Q Well, but what -- what makes it safe? I
13:19:00 7 don't understand the use of the phrase "safe to
13:19:05 8 fund." Where -- where would the money go except to
13:19:07 9 pay draws that have been presented to the lender?

13:19:10 10 **A But the draws have to be verified as for**
13:19:13 11 **contracts that are in force and work that is**
13:19:16 12 **complete and lien waivers that have been provided**
13:19:21 13 **and a fully signed off set of documents. That is --**
13:19:25 14 **that is -- that is what I mean by "safe to fund."**

13:19:28 15 Q And your testimony here today is that your
13:19:30 16 position is that that was not the case in June,
13:19:33 17 July, and August of 2016?

13:19:35 18 **A That is not what I said.**

13:19:36 19 Q I'm trying to understand --

13:19:38 20 **A I did not review those documents.**

13:19:40 21 Q So you don't know one way or the other as
13:19:42 22 we sit here today?

13:19:43 23 **A That is correct.**

13:19:44 24 Q I see.

13:19:52 25 Okay. Would it -- how -- how would it help

13:20:04 1 the project or Canyon to not fund the draw if that
13:20:11 2 were something that had occurred?

13:20:13 3 **A I don't understand what you mean by "help."**

13:20:16 4 Q Well, is it beneficial to Canyon or to the
13:20:21 5 continual development of the project to not fund a
13:20:25 6 draw?

13:20:26 7 **A It is only beneficial to fund a draw when
13:20:29 8 all of the requirements of the loan are being met.**

13:20:31 9 Q Is it better than for the contractors to
13:20:33 10 not get paid and to file liens against the property?

13:20:37 11 **A It is the borrower's obligation to provide
13:20:43 12 lien-free collateral and it is also their obligation
13:20:48 13 to be able to provide the work in place in
13:20:52 14 accordance with the milestones, and it is also their
13:20:56 15 obligation to provide draws that are accepted,
13:20:59 16 completely signed off on, and in the form that is
13:21:02 17 required pursuant to the loan documents.**

13:21:05 18 **So to the extent that that does not exist,
13:21:08 19 it would not be in Canyon's interest to fund. And
13:21:11 20 it is not our project. We are not the equity. It
13:21:15 21 is the borrower's project.**

13:21:15 22 Q Right.

13:21:17 23 But if the funds -- if the funds aren't
13:21:19 24 provided to pay the contractors and the contractors
13:21:22 25 walked off the job and my client has a contract with

13:21:25 1 Canyon in which Canyon promises to pay the money
13:21:29 2 that my client is paying an interest rate for the
13:21:32 3 privilege of using and Canyon doesn't do that, do
13:21:34 4 you see how that could cause a problem?

13:21:36 5 **A No, because it is the -- it is Canyon's**
13:21:40 6 **obligation to protect the money that it invests.**
13:21:46 7 **And to the extent that a borrower has a loan that is**
13:21:49 8 **either in default, not in compliance,**
13:21:52 9 **undercapitalized, whatever that may be, it is not**
13:21:55 10 **our job to fix that problem. It is our job to**
13:21:58 11 **invest the money in accordance with the requirements**
13:22:02 12 **of the loan.**

13:22:02 13 **And to the extent that there is other money**
13:22:04 14 **needed in order to solve other issues, that is the**
13:22:07 15 **equity's obligation.**

13:22:09 16 **And so, yes, your borrower -- our borrower,**
13:22:11 17 **your client, could have funded whatever he wanted to**
13:22:14 18 **make sure that whatever his issues with his**
13:22:17 19 **contractor were, were solved.**

13:22:19 20 **Q You make it sound like you just pull out a**
13:22:21 21 **magic wand and -- and make those problems go away.**
13:22:25 22 **I'm sure Mr. Pascoe and his client wouldn't agree**
13:22:32 23 **that it was quite so easy.**

13:22:35 24 **Did -- does Canyon default construction**
13:22:38 25 **borrowers on a regular basis?**

13:22:40 1 **A Please rephrase your question.**

13:22:43 2 Q How many times in the last six months has

13:22:46 3 Canyon sent a default letter to a construction

13:22:49 4 borrower?

13:22:50 5 **A I couldn't give you a specific answer**

13:22:52 6 **without reviewing our files.**

13:22:54 7 Q How about an approximate answer?

13:22:56 8 **A I don't approximate for depositions.**

13:22:58 9 Q Well, you might have to because you don't

13:23:00 10 have the information.

13:23:01 11 **A I wasn't asked to bring the information.**

13:23:03 12 Q Oh, actually, you were.

13:23:04 13 **A No.**

13:23:04 14 Q Did you review -- did you review the

13:23:06 15 deposition notice that you were provided?

13:23:08 16 **A I did.**

13:23:09 17 Q Did you see the part at the end that said

13:23:11 18 bring all the documents relative to this -- to this

13:23:14 19 project with you?

13:23:14 20 **A That would be impossible.**

13:23:17 21 Q Well, that is not the same thing as not

13:23:19 22 being asked to bring them now, is it, ma'am?

13:23:21 23 **A There was no specificity required of me in**

13:23:25 24 **relation to these questions.**

13:23:26 25 Q That is not how the -- it works, though.

13:23:27 1 You were directed to bring everything and you
13:23:29 2 brought nothing. And now you're saying that that
13:23:31 3 doesn't -- that that allows you not to answer the
13:23:33 4 question. So I'm asking you to approximate because
13:23:35 5 there is nothing else I can do.

13:23:37 6 MR. DOLAN: Let me just place an objection
13:23:39 7 on the record. The dep notice was an individual
13:23:42 8 notice of deposition to Ms. Stamolis. She doesn't
13:23:45 9 have any documents in her individual capacity to
13:23:49 10 bring today. So you can't accuse her of not
13:23:53 11 bringing documents that she doesn't have. She
13:23:56 12 doesn't have any. Canyon has all of the documents,
13:23:59 13 and Canyon is a different entity from Ms. Stamolis.
13:24:02 14 So that is No. 1.

13:24:03 15 No. 2, Canyon has provided all those
13:24:05 16 documents.

13:24:06 17 No. 3, you're asking her to approximate how
13:24:09 18 many default notices were sent out on other files
13:24:11 19 unrelated to Canyon. Those wouldn't be in those
13:24:14 20 documents anyway. They don't have anything to do
13:24:15 21 with today. So you're -- you're -- you're mixing
13:24:16 22 and matching and making an argument that is built on
13:24:19 23 nothing.

13:24:20 24 MR. MILLER: Ben, we've talked about
13:24:22 25 documents today and yesterday that have never been

13:24:23 1 provided to me that are completely and totally
13:24:25 2 relevant.

13:24:25 3 MR. DOLAN: You asked about default on
13:24:28 4 other loans.

13:24:28 5 MR. MILLER: I -- I know, but you're
13:24:28 6 grouping in -- you're saying that you've provided
13:24:30 7 everything. Please stop saying that. I'm --

13:24:30 8 MR. DOLAN: You --

13:24:32 9 MR. MILLER: You're right. I'm talking
13:24:33 10 about other loans right now. That is true.

13:24:35 11 MR. DOLAN: And you said that she was
13:24:36 12 supposed to bring documents relative to that. No,
13:24:38 13 she wasn't.

13:24:38 14 MR. MILLER: But she didn't bring anything
13:24:39 15 anyway; so it doesn't matter.

13:24:39 16 MR. DOLAN: Doesn't matter. She -- you're
13:24:40 17 asking her a question about default of the loan.
13:24:42 18 She didn't have any documents to bring on those, and
13:24:44 19 there is no obligation for her to know that today.

13:24:46 20 BY MR. MILLER:

13:24:47 21 Q All right. Can you name one project for
13:24:49 22 which a default letter has been sent in the last
13:24:52 23 90 days from Canyon?

13:24:54 24 **A Not off the top of my head.**

13:25:01 25 Q How many projects do you oversee?

13:25:05 1 **A** **At any given time, between 50 and 60.**

13:25:08 2 Q And aren't you familiar with the progress
13:25:11 3 in those projects?

13:25:13 4 **A** **I have a team of people who keep me**
13:25:14 5 **informed.**

13:25:15 6 Q So wouldn't the -- the issue of a project
13:25:19 7 being in default be one of those red-letter things
13:25:23 8 that would stick out in the mind of the head of the
13:25:26 9 real estate division?

13:25:27 10 **A** **It would.**

13:25:28 11 Q So how come you can't recount any at this
13:25:30 12 time?

13:25:30 13 **A** **You're asking me for a specific answer, and**
13:25:34 14 **I am telling you that without being able to review**
13:25:37 15 **that, I will not be able to give you a specific**
13:25:39 16 **answer.**

13:25:40 17 Q Well, if you can't name one and you can't
13:25:43 18 approximate how many there have been, can you
13:25:46 19 approximate on how many different projects devel- --
13:25:49 20 default letters have been sent in the last 90 days?

13:25:53 21 **A** **No.**

13:25:53 22 Q Couldn't even hazard a guess?

13:25:55 23 **A** **No.**

13:25:56 24 Q Would it be possible for Mr. Goldman to
13:26:03 25 have that information?

13:26:06 1 **A** **You'll have to ask Mr. Goldman tomorrow.**

13:26:10 2 Q Well, then, I'm going to ask Mr. Dolan to
13:26:13 3 suggest to Mr. Goldman that he be prepared to answer
13:26:15 4 questions of that nature tomorrow with documents if
13:26:16 5 he needs to review them in advance.

13:26:18 6 MR. DOLAN: Mr. Goldman will be prepared on
13:26:20 7 the topics he has been designated.

13:26:22 8 MR. MILLER: Oh, no. Mr. Goldman is being
13:26:24 9 deposed as an individual as well as the topics
13:26:27 10 you've deigned -- you've told us he is going to be
13:26:30 11 deposed upon. We're doing to depose him about
13:26:30 12 everything.

13:26:30 13 MR. DOLAN: He is an individual. He will
13:26:32 14 be prepared as well.

13:26:35 15 MR. MILLER: Yeah. That is Dolan speak for
13:26:38 16 he will have nothing.

13:26:39 17 MR. DOLAN: You know what, Mr. Miller?

13:26:39 18 MR. MILLER: Yeah.

13:26:39 19 MR. DOLAN: The personal attacks should
13:26:41 20 stop.

13:26:42 21 MR. MILLER: Well, as long as they -- as
13:26:42 22 long as that goes both ways, that would be great.

13:26:44 23 MR. DOLAN: I haven't attacked you
13:26:45 24 personally.

13:26:46 25 MR. MILLER: No. Okay.

13:26:50 1 Q So what -- at the time of the filing of the
13:26:59 2 lawsuit -- no. Let's ask it a different way.

13:27:05 3 Since the receiver has been appointed, what
13:27:09 4 damages has Canyon incurred?

13:27:11 5 **A Conceptually?**

13:27:15 6 Q Financially.

13:27:17 7 **A We have continued to advance money to the**
13:27:24 8 **receiver, which has continued to increase our**
13:27:27 9 **exposure in this loan beyond anything that was**
13:27:32 10 **originally contemplated when the original loan was**
13:27:35 11 **made.**

13:27:35 12 Q Okay. But if the property is sold,
13:27:41 13 wouldn't Canyon be made whole?

13:27:45 14 **A I don't know.**

13:27:45 15 Q What -- what do you mean you don't know?

13:27:45 16 **A I don't know what the property is going to**
13:27:47 17 **be sold for.**

13:27:48 18 Q Have you engaged in discussions regarding
13:27:50 19 the sale of the property?

13:27:52 20 **A We have received minimal updates from the**
13:27:54 21 **receiver, but I don't know the status of where the**
13:27:57 22 **sale -- sale is at this point.**

13:27:59 23 Q Have you discussed with the receiver the
13:28:04 24 plan for selling the property?

13:28:07 25 **A We are aware of the plan for selling the**

13:28:11 1 **property, and as the lender to the receiver, we are**
13:28:14 2 **entitled to have that communication with the**
13:28:17 3 **receiver.**

13:28:17 4 Q Have you received any offers at all?

13:28:20 5 A I have not received any information on
13:28:21 6 offers yet.

13:28:22 7 Q Have you ever talked to Debbie Corson?

13:28:25 8 A I have been on a call with -- that Debbie
13:28:28 9 was on that was an update call.

13:28:32 10 Q Can you tell us the status of the sale
13:28:34 11 efforts?

13:28:34 12 A At that point in time, it was very broad
13:28:37 13 and about outreach and property tours and the call
13:28:41 14 for offers being somewhere this -- in -- you know,
13:28:46 15 around April 30, May 1.

13:28:48 16 Q Right. So that was a few days ago.

13:28:50 17 Have you -- have you received -- have you
13:28:50 18 heard of any offers being received?

13:28:52 19 A I have not gotten an update on any offers.

13:28:56 20 Q If, presumably, the property is sold and
13:29:03 21 Canyon is made whole, it will not have suffered any
13:29:07 22 damages; is that correct?

13:29:13 23 A As a concept, if we are owed \$100 and the
13:29:16 24 property sells for \$100, that would be yes.

13:29:21 25 Q Okay. And at the time that the lawsuit was

13:29:27 1 filed, what damages had Canyon incurred?

13:29:30 2 **A The project was incomplete. We had a loan**
13:29:34 3 **that had a substantial completion date that was not**
13:29:38 4 **met and we had collateral that would not satisfy the**
13:29:43 5 **loan that was outstanding because it was incomplete.**

13:29:46 6 Q What -- did you know what the value of the
13:29:49 7 property was at that time?

13:29:50 8 **A As incomplete?**

13:29:51 9 Q Yes.

13:29:52 10 **A No. That is very difficult to gauge.**

13:29:55 11 Q Did you do internal valuations about that?

13:29:58 12 **A We value our loan.**

13:30:02 13 Q Did you do internal valuations about that?

13:30:05 14 MR. DOLAN: What is "that"?

13:30:06 15 THE WITNESS: What is "that"?

13:30:07 16 BY MR. MILLER:

13:30:07 17 Q The value of the incomplete property. I
13:30:09 18 asked -- answered -- I asked the question, she
13:30:11 19 changed the answer. So I'm going to ask the same
13:30:14 20 question again.

13:30:14 21 **A You asked me --**

13:30:14 22 Q Uh-huh.

13:30:16 23 **A -- what we value.**

13:30:17 24 Q No. I did not ever say the words, "What do
13:30:20 25 you value?"

13:30:21 1 MR. DOLAN: You said, "Do you do internal
13:30:23 2 valuations?"
13:30:24 3 MR. MILLER: I said, "Do you do
13:30:25 4 internal" --
13:30:25 5 THE WITNESS: Right. And what would I be
13:30:27 6 valuing if not my loan?
13:30:27 7 BY MR. MILLER:
13:30:30 8 Q The -- the property. The asset.
13:30:31 9 A **The collateral is a secondary piece. We**
13:30:34 10 **value, when we are doing our internal work product,**
13:30:38 11 **the loan.**
13:30:39 12 Q Right.
13:30:39 13 But you just -- you just said that you were
13:30:42 14 concerned about not receiving the recovery of the
13:30:45 15 amount of the loan. So at that time, how much had
13:30:48 16 been lent on the -- on the construction from Canyon?
13:30:52 17 How much out of pocket was Canyon at at that point?
13:30:57 18 A **At which time?**
13:30:57 19 Q The time of the filing of the lawsuit.
13:30:59 20 A **I would say approximately \$32 million.**
13:31:03 21 Q Might it have been more like 19 or 20?
13:31:05 22 A **I don't believe so.**
13:31:07 23 Q Okay. So let's assume it was 32 million.
13:31:11 24 At that time, what -- it is -- what -- what did
13:31:14 25 Canyon believe the value of the property was

13:31:17 1 incomplete at that time?

13:31:19 2 **A I don't know.**

13:31:19 3 Q You don't think it exceeded 32 million?

13:31:22 4 **A I think it is impossible to value
13:31:24 5 incomplete projects.**

13:31:26 6 Q Well, people sell incomplete projects, do
13:31:28 7 they not?

13:31:29 8 **A Reluctantly.**

13:31:31 9 Q Okay. So can you explain to me why the
13:31:34 10 project is for sale now when it is incomplete?

13:31:37 11 **A The receiver is selling the project.**

13:31:40 12 Q Do you know why?

13:31:41 13 **A The receiver loan matures in June. I
13:31:43 14 assume that is why.**

13:31:45 15 Q But what the receiver -- so either -- so
13:31:47 16 let me make sure I understand this. The receiver
13:31:50 17 loan matures in June. The project is not going to
13:31:53 18 be finished till December by the same receiver who
13:31:57 19 entered into the receiver loan, and they're trying
13:32:00 20 to sell it incomplete. How does that benefit
13:32:06 21 anyone?

13:32:06 22 **A You would have to ask the receiver.**

13:32:08 23 Q But it is your money. So I'm going to ask
13:32:11 24 you.

13:32:11 25 **A Right. But the project is substantially**

13:32:13 1 complete at this point. Not substantially complete
13:32:17 2 in the definition of the documents, but the first
13:32:19 3 TCO has been received, substantial amount of work
13:32:22 4 that has been -- that has had to be corrected has
13:32:26 5 been corrected. And progress has been made with
13:32:30 6 respect to the construction of the common areas, and
13:32:34 7 there is the ability to occupy certain units. So I
13:32:38 8 think it is a substantially different place than it
13:32:41 9 was when it was -- when your borrower defaulted.

13:32:46 10 Q Well, granted, that was a year and a half
13:32:47 11 ago, wasn't it? I mean, a lot -- a long time has
13:32:50 12 passed since that time, isn't it -- hasn't it?

13:32:52 13 A The amount of time you said has passed has
13:32:55 14 passed.

13:32:57 15 Q How -- how long was the project supposed to
13:33:01 16 take to be built from beginning to end?

13:33:04 17 A I don't recall specifically.

13:33:04 18 Q Well, you have the loan document right in
13:33:04 19 front of you.

13:33:04 20 A I'd be happy to read it if you'd like.

13:33:06 21 Q Well, it is dated October 1, 2014, and has
13:33:08 22 a substantial completion date of, I think -- we were
13:33:11 23 just talking about the substantial completion date,
13:33:14 24 weren't we?

13:33:14 25 A October.

13:33:15 1 Q October 2016; right?

13:33:17 2 A Uh-huh.

13:33:17 3 Q So two years. We didn't have to look at
13:33:19 4 anything to come to that conclusion, did we?

13:33:22 5 A If you would like me to double-check the
13:33:25 6 dates --

13:33:25 7 Q I don't need you to double-check the dates.
13:33:28 8 We just talked about how it is dated October 1,
13:33:31 9 2014, and the substantial completion date you just
13:33:32 10 testified to is October 21, '16.

13:33:34 11 Without looking, we can all come to the
13:33:36 12 agreement that was two years, can we not?

13:33:37 13 A But if you knew that, why did you ask me?

13:33:41 14 Q Because I'm going to ask you the next
13:33:41 15 question --

13:33:41 16 A Uh-huh.

13:33:42 17 Q -- which is: If it only was supposed to
13:33:43 18 take two years to build the entire project, how is
13:33:46 19 it -- is it -- is it appropriate for it to take
13:33:49 20 another two years just to finish the last third?

13:33:52 21 MR. DOLAN: Object to the form of the
13:33:53 22 question. It assumes the last third was all that
13:33:57 23 needed to be completed.

13:33:58 24 MR. MILLER: Oh, whatever portion it was.

13:34:01 25 THE WITNESS: The project was not a third

13:34:05 1 left, first of all.

13:34:07 2 Secondly, the receiver needed to undertake
13:34:09 3 activities in order to understand the conditions of
13:34:12 4 the property and the actual work in place.

13:34:15 5 He also had an obligation to find a general
13:34:19 6 contractor, negotiate a contract, develop a
13:34:22 7 timeline, and develop a budget.

13:34:25 8 So those activities took about the same
13:34:27 9 amount of time, I believe, that it took your client
13:34:30 10 to find his contract with Quandel.

13:34:35 11 So I think that the receiver's activities,
13:34:40 12 especially since he was coming into an unknown
13:34:43 13 situation, were customary with market as far as
13:34:46 14 being able to get to that point of the project.

13:34:48 15 And then when you add in the bankruptcy,
13:34:50 16 which, again, in our view, put at least a four-month
13:34:54 17 delay, it seems completely possible to me that we
13:34:59 18 are where we are today.

13:35:02 19 BY MR. MILLER:

13:35:02 20 Q Are there any other possible reasons that
13:35:04 21 it could be that way?

13:35:06 22 **A I don't know what your question means.**

13:35:10 23 Q Are there any other --

13:35:10 24 **A Would you like to rephrase?**

13:35:12 25 Q Sure.

13:35:12 1 Are there any other possibilities as to why
13:35:14 2 the progress was so slow?

13:35:16 3 **A I didn't say progress was slow. You did.**

13:35:19 4 Q Well, you just listed about ten different
13:35:21 5 reasons why it took a while to do all these things
13:35:24 6 to get to the point where we are today. You think
13:35:26 7 that that was done in a timely fashion?

13:35:29 8 **A I believe that the receiver has acted in a**
13:35:31 9 **timely fashion.**

13:35:32 10 Q I'm going to show you what we're going to
13:35:34 11 mark as Exhibit 45.

13:35:36 12 (Exhibit 45 was marked for
13:35:48 13 identification.)

13:35:48 14 BY MR. MILLER:

13:35:49 15 Q Ma'am, have you ever seen this document
13:35:51 16 before?

13:36:20 17 **A This is the first time I'm reading this**
13:36:24 18 **document; so I'll take my time.**

13:36:26 19 Q Please.

13:37:55 20 **A Okay.**

13:37:57 21 Q I know you've never seen this document
13:37:59 22 before, according to your testimony. Do you even
13:38:02 23 know what it is?

13:38:03 24 **A I've read what it is.**

13:38:05 25 Q Okay. Well, then, I'm going to address

13:38:09 1 your -- direct your attention to the fifth full
13:38:14 2 paragraph, last sentence. Starts with, "The
13:38:18 3 receiver acknowledges."

13:38:23 4 **A One, two, three, four, five.**

13:38:26 5 Q Last full sentence.

13:38:28 6 **A That isn't what it starts with. It says,
13:38:31 7 "If at any time" or this is -- okay. Got it.**

13:38:37 8 Q Is it -- have you ever seen language like
13:38:41 9 this in an agreement between -- not between --
13:38:46 10 involving a construction general contractor?

13:38:52 11 **A Can you please rephrase or be more
13:38:55 12 specific.**

13:38:55 13 Q Yeah.

13:38:56 14 It talks about how "the receiver
13:38:58 15 acknowledges that the release of multiple tranches
13:39:02 16 may reduce or eliminate efficient and economical
13:39:05 17 implementation of the work, which may increase the
13:39:07 18 contract sum and contract time generally typical to
13:39:12 19 industry standards."

13:39:14 20 Is that a sentence or a concept that you've
13:39:20 21 ever seen in a contract with a construction company
13:39:23 22 before?

13:39:24 23 **A This isn't customary. This is a
13:39:29 24 receivership; so nothing about this is customary.**

13:39:34 25 Q To take -- to say that they're going to

13:39:37 1 build the building, perhaps, as slowly as they
13:39:41 2 choose is not customary?

13:39:43 3 **A You're paraphrasing --**

13:39:46 4 **Q Yes.**

13:39:46 5 **A -- and implying something that this does
13:39:48 6 not say. This says,**

13:39:50 7 **"The receiver acknowledges the**

13:39:52 8 **release of multiple tranches may**

13:39:52 9 **reduce or eliminate efficient and**

13:39:55 10 **economical implementation of the**

13:39:56 11 **work, which may increase the contract**

13:39:58 12 **sum and the contract time generally**

13:40:00 13 **typical to industry standards."**

13:40:03 14 **Q I know that is what it says, but isn't the
13:40:06 15 point of building the building to finish it as
13:40:08 16 quickly as possible?**

13:40:09 17 **A It would be, yes. But, again, at this
13:40:12 18 point in time, it -- it was impossible to know how
13:40:16 19 to approach the work because it needed to be
13:40:24 20 analyzed and it needed to be done in phases in order
13:40:28 21 to be able to do that. So nothing about this
13:40:32 22 project is customary.**

13:40:33 23 **Q So at the time the receiver was appointed,
13:40:36 24 the suggestion that the building would be completed
13:40:39 25 more quickly and more efficiently would not have**

13:40:42 1 been an accurate statement; is that correct?

13:40:44 2 **A I don't think that is correct either.**

13:40:46 3 Q What -- what do you think is correct?

13:40:48 4 **A What I think is correct is that the**

13:40:51 5 **receiver had an obligation, and his receivership**

13:40:55 6 **orders have been approved by the court to do what**

13:41:00 7 **was best for the project at any given time. And in**

13:41:03 8 **April of last year when this was signed, almost a**

13:41:06 9 **year ago, there were a tremendous amount of unknowns**

13:41:10 10 **still in the project and there were also tremendous**

13:41:14 11 **difficulties in ensuring that subcontractors could**

13:41:19 12 **be obtained for this project as well.**

13:41:21 13 Q But are you aware of the fact that it was

13:41:24 14 represented to the court at the time of the

13:41:27 15 receiver's appointment that part of the reason the

13:41:31 16 receiver should be appointed was because they had a

13:41:33 17 plan in place and were prepared to get started right

13:41:35 18 away and to finish this building as quickly as they

13:41:38 19 could?

13:41:39 20 **A I think that the court's approval relates**

13:41:42 21 **predominantly to having a building that can be built**

13:41:47 22 **correctly and to code so that the collateral for the**

13:41:52 23 **loan was protected and so that the collateral itself**

13:41:56 24 **was protected for the benefit of everyone.**

13:42:00 25 Q What about the collateral wasn't protected

13:42:03 1 at that time?

13:42:03 2 **A What do you mean?**

13:42:04 3 Q Well, you -- you just used the phrase that
13:42:06 4 collateral had to be protected. What about -- what
13:42:09 5 about the collateral wasn't protected?

13:42:11 6 **A The loan had been in default. The court**
13:42:14 7 **had appointed a receiver for a reason. So your**
13:42:18 8 **question should really be directed at the court.**

13:42:20 9 Q Oh, believe me, I've asked the court the
13:42:23 10 question a number of times, but he doesn't have to
13:42:25 11 answer it because I can't put him under oath, but I
13:42:26 12 get to put you.

13:42:27 13 So my question to you remains the same,
13:42:29 14 which is: What was needing to be done at that time
13:42:35 15 that necessitated the appointment of the receiver?

13:42:41 16 **A The -- the receiver needed to be appointed**
13:42:45 17 **in order to assess and consider completion of the**
13:42:49 18 **project.**

13:42:50 19 Q What needed to be protected, though?

13:42:52 20 **A The collateral for our loans.**

13:42:55 21 Q Okay. But what about it wasn't properly
13:42:58 22 protected? That is what I'm trying to understand.

13:42:58 23 **A It was incomplete. Your client had an**
13:43:00 24 **obligation to deliver a substantially complete**
13:43:04 25 **building six months plus before this order even**

13:43:07 1 **happened.**

13:43:08 2 Q No. I think the substantial completion

13:43:12 3 date was -- you just testified was in October.

13:43:13 4 **A This is April -- right. So --**

13:43:13 5 Q Well, no.

13:43:14 6 **A -- that is six months plus.**

13:43:16 7 Q I'm -- I'm not talking about Exhibit 45

13:43:19 8 anymore. I'm sorry, ma'am. I'm talking about at

13:43:19 9 the time --

13:43:19 10 **A Did we switch exhibits?**

13:43:22 11 Q No. We -- no. We started talking about

13:43:23 12 something else. We're talking about -- I asked you

13:43:25 13 about the time of the appointment of the receiver.

13:43:27 14 At the time of the appointment of the receiver, you

13:43:29 15 said the collateral needed to be protected. I want

13:43:32 16 to know: At the time of the appointment of the

13:43:35 17 receiver, what did the collateral need to be

13:43:38 18 protected from?

13:43:39 19 **A Being incomplete, being exposed to the**

13:43:41 20 **weather, not having any clear path to completion**

13:43:44 21 **under the borrower. And it is our obligation to**

13:43:48 22 **avail ourself of any path that we need to in order**

13:43:51 23 **to make sure that our investors can be repaid**

13:43:55 24 **pursuant to their loan.**

13:43:56 25 Q And if they get repaid at 16 percent, it is

13:44:00 1 better than at the standard original rate; isn't

13:44:02 2 that true?

13:44:03 3 **A I am not the borrower who put his loan into**
13:44:07 4 **default and who signed with counsel an agreement**
13:44:11 5 **that knew that default rate was 16 percent.**

13:44:14 6 Q Okay. So why don't you answer the question
13:44:15 7 that I asked you.

13:44:16 8 **A I did.**

13:44:17 9 Q No. You -- actually, you didn't.

13:44:19 10 **A No, I did.**

13:44:20 11 Q I asked --

13:44:20 12 Debbie, will you please read back the
13:44:22 13 question.

13:44:54 14 (Record read.)

13:44:55 15 THE WITNESS: What does "better" mean?

13:44:55 16 BY MR. MILLER:

13:44:57 17 Q You make more money at 16 percent than you
13:45:00 18 make at the original rate; isn't that so?

13:45:03 19 **A 16 is more than 10.**

13:45:05 20 Q Right.

13:45:05 21 So you agree with me?

13:45:05 22 **A No.**

13:45:07 23 Q It is not better?

13:45:08 24 **A No.**

13:45:09 25 Q Why not?

13:45:09 1 **A** **Because we prefer when our loans perform**
13:45:11 2 **and we get repaid on time.**

13:45:12 3 Q Even if you make more money?

13:45:14 4 **A** **Absolutely.**

13:45:17 5 Q Then in that situation, what was -- what
13:45:22 6 would have been the harm with discussing the new
13:45:27 7 contractor, Gleason, with my client?

13:45:31 8 **A** **The material point in any construction loan**
13:45:37 9 **agreement is substantial completion. Your client**
13:45:43 10 **failed to even come remotely close to that. At that**
13:45:47 11 **point in time, there were discussions that occurred,**
13:45:51 12 **but nothing was supplied to us that met the**
13:45:56 13 **requirements of a replacement contractor.**

13:45:58 14 Q You weren't presented information from
13:46:00 15 Gleason Construction that they could finish the
13:46:03 16 building by March or April of 2017 --

13:46:03 17 **A** **There was no --**

13:46:06 18 Q -- just six months later?

13:46:08 19 **A** **There was no GNP at all, there was no**
13:46:11 20 **timeline, and there was no budget. The subm- -- the**
13:46:13 21 **submissions, as I understand it, that were made were**
13:46:16 22 **incomplete.**

13:46:17 23 Q Why did you ask my client to come to
13:46:19 24 Los Angeles in October of 2016?

13:46:23 25 **A** **Your client wanted to have discussions with**

13:46:27 1 **us; so we invited him to our offices.**

13:46:31 2 Q For what purpose?

13:46:32 3 **A To discuss the status of the default of the**
13:46:36 4 **loan.**

13:46:36 5 Q Do you recall the day that -- the date that
13:46:39 6 he was here?

13:46:40 7 **A I don't.**

13:46:41 8 Q Might it have been October 20, 2016?

13:46:44 9 **A It could be.**

13:46:46 10 Q And just to refresh your recollection, that
13:46:49 11 was the date in which you were referring to
13:46:52 12 revisions and affidavits and mission critical as
13:47:00 13 pursuant to Exhibits 2 and 3?

13:47:03 14 **A Correct.**

13:47:04 15 Q Did you tell my client that you were
13:47:06 16 preparing a lawsuit while he was standing in your
13:47:08 17 office?

13:47:09 18 **A It wouldn't be my obligation to do that.**

13:47:11 19 Q I didn't ask you if you were obligated. I
13:47:15 20 asked you if you did.

13:47:15 21 **A I don't recall.**

13:47:17 22 Q And why wouldn't it be your obligation to
13:47:19 23 tell him that?

13:47:20 24 **A It is our job as, you know, representatives**
13:47:25 25 **of our investors to both pursue paths that might be**

13:47:32 1 **different than what exercising remedies might be.**

13:47:35 2 **And it is not a typical -- I think for anybody when**

13:47:39 3 **they're trying to evaluate a circumstance that is**

13:47:42 4 **complicated to look at both options.**

13:47:50 5 Q Well, but in fairness, the lawsuit was

13:47:52 6 prepared and ready to go while my client was

13:47:55 7 standing in your office; isn't that true?

13:47:57 8 **A I don't know that it was completed at that**

13:47:59 9 **point in time.**

13:48:00 10 Q Well, Ms. Getler or Ms. Van Curen made

13:48:04 11 reference to her draft affidavit on October 21,

13:48:09 12 2016. So it was either that day or short -- very

13:48:13 13 shortly thereafter; correct?

13:48:15 14 **A Which is after the meeting.**

13:48:16 15 Q So if you were being straightforward and up

13:48:21 16 front with my client, wouldn't it have been

13:48:23 17 appropriate to tell him rather than surprise him

13:48:28 18 with a lawsuit?

13:48:29 19 **A I don't know what would be appropriate in**

13:48:30 20 **your view, but in my view, doing whatever needs to**

13:48:34 21 **be done in order to protect my investors is my job.**

13:48:37 22 Q So your job is to bring people to

13:48:40 23 California, talk to them about trying to work out

13:48:43 24 some kind of a resolution, and then at the same time

13:48:46 25 actually not meaning to do anything except file a

13:48:49 1 lawsuit while my client is 3,000 miles away from the
13:48:52 2 form of the lawsuit?

13:48:53 3 MR. DOLAN: Objection to --

13:48:53 4 THE WITNESS: Actually --

13:48:54 5 MR. DOLAN: -- the form of the question.

13:48:55 6 THE WITNESS: -- that is not even close to
13:48:57 7 reality. The reality was your client wanted to have

13:49:02 8 a meeting. We told him if he wanted to have a

13:49:05 9 meeting, he could come to see us. He elected to do

13:49:08 10 that. During that meeting and, actually, prior to

13:49:11 11 that meeting, we made it very clear that it was

13:49:14 12 going to be important to come with a prepared plan

13:49:18 13 if he wanted us to consider anything outside of

13:49:22 14 pursuing -- us pursuing our remedies.

13:49:25 15 BY MR. MILLER:

13:49:25 16 Q And my client didn't have a prepared plan
13:49:25 17 with --

13:49:28 18 A He did not.

13:49:29 19 Q He didn't have a replacement contractor on
13:49:32 20 site working?

13:49:33 21 A No, he did not.

13:49:35 22 Q Let me show you what has been marked as --
13:49:41 23 maybe it hasn't yet been marked.

13:50:22 24 Q I'm going to show you what has been marked
13:50:23 25 as Exhibit 34. Can you tell me if you've seen that

13:50:29 1 before?

13:50:29 2 Have you had a chance to review Exhibit 34?

13:54:15 3 **A I have.**

13:54:15 4 Q Do you recall receiving and reviewing these
13:54:17 5 e-mails when they were sent on October 21, 2016?

13:54:20 6 **A I don't recall whether or not I reviewed**
13:54:22 7 **them at that time. I'm only one of the parties that**
13:54:25 8 **was copied.**

13:54:26 9 Q I understand.

13:54:27 10 But having read it today, does it change
13:54:31 11 any of your position on to what the situation was at
13:54:35 12 the time of the filing of this lawsuit?

13:54:37 13 **A Not at all.**

13:54:38 14 Q Gleason was there, Gleason was ready to
13:54:42 15 work, Gleason was on site, Gleason was ready to
13:54:45 16 proceed, but the problem was that the subcontractors
13:54:49 17 weren't being paid?

13:54:50 18 **A I think you're missing a critical**
13:54:52 19 **component, and it is in the loan documents. The**
13:54:55 20 **only way Gleason could have been engaged to take**
13:55:01 21 **over for Quandel is, A, if Quandel was terminated**
13:55:05 22 **after receiving lender approval, which did not**
13:55:08 23 **occur. B, after all of the submissions, including a**
13:55:13 24 **replacement GNP, a timeline of budget were submitted**
13:55:18 25 **to us and we had the appropriate time to review and**

13:55:21 1 approve and diligence it.

13:55:22 2 None of that happened. This is all your
13:55:24 3 client's perspective on what should have been in his
13:55:27 4 ideal world. This is not the way we run whether or
13:55:30 5 not we fund a -- projects.

13:55:32 6 Q Right.

13:55:32 7 But the draws hadn't been paid for the
13:55:36 8 three prior months and that --

13:55:37 9 A Because the requirements had not been met,
13:55:39 10 apparently.

13:55:41 11 Q What requirements hadn't been met,
13:55:41 12 apparently? Because of the switching off of
13:55:42 13 contract or that the work hadn't been performed?

13:55:44 14 A The GNP was in default. The borrower's
13:55:50 15 loan was in default. It is not our obligation to
13:55:53 16 fund when they are in defaults.

13:55:56 17 Q What were the defaults in June of 2016?

13:56:01 18 A I would have to review the file.

13:56:02 19 Q What were the defaults in July of 2016?

13:56:05 20 A The contractor had been terminated without
13:56:09 21 approval, just as one.

13:56:10 22 Q In July of 2016?

13:56:11 23 A I don't know the date. You're asking me
13:56:15 24 if -- if -- in this date, which is -- I -- it is
13:56:19 25 impossible to tell because it is cut off up here.

13:56:25 1 Q October 21?

13:56:26 2 A **October. There were -- prior to this**
13:56:29 3 **point, there were copies sent to Canyon and, you**
13:56:33 4 **know, notices -- and we were advised internally of**
13:56:36 5 **the dispute between your client and the general**
13:56:40 6 **contractor.**

13:56:40 7 Q So rather than assist in working out the
13:56:43 8 problems between the general contractor and your
13:56:46 9 borrower, you would rather just throw my client to
13:56:50 10 the curb?

13:56:52 11 A **I don't think that is a fair assessment or**
13:56:54 12 **what I said.**

13:56:56 13 Q Well, I mean, it sounds like what you said
13:56:59 14 was that Canyon has no interest in getting involved
13:57:02 15 in a dispute with the general contractor. You've
13:57:04 16 said that. Canyon has no interest in paying off
13:57:09 17 approved draws if it chooses not to and --

13:57:14 18 A **That is not what I said.**

13:57:14 19 Q Well --

13:57:16 20 A **What I said is we pay draws that have been**
13:57:19 21 **reviewed and approved by our consultants and our**
13:57:23 22 **team.**

13:57:23 23 Q Well, is there --

13:57:24 24 A **And if they are not in compliance with the**
13:57:26 25 **loan and do not have all the components required or**

13:57:30 1 if a contract with the general contractor is in
13:57:33 2 default or if letters are being sent back and forth
13:57:37 3 basically evidencing a significant dispute, it is
13:57:40 4 our obligation to be very careful about disbursing
13:57:40 5 funds.

13:57:45 6 Q Is part of the reason Newbanks was
13:57:48 7 terminated was because they provided reports that
13:57:51 8 were not as damaging as you're suggesting right now?

13:57:57 9 MR. DOLAN: Object to the form of the
13:57:58 10 question.

13:57:59 11 BY MR. MILLER:

13:57:59 12 Q I mean, Newbanks -- Newbanks suggested that
13:58:01 13 the -- that the -- that the draws be paid.

13:58:06 14 A Newbanks is one component of what is
13:58:10 15 required to approve a draw. And ultimately the work
13:58:14 16 in place speaks for itself.

13:58:16 17 Q When did you go to the property in -- in
13:58:19 18 the fall of 2016?

13:58:20 19 A I wasn't at the property.

13:58:23 20 Q So you have no personal knowledge of what
13:58:25 21 the condition of the property was, do you?

13:58:26 22 A I have seen multiple photos of what the
13:58:29 23 property looked like at that point in time.

13:58:30 24 Q Have you seen the photos of what the
13:58:34 25 property looked like a year later?

13:58:35 1 **A Are those photos available?**

13:58:36 2 Q Well, I'm asking you if you've seen photos
13:58:38 3 from a year later. Do you -- do you not communicate
13:58:41 4 with the receiver on a frequent basis?

13:58:43 5 **A I don't communicate with the receiver on a
13:58:46 6 frequent basis.**

13:58:46 7 Q Have you not been privy to the updates of
13:58:50 8 the construction over the past year?

13:58:52 9 **A I have on occasion, but my team handles
13:58:54 10 that.**

13:58:54 11 Q Okay. So if there were still envelope
13:58:58 12 completion issues a year later, would that -- would
13:59:02 13 that have surprised you?

13:59:03 14 **A Not necessarily.**

13:59:04 15 Q Why not?

13:59:07 16 **A The same reason I gave earlier that the
13:59:11 17 receiver had a very challenging situation here,
13:59:16 18 especially considering the almost four-month break
13:59:20 19 in work being able to be completed when your -- your
13:59:23 20 client filed bankruptcy.**

13:59:25 21 Q Yeah, but they had been -- they had been in
13:59:26 22 control of the property for ten months at that time.
13:59:29 23 So let's talk about what happened before the
13:59:31 24 bankruptcy because I wasn't referring to that time.
13:59:33 25 I'm talking about what happened in the preceding

13:59:37 1 year before the bankruptcy.

13:59:38 2 You said that the -- that the collateral

13:59:39 3 had to be protected from the elements. Do you know

13:59:42 4 how long it took the receiver to purportedly protect

13:59:47 5 the building from the elements?

13:59:49 6 **A I don't specifically know.**

13:59:51 7 Q Okay. Are you aware of Tina Van Curen's

13:59:54 8 testimony from a few weeks ago?

13:59:55 9 **A I have not.**

13:59:57 10 MR. MILLER: Okay. Let's mark Exhibit 33,

13:59:59 11 please.

13:59:59 12 (Exhibit 33 was marked for

14:00:14 13 identification.)

14:00:14 14 BY MR. MILLER:

14:00:15 15 Q Tell me, ma'am, if you have seen Exhibit 33

14:00:19 16 before, please.

14:01:18 17 Have you had a chance to review

14:01:21 18 Exhibit 233?

14:01:21 19 **A I have.**

14:01:22 20 Q Are you familiar with this e-mail?

14:01:25 21 **A I am now.**

14:01:26 22 Q Do you recall a situation where there was a

14:01:28 23 suggestion that my client should provide a deed in

14:01:31 24 lieu of foreclosure to Canyon?

14:01:33 25 **A Yes.**

14:01:34 1 Q Can you tell me the facts that surround not
14:01:36 2 this e-mail, but the concept of making that request
14:01:39 3 of my client?

14:01:41 4 **A Conceptually.**

14:01:43 5 Q Well, I don't know what happened. So what
14:01:45 6 happened to get to the point -- this point where
14:01:47 7 this e-mail was sent?

14:01:48 8 **A This was subject to the pre-negotiation**
14:01:51 9 **agreement and not anything that was to be binding**
14:01:54 10 **from and after that point in time if it was not**
14:01:58 11 **agreed to.**

14:01:59 12 Q Are you saying that there was an agreement
14:02:02 13 made that my client was going to provide a deed in
14:02:04 14 lieu of foreclosure?

14:02:06 15 **A No, that is not what I said.**

14:02:07 16 Q Okay. I'm trying to understand what
14:02:09 17 happened. I wasn't there, and I think that you
14:02:10 18 might have been. So can you tell me how the concept
14:02:12 19 of discussion of a deed in lieu of foreclosure even
14:02:17 20 came up originally?

14:02:18 21 **A The defaults under the loan having -- being**
14:02:20 22 **as significant as they were and with the absence of**
14:02:24 23 **a distinct tied-up plan, if we were going to**
14:02:28 24 **consider any further forbearances, the requirement**
14:02:33 25 **of a deed in lieu was to not have to revisit that**

14:02:37 1 again, meaning if he failed again to complete the
14:02:41 2 project in accordance with any potential
14:02:48 3 forbearance, that we would not have to negotiate
14:02:50 4 again in order to make sure that the project was
14:02:54 5 able to be completed and that we would be able to
14:02:56 6 recover our loan.

14:02:57 7 Q And what would happen to my client's equity
14:03:00 8 investment and hard work and future earnings in the
14:03:04 9 property?

14:03:04 10 A In the case of a deed in lieu?

14:03:06 11 Q Yeah.

14:03:07 12 A They would be wiped out.

14:03:07 13 Q Right.

14:03:08 14 So doesn't sound like a particularly good
14:03:13 15 deal for my client, does it?

14:03:14 16 A He didn't have to take it.

14:03:17 17 Q Well, would anybody take it?

14:03:18 18 A It depends.

14:03:20 19 Q Have -- has anybody ever been presented
14:03:21 20 with a deed in lieu in a similar situation at Canyon
14:03:24 21 that you're aware of?

14:03:25 22 A I'm not aware personally, but I'm not
14:03:26 23 saying this isn't a -- this is a concept that is
14:03:28 24 used for a reason.

14:03:29 25 Q Well, how many times has Canyon used such a

14:03:30 1 concept that you're aware of?

14:03:32 2 **A I'm not aware.**

14:03:33 3 Q Are you aware of any situations where this
14:03:36 4 has occurred?

14:03:36 5 **A I cannot recall any that used this concept**
14:03:40 6 **before.**

14:03:41 7 Q As far as your -- as far as you can recall
14:03:42 8 in your 11 years here, this is the one and only time
14:03:45 9 this has been presented to a borrower?

14:03:48 10 **A As far as I can recall. We don't have**
14:03:50 11 **situations like this regularly. We don't.**

14:03:57 12 Q Let's talk about the meeting that took
14:04:03 13 place in your office. What did you say to my client
14:04:06 14 at that meeting, the one in October of 2016?

14:04:10 15 **A Can you be a little more specific.**

14:04:12 16 Q I wasn't there; so I really can't. I don't
14:04:15 17 know what happened. I don't, you know -- "Hello,
14:04:15 18 Craig. Nice to meet you," or maybe not.

14:04:19 19 And what -- what happened -- what was
14:04:19 20 the -- what was the -- what was the conversation
14:04:22 21 between you and my client?

14:04:23 22 **A I cannot recall specific words of a**
14:04:25 23 **conversation from two years ago.**

14:04:28 24 Q It was a year and a half ago.

14:04:31 25 **A Okay. I can't recall a conversation that**

14:04:34 1 **happened a year and a half ago.**

14:04:36 2 Q Can you recall anything about that

14:04:38 3 conversation from a year and a half ago?

14:04:40 4 **A Words or --**

14:04:42 5 Q Subjects, discussions, theories, concepts.

14:04:45 6 **A We entered the room and expected to have a
14:04:53 7 plan of action be presented to us, and there was not**

14:04:58 8 **a specific plan of action that was able to be**

14:05:02 9 **presented that met our requirements. And the**

14:05:06 10 **meeting was not that long.**

14:05:08 11 Q Well, did your requirements including --

14:05:09 12 include my client signing over his property to you?

14:05:13 13 Was that one of the requirements at that meeting?

14:05:16 14 **A This is obviously one of the items that was**

14:05:20 15 **up for discussion because this is the 14th and our**

14:05:23 16 **meeting was on the 20th.**

14:05:25 17 Q Right.

14:05:26 18 So was that the tenor of the meeting? What

14:05:28 19 did you -- did you say, "Mr. Schubiner, I'm prepared

14:05:31 20 to have a conversation with you about the plan as

14:05:35 21 long as you sign over ownership of your property to

14:05:37 22 me"?

14:05:37 23 **A No, that is not what I said.**

14:05:38 24 Q Well, what did you say? That is what I'm

14:05:38 25 trying to -- trying to understand.

14:05:40 1 **A** **It is very clear what the parameters of the**
14:05:44 2 **forbearance discussions were. They are right here.**
14:05:47 3 **I mean, you asked me to read them. Would you like**
14:05:47 4 **me to read them?**

14:05:48 5 **Q** **No. But that was a week before. I don't**
14:05:49 6 **know that you had the same conversation a week**
14:05:51 7 **later.**

14:05:51 8 **A** **The -- this was the framework for the**
14:05:53 9 **meeting.**

14:05:53 10 **Q** **I didn't know that. That is what I'm**
14:05:55 11 **asking you. That is what I'm trying to understand.**

14:05:57 12 **Are you saying to me that the discussion at**
14:05:58 13 **the meeting was virtually the same as the discussion**
14:06:02 14 **in the e-mail in -- in Exhibit 33?**

14:06:04 15 **A** **What I'm saying is there was a framework**
14:06:06 16 **set up for the meeting, which is right here before**
14:06:09 17 **you in your Exhibit No. 33, and in the room, the**
14:06:14 18 **discussion revolved around whether or not there was**
14:06:21 19 **the possibility of a resolution through a**
14:06:22 20 **forbearance arrangement.**

14:06:24 21 **Q** **Do you recall what the terms of the**
14:06:27 22 **proposed forbearance arrangement were?**

14:06:31 23 **A** **No.**

14:06:32 24 **Q** **Is that a document that was actually**
14:06:32 25 **drafted? Oh, yes, it was. "Attached hereto" --**

14:06:32 1 **A** **Yes.**

14:06:32 2 Q -- "please find a draft." Okay.

14:06:32 3 **A** **From a week before.**

14:06:32 4 Q Right.

14:06:35 5 Did you raise your voice at my client at

14:06:38 6 that meeting?

14:06:38 7 **A** **I don't remember.**

14:06:39 8 Q No screaming that day?

14:06:40 9 **A** **I don't remember.**

14:06:41 10 Q Is that an unusual thing for you to do, to

14:06:48 11 scream at people in meetings?

14:06:51 12 **A** **What is the point of your question?**

14:06:54 13 Q Are you a screamer? Did you scream at my

14:06:56 14 client? Do you scream at other people?

14:06:59 15 **A** **I wouldn't put myself in the category of a**

14:07:02 16 **screamer.**

14:07:02 17 Q Okay. When the -- when the meeting was

14:07:08 18 taking place, is it fair to say, then, the decision

14:07:11 19 to file suit had already been confirmed?

14:07:15 20 **A** **Say that again.**

14:07:16 21 Q Yeah.

14:07:16 22 At the time my client was meeting with you,

14:07:18 23 the decision to proceed with the lawsuit had already

14:07:20 24 been decided; correct?

14:07:22 25 **A** **No.**

14:07:22 1 Q It had not been?

14:07:23 2 A No. The point of the meeting was to

14:07:25 3 determine whether or not a forbearance could be

14:07:29 4 arranged that was mutually acceptable.

14:07:32 5 Q I see.

14:07:32 6 So when my client left the room, is that

14:07:34 7 when the decision was made to file the lawsuit?

14:07:36 8 A I don't recall your client leaving the room

14:07:39 9 at any key point in time.

14:07:39 10 Q When the meeting ended --

14:07:41 11 A I left.

14:07:43 12 Q Oh, you left the room?

14:07:43 13 A Yeah.

14:07:44 14 Q See, these are things I'm trying to learn

14:07:47 15 about this meeting that you're --

14:07:47 16 A Well, if he wasn't six, seven, eight

14:07:49 17 lawyers in, you might know.

14:07:52 18 Q Were any lawyers at the meeting?

14:07:54 19 A I don't remember who Craig brought. I

14:07:56 20 think it was John Sayer.

14:07:59 21 Q John Sayer came to the meeting in

14:08:01 22 California?

14:08:03 23 A I believe so.

14:08:03 24 Q Okay.

14:08:03 25 A Either that or he was on the phone, but he

14:08:04 1 **was represented.**

14:08:05 2 Q Okay.

14:08:06 3 **A Did you really think we were represented**
14:08:08 4 **and he wasn't?**

14:08:10 5 Q I have -- ma'am, I'm just -- you know, I'm
14:08:11 6 just trying to get the information on the record.
14:08:12 7 That is really all I'm trying to do here.

14:08:15 8 **A Sounds good.**

14:08:16 9 Q I'm not trying to argue with you. I wasn't
14:08:19 10 at the meeting. I'm just trying to find out what
14:08:21 11 happened.

14:08:21 12 So you left -- was it in your office or in
14:08:23 13 a conference room? I -- I wasn't there. Can you --

14:08:25 14 **A It was in a conference room.**

14:08:27 15 Q Okay. And you left the conference room?

14:08:28 16 **A I did.**

14:08:29 17 Q And then from doing that, did -- at that
14:08:34 18 point after having left the conference room, was
14:08:36 19 that when the decision was made to file the lawsuit?

14:08:39 20 **A The decision was made after the meeting**
14:08:41 21 **concluded that we had not come to an agreement, and**
14:08:44 22 **then the lawsuit was filed.**

14:08:46 23 Q The very next day?

14:08:47 24 **A Yeah.**

14:08:48 25 Q Okay. And so who ultimately made that

14:08:53 1 decision? Was that you or was that the investment
14:08:55 2 committee or -- or who?

14:08:56 3 **A I was a part of the decision. And we**
14:08:57 4 **discussed it with members of our legal team and the**
14:09:01 5 **investment committee.**

14:09:07 6 Q Okay. At that time, though, in
14:09:10 7 October 2016 -- I just want to be very clear. At
14:09:14 8 that time Canyon had not suffered any out-of-pocket
14:09:17 9 financial losses as it pertains to this loan at that
14:09:21 10 very moment in time; isn't that true?

14:09:24 11 **A No. How -- how do you determine that?**

14:09:26 12 Q Well, was there a missed payment by my
14:09:29 13 client?

14:09:30 14 **A We have an interest reserve; so there**
14:09:32 15 **wasn't a missed payment.**

14:09:36 16 Q Well, without the interest reserve, was --
14:09:37 17 did -- was a payment not made?

14:09:39 18 **A At that point in time, the loan was**
14:09:41 19 **maturing.**

14:09:41 20 Q I understand.

14:09:42 21 I'm talking about --

14:09:42 22 **A No. But what is -- what is the bigger**
14:09:43 23 **payment than the loan balance?**

14:09:46 24 Q Okay. But at that time, the payments had
14:09:48 25 been current?

14:09:49 1 **A** **Yes.**

14:09:49 2 Q Okay. That is all I'm asking you.

14:09:50 3 **A** **But the --**

14:09:50 4 Q I --

14:09:51 5 **A** **-- payments are not the only thing that**

14:09:54 6 **you're bargaining for when you sign a loan agreement**

14:09:57 7 **of this size.**

14:09:59 8 Q I understand. I'm just talking about the

14:10:01 9 situation at that moment. That is all I'm asking.

14:10:05 10 That the -- the payments were current. I understand

14:10:08 11 your position about the maturity. That is fine. I

14:10:11 12 understand what you're saying, but that is not my

14:10:13 13 question.

14:10:14 14 My question was -- there -- just to

14:10:18 15 confirm, there was nothing out of pocket that Canyon

14:10:22 16 hadn't received that it was supposed to have

14:10:25 17 received other than your claim that it was entitled

14:10:28 18 to the full balance of the loan?

14:10:30 19 **A** **At that exact moment in time, we had been**

14:10:34 20 **paid interest and the loan was maturing.**

14:10:38 21 Q So -- okay. But -- but the payments

14:10:43 22 were -- but there were no payments that were monthly

14:10:47 23 payments that had not been received. I just want to

14:10:49 24 make sure that we're clear on that.

14:10:52 25 **A** **Correct.**

14:10:52 1 Q Okay. Can you talk to me about this -- the
14:10:55 2 2500 building? Do you know what that is?
14:10:59 3 **A Can you be a little more specific?**
14:11:01 4 Q Yeah.
14:11:02 5 There was a building that was next door to
14:11:04 6 the Packard Square project called the 2500
14:11:08 7 building --
14:11:08 8 **A Yes.**
14:11:09 9 Q -- that was part of -- discussion of part
14:11:10 10 of the loan. Can you describe for me your
14:11:14 11 understanding of -- of what was supposed to happen
14:11:16 12 with the 2500 --
14:11:16 13 **A I can't, actually.**
14:11:18 14 Q -- building?
14:11:18 15 **A No.**
14:11:19 16 Q Do you -- you have no recollection at all?
14:11:21 17 **A I would have to read the loan documents to**
14:11:23 18 **understand how that particular part was supposed to**
14:11:25 19 **be administered.**
14:11:26 20 Q Do you recall that there was a concept that
14:11:29 21 my client was going to use 2.65 million to purchase
14:11:34 22 the building but then that didn't happen?
14:11:37 23 **A I remember that that concept existed. I**
14:11:42 24 **don't know all the achievements or requirements**
14:11:45 25 **because I haven't read the document. However, those**

14:11:50 1 potential advances that you're referring to -- and,
14:11:54 2 again, I can't attest to the exact amount -- were
14:11:57 3 conditioned 100 percent on the acquisition of that.
14:12:00 4 They were not additional loan proceeds for whatever.

14:12:03 5 Q Well, what happened to the interest that
14:12:05 6 Canyon collected on the 2.65 million that it didn't
14:12:10 7 lend?

14:12:11 8 A The loan agreement addresses all of that,
14:12:15 9 and I can't speak to that without receiving --
14:12:17 10 reviewing that part of the loan agreement.

14:12:19 11 Q So your position is that if the money
14:12:22 12 wasn't used for the purpose of purchasing the
14:12:27 13 building, that it wasn't permissible to be used for
14:12:30 14 anything?

14:12:31 15 A That is correct.

14:12:32 16 Q I see.

14:12:34 17 Even if my client was paying interest on
14:12:36 18 the money, he was not allowed to use the money?

14:12:40 19 A Like I said, if you want me to be very
14:12:43 20 specific and answer that very specific question, I'm
14:12:45 21 going to need to read it.

14:12:47 22 Q Well, I don't need you to read it. I
14:12:49 23 just -- conceptualize with me, because you seem to
14:12:52 24 have some understanding of the framework, and it
14:12:55 25 sounded like you said he couldn't use the money.

14:12:55 1 And I'm trying to understand how that makes any
14:12:57 2 sense.

14:12:57 3 **A** Those loans proceeds -- I do recall this
14:13:00 4 very specifically -- were for the purchase -- the
14:13:03 5 potential purchase under an option agreement, I
14:13:06 6 believe, of that adjacent property.

14:13:08 7 If that did not occur, those proceeds were
14:13:12 8 not available for anything else. They were not
14:13:15 9 additional loan proceeds for construction or
14:13:17 10 anything like that, if that is what you're asking.

14:13:19 11 Q That is what I'm asking.

14:13:22 12 **A** Okay.

14:13:23 13 Q And so notwithstanding the fact that my
14:13:25 14 client paid interest on that money, your position is
14:13:28 15 he had no right to use it for any other purpose?

14:13:31 16 **A** Your client's agreement to pay interest on
14:13:34 17 that money is in the loan document, and if that is
14:13:37 18 what he agreed to, that is what is.

14:13:40 19 Q Okay. But the money -- you'll agree with
14:13:41 20 me the money wasn't spent. It still remained in
14:13:46 21 Canyon's account; correct?

14:13:47 22 **A** I would have to look.

14:13:48 23 Q Well -- well, what -- you just told me it
14:13:49 24 couldn't have been spent.

14:13:50 25 **A** Which account?

14:13:52 1 Q Whatever account you keep the money in that
14:13:55 2 is being lent to my client.

14:13:57 3 **A There are a variety of accounts.**

14:13:59 4 Q Okay. Well, the money is -- was still in
14:14:00 5 Canyon's possession; is that fair?

14:14:04 6 **A It was in one of the bank accounts,**
14:14:06 7 **potentially.**

14:14:07 8 Q My client hadn't spent it, in other words?

14:14:09 9 **A Your client was unable --**

14:14:09 10 Q I --

14:14:12 11 **A -- to successfully negotiate an agreement**
14:14:13 12 **at the outside date that he thought he would be able**
14:14:16 13 **to conclude, and so, yes, he lost the right to those**
14:14:19 14 **proceeds being used to purchase the land he was**
14:14:22 15 **unsuccessful in negotiating in -- a PSA on.**

14:14:27 16 Q Okay. But just so we're clear, the money
14:14:28 17 remained in Canyon's possession the entire time?

14:14:35 18 **A Yes.**

14:14:37 19 Q Okay. Right.

14:14:41 20 Is it Canyon's -- let me see one thing.
14:14:58 21 There is another exhibit.

14:14:58 22 **A If you don't mind, I'd really like a break.**

14:15:02 23 Q Sure. That is fine.

14:15:02 24 **A Thank you.**

14:15:02 25 Q Five minutes, though.

14:15:04 1 **A** **How about 10?**

14:15:04 2 THE VIDEOGRAPHER: Off the record at

14:15:05 3 2:15 p.m.

14:27:44 4 (Recess.)

14:27:44 5 THE VIDEOGRAPHER: This marks the beginning

14:27:48 6 of Media No. 3. We are back on the record at

14:27:52 7 2:27 p.m.

14:27:55 8 BY MR. MILLER:

14:27:55 9 Q Ma'am, I'm going to show you what has been

14:27:57 10 marked as Exhibit 6 for today's deposition. Can you

14:28:00 11 take a look at that, please.

14:28:02 12 (Exhibit 6 was marked for

14:30:08 13 identification.)

14:30:08 14 THE WITNESS: Okay.

14:30:08 15 BY MR. MILLER:

14:30:09 16 Q Have you familiarized yourself with

14:30:12 17 Exhibit 6, ma'am?

14:30:12 18 **A** **Yes.**

14:30:13 19 Q As you'll note, it is dated October 20 and

14:30:18 20 October -- October 19 and October 18. I guess it is

14:30:21 21 three days' worth of e-mails.

14:30:23 22 After reviewing this, especially the e-mail

14:30:26 23 from Marcus Neupert on the second page at 4:16 p.m.,

14:30:32 24 does this refresh your recollection as to, perhaps,

14:30:36 25 it wasn't my client who asked for the meeting but it

14:30:40 1 was actually Canyon that asked for the meeting?

14:30:42 2 **A No.**

14:30:43 3 Q Okay. Now, the e-mail from Scott Kalt on
14:30:49 4 October 20 talks about your having left the meeting
14:30:54 5 and asking about cost estimates referenced in the
14:30:57 6 meeting and the difficulty in coming to a resolution
14:31:02 7 without any information relative to the actual
14:31:07 8 backup to support the claims that were made in the
14:31:10 9 meeting.

14:31:11 10 **A Uh-huh.**

14:31:12 11 Q Can you recount your recollection of that
14:31:14 12 discussion in the meeting that you attended?

14:31:16 13 **A I can't specifically, but broadly, you**
14:31:19 14 **know, as I said, prior to the break, we were -- we**
14:31:23 15 **had set a framework for the meeting, and if there**
14:31:25 16 **was going to be a forbearance-type resolution, it**
14:31:29 17 **would require a full understanding of the borrower's**
14:31:35 18 **business plan as recasted at that point in time,**
14:31:38 19 **which would include a GNP, a budget, a timeline, an**
14:31:44 20 **interest reserve that would have to be rebalanced**
14:31:47 21 **because, obviously, time was not going to be met.**
14:31:50 22 **And I think those were the components of the**
14:31:52 23 **discussion, generally speaking, that, you know, were**
14:31:56 24 **part of that meeting.**

14:31:57 25 Q Well -- okay. That is well and good, but

14:31:59 1 I'm talking about the -- the conversation about
14:32:02 2 getting information relative to Canyon's accounting
14:32:06 3 numbers. Do you recall that conversation?

14:32:07 4 **A Not specifically. No. But, again, just**
14:32:11 5 **reading what was here, we made an internal**
14:32:16 6 **assessment based upon the information that we had at**
14:32:19 7 **that point in time of all of the components that**
14:32:23 8 **would need to be funded in order for a forbearance**
14:32:27 9 **or a balancing to occur. And those are our**
14:32:30 10 **estimates. It is always the borrower's obligation**
14:32:35 11 **and responsibility to run their project and to bring**
14:32:38 12 **timelines and budgets and business plans. It is not**
14:32:41 13 **our obligation in the reverse.**

14:32:43 14 **Q Well -- but if your numbers were incorrect**
14:32:45 15 **or your numbers were overstated or your data was**
14:32:48 16 **wrong, then shouldn't my client be entitled to see**
14:32:51 17 **the basis of the data that you were relying upon?**

14:32:55 18 **A Not necessarily. We were waiting for his**
14:32:58 19 **data.**

14:32:59 20 **Q But it goes -- but doesn't it go both ways,**
14:33:03 21 **ma'am? If I -- if I -- if I come --**

14:33:03 22 **A No.**

14:33:03 23 **Q It doesn't?**

14:33:04 24 **A It shouldn't. It was not our project.**

14:33:07 25 **Your borrower is the developer and the equity. It**

14:33:12 1 is our job to make an assessment of what we believe
14:33:15 2 underlies the loan and the collateral. And it was
14:33:18 3 his obligation, not ours, to come to us with a fully
14:33:24 4 baked, fully capitalized plan if he was interested
14:33:28 5 in a forbearance.

14:33:29 6 Q But that assumes a fact that we have yet to
14:33:32 7 establish, which was that my client allegedly had
14:33:36 8 potential cost overruns and did not have an
14:33:42 9 opportunity to see the numbers that Canyon was
14:33:45 10 basing its conclusions upon.

14:33:48 11 A I'll say the same thing again.

14:33:48 12 Q Okay.

14:33:50 13 A It was not our obligation to cost the
14:33:53 14 project. It was our obligation to make estimates so
14:33:57 15 that we could make decisions. Your client/our
14:34:02 16 borrower did not present information. That would
14:34:04 17 have been the purpose of the meeting.

14:34:07 18 Q Okay. But let's -- I wasn't at the
14:34:09 19 meeting; so I don't know what happened, and you
14:34:12 20 don't seem to have a perfect recollection either.
14:34:14 21 But let's say I walked into that meeting as your
14:34:18 22 borrower and I walked into the meeting and you said,
14:34:20 23 "You're \$12 million over budget."

14:34:21 24 And I said, "What are you talking about?
14:34:23 25 I'm not over budget at all."

14:34:25 1 "You're \$12 million over budget."

14:34:28 2 **A Could I ask --**

14:34:28 3 **Q** Wait. No. You can't ask me anything

14:34:29 4 because I'm asking the questions and you get to

14:34:31 5 answer them because you're the one under oath, not

14:34:33 6 me. So --

14:34:33 7 **MR. DOLAN:** Hold on.

14:34:34 8 **MR. MILLER:** No, no, no. She cannot ask.

14:34:34 9 **MR. DOLAN:** Hold on. You can --

14:34:35 10 **THE WITNESS:** You asked a question.

14:34:36 11 **MR. MILLER:** I haven't finished my

14:34:38 12 question.

14:34:38 13 **MR. DOLAN:** No. Okay. But don't -- your

14:34:42 14 tone is unnecessary, first of all. But also, she

14:34:45 15 can ask a question to clarify your question. That

14:34:47 16 is allowed.

14:34:47 17 **MR. MILLER:** I didn't even finish my

14:34:49 18 question yet. How do we know what --

14:34:49 19 **MR. DOLAN:** Okay.

14:34:50 20 **MR. MILLER:** -- the clarification is? She

14:34:50 21 wanted to ask me something. I don't know what that

14:34:50 22 is.

14:34:50 23 (Unreportable cross-talk.)

14:34:52 24 **MR. DOLAN:** -- and then we'll go for it.

14:34:53 25 **MR. MILLER:** You should probably direct

14:34:54 1 your client to stop interrupting me because it is
14:34:56 2 not great for the record.

14:35:00 3 MR. DOLAN: Let -- let -- you put the
14:35:01 4 question on, and then we'll deal with the response.
14:35:01 5 BY MR. MILLER:

14:35:04 6 Q Okay. Ma'am, assume for the moment I'm a
14:35:08 7 borrower of Canyon. I rep- -- I'm, you know, Sidley
14:35:11 8 Austin, LLC, just because we're sitting in here. I
14:35:14 9 know we're not. It is a bad example, but let's --
14:35:16 10 you know, Ben Dolan, LLC. And I walk in as the
14:35:19 11 managing member of Ben Dolan, LLC, and I've been
14:35:24 12 called to come to a meeting to talk about problems
14:35:26 13 with the status of my development. And I walk into
14:35:30 14 the meeting and I am told I'm 12 million dollars
14:35:33 15 over budget on my -- on my agreement and the -- and
14:35:40 16 Canyon's cost estimates show that there is no way
14:35:42 17 that I'm going to be able to, you know, recover
14:35:46 18 that, I'm not going to be able to get back on
14:35:46 19 schedule.

14:35:46 20 And I say to you, "Wait a minute.
14:35:48 21 \$12 million over budget? That can't possibly be
14:35:51 22 right. If anything, I might be, you know, a million
14:35:53 23 dollars over budget maybe, but there is no way I'm
14:35:56 24 \$12 million over budget."

14:35:58 25 And then I say, "Can I see your

14:35:59 1 documentation that supports your contention that I'm
14:36:02 2 \$12 million over budget?"

14:36:03 3 And your response is "No."

14:36:05 4 Is that sort of what happened at the
14:36:06 5 meeting?

14:36:07 6 A No.

14:36:08 7 Q Okay. So tell me how I was wrong with that
14:36:10 8 assertion.

14:36:10 9 A First of all, we asked the borrower first
14:36:14 10 to present his thoughts about cost overruns,
14:36:18 11 which -- whether you think they're a dollar or
14:36:21 12 \$30 million -- existed because you had a project
14:36:24 13 that was somewhere between 50 and 60 percent
14:36:27 14 complete at the end of its entire project timeline.

14:36:33 15 In addition, you had, by that point, a very
14:36:37 16 clear dispute and, I think, a lien filed by the
14:36:41 17 general contractor. So that is a cost that is
14:36:45 18 essential as a part of a lender's assessment.

14:36:48 19 In addition, the interest reserve did not
14:36:51 20 contemplate this loan going beyond the initial
14:36:57 21 maturity. And so whether there was an agreement
14:37:00 22 walking into the room on the amount, there was
14:37:03 23 absolutely an indisputable fact, which is that the
14:37:07 24 project needed equity in order to balance it. And
14:37:11 25 we did not go first. We asked your client to

14:37:15 1 **present what his thoughts were.**

14:37:19 2 Q Okay. But my question remains the same.

14:37:23 3 What would have been the harm to show your
14:37:26 4 information so that my client could have a more
14:37:28 5 complete picture of the allegations that were being
14:37:31 6 made?

14:37:31 7 A If your client had his work in order, he
14:37:34 8 would not need anything else. He had nothing. So
14:37:38 9 it is not our job to share estimates with the
14:37:43 10 borrower. It is the borrower's job to present to us
14:37:47 11 his plan. That is the way loans work and the way
14:37:52 12 the relationship between the lender and the borrower
14:37:56 13 work. So you can ask me as many ways as you want.
14:38:00 14 The answer is always going to be the same. We are
14:38:03 15 not directing the project. We are not the equity.
14:38:06 16 We are not the borrower.

14:38:08 17 Q But what if your basis was mistaken?

14:38:11 18 A It is our job to assess risk and determine
14:38:17 19 what our facts for making decisions are, not your
14:38:20 20 client's.

14:38:21 21 Q No. I understand that.

14:38:22 22 But if it turns out that your assumptions
14:38:24 23 were incorrect, then maybe all of this was much ado
14:38:29 24 about nothing.

14:38:30 25 A How could it be much ado about nothing when

14:38:33 1 **you had a 60 percent complete project when it was**
14:38:36 2 **supposed to be 100 percent?**

14:38:36 3 Q Because it was going to be completed before
14:38:38 4 the loan maturity date.

14:38:39 5 **A How was that possible?**

14:38:41 6 Q Because, I believe, the loan wasn't due to
14:38:43 7 come due for a few more months after the substantial
14:38:48 8 construction completion date.

14:38:48 9 **A The -- basically -- if you're at 60 percent**
14:38:51 10 **complete, generously, how would that be possible?**

14:38:54 11 Q There was a schedule from Gleason
14:38:56 12 Construction to finish the project by March.

14:38:57 13 **A There was no schedule presented to us.**
14:39:00 14 **There was no GNP.**

14:39:01 15 Q Well, whether there was a GNP or whether
14:39:03 16 there was a schedule are not the same thing,
14:39:03 17 wouldn't you agree?

14:39:04 18 **A Yes, they are, because the schedule is an**
14:39:05 19 **attachment to a GNP. They -- they are -- one is**
14:39:09 20 **encompassed with the other.**

14:39:10 21 Q Does every construction project that Canyon
14:39:15 22 funds -- funded to a GNP?

14:39:19 23 **A It is -- we require guaranteed maximum**
14:39:21 24 **price contracts or other similar contracts with**
14:39:23 25 **timelines and budgets.**

14:39:25 1 Q But you didn't for the receiver?

14:39:27 2 A Like I said before, the receiver loan is

14:39:31 3 not customary and it is rescue capital.

14:39:35 4 Q If the reason that the lien --

14:39:35 5 A And protective capital.

14:39:38 6 Q If the reason that the lien got put on --

14:39:40 7 or the money wasn't there was Canyon's fault, then

14:39:45 8 the whole thing falls apart, doesn't it?

14:39:47 9 A No.

14:39:48 10 Q Why not?

14:39:49 11 A Because it is not Canyon's obligation to

14:39:51 12 fund outside of the requirements of the loan.

14:39:53 13 Q No. Right.

14:39:54 14 But if the -- if the requirements to fund

14:39:57 15 were within the loan and you didn't fund, then you

14:40:01 16 would have a really big problem, wouldn't you?

14:40:03 17 A That didn't happen.

14:40:06 18 Q Well, I guess we'll find out one day.

14:40:09 19 Here is Exhibit 65. Why don't you please

14:40:11 20 take a look at that.

14:40:12 21 (Exhibit 65 was marked for

14:41:43 22 identification.)

14:41:43 23 BY MR. MILLER:

14:41:44 24 Q Have you had an opportunity to review

14:41:46 25 Exhibit 65?

14:41:47 1 **A** **I have.**

14:41:47 2 Q This was six months after the loan was

14:41:50 3 signed, approximately; correct?

14:41:52 4 **A** **It seems so.**

14:41:56 5 Q Do you recall the facts surrounding this

14:41:59 6 reinstatement agreement?

14:42:01 7 **A** **Not specifically.**

14:42:02 8 Q What is a reinstatement agreement?

14:42:05 9 **A** **It is a mechanism for reinstating a loan**

14:42:09 10 **that has gone into default.**

14:42:12 11 Q Do you recall what the alleged default was

14:42:14 12 at this time?

14:42:14 13 **A** **I believe the alleged default, which I**

14:42:18 14 **think is outlined in the body of the paragraph here,**

14:42:21 15 **is related to the Quandel agreement.**

14:42:29 16 Q I'm sorry. Can you point that out to me?

14:42:33 17 **A** **Look at the third paragraph.**

14:42:35 18 Q "The fully executed Quandel amendment in an

14:42:38 19 e-mail" -- what is a Quandel amendment?

14:42:42 20 **A** **I don't know. You would have to produce**

14:42:43 21 **that for me to look at.**

14:42:45 22 Q Well, ma'am, you pointed it out to me. I

14:42:47 23 wasn't even familiar with it. So you don't -- do

14:42:50 24 you know what this alleged default was or you don't

14:42:53 25 know what the alleged default was?

14:42:55 1 **A** **I specifically said that I was reading from**
14:42:59 2 **here that the loan would have to be in default for a**
14:43:03 3 **reinstatement agreement to be necessary. If you**
14:43:06 4 **would like me to look at that, I'm happy to look at**
14:43:09 5 **the document.**

14:43:10 6 **Q** **I don't have the document. That is why I'm**
14:43:13 7 **asking you if you have a recollection of it. That**
14:43:14 8 **is all.**

14:43:14 9 **A** **I cannot recall something from 2015 over**
14:43:19 10 **25 months ago.**

14:43:20 11 **Q** **Okay. So did you read my client's e-mail**
14:43:26 12 **at the bottom of page -- of Exhibit 65?**

14:43:29 13 **A** **I did.**

14:43:30 14 **Q** **"I view this whole thing as**
14:43:33 15 **incredibly unfair and unwarranted,**
14:43:36 16 **and I really wish I was not pressured**
14:43:38 17 **to sign."**

14:43:39 18 **Is that the way Canyon conducts business**
14:43:39 19 **normally?**

14:43:42 20 **A** **This is your client's view. This isn't how**
14:43:44 21 **we conduct business.**

14:43:47 22 **Q** **Well, which part of "Sign it or don't"**
14:43:49 23 **isn't -- isn't implied by -- by your attorney's**
14:43:52 24 **e-mail?**

14:43:52 25 **A** **The last time I checked, a reinstatement**

14:43:54 1 agreement was an accommodation for somebody who is
14:43:58 2 in default. It is not our obligation to do anything
14:44:01 3 once somebody is in default.

14:44:04 4 Q How often does Canyon send out
14:44:06 5 reinstatement agreements to borrowers?

14:44:07 6 A Not frequently.

14:44:09 7 Q When is the last time you did one?

14:44:10 8 A I don't remember.

14:44:11 9 Q Do you remember the entity to which you've
14:44:13 10 sent any reinstatement agreement?

14:44:15 11 A I do not remember.

14:44:17 12 Q How long ago was the last time a
14:44:18 13 reinstatement agreement was sent out?

14:44:23 14 A I said I don't remember --

14:44:23 15 Q Do you have --

14:44:23 16 A -- a reinstatement agreement being sent out
14:44:27 17 other than this one.

14:44:28 18 Q What -- this is the only reinstatement
14:44:30 19 agreement you're -- you are familiar with having
14:44:31 20 been sent out during your 11 years at Canyon that
14:44:33 21 you know of?

14:44:34 22 A I said based upon not researching, the one
14:44:38 23 I can speak to is this one.

14:44:41 24 Q You have no personal recollection of any
14:44:43 25 other?

14:44:44 1 **A** **I do not have any personal recollection of**
14:44:47 2 **others.**

14:44:49 3 **Q** Do you recall in this agreement with my
14:44:56 4 client that it was required to purchase a
14:45:01 5 \$32 million construction bond on behalf of Quandel
14:45:07 6 Construction?

14:45:08 7 **A** **I think that when we read the paragraph**
14:45:11 8 **earlier, that bonding was required as a part of the**
14:45:16 9 **conditions related to the construction agreement**
14:45:18 10 **post-closing.**

14:45:19 11 **Q** Is there a reason why Canyon has taken no
14:45:23 12 effort to pursue collection of the bond?

14:45:26 13 **A** **We are not in charge of that. The receiver**
14:45:30 14 **is.**

14:45:31 15 **Q** You -- what -- didn't -- prior to suing my
14:45:37 16 client, Canyon could have brought an action to
14:45:39 17 collect against the bond, couldn't it?

14:45:41 18 **A** **I don't know. You would have to ask**
14:45:43 19 **counsel.**

14:45:44 20 **Q** Was that something that was discussed or
14:45:46 21 considered?

14:45:46 22 MR. DOLAN: I'd just object to the extent
14:45:47 23 it was discussed or considered with counsel.

14:45:49 24 MR. MILLER: No, no.

14:45:50 25 **Q** Discussed or considered within -- within

14:45:52 1 Canyon.

14:45:54 2 **A We are first and foremost interested in**
14:45:58 3 **recovering from our primary arrangement, which is**
14:46:03 4 **the loan agreement.**

14:46:04 5 Q But there's \$32 million sitting in a bond,
14:46:07 6 and we just talked about the fact that if the
14:46:11 7 property is completed and sold, Canyon will suffer
14:46:14 8 no financial damages. Wouldn't it have been easier
14:46:17 9 just to --

14:46:17 10 **A No.**

14:46:17 11 Q -- file suit on the bond?

14:46:18 12 **A No. We did not say that. You said that.**

14:46:21 13 Q Wouldn't it have been easier just to file
14:46:24 14 on the bond?

14:46:24 15 **A Not necessarily.**

14:46:25 16 Q Why not?

14:46:27 17 **A Because our primary obligation was from the**
14:46:32 18 **borrower. The primary obligation to Canyon was from**
14:46:36 19 **the borrower. And the bond is first and foremost in**
14:46:42 20 **favor of the borrower and Quandel.**

14:46:45 21 Q But nothing prevented Canyon from pursuing
14:46:49 22 a cause of action based on the bond. It was a
14:46:52 23 dual ob- --

14:46:52 24 **A That is a legal opinion.**

14:46:54 25 MR. DOLAN: Objection. Yeah. Objection to

14:46:54 1 the extent it calls for a legal conclusion.

14:46:57 2 Go ahead.

14:46:57 3 BY MR. MILLER:

14:46:59 4 Q Are you aware at -- of how much money is
14:47:02 5 being spent by the receiver in this project?

14:47:06 6 **A Can you be more specific?**

14:47:08 7 Q Do you know how much the receiver has spent
14:47:11 8 and purports to spend in its term as receiver to --
14:47:15 9 on this project?

14:47:17 10 **A There is a receiver loan with a balance,**
14:47:21 11 **and that is the amount of money that the receiver is**
14:47:24 12 **permitted to spend.**

14:47:25 13 Q Well, are you aware that the receiver went
14:47:28 14 back to court to ask for \$18 million more after its
14:47:34 15 initial \$9 million loan because it was --
14:47:40 16 \$19 million after its original \$9 million loan
14:47:47 17 because it was -- yeah. Oh, right, right, right --
14:47:49 18 originally the \$19 million loan, and then went back
14:47:53 19 to court for an additional \$18 million for --
14:47:57 20 because of cost overruns?

14:47:59 21 **A I am aware.**

14:48:00 22 Q How do you reconcile that based on your
14:48:03 23 treatment of my client for the alleged cost overruns
14:48:08 24 that he was accused of having?

14:48:10 25 **A Please rephrase your question.**

14:48:10 1 Q Yeah.

14:48:12 2 Why is it okay for the receiver to be

14:48:16 3 \$18 million over budget?

14:48:18 4 A I think, as I mentioned earlier, the
14:48:20 5 receiver had unknown conditions and an obligation to
14:48:23 6 research and plan for all of that. It would be
14:48:26 7 impossible for him to have known at the front end of
14:48:29 8 the project what the entirety of the project might
14:48:33 9 cost.

14:48:34 10 And throughout, there have been multiple
14:48:38 11 construction issues that have come up. So again,
14:48:41 12 the receiver has provided its information to the
14:48:44 13 court. The receivership reports are there verifying
14:48:48 14 the work that is being "complete" and the fundings
14:48:51 15 have been done in accordance with the approved court
14:48:54 16 reports.

14:48:55 17 Q Right, but that wasn't my question.

14:48:57 18 My question was: How do you reconcile the
14:48:59 19 fact that the receiver is \$18 million over budget
14:49:04 20 compared to the tactics that were used against my
14:49:09 21 client when it was allegedly over budget?

14:49:12 22 MR. DOLAN: Object to the form of the
14:49:13 23 question. Assumes the receiver is over budget
14:49:17 24 \$18 million.

14:49:18 25 Go ahead.

14:49:18 1 THE WITNESS: I was going to say the same
14:49:20 2 thing.

14:49:20 3 MR. DOLAN: Sorry.

14:49:21 4 THE WITNESS: The receiver is not over
14:49:24 5 budget. The receiver correctly sized the budget
14:49:27 6 after doing its diligence, went to court, petitioned
14:49:30 7 for approval, and our loan was upsized in accordance
14:49:33 8 with that.

14:49:33 9 BY MR. MILLER:

14:49:34 10 Q Do you have any idea how much the GNP with
14:49:40 11 Quandel was to complete this building?

14:49:42 12 **A I don't know it off the top of my head.**

14:49:44 13 Q Do you know how much -- well, yeah, you do.
14:49:48 14 Wasn't it in the -- in the loan agreement? Wasn't
14:49:52 15 it, like, \$32 million to --

14:49:54 16 **A It couldn't be in the loan agreement
14:49:56 17 because the budget for Quandel was post-closing.**

14:50:01 18 Q Right.

14:50:01 19 Assume for me for the moment that it was --
14:50:03 20 \$32 million was the Quandel contract. Does it
14:50:08 21 make -- to complete the entire building, does it
14:50:11 22 make any sense at all that it would cost that much
14:50:15 23 more or more to finish the building?

14:50:18 24 **A What makes sense is that the receiver has
14:50:21 25 thoughtfully reviewed the work in place, they have**

14:50:27 1 **secured an appropriate contractor to do the work,**
14:50:29 2 **and they have been supplying the court and us with**
14:50:33 3 **information in order to have draws approved and have**
14:50:37 4 **the project funded.**

14:50:38 5 Q Have you been informed by your construction
14:50:40 6 consultant that many of the charges are
14:50:45 7 significantly higher than market?

14:50:45 8 **A No.**

14:50:47 9 Q You haven't heard that the O'Brien general
14:50:50 10 conditions and fees are -- to finish the building
14:50:53 11 are double what Quandel was going to charge for the
14:50:57 12 entire construction project?

14:50:58 13 **A I don't know that I could say whether or**
14:51:01 14 **not Quandel was market. And they failed to complete**
14:51:03 15 **the project, as did your client; so I'm not sure**
14:51:07 16 **that that is a benchmark.**

14:51:08 17 Q Well, the only benchmark is that the
14:51:10 18 receiver is spending money excessively and taking as
14:51:16 19 long as it possibly can to finish this project and
14:51:20 20 it is not harming Canyon. It is certainly not
14:51:24 21 harming the receiver. There is really only one
14:51:27 22 party that is being harmed; isn't that true?

14:51:31 23 **A No.**

14:51:31 24 Q Who is being harmed other than my client?

14:51:32 25 **A All of us who are -- all of us who remain**

14:51:34 1 **at risk until we are repaid.**

14:51:36 2 Q Well -- but that is not -- that is not any
14:51:38 3 actual harm, is it?

14:51:39 4 **A Yes, of course it is.**

14:51:41 5 Q Well, no, because you've got -- you've got
14:51:42 6 the opportunity to recover the money from the sale
14:51:44 7 of the -- of the -- of the project?

14:51:45 8 **A I said five hours ago that that is not**
14:51:48 9 **necessarily true because nobody knows what the**
14:51:50 10 **project will yield at this point.**

14:51:54 11 Q But it is in -- in the -- you would agree
14:51:55 12 with me it is in the receiver's best interest to
14:51:58 13 take as long as it can to complete this project
14:52:01 14 because it makes significant fees every month --

14:52:01 15 **A I would not --**

14:52:04 16 Q -- that it is working?

14:52:05 17 **A -- say that.**

14:52:07 18 Q Why wouldn't you say that?

14:52:11 19 **A Because the receiver has been appointed by**
14:52:11 20 **the court with a work scope and is monitored by the**
14:52:11 21 **court.**

14:52:11 22 Q That is not even close to my question.

14:52:14 23 My question was: Isn't it in the
14:52:15 24 receiver's best interest for this project to go as
14:52:18 25 slowly as it can so that it can recover as much in

14:52:22 1 fees as it possibly can?

14:52:23 2 **A You would have to ask the receiver what his**
14:52:26 3 **intentions and best interests are.**

14:52:29 4 Q Well, wouldn't you share with me that the
14:52:30 5 receiver would make less money if the building were
14:52:31 6 completed by now than it would if it took another
14:52:34 7 six months to complete the building and it received
14:52:34 8 fees for another six more months?

14:52:36 9 **A But the building can be complete when it**
14:52:38 10 **can be complete and the work can be done when it can**
14:52:40 11 **be done based upon market conditions and based upon**
14:52:43 12 **the conditions that your client delivered the**
14:52:45 13 **project in. As well, you continue to minimize the**
14:52:49 14 **interruption your client voluntarily orchestrated**
14:52:54 15 **by, right in the middle of construction, declaring**
14:52:57 16 **bankruptcy.**

14:52:58 17 Q Do you know on a monthly basis when my
14:53:00 18 client was in control of the project, how much it
14:53:03 19 was doing in hard cost construction on a monthly
14:53:06 20 basis?

14:53:06 21 **A I don't know.**

14:53:07 22 Q Do you have any idea how much the receiver
14:53:09 23 has been doing in hard cost construction on a
14:53:12 24 monthly basis?

14:53:12 25 **A I don't know, but the work scopes are not**

14:53:15 1 equal, I am certain.

14:53:16 2 Q What do you mean?

14:53:17 3 A How can you compare a work scope from one
14:53:20 4 part of the job to the other part of the job? The
14:53:22 5 hard costs are related to work complete; so that is
14:53:25 6 very specific to any one draw.

14:53:27 7 Q Yeah.

14:53:27 8 But if there is only 40 -- 40 to 45 percent
14:53:31 9 of the building to be completed, as you testified
14:53:34 10 to, then --

14:53:34 11 A I actually said somewhere between 40 and
14:53:38 12 50.

14:53:39 13 Q Okay. Fine.

14:53:40 14 40 and 50 percent of the building,
14:53:42 15 according to you, to be completed. Is there any
14:53:46 16 explanation as to why the rate of construction
14:53:50 17 shouldn't have been at least somewhat consistent to
14:53:53 18 that which my client was doing when it was removed
14:53:56 19 from the property?

14:53:57 20 A How long did it take your client to
14:54:00 21 complete 50 percent?

14:54:01 22 Q From the time that Quandel started?

14:54:03 23 A Uh-huh.

14:54:04 24 Q I think he was moving right along until
14:54:06 25 Quandel had --

14:54:06 1 **A** **What was the period of time was my question**
14:54:09 2 **because I want to be able to answer your question**
14:54:11 3 **accurately.**

14:54:13 4 **Q** **Well, I don't know, ma'am, because I'm not**
14:54:14 5 **under oath today.**

14:54:15 6 **A** **Like I said, the receiver has engaged a**
14:54:19 7 **contractor. They are performing work. There are**
14:54:26 8 **reports supplied to the court. Those reports have**
14:54:28 9 **been approved, the draws have been approved, and the**
14:54:29 10 **work is going at the pace that it is going at. And**
14:54:32 11 **whatever other issues you might have with the**
14:54:37 12 **receiver, I think you should take up with the**
14:54:38 13 **receiver.**

14:54:39 14 **Q** **Where is the sense of urgency that was**
14:54:42 15 **presented toward my client that has not been**
14:54:46 16 **presented toward the receiver?**

14:54:48 17 **A** **You are implying that there is no sense of**
14:54:51 18 **urgency, and I don't agree that there is no sense of**
14:54:54 19 **urgency.**

14:54:55 20 **Q** **Oh. Has -- has Canyon told the receiver**
14:54:57 21 **that there is a sense of urgency to complete the**
14:55:01 22 **project?**

14:55:01 23 **A** **There is always the expectation that the**
14:55:08 24 **timeline that has been agreed to will be followed.**
14:55:11 25 **And, again, that timeline has been followed. The**

14:55:14 1 one that was approved as a part of the GNP -- that
14:55:17 2 was approved by the court. It is almost the exact
14:55:20 3 amount of time that has been now added to it as
14:55:25 4 corresponds to your client's bankruptcy. So
14:55:29 5 originally, August was supposed to be the completion
14:55:34 6 date, and now it is four months after that.

14:55:37 7 Q You have a schedule from the receiver that
14:55:38 8 said that the building was going to be completed in
14:55:41 9 August of 2017?

14:55:42 10 A 2017? What are you talking about?

14:55:45 11 Q They took over in November of 2016.

14:55:47 12 A I said the schedule --

14:55:47 13 Q Uh-huh.

14:55:49 14 A -- that has been a part of the GNP that was
14:55:53 15 approved last year was 2018 -- August of 2018. Have
14:55:57 16 you looked at it?

14:55:58 17 Q So do you believe it is appropriate that it
14:56:02 18 would take two years to finish the building?

14:56:04 19 A I am going to say the same thing again.

14:56:07 20 And we could just do this for the next two hours
14:56:10 21 until it is time, you know, to be up. I think that
14:56:13 22 the receiver is doing exactly what the court
14:56:16 23 requires the receiver to do, hard stop.

14:56:19 24 Q Has the receiver complied with the receiver
14:56:21 25 loan agreement that was signed with Canyon?

14:56:24 1 **A** **The receiver is in compliance with the loan**
14:56:26 2 **agreement.**

14:56:27 3 Q And is that because there is no completion
14:56:29 4 date in the loan agreement?

14:56:31 5 **A** **How do you define "compliance"?**

14:56:33 6 Q It is your agreement, ma'am. It says there
14:56:35 7 is -- the completion date is the date they complete.
14:56:38 8 So are there any --

14:56:38 9 **A** **So I guess they are.**

14:56:40 10 Q So are there any milestones or
14:56:42 11 responsibilities to the receiver as it pertains to
14:56:46 12 Canyon at all?

14:56:47 13 **A** **There is maturity.**

14:56:49 14 Q What happens then?

14:56:50 15 **A** **The loan matures.**

14:56:51 16 Q What happens then?

14:56:52 17 **A** **The loan matures.**

14:56:54 18 Q And what happens then?

14:56:55 19 **A** **The loan matures.**

14:56:57 20 Q So what is -- so what? If the receiver is
14:57:01 21 not done, doesn't the receivership continue? It has
14:57:04 22 got nothing to do -- I mean, there is no order --

14:57:04 23 **A** **You're asking me for a legal opinion again.**

14:57:07 24 Q Well, what happens when the loan matures?

14:57:08 25 **A** **The loan matures.**

14:57:13 1 Q Can't the receiver just get another loan?

14:57:15 2 **A You're asking me for a legal opinion.**

14:57:15 3 Q No.

14:57:17 4 Wouldn't Canyon just extend the loan to the

14:57:19 5 receiver?

14:57:19 6 **A That is not necessarily the case.**

14:57:23 7 Q Well, what would Canyon do in that scenario

14:57:26 8 when the loan matures?

14:57:26 9 **A We aren't there.**

14:57:28 10 Q I'm sorry?

14:57:29 11 **A We are not there.**

14:57:30 12 Q Okay. So assume that the loan matures

14:57:32 13 tomorrow, what would Canyon's course of action be?

14:57:36 14 **A We haven't developed a course of action**

14:57:38 15 **because it is not maturing tomorrow.**

14:57:40 16 Q When are you going to start preparing that

14:57:40 17 course of action?

14:57:42 18 **A We'll determine that internally.**

14:57:42 19 Q Do you have a plan to prepare that course

14:57:46 20 of action?

14:57:46 21 **A We have -- we will develop our plan**

14:57:48 22 **accordingly.**

14:57:50 23 Q I see.

14:57:52 24 How many -- are you familiar with other

14:57:55 25 receivership cases through loans having to do with

14:58:00 1 Canyon?

14:58:00 2 **A I haven't worked on a receivership case at**
14:58:07 3 **Canyon.**

14:58:07 4 Q Are you familiar with any others at Canyon
14:58:09 5 that you haven't worked on?

14:58:10 6 **A I am not familiar with any other cases**
14:58:13 7 **because I have not worked on any other receivership**
14:58:16 8 **cases while at Canyon.**

14:58:18 9 Q Have there been any cases in which Canyon
14:58:19 10 sought the appointment of a receiver that was not
14:58:20 11 granted?

14:58:21 12 **A I am not -- I would not know.**

14:58:22 13 Q You don't have any personal familiarity
14:58:24 14 with that?

14:58:25 15 **A I don't.**

14:58:26 16 Q Okay. What is your relationship with the
14:58:32 17 receiver?

14:58:33 18 **A Can you define what you mean by**
14:58:35 19 **"relationship."**

14:58:35 20 Q Yeah.

14:58:35 21 How often -- how often do you communicate
14:58:37 22 with the receiver or anybody at McKinley?

14:58:40 23 **A We receive updates that are on a standing**
14:58:42 24 **basis, and that is generally the communication. And**
14:58:45 25 **I'm not involved in all of them because I have a**

14:58:48 1 **team of people who do that.**

14:58:50 2 Q So how often do you participate in the

14:58:51 3 weekly calls?

14:58:53 4 **A I would say 50 percent of the time.**

14:58:56 5 Q Okay. Have you met face-to-face with any

14:58:59 6 of the people at McKinley?

14:59:01 7 **A I have met with them once.**

14:59:03 8 Q Oh, when was that?

14:59:05 9 **A I don't recall.**

14:59:07 10 Q Was it here in Los Angeles?

14:59:09 11 **A Yes, it was.**

14:59:11 12 Q Have you ever been to Ann Arbor?

14:59:12 13 **A Nope. Not for this.**

14:59:16 14 Q Oh, for what other reasons have you been to

14:59:17 15 Ann Arbor?

14:59:17 16 **A I think I went to Michigan recruiting when**

14:59:20 17 **I was --**

14:59:20 18 Q Oh.

14:59:22 19 **A -- working in development for my MBA**

14:59:24 20 **program.**

14:59:27 21 Q Okay. Have you -- have you spoken on the

14:59:29 22 telephone with -- separately from the weekly

14:59:33 23 meetings with leadership at McKinley?

14:59:36 24 **A I have not.**

14:59:39 25 Q Were you aware that the --- were you aware

14:59:49 1 that the receiver's appointed agent, Matt Mason --

14:59:56 2 let me ask it a different way.

14:59:58 3 Are you aware of the receiver's appointed
15:00:00 4 representative, Matthew Mason?

15:00:03 5 **A Yes.**

15:00:04 6 Q Have you spoken with or met Mr. Mason
15:00:07 7 separate than through the weekly calls?

15:00:09 8 **A You asked me that already, and I said I met
15:00:12 9 him once.**

15:00:13 10 Q No. You didn't tell me who you met.

15:00:15 11 **A The one time that I met with anyone, it was
15:00:17 12 with Matt.**

15:00:18 13 Q Oh, you didn't tell -- you didn't identify
15:00:19 14 him by name; so I didn't know who you were referring
15:00:21 15 to. Because the receiver, of course, isn't
15:00:21 16 Mr. Mason.

15:00:25 17 You understand that; right?

15:00:26 18 **A So the only person I met with at McKinley
15:00:29 19 is Mason.**

15:00:30 20 Q Thank you.

15:00:33 21 You -- you never met with McKinley
15:00:36 22 leadership in -- in Ann Arbor?

15:00:37 23 **A I've never been to Ann Arbor.**

15:00:40 24 Q Well, I thought I saw something.

15:00:45 25 Well, I'll ask you about it. Let me show

15:00:49 1 you what has been marked as Exhibit 11, please.

15:00:52 2 Sorry.

15:00:52 3 (Exhibit 11 was marked for
15:00:52 4 identification.)

15:01:23 5 THE WITNESS: Uh-huh.

15:01:23 6 BY MR. MILLER:

15:01:24 7 Q Have you reviewed Exhibit 11?

15:01:26 8 **A I have.**

15:01:26 9 Q This was an e-mail. It says it was sent to
15:01:29 10 you on Tuesday, May 2, 2017, at 9:48 a.m., making
15:01:34 11 reference to a meeting and lunch and a site tour the
15:01:38 12 next day.

15:01:38 13 Is that a true statement of what the e-mail
15:01:41 14 says?

15:01:42 15 **A That is.**

15:01:43 16 Q Did you cancel the meeting?

15:01:44 17 **A I didn't attend the meeting. I don't know
15:01:46 18 why she sent this to me.**

15:01:48 19 Q Okay. Did you ever review the allegations
15:01:59 20 that my client made relative to the job that Quandel
15:02:02 21 was doing or not doing at this site?

15:02:05 22 **A Review in what capacity?**

15:02:07 23 Q In your capacity as asset manager.

15:02:11 24 **A What do you mean by "review"?**

15:02:13 25 Q Did you review the allegations that were

15:02:15 1 made in writing about Quandel's work or lack thereof
15:02:19 2 at the project contemporaneous to when it was
15:02:22 3 allegedly happening?

15:02:24 4 **A There were some e-mails that were sent,**
15:02:26 5 **including, you know, the one you presented today.**

15:02:29 6 Q And did you agree with my client's
15:02:35 7 suggestion that Quandel had to be replaced?

15:02:38 8 **A I did not make an assessment. It wasn't my**
15:02:42 9 **position to do that. It was his. Quandel is his --**
15:02:45 10 **his contractor, not mine.**

15:02:47 11 Q Well -- but he needed lender approval in
15:02:48 12 order to make the transition; correct?

15:02:50 13 **A Actually, he needed lender approval for the**
15:02:53 14 **termination, which he did not seek, and he also**
15:02:55 15 **would have needed the approval of lender for the**
15:02:57 16 **replacement after a full package and a full**
15:03:00 17 **transaction with a replacement contractor would have**
15:03:03 18 **been negotiated. And, no, neither of those things**
15:03:05 19 **occurred.**

15:03:06 20 Q My client did seek lender approval to
15:03:10 21 terminate Quandel. Are you saying he did not?

15:03:13 22 **A I do not believe that he did. I think he**
15:03:16 23 **was required to seek prior approval, and I don't**
15:03:18 24 **recall that occurring.**

15:03:19 25 Q You don't recall the conversations

15:03:21 1 complaining about -- or the e-mails and
15:03:22 2 communications relating to the problems he was
15:03:24 3 having on site with Quandel when they were
15:03:28 4 happening? That -- that was never communicated to
15:03:28 5 you?

15:03:29 6 **A I think those are two different things.**

15:03:31 7 Q That notifying you of the problems was one.

15:03:35 8 **A And -- and determination.**

15:03:36 9 Q Is two.

15:03:37 10 **A There was no submission made to Canyon**
15:03:41 11 **formally for a request to terminate Quandel prior to**
15:03:46 12 **any termination, if that did, in fact, occur --**
15:03:51 13 **occurring.**

15:04:12 14 Q Let's look at Exhibit 7. I'm handing you
15:04:15 15 Exhibit 7.

15:04:15 16 (Exhibit 7 was marked for
15:04:50 17 identification.)

15:04:50 18 BY MR. MILLER:

15:04:50 19 Q Have you had a chance to review Exhibit 7?

15:04:52 20 **A I have.**

15:04:53 21 Q And what was -- what was the e-mail that
15:04:59 22 you sent regarding the next steps and overall
15:05:05 23 strategy ideas referring to?

15:05:09 24 **A This is a notice of claim that we were**
15:05:12 25 **copied on from Quandel against your client and the**

15:05:15 1 project. And then once that was received, we
15:05:19 2 referred it to our counsel who specializes in this
15:05:23 3 area and who is involved in the negotiation of
15:05:27 4 the -- the approval of the negotiated GNP with
15:05:31 5 Quandel.

15:05:31 6 And, of course, we at that point need to
15:05:34 7 determine next steps and strategy.

15:05:37 8 Q And so what types of strategies were --
15:05:41 9 were you referring to?

15:05:43 10 A What our response to this letter we were
15:05:47 11 copied on might need to be.

15:05:49 12 Q Back to Quandel?

15:05:53 13 A To the borrower, to Quandel, to anything.

15:05:58 14 Q Do you know if there are negotiations with
15:06:05 15 Quandel to settle their claim going on right now?

15:06:08 16 A I believe that the receiver is endeavoring
15:06:11 17 to settle mechanic's liens at this point.

15:06:15 18 Q Well, okay. Have -- do you recall at the
15:06:24 19 time of filing the lawsuit whether the -- how -- no.
15:06:29 20 Let me ask it a different way.

15:06:31 21 How long prior to the filing of the lawsuit
15:06:34 22 was the idea raised about recommending McKinley to
15:06:40 23 be the receiver?

15:06:41 24 A We did not know the receiver prior to. We
15:06:46 25 just consulted with counsel and asked for

15:06:48 1 **recommendations.**

15:06:49 2 Q So the -- so the recommendation came from

15:06:52 3 counsel --

15:06:52 4 **A Yes.**

15:06:53 5 Q -- not from Canyon?

15:06:54 6 **A Of the receiver's --**

15:06:57 7 Q Yeah.

15:06:57 8 **A Yes.**

15:06:57 9 Q Okay.

15:06:57 10 **A Yeah.**

15:06:59 11 Q When -- were you aware of McKinley's or

15:07:03 12 Mr. Mason's development experience before they were

15:07:07 13 recommended to be the receiver?

15:07:08 14 **A I had never interacted with McKinley prior**

15:07:13 15 **to this, and I was not the person "diligencing" in**

15:07:17 16 **making that decision.**

15:07:18 17 Q Who was that?

15:07:19 18 **A Gerald was making that decision.**

15:07:28 19 Q Okay. Did you ever see a business plan or

15:07:30 20 any information from McKinley about what their

15:07:33 21 intentions were with this project at the time or

15:07:35 22 shortly after their appointment?

15:07:37 23 **A Gerald would be reviewing that as a part of**

15:07:40 24 **his diligencing this.**

15:07:43 25 Q Okay. Is -- so why is Canyon pursuing the

15:08:07 1 sale of the property before it is completed?

15:08:09 2 **A Canyon is not pursuing the sale of the**
15:08:11 3 **property. The receiver is.**

15:08:14 4 Q Was Canyon consulted before pursuing that
15:08:19 5 course of action?

15:08:19 6 **A We were informed that the receiver was**
15:08:21 7 **going to pursue a sale of the property and we did**
15:08:23 8 **not take a position against that.**

15:08:27 9 Q Did any pricing get discussed?

15:08:34 10 **A We were leaving it to the receiver to make**
15:08:38 11 **an assessment of the market, interview brokers,**
15:08:41 12 **select the broker, and conduct process.**

15:08:44 13 Q Wouldn't the eventual sale price be higher
15:08:50 14 if the retail space was completed and rented?

15:08:54 15 **A I don't know.**

15:08:55 16 Q Well, wouldn't the price -- sale price be
15:08:59 17 higher if the entire project were completed, rented,
15:09:03 18 and stabilized?

15:09:04 19 **A The business plan did not include**
15:09:06 20 **improvements for that. So unless you want to**
15:09:10 21 **advance more loan proceeds for the retail, I don't**
15:09:14 22 **think that is a question that pertains to this.**

15:09:15 23 Q What do you mean the business plan didn't
15:09:17 24 provide for that?

15:09:19 25 **A The retail -- the -- the plan for**

15:09:20 1 **completion -- so let me rephrase. The GNP does not**
15:09:25 2 **include improvements for the retail.**

15:09:28 3 Q So the \$25.7 million contract from O'Brien
15:09:33 4 to finish the property doesn't include finishing the
15:09:37 5 retail. Is that your testimony?

15:09:39 6 **A It does not include tenant improvements --**

15:09:39 7 Q But --

15:09:43 8 **A -- securing a tenant.**

15:09:43 9 Q Right. But wouldn't -- okay. Fine.

15:09:45 10 But in most retail situations, wouldn't a
15:09:48 11 tenant come in and do their improvements themselves?

15:09:52 12 **A Not necessarily.**

15:09:53 13 Q Okay. But is there any effort being made
15:09:55 14 to find any retail tenants that you're aware of?

15:09:57 15 **A You need to talk to the receiver.**

15:09:59 16 Q Do you know of any efforts that are being
15:10:01 17 made?

15:10:01 18 **A I am not -- I have not inquired.**

15:10:03 19 Q But, theoretically, you would agree with me
15:10:07 20 that if the project were completed and fully rented,
15:10:09 21 it would garner a higher sale price?

15:10:12 22 **A Not necessarily.**

15:10:13 23 Q In what scenario would it not garner a
15:10:16 24 higher sale price?

15:10:19 25 **A Forward sales happen all the time.**

15:10:21 1 Q What are you referring to?

15:10:22 2 A Pre-completed projects get sold. And when
15:10:26 3 it is a highly desirable product type, like
15:10:28 4 multifamily, it is not uncustomary for buyers to be
15:10:32 5 willing to try to secure such properties earlier
15:10:37 6 than completion.

15:10:40 7 Q Are you aware of the rental rate that the
15:10:43 8 receiver has been seeking to rent the residential
15:10:47 9 properties for?

15:10:48 10 A I'm not reviewing that material.

15:10:52 11 Q Do you make decisions about design issues
15:10:56 12 at the property?

15:10:57 13 A I do not make decisions.

15:10:59 14 Q Did you make a choice about a carpet
15:11:03 15 selection?

15:11:03 16 A I was asked for an opinion and I gave an
15:11:07 17 opinion. I did not make a decision or direct.

15:11:10 18 Q Were you asked about fonts and colors for
15:11:14 19 signs?

15:11:14 20 A I was.

15:11:15 21 Q Who asked you for your opinion on these
15:11:17 22 issues?

15:11:17 23 A I can't recall.

15:11:19 24 Q Was it the receiver?

15:11:19 25 A I can't recall.

15:11:21 1 Q Well, who ultimately was the one who is
15:11:25 2 implementing the result?
15:11:26 3 A **The receiver.**
15:11:28 4 Q Right.
15:11:28 5 So who else would be asking your opinion?
15:11:30 6 A **I don't know what specific person sent it**
15:11:32 7 **over.**
15:11:34 8 Q Well, the receiver isn't a person, of
15:11:37 9 course. The receiver is a company. So I'm -- I'm
15:11:41 10 under the presumption --
15:11:42 11 A **The receiver, McKinley.**
15:11:45 12 Q Asked you for your opinion?
15:11:46 13 A **Yes.**
15:11:48 14 Q Okay. Why -- why is it up to you what the
15:11:52 15 design choices should be?
15:11:54 16 A **It wasn't up to me and I didn't make the**
15:11:56 17 **design choices. I was asked for an opinion.**
15:12:00 18 Q Who owns the building, Packard Square?
15:12:15 19 A **The receiver is accountable for the**
15:12:20 20 **building at this point in time.**
15:12:22 21 Q Who owns the building at Packard Square?
15:12:26 22 A **The borrower.**
15:12:26 23 Q Okay.
15:12:35 24 A **But he is not executing it.**
15:12:37 25 Q Well, he can't, can he?

15:12:39 1 **A Right. Because the receiver is in charge,**
15:12:41 2 **just like I said.**

15:12:42 3 Q Yeah.

15:12:53 4 If -- if there is a payoff letter issued by
15:12:56 5 Canyon, what is the normal or appropriate -- and
15:12:59 6 maybe they're not the same thing -- amount of time
15:13:02 7 that should be provided for the borrower receiving
15:13:08 8 the payoff letter to pay off the amount?

15:13:10 9 **A Could you rephrase.**

15:13:12 10 Q Yeah.

15:13:12 11 If Canyon sends out a payoff letter, what
15:13:16 12 is an appropriate amount of time that Canyon should
15:13:20 13 provide a borrower to make the payment?

15:13:25 14 **A There is no appropriate amount of time that**
15:13:27 15 **is broadly applied.**

15:13:30 16 Q Okay. Well, if you sent a payoff letter to
15:13:33 17 me at my Ben Dolan, LLC, project that I'm developing
15:13:38 18 and I asked you for a payoff letter and it was dated
15:13:42 19 today, May 3, 2018 --

15:13:42 20 **A Uh-huh.**

15:13:45 21 Q -- how much time would that payoff letter
15:13:48 22 give me to pay it off?

15:13:52 23 **A If the -- if the asset was being repaid in**
15:13:57 24 **full, we would refresh it if you were out of your,**
15:14:00 25 **you know -- if you were within the period to repay,**

15:14:05 1 you would be able to repay as long as you brought
15:14:08 2 the money.

15:14:09 3 Q Right.

15:14:09 4 But how long is the -- I'm asking about --
15:14:13 5 how long is the period?

15:14:14 6 A There is no specified period of time.

15:14:16 7 Q Well, if a letter is sent to me, a payoff
15:14:16 8 letter, doesn't it say this -- this is good until --

15:14:17 9 A You would have to show me the specific
15:14:20 10 payoff letter, and I would read to you what the date
15:14:23 11 it expired was.

15:14:24 12 Q Yeah. I know I can do that.

15:14:26 13 But my question to you is: Is there -- is
15:14:29 14 there a general amount of time that Canyon provides
15:14:32 15 to a borrower receiving a payoff letter to pay? So
15:14:36 16 if I get -- if you send me a payoff letter on May 3
15:14:39 17 that says, you know, "Mr. Miller, you want to pay
15:14:42 18 off Ben Dolan, LLC? The balance is \$4.5 million.
15:14:48 19 Today is May 3, this amount is" -- this number is
15:14:53 20 still good until what date?

15:14:54 21 A Until the date through which the interest
15:14:57 22 was collected, and oftentimes there is a per diem.

15:15:01 23 Q Okay. So my question is: What is -- is
15:15:03 24 there a -- is there a standard amount of time --

15:15:06 25 A And my answer is no.

15:15:08 1 Q How does that fluctuate? Like, why would I
15:15:12 2 get three weeks to refinance Ben Dolan, LLC, but,
15:15:17 3 you know, Debbie might only get, you know, five days
15:15:18 4 to refinance her project?

15:15:21 5 **A There is no arbitrary amount of time**
15:15:23 6 **assigned.**

15:15:25 7 Q So what is the amount of time that is given
15:15:27 8 to me?

15:15:28 9 **A There is no specific amount assigned other**
15:15:30 10 **than what is contained in the letter, and that**
15:15:33 11 **letter is driven by what is contained in the loan**
15:15:36 12 **documents.**

15:15:37 13 Q No. Okay. I think -- I think we're having
15:15:41 14 two different conversations. Maybe I'm -- maybe I'm
15:15:44 15 not being clear.

15:15:46 16 If I make a request for a payoff letter and
15:15:48 17 you give me a payoff letter and you date it May 3,
15:15:52 18 when is -- how far out is it calculated with
15:15:58 19 interest for which I would be expected to return
15:16:01 20 that payment, by what date, from a letter on May 3?
15:16:01 21 Would you --

15:16:03 22 **A Customarily, performing borrowers give us a**
15:16:05 23 **date by which they expect their capital to fund, and**
15:16:09 24 **then we tie that to what they have requested and**
15:16:11 25 **then they pay us. But that hasn't happened.**

15:16:14 1 Q I -- I'm not asking about Mr. Schubiner.
15:16:17 2 I'm not asking about Packard Square. I'm asking --
15:16:20 3 so you're saying that only borrowers who you have
15:16:25 4 determined are not in default are given payoff
15:16:29 5 letters for a date certain? I'm not following you.

15:16:31 6 **A I don't know what your question is.**

15:16:33 7 MR. DOLAN: No. She said that borrowers
15:16:34 8 say, "I want to pay this off May 31. Give me a
15:16:37 9 payoff letter for that date."

15:16:38 10 MR. MILLER: Ah.

15:16:39 11 MR. DOLAN: That is what she was saying.

15:16:40 12 BY MR. MILLER:

15:16:40 13 Q So if there is no date provided by the
15:16:43 14 borrower -- if I'm the borrower and I say, "I need a
15:16:46 15 payoff letter for today and what" -- "what is it
15:16:49 16 today?" do you tell me, "Well, this" -- "here is a
15:16:52 17 letter, and it is only good for today," or do you
15:16:55 18 send it out a couple of weeks to -- to calculate
15:16:58 19 that for me?

15:16:59 20 **A I think we've produced multiple -- although**
15:17:01 21 **I don't know how many -- payoff letters for your**
15:17:04 22 **client, none of which were met with capital to repay**
15:17:09 23 **us. The bottom line is we calculate what is due, we**
15:17:13 24 **are responsive to the date that we're provided by**
15:17:15 25 **the borrower, and often, not always, a per diem is**

15:17:20 1 also included. And then to the extent that it needs
15:17:23 2 to be refreshed because a person, your client,
15:17:26 3 cannot find the capital to repay us, we would
15:17:30 4 refresh it. And we have done that multiple times
15:17:32 5 based upon my recollection.

15:17:34 6 Q And so is there a reason -- what is a
15:17:36 7 reasonable period before a payoff letter would
15:17:38 8 expire?

15:17:39 9 A My question, just for clarity to make sure
15:17:42 10 I'm answering your question, is: Why would that
15:17:45 11 matter if -- if it expires, but you found the money,
15:17:50 12 we would issue another one because we would be happy
15:17:54 13 to take the money.

15:17:55 14 Q And what if there is a request to ask
15:17:57 15 Canyon to explain or break down the figures in the
15:18:02 16 payoff letter? Is that something that Canyon would
15:18:04 17 be expected to do?

15:18:05 18 A Canyon has very detailed payoff letters.

15:18:09 19 Q But they don't provide, like, a breakdown
15:18:13 20 of what -- the funds that are within the numbers
15:18:15 21 that come up, do they?

15:18:18 22 A Like I said, Canyon's payoff letters are
15:18:22 23 drafted completely consistently with what is
15:18:24 24 required pursuant to the loan documents and they
15:18:26 25 provide detail.

15:18:28 1 Q But the millions of dollars of legal fees
15:18:30 2 that have been assessed on this claim are not
15:18:33 3 actually broken out in any payoff letter; isn't that
15:18:37 4 right?

15:18:38 5 A I don't know. And I would not be able to
15:18:39 6 opine on that.

15:18:41 7 Q If there were millions of dollars in legal
15:18:43 8 fees as made up in the number and there was no
15:18:47 9 breakdown of the number, there would be no way to
15:18:49 10 know where the amounts that were in the payoff
15:18:51 11 letter came from?

15:18:52 12 A I think that the legal fees have been
15:18:55 13 submitted to the court, and I also believe that the
15:19:01 14 rational thought would have one believe that legal
15:19:04 15 costs would have to be very high here because of all
15:19:07 16 of the different motions and lawsuits that have been
15:19:12 17 had to be defended by the lender. And I believe
15:19:15 18 that our loan documents say that legal costs born by
15:19:18 19 the lender are the obligation of the borrower.

15:19:21 20 Q But wouldn't -- before paying it, wouldn't
15:19:24 21 the -- wouldn't the borrower be entitled to see that
15:19:26 22 the actually payments were having anything to do
15:19:29 23 with this case?

15:19:30 24 A We have provided whatever information we
15:19:33 25 are obligated to provide.

15:19:35 1 Q We have actually -- and the receiver has
15:19:36 2 actually confirmed that it has never seen an
15:19:38 3 unredacted legal bill from any lawyer representing
15:19:43 4 Canyon in this case.

15:19:44 5 Are you aware of that?

15:19:44 6 **A I am not aware.**

15:19:46 7 Q Do you know that Sidley Austin withdrew
15:19:48 8 from this case in July of 2017?

15:19:51 9 **A I don't know the specific date.**

15:19:53 10 Q Do you know that Sidney Austin is still
15:19:55 11 charging significant legal fees for work allegedly
15:19:57 12 being done on this case?

15:19:58 13 **A Sidley Austin is still working on this
15:20:01 14 case.**

15:20:01 15 Q If they're not an attorney of record in
15:20:05 16 this case, what are they doing on this case? What
15:20:06 17 services are they providing?

15:20:08 18 **A You would have to ask our counsel.**

15:20:12 19 Q Well, I'd love to see their bills, but I'm
15:20:12 20 not allowed to see those. So I have no idea what
15:20:14 21 they're doing. I just have to take you at your word
15:20:17 22 that these are charges incurred in this case even
15:20:19 23 though they withdrew ten months ago.

15:20:23 24 Why could I -- why would I accept that
15:20:23 25 without the --

15:20:24 1 **A You don't have to accept anything.**

15:20:25 2 Q Well, I sort of -- I do. Because if you
15:20:27 3 give me a payoff letter that includes their figures
15:20:30 4 and then I can't confirm that those are actually
15:20:32 5 real figures, how do I know that I'm not then paying
15:20:36 6 Liz Walker \$1,200 an hour to work on a completely
15:20:39 7 different deal?

15:20:41 8 **A There is no other way for me to answer this**
15:20:44 9 **other than to tell you that our legal bills are**
15:20:46 10 **reviewed by counsel and they are submitted, and**
15:20:48 11 **those legal bills that are charged in our payoff**
15:20:52 12 **statement relate to your account.**

15:20:54 13 Q So I can just take your word for it?

15:20:56 14 **A You can assess that however you'd like.**

15:20:59 15 Q Well, how else would I get the information?

15:21:01 16 **A I don't know.**

15:21:02 17 Q Me -- me neither.

15:21:12 18 The 50 -- 40 or 50 entities that you have
15:21:18 19 under your management at this time, where -- in what
15:21:21 20 states are they located?

15:21:22 21 MR. DOLAN: Entities or projects? You said
15:21:25 22 entities.

15:21:26 23 MR. MILLER: Well, I'm assuming -- well, we
15:21:26 24 learned yesterday that the entities and projects are
15:21:29 25 one and the same. They have different names, but --

15:21:29 1 MR. DOLAN: I don't think they're one and
15:21:29 2 the same, but all right.
15:21:29 3 (Unreportable cross-talk.)
15:21:34 4 MR. MILLER: I'll ask you.
15:21:35 5 MR. DOLAN: I thought you used the wrong
15:21:37 6 word.
15:21:37 7 Go ahead. Ask your question.
15:21:38 8 BY MR. MILLER:
15:21:39 9 Q Well, they're -- I thought we learned
15:21:40 10 yesterday from a different witness that each Canyon
15:21:44 11 project, loan, investment, whatever, has its own
15:21:49 12 separate Canyon entity. They're all single-purpose
15:21:53 13 entities; is that right?
15:21:54 14 A They're typically single-purpose entities.
15:22:01 15 Q Okay. So call it project, call it entity,
15:22:01 16 doesn't matter to me. They're the same thing
15:22:02 17 and -- for the purpose of this question.
15:22:03 18 The -- how many did you say that you're
15:22:05 19 overseeing in the realty division?
15:22:07 20 A It ranges between 50 and 60.
15:22:09 21 Q All right. So where are they located?
15:22:13 22 A They're in the domestic U.S.
15:22:16 23 Q In which states?
15:22:17 24 A A variety of states.
15:22:18 25 Q Well, start naming some, will you, please.

15:22:22 1 **A** **Portland, Oregon.**

15:22:24 2 Q That is not even a state.

15:22:26 3 **A** **Oregon is a state.**

15:22:28 4 Q I know, but I asked you which state and you
15:22:30 5 gave me city. But I'll take it. Thank you.

15:22:32 6 **A** **I gave you both.**

15:22:33 7 Q I understand, but I didn't ask you for one.
15:22:36 8 But that is fine. I'll take it, please. Thank you.
15:22:37 9 Please continue.

15:22:37 10 **A** **California, New York, Texas, Florida, to
15:22:46 11 name a few.**

15:22:48 12 Q What about Michigan?

15:22:54 13 **A** **This is our loan in Michigan.**

15:22:56 14 Q There is no other loan in Michigan?

15:22:58 15 **A** **No.**

15:22:59 16 Q What about in Illinois?

15:23:04 17 **A** **I can't recall if we have any outstanding
15:23:07 18 in Illinois at this point.**

15:23:08 19 Q Are there any in Alabama?

15:23:10 20 **A** **No, not at this point.**

15:23:12 21 Q Arizona?

15:23:13 22 **A** **I don't think there is any in Arizona right
15:23:19 23 now except for -- there -- there is actually -- I'm
15:23:22 24 not sure.**

15:23:23 25 Q Nevada?

15:23:24 1 **A** **We have one in Nevada, I think.**

15:23:28 2 Q Maryland?

15:23:30 3 **A** **Maryland.**

15:23:31 4 Q Okay. Any -- any others come to mind since

15:23:34 5 I've been rattling off states where you do business

15:23:36 6 and I don't?

15:23:37 7 **A** **I don't have a list in front of me. I gave**

15:23:42 8 **you -- I agreed with the ones that you were correct**

15:23:46 9 **on. What else would you like?**

15:23:47 10 Q I would like you to offer for me the rest

15:23:50 11 of them, if there are any, rather than having me

15:23:53 12 guess around the country.

15:23:54 13 **A** **You're asking me to do this off the top of**

15:23:56 14 **my head, and I am not prepared to do that.**

15:23:56 15 Q I don't under- -- okay.

15:24:07 16 MR. MILLER: All right. Let's take a

15:24:07 17 five-minute break, may we?

15:24:09 18 MR. DOLAN: Okay.

15:24:10 19 MR. MILLER: Thanks.

15:24:10 20 THE VIDEOGRAPHER: Off the record at

15:24:11 21 3:24 p.m.

15:36:59 22 (Recess.)

15:36:59 23 THE VIDEOGRAPHER: We are back on the

15:37:03 24 record at 3:37 p.m.

15:37:05 25 BY MR. MILLER:

15:37:06 1 Q Ms. Stamolis, welcome back. I appreciate
15:37:08 2 your telling me about the -- that Portland in Oregon
15:37:12 3 was one of the locations where a project was
15:37:16 4 located. Do you -- do you know the name of the
15:37:17 5 project in Portland?

15:37:19 6 **A Multnomah.**

15:37:21 7 Q How do you spell that?

15:37:23 8 **A "M-u-l-t-n-o-m-a," I think. Multnomah. I**
15:37:28 9 **might have the spelling incorrect.**

15:37:33 10 Q Okay. I was -- I commented yesterday that
15:37:35 11 some of these names are just nonsensical and --
15:37:38 12 another word that I've never heard and can't spell.

15:37:41 13 What type of project is this?

15:37:44 14 **A It is a ground-up construction of a**
15:37:46 15 **condominium project.**

15:37:48 16 Q All right. And it is in Portland.

15:37:51 17 Are there any other projects that are in
15:37:54 18 Portland, Oregon?

15:37:55 19 **A No.**

15:37:57 20 Q You also mentioned that there were projects
15:38:00 21 in California. How many projects are in California?

15:38:02 22 **A I don't know off the top of my head.**

15:38:04 23 Q Do you know in what cities they're located?

15:38:06 24 **A We have one in Los Angeles.**

15:38:18 25 Q Well, you have to have more than -- I would

15:38:22 1 venture to say more than one in Los Angeles and
15:38:26 2 certainly more than one in California. I mean,
15:38:28 3 you're -- you're located across the street.

15:38:34 4 **A Are you looking for a list of 50? Is that**
15:38:38 5 **what we're doing?**

15:38:39 6 Q That is what we're doing.

15:38:42 7 **A I'm not going to be able to give that to**
15:38:44 8 **you off the top of my head.**

15:38:46 9 Q Okay. Well, tell me about the number of
15:38:48 10 projects in Los Angeles.

15:38:50 11 **A Projects or loans?**

15:38:54 12 Q Is there a difference?

15:38:56 13 **A Yeah.**

15:38:57 14 Q What is the difference between a project
15:38:59 15 and a loan?

15:39:00 16 **A Other types of investments --**

15:39:00 17 Q Oh. You mean --

15:39:02 18 **A -- than loans.**

15:39:03 19 Q -- construction versus equity? Is that
15:39:04 20 what you're referring to?

15:39:06 21 **A Yes.**

15:39:06 22 Q Okay. Then you're right. The word is --
15:39:08 23 the prime word is project on which the investment is
15:39:12 24 made.

15:39:12 25 So in Los Angeles, what -- what is there

15:39:14 1 here?

15:39:15 2 **A We have a loan in downtown Los Angeles on**
15:39:18 3 **an existing creative office project.**

15:39:24 4 Q What else?

15:39:25 5 **A We have an equity investment in a downtown**
15:39:29 6 **Los Angeles office building.**

15:39:32 7 Q Any others?

15:39:37 8 **A We have existing multifamily developments.**

15:39:56 9 **One is in Orange County. We have a couple of retail**
15:40:10 10 **developments that are also equity.**

15:40:12 11 Q Also in Orange County?

15:40:14 12 **A One is San Diego. We have a loan on an**
15:40:25 13 **existing asset in Florida.**

15:40:28 14 Q Wait. Before you go to Florida, are these
15:40:31 15 four that you've just described the only ones --

15:40:33 16 **A I don't --**

15:40:34 17 Q -- in California?

15:40:35 18 **A As I said, I am not going to be able to**
15:40:37 19 **rattle off 50 off the top of my head.**

15:40:40 20 Q Well, that is why I wanted to do it
15:40:42 21 geographically based on what you suggested because I
15:40:43 22 thought that would make it a lot easier.

15:40:46 23 **A Not necessarily.**

15:40:47 24 Q Well, are there any in San Diego?

15:40:49 25 **A I gave you one in San Diego.**

15:40:52 1 Q No. You gave me -- oh, I'm sorry. You
15:40:53 2 did. The retail.

15:40:55 3 Are there any others in -- in -- oh, I'm
15:40:57 4 confused. You mentioned there were two retail, and
15:41:00 5 you only told us about one of them.

15:41:03 6 **A One other -- the other one is in**
15:41:05 7 **Northridge. We have a hotel under -- loan for**
15:41:11 8 **development, also in San Diego.**

15:41:18 9 Q Any others in the San Diego area?

15:41:21 10 **A I -- I am not sure.**

15:41:22 11 Q What about in San Francisco?

15:41:29 12 **A We have an equity investment in San Mateo.**
15:41:37 13 **That is an office. We have existing industrial,**
15:41:50 14 **also in northern California. Equity.**

15:41:56 15 Q Any others --

15:42:07 16 **A I --**

15:42:07 17 Q -- in California?

15:42:08 18 What -- what is the downtown office project
15:42:11 19 called?

15:42:11 20 **A It is not named yet.**

15:42:14 21 Q Where is it located?

15:42:15 22 **A You mean the first one?**

15:42:16 23 Q Yeah.

15:42:17 24 **A Park DTLA.**

15:42:20 25 Q Okay. And that -- you say it hasn't -- has

15:42:23 1 not begun construction?

15:42:25 2 **A No, that is not what I said.**

15:42:27 3 Q Oh, what did you say? I'm sorry.

15:42:29 4 **A I said it was an existing creative office**
15:42:32 5 **and that was a loan, and then I said there was**
15:42:35 6 **another equity investment that was also an existing**
15:42:38 7 **office.**

15:42:39 8 Q And that was also in Los Angeles?

15:42:39 9 **A Yes.**

15:42:39 10 Q What was that one called?

15:42:41 11 **A Doesn't have a name yet.**

15:42:44 12 Q Does -- do all of these entities that
15:42:47 13 you've described thus far have, like, Can before
15:42:53 14 their single-purpose entity name?

15:42:56 15 **A I don't know.**

15:42:56 16 Q Do you ever work with the names -- you
15:43:00 17 know, the Can IV Packard Square LLC, is that --

15:43:03 18 **A I don't do that.**

15:43:04 19 Q How do you refer to the projects?

15:43:06 20 **A By the name of the project.**

15:43:06 21 Q I see.

15:43:07 22 So if it was Packard Square, you wouldn't
15:43:09 23 call it Can IV Packard Square. You would just
15:43:09 24 refer to it --

15:43:09 25 **A That is right.**

15:43:12 1 Q -- as Packard Square?

15:43:12 2 **A Right.**

15:43:13 3 Q Got it.

15:43:14 4 So the multifamily in -- in Orange

15:43:17 5 County -- what is that called?

15:43:18 6 **A I can't remember the name of it.**

15:43:20 7 Q Is it under construction?

15:43:21 8 **A No. As I said, it was an existing**

15:43:23 9 **multifamily.**

15:43:24 10 Q Okay. Well, you talked -- I wasn't able to

15:43:25 11 get every single thing down. I apologize.

15:43:30 12 The -- the retail in San Diego -- do you

15:43:32 13 know what that is called?

15:43:35 14 **A It is in Escondido. I don't remember the**

15:43:39 15 **name.**

15:43:39 16 Q The retail in Northridge -- do you know

15:43:41 17 what that is called?

15:43:44 18 **A I don't. Grocery anchored or**

15:43:55 19 **neighborhood-serving retail.**

15:43:57 20 Q The hotel in San Diego -- what is that

15:43:59 21 called?

15:44:01 22 **A It is going to be called Carté.**

15:44:03 23 Q C-a-r-t-é with an apostrophe?

15:44:03 24 **A Yes.**

15:44:07 25 Q How very "fancé."

15:44:09 1 What about the office building in -- or
15:44:13 2 office -- whatever it is in San Mateo? What is that
15:44:13 3 project?
15:44:14 4 **A San Mateo Bay Center.**
15:44:17 5 Q Bay Center? Okay.
15:44:18 6 And the industrial in northern
15:44:21 7 California -- what is that called?
15:44:23 8 **A It is multiple buildings, and I don't know**
15:44:25 9 **the name.**
15:44:27 10 Q Are any of the ones that -- are there any
15:44:29 11 others in California that you can recall off -- off
15:44:32 12 the top of your head?
15:44:33 13 **A I really can't.**
15:44:34 14 Q Are any of these owned by Can IV 450 Hayes,
15:44:40 15 LLC?
15:44:41 16 **A No.**
15:44:41 17 Q Is that a different project that is being
15:44:43 18 worked on?
15:44:44 19 **A We -- that is not a current project.**
15:44:45 20 Q It has been sold or --
15:44:47 21 **A We were fully repaid on that project.**
15:44:50 22 Q Okay. So that is done.
15:44:52 23 What about Can IV Enclave, LLC? Is that
15:44:56 24 still one -- is that one of these projects?
15:44:58 25 **A No. We were repaid.**

15:44:59 1 Q That was also completed?

15:45:00 2 **A Yeah.**

15:45:01 3 Q Okay. What about Can IV Laurel Canyon,
15:45:04 4 LLC? Is that one of these projects that we've
15:45:07 5 discussed?

15:45:08 6 **A I'm not positive about that one. I -- I
15:45:14 7 don't know how the Laurel Canyon name relates to the
15:45:16 8 project; so I'm -- I can't answer that accurately.**

15:45:20 9 Q And Can IV Outlets at the Border, LLC -- do
15:45:24 10 you know what that is?

15:45:25 11 **A We were repaid multiple years ago on that.**

15:45:28 12 Q And -- and that is also in San Diego;
15:45:30 13 right?

15:45:30 14 **A It was, yeah.**

15:45:32 15 Q Okay. Can IV Wave House, LLC -- is that
15:45:35 16 one of these entities?

15:45:37 17 **A No. And I don't know what -- I can't
15:45:39 18 remember what Wave House is.**

15:45:41 19 Q What about "CJUUFF" III Barn Lofts, LLC? Is
15:45:47 20 that one of these entities?

15:45:49 21 **A It -- I think it is only CJUF; right?**

15:45:52 22 Q CJU- -- Mr. Scholz told us what CJUF stood
15:45:59 23 for, but then there were other projects that were
15:46:00 24 considered CJUF.

15:46:01 25 **A This is CJUF III. It was an equity**

15:46:05 1 **involvement in downtown Los Angeles repaid many**
15:46:07 2 **years ago.**

15:46:08 3 Q So it is not one of these other downtown LA
15:46:09 4 matters --

15:46:09 5 **A No.**

15:46:10 6 Q -- that are still pending?
15:46:12 7 Okay. What about CJUF Raymond?

15:46:14 8 **A Fully repaid. It was in Pasadena.**

15:46:19 9 Q All right. In any of these California
15:46:26 10 entities that you've discussed today, have any of
15:46:28 11 them been involved in litigation?

15:46:31 12 **A I don't know.**

15:46:32 13 Q Do you recall having sent out default
15:46:35 14 letters to any of these borrowers?

15:46:38 15 **A No.**

15:46:38 16 Q You don't recall or there haven't been any?
15:46:41 17 **A I don't recall sending any default letters.**

15:46:45 18 Q Okay. What about Florida? In what cities
15:46:49 19 in Florida are there Canyon projects?

15:46:52 20 **A We have a loan on SLS Brickell.**

15:46:59 21 Q What type of project was that?
15:47:01 22 **A It was a mixed-use project -- project with**
15:47:03 23 **hotel and condos.**

15:47:05 24 Q And what else do you have?
15:47:07 25 **A A project called Shorecrest. That is a**

15:47:10 1 **loan on an existing multifamily high-rise asset.**

15:47:14 2 Q In what city?

15:47:15 3 **A It is Miami adjacent.**

15:47:19 4 Q Okay. Anything else there?

15:47:23 5 **A We have a project in Delray.**

15:47:27 6 Q Do you know what kind?

15:47:29 7 **A It is an existing office building with a**

15:47:34 8 **lot next door.**

15:47:36 9 Q What is Canyon's involvement in that

15:47:42 10 project?

15:47:43 11 **A It is an equity investment.**

15:47:44 12 Q Okay. Do you know what it is called?

15:47:46 13 **A Doesn't have a name.**

15:47:47 14 Q Is it -- is it -- is it constructed?

15:47:49 15 **A It is. It is an existing building.**

15:47:49 16 Q Okay.

15:47:51 17 **A But the -- the tenant in the building, if**

15:47:53 18 **that helps you, is SunTrust.**

15:47:53 19 Q Oh, I see.

15:47:57 20 It doesn't have a name because --

15:48:00 21 **A Yeah.**

15:48:00 22 Q I got it.

15:48:00 23 It is, like, an office building --

15:48:00 24 **A Yeah, yeah.**

15:48:00 25 Q -- for a single -- for a single occupant?

15:48:03 1 **A** **Exactly.**

15:48:03 2 Q Got it.

15:48:04 3 Anything else in -- in Florida?

15:48:10 4 **A** **I can't recall. If you have others you**

15:48:13 5 **want to ask me about on the list, I'm happy to**

15:48:16 6 **answer.**

15:48:17 7 Q Well, I don't know that my list is

15:48:18 8 particularly very good. So --

15:48:19 9 **A** **I'm trying.**

15:48:20 10 Q This is all in the Miami area. Do you have

15:48:23 11 any involvement in projects in, say, the

15:48:26 12 Tampa/St. "Pete" area?

15:48:28 13 **A** **Yes.**

15:48:29 14 Q What do you have there?

15:48:30 15 **A** **I can't remember the name.**

15:48:32 16 Q What type of project?

15:48:33 17 **A** **It is a ground-up development of**

15:48:36 18 **multifamily. That is substantially complete at this**

15:48:42 19 **point. Not by formal definition, meaning it is**

15:48:45 20 **nearing end of completion.**

15:48:47 21 Q And that is in Tampa?

15:48:48 22 **A** **I think so.**

15:48:49 23 Q Okay. Anything else in that vicinity of

15:48:54 24 Florida?

15:48:55 25 **A** **I really -- I don't think so.**

15:48:56 1 Q What about, like, up in, like, the
15:48:58 2 Jacksonville-type area or Orlando areas?

15:49:02 3 A We might have one investment that we've
15:49:04 4 done there, but I'm not sure that it is still
15:49:07 5 outstanding there.

15:49:08 6 Q Do you know what Can IV 1300 South Miami
15:49:12 7 is?

15:49:12 8 A No.

15:49:13 9 Q How about Can IV BrickellHouse, LLC?

15:49:16 10 A Yes.

15:49:17 11 Q Is that the one you talked about earlier?

15:49:20 12 A Yes.

15:49:20 13 Q Okay. Very good.

15:49:20 14 What about --

15:49:21 15 A Wait. I'm sorry. No. So BrickellHouse
15:49:24 16 was, I believe, another multifamily development. We
15:49:31 17 were repaid on that a while ago.

15:49:33 18 Q Okay. What about Can IV Design 41, LLC?

15:49:37 19 A Yes. That is an existing loan on an --
15:49:40 20 at -- as a -- I'm sorry -- an existing office
15:49:42 21 building.

15:49:42 22 Q And --

15:49:44 23 A It is in the design district of Miami.

15:49:49 24 Q I see.

15:49:49 25 What about CJUF Intracoastal?

15:49:53 1 **A** **That has been repaid long ago.**

15:49:55 2 Q All right. Anything else in Florida that

15:49:57 3 you can recall?

15:49:58 4 **A** **I can't.**

15:49:59 5 Q How about in New York?

15:50:00 6 **A** **Yes.**

15:50:01 7 Q What -- what is in New York?

15:50:03 8 **A** **We have a ground-up construction project**

15:50:08 9 **for condominiums in Long Island City.**

15:50:12 10 Q Is that what we call it or is that just the

15:50:14 11 location of it?

15:50:15 12 **A** **That is the location of it.**

15:50:15 13 Q All right.

15:50:16 14 **A** **And it is called the Lindley.**

15:50:19 15 Q Lindley? Okay.

15:50:21 16 **A** **And there is another project,**

15:50:25 17 **571 Third Avenue. Actually, I'm -- hold on one**

15:50:32 18 **second. The Lindley is the -- the one that I'm**

15:50:37 19 **giving you now. The Long Island City one is just in**

15:50:40 20 **the process of being named. They're both**

15:50:42 21 **condominium projects.**

15:50:42 22 Q Okay.

15:50:44 23 **A** **And the Long Island City one is a newer**

15:50:47 24 **project that is currently under construction. The**

15:50:51 25 **other project is nearing completion.**

15:50:54 1 Q And the Third Avenue is a -- is a ground-up
15:50:56 2 construction?
15:50:56 3 **A It was.**
15:50:56 4 Q Is that what you just said?
15:50:58 5 **A Yeah.**
15:50:58 6 Q Okay. What -- anything else in New York
15:50:59 7 state? Didn't you say something about Brooklyn
15:51:08 8 earlier today?
15:51:09 9 **A But we were repaid on that.**
15:51:09 10 Q Oh.
15:51:13 11 **A 20 Henry is what you had asked me about.**
15:51:13 12 Q Oh, that is right.
15:51:16 13 **A And we were repaid long ago on that.**
15:51:18 14 Q Any others in -- in the boroughs of
15:51:20 15 New York?
15:51:21 16 **A No.**
15:51:22 17 Q Okay. What about Texas?
15:51:25 18 **A We have multifamily ground-up development**
15:51:31 19 **projects there that we've done preferred equity on,**
15:51:35 20 **and honestly I cannot come up with the current names**
15:51:38 21 **of those.**
15:51:39 22 Q Do you have any idea in what cities they're
15:51:41 23 located?
15:51:45 24 **A Plano, San Antonio.**
15:51:53 25 Q Dallas? Houston? No?

15:51:55 1 **A** **No. We are -- we had an investment in**
15:51:56 2 **Houston. It was also repaid many years ago.**

15:52:00 3 **Q** **I think you also mentioned Maryland.**

15:52:02 4 **A** **Yes.**

15:52:02 5 **Q** **What is in Maryland?**

15:52:04 6 **A** **We have also -- that is a ground-up**
15:52:09 7 **multifamily. The names -- because they're all**
15:52:15 8 **similar, one has been -- they've been repaid except**
15:52:19 9 **for one. And it is either, like, Ascend or Allure,**
15:52:23 10 **or something like that. But it is one of those**
15:52:26 11 **names.**

15:52:26 12 **Q** **Do you know in what city those -- one of,**
15:52:28 13 **or both of those are located?**

15:52:30 14 **A** **No.**

15:52:31 15 **Q** **Not in Baltimore or --**

15:52:33 16 **A** **No, it is not in Baltimore. It is -- it is**
15:52:35 17 **outside.**

15:52:36 18 **Q** **Okay. Nevada. I think you said there**
15:52:40 19 **might have been one in Nevada?**

15:52:42 20 **A** **We had one multifamily development that was**
15:52:49 21 **with Watt. So I can't -- Watt, W-a-t-t. And I --**
15:52:54 22 **I'm not -- I can't recall the name.**

15:52:55 23 **Q** **What is Watt?**

15:52:56 24 **A** **The sponsor.**

15:52:57 25 **Q** **What is a sponsor?**

15:52:58 1 **A** **What he did. When you sponsor a project.**

15:53:02 2 **When you're the developer of a project.**

15:53:05 3 Q Oh. Watt was the name of the developer?

15:53:06 4 **A** **Yeah.**

15:53:06 5 Q I see.

15:53:07 6 And was that in Las Vegas or somewhere else
15:53:08 7 in Nevada?

15:53:09 8 **A** **It is in a suburb in Nevada.**

15:53:11 9 Q Okay. What type of project was that?

15:53:13 10 **A** **Multifamily.**

15:53:14 11 Q I'm -- okay. Thank you.

15:53:15 12 Is that the only one there in Nevada?

15:53:17 13 **A** **At this point, I believe so.**

15:53:18 14 Q Okay. Just going through trying to cross
15:53:20 15 check with what I've got so far. Where is -- I
15:53:26 16 can't read my writing.

15:53:27 17 Where is 10 -- Can IV 10 Bond?

15:53:32 18 **A** **Oh. On Bond Street in New York. It was**
15:53:34 19 **repaid long ago.**

15:53:36 20 Q Okay. And Can IV 365 BST -- is that in
15:53:41 21 New York also?

15:53:43 22 **A** **I don't know.**

15:53:44 23 Q All right. What about Can IV Driggs, LLC?

15:53:48 24 **A** **That was in Brooklyn. Again, repaid.**

15:53:52 25 Q That -- that is completed and paid? Okay.

15:53:54 1 What about --

15:53:55 2 **A Oh, I -- I actually do recall now.**

15:53:55 3 Q All right.

15:53:58 4 **A 365 Bond is -- was also ground-up**

15:54:01 5 **multifamily development in Brooklyn, and it was**

15:54:04 6 **fully repaid.**

15:54:05 7 Q That is 365 BST?

15:54:09 8 **A Yeah.**

15:54:09 9 Q Thank you.

15:54:14 10 Can IV LV Hotel -- do you know what that

15:54:18 11 is?

15:54:18 12 **A No.**

15:54:19 13 Q Okay. I thought maybe that meant

15:54:21 14 Las Vegas. I was just guessing.

15:54:23 15 What about CJUF Charles Village? Is

15:54:28 16 that -- are you familiar --

15:54:28 17 **A Fully repaid.**

15:54:29 18 Q Was that in Maryland?

15:54:31 19 **A Baltimore.**

15:54:32 20 Q And what -- that is -- so that is not the

15:54:32 21 Ascend --

15:54:32 22 **A No.**

15:54:34 23 Q -- or the Allure? Okay.

15:54:39 24 All right. Were there -- in any of these

15:54:44 25 matters that we just discussed in Florida, in

15:54:48 1 New York, in Texas, in Maryland, and Nevada, were

15:54:49 2 any of these the subject of litigation?

15:54:51 3 **A No.**

15:54:51 4 Q Do you recall if default letters were sent

15:54:54 5 to any of these borrowers?

15:54:55 6 **A I don't recall.**

15:54:56 7 Q What about -- are there any projects in the

15:54:59 8 District of Columbia area?

15:55:00 9 **A Not anymore.**

15:55:01 10 Q What about in Virginia?

15:55:06 11 **A You know, the -- there is a recent**

15:55:08 12 **transaction, Verse at the Boro.**

15:55:16 13 Q I'm not even going to guess how many

15:55:22 14 different times -- how many different ways you can

15:55:23 15 spell Boro.

15:55:24 16 **A It is just B-o-r-o.**

15:55:24 17 Q Oh, that --

15:55:26 18 **A Yeah. It is an easy one.**

15:55:27 19 Q And where is that located?

15:55:28 20 **A I can't remember the county, but it is in,**

15:55:31 21 **you know, the Virginia area that you were asking**

15:55:34 22 **about. And that is a recent transaction, and it is**

15:55:38 23 **a ground-up development of condominiums.**

15:55:42 24 Q All right. Anything else in Virginia or

15:55:43 25 D.C.?

15:55:44 1 **A** **I really don't believe there is anything**
15:55:46 2 **else in D.C. at this point.**

15:55:48 3 **Q** **What about Massachusetts?**

15:55:50 4 **A** **We do. We have one ground-up construction**
15:55:53 5 **project at 110 Broad Street.**

15:55:57 6 **Q** **Is that in Boston?**

15:55:59 7 **A** **It is.**

15:56:00 8 **Q** **Anything else in Massachusetts?**

15:56:06 9 **A** **Not anymore.**

15:56:07 10 **Q** **What about in New Jersey?**

15:56:08 11 **A** **Not anymore.**

15:56:09 12 **Q** **What about in Washington State?**

15:56:12 13 **A** **I don't think so.**

15:56:13 14 **Q** **What about in Hawaii?**

15:56:16 15 **A** **Not anymore.**

15:56:17 16 **Q** **What about in Illinois?**

15:56:18 17 **A** **Not anymore.**

15:56:19 18 **Q** **So let me ask you a couple of these.**
15:56:22 19 **What about in Arizona?**

15:56:23 20 **A** **Which one?**

15:56:24 21 **Q** **I didn't have one. I was just asking: Is**
15:56:27 22 **there any in Arizona?**

15:56:28 23 **A** **I gave you what I recalled.**

15:56:30 24 **Q** **I don't know that you gave me any in**
15:56:32 25 **Arizona.**

15:56:32 1 **A** **I don't think we have any.**

15:56:32 2 Q Oh, okay.

15:56:34 3 **A** **We had talked about Arizona before --**

15:56:34 4 Q I'm sorry.

15:56:35 5 **A** **-- is what I'm saying.**

15:56:37 6 Q Okay.

15:56:38 7 **A** **Yeah.**

15:56:38 8 Q Are you familiar with this entity Can IV

15:56:43 9 Blue Sky, LLC?

15:56:44 10 **A** **It is an old loan, fully repaid long ago.**

15:56:47 11 Q Was that in Arizona?

15:56:47 12 **A** **It was.**

15:56:48 13 Q Okay. Do you know where in Arizona?

15:56:50 14 **A** **No.**

15:56:56 15 Q Okay. What about Alabama?

15:56:59 16 **A** **Not in about a hundred years.**

15:57:02 17 Q San Carlos Condominium Company?

15:57:05 18 **A** **Like, ten years ago.**

15:57:07 19 Q Okay. But that was in Alabama?

15:57:09 20 **A** **Yeah.**

15:57:11 21 Q All right. Were any of these places in

15:57:13 22 Virginia or Massachusetts ever the subject of the

15:57:15 23 litigation?

15:57:15 24 **A** **I don't believe so.**

15:57:17 25 Q Any default letters sent to those people?

15:57:20 1 **A I'm not aware of any.**

15:57:22 2 Q Are you aware of any other lawsuits
15:57:24 3 involving any Canyon real estate projects other than
15:57:28 4 my client's for the time that you've been working at
15:57:31 5 this company?

15:57:32 6 **A Lawsuits?**

15:57:33 7 Q Other than the two that you mentioned that
15:57:36 8 you testified as part of, of course.

15:57:38 9 **A I can't recall any.**

15:57:41 10 Q Are you aware of any litigation at all even
15:57:44 11 on the repaid loans?

15:57:49 12 **A There might be insurance litigation on one,
15:57:52 13 but I'm -- and contract litigation on another.**

15:57:56 14 Q Do you know where those are located?

15:57:58 15 **A The contract one would be Raymond
15:58:01 16 Renaissance, the one in Pasadena. You had already
15:58:04 17 asked me about that and I -- it is on the list of
15:58:07 18 repaid.**

15:58:11 19 Q Oh, okay. And what was the other one?

15:58:24 20 **A You know, the -- the -- honestly, this
15:58:26 21 would have to be counsel opining on the litigation.**

15:58:29 22 Q Well, it is not really -- I'm not asking
15:58:30 23 for your opinion on litigation. I'm just asking if
15:58:33 24 you know of any in existence.

15:58:35 25 **A The insurance stuff I don't follow.**

15:58:38 1 Q Okay. Can you explain to me why some --
15:58:41 2 some projects are -- are -- start with the prefix of
15:58:44 3 Can IV and others start with the prefix of Can II
15:58:47 4 and others start with the prefix of Can V and others
15:58:51 5 start with the prefix of Can III?
15:58:54 6 **A I can't because I don't form the entities.**
15:58:56 7 Q Okay. So you don't know how those --
15:58:56 8 **A I don't.**
15:58:59 9 Q -- names get made?
15:59:03 10 Can you -- do you know where -- are you
15:59:05 11 aware of a -- of an entity called Can IV Echo, LLC?
15:59:10 12 **A Yes.**
15:59:11 13 Q Where was that located?
15:59:12 14 **A Florida. That we've been repaid.**
15:59:14 15 Q Do you know where in Florida?
15:59:18 16 **A Miami.**
15:59:19 17 Q Do you know about Can IV CT, LLC?
15:59:22 18 **A I don't know what CT is.**
15:59:23 19 Q Okay. How about Can IV HW Park, LLC?
15:59:28 20 **A I think it is called Hollywood Park.**
15:59:30 21 Q So is that Hollywood, California?
15:59:32 22 **A Yeah. But we -- it is not a loan that is**
15:59:35 23 **on our books.**
15:59:36 24 Q Is it because it has been repaid?
15:59:39 25 **A Yes.**

15:59:39 1 Q Okay. Do you know what Can IV Muse, LLC,
15:59:41 2 refers to?

15:59:42 3 A Yes. Muse is a condominium project
15:59:46 4 actually in Florida in Sunny Isles. And I forgot to
15:59:50 5 tell you about that one when you asked about
15:59:53 6 Florida. I apologize. And it is a high-rise
15:59:56 7 condominium development.

15:59:58 8 Q All right. How about Can IV Rim, LLC?

16:00:05 9 A I think that has been repaid.

16:00:08 10 Q Do you have any idea where that was
16:00:10 11 located?

16:00:11 12 A It was Florida.

16:00:13 13 Q Also in Florida. Okay.

16:00:14 14 What about Can IV Sylvan, LLC?

16:00:19 15 A Sylvan is also, I believe, in Florida, and
16:00:21 16 it has been repaid, I believe.

16:00:22 17 Q Do you know which city or area in Florida
16:00:25 18 Sylvan was?

16:00:25 19 A I don't.

16:00:27 20 Q How about Rim? Do you know where that was
16:00:29 21 in Florida?

16:00:29 22 A I don't.

16:00:31 23 Q What about Can IV UG, LLC?

16:00:34 24 A I believe that is University Gateway. And
16:00:42 25 that was a loan. It was in Las Vegas, but it has

16:00:45 1 **been repaid.**

16:00:47 2 Q What about -- do you know what CVOF stands
16:00:56 3 for?

16:00:56 4 **A Canyon Value Opportunity Fund.**

16:00:59 5 Q And do you know what the CVOF 71, LLC,
16:01:02 6 might be?

16:01:02 7 **A It was for Hotel 71, which was located in**
16:01:05 8 **Chicago. Repaid long ago.**

16:01:09 9 Q Okay. In talking about these few that
16:01:12 10 we've just discussed, have any others that are
16:01:14 11 currently operational come to mind?

16:01:18 12 **A I know it is not an exhaustive list, but**
16:01:26 13 **that is all I can recall at this point.**

16:01:33 14 Q Okay. If there is a -- let me ask it a
16:01:40 15 different way.

16:01:40 16 The receiver construction loan that we
16:01:42 17 talked about earlier -- do you know if there were
16:01:45 18 points paid on that loan?

16:01:46 19 **A I don't.**

16:01:48 20 Q Are you married, ma'am?

16:01:55 21 MR. DOLAN: What is the relevance of that?

16:01:57 22 MR. MILLER: I just want to know if -- just
16:01:59 23 in case I can't track her down again if there is a
16:02:02 24 spouse who might have a different name that I would
16:02:05 25 be able to identify. I don't know why that is

16:02:08 1 privileged, secret, confidential, or anything. I

16:02:11 2 could probably look it up in court records.

16:02:12 3 MR. DOLAN: It is just -- abnormally

16:02:13 4 intrusive is what it is.

16:02:14 5 MR. MILLER: The question is intrusive?

16:02:16 6 MR. DOLAN: Yeah. About marital status and

16:02:19 7 things? I don't think that is appropriate at all.

16:02:19 8 MR. MILLER: Well, she could tell me where

16:02:20 9 she lives, then I wouldn't have to ask this

16:02:23 10 question.

16:02:23 11 MR. DOLAN: I don't think you have to ask

16:02:25 12 either question.

16:02:26 13 MR. MILLER: Well, as you know, I'm having

16:02:27 14 trouble finding former employees. So that is my

16:02:30 15 concern. I raised that a long time ago.

16:02:30 16 MR. DOLAN: She is not a former employee,

16:02:33 17 though.

16:02:33 18 MR. MILLER: Not yet.

16:02:33 19 MR. DOLAN: Well --

16:02:35 20 MR. MILLER: I mean, I don't know. She can

16:02:39 21 tell me if she is married or she can tell me where

16:02:42 22 she lives.

16:02:42 23 Those are our -- I mean, that is where

16:02:43 24 we're -- that is where we are at at the moment.

16:02:46 25 THE WITNESS: I prefer not to answer.

16:02:46 1 BY MR. MILLER:

16:02:47 2 Q I understand your preference, but I don't
16:02:50 3 know that that is a question that is secret. It is
16:02:53 4 actually a matter of public record.

16:02:55 5 **A Then find it.**

16:02:57 6 Q Well, where were you married?

16:02:58 7 **A Find it.**

16:02:59 8 Q Find it? This is another --

16:02:59 9 MR. DOLAN: This is -- this is --

16:03:00 10 THE WITNESS: This is -- this is -- come
16:03:01 11 on.

16:03:01 12 MR. DOLAN: Yeah, this is -- it is --

16:03:01 13 BY MR. MILLER:

16:03:03 14 Q Would you consider Canyon to be an honest
16:03:05 15 lender?

16:03:08 16 **A Of course.**

16:03:10 17 Q Then why are you hiding so much?

16:03:12 18 **A It is your opinion, not mine.**

16:03:15 19 Q Well, do you believe you've presented me
16:03:16 20 with all of the information we have sought?

16:03:17 21 **A I've presented you with answers to the
16:03:19 22 questions you've asked in the way that I know the
16:03:22 23 information, which is my job.**

16:03:23 24 Q Yeah. But I'm more referring to the 6,400
16:03:27 25 e-mails that we're not allowed to see and the

16:03:31 1 internal valuations that we've not been provided and
16:03:34 2 the investor letters that were not delivered.

16:03:39 3 I mean, why are those being hidden from us
16:03:42 4 if you're an honest lender -- if Canyon is an honest
16:03:44 5 lender?

16:03:45 6 **A I'm not answering that question because it**
16:03:47 7 **is your opinion and you're asking me to validate an**
16:03:50 8 **opinion that I don't agree with.**

16:03:52 9 Q You don't agree that you haven't produced
16:03:54 10 those items?

16:03:55 11 **A I am not the person in charge of**
16:03:57 12 **production. We have counsel, as you are well aware.**

16:04:00 13 Q But you -- so what does Canyon have to
16:04:03 14 hide?

16:04:05 15 **A Canyon doesn't have anything to hide.**

16:04:07 16 Q But yet Canyons hides a lot.

16:04:09 17 **A I do not agree that Canyon hides anything.**

16:04:13 18 Q Well, then why don't I get to see all the
16:04:15 19 documents that I want to see?

16:04:17 20 **A I'm not going to answer the same question**
16:04:20 21 **over and over again.**

16:04:22 22 Q Uh-huh.

16:04:24 23 Do you think you acted in good faith with
16:04:28 24 my client?

16:04:29 25 **A I believe I always act in good faith.**

16:04:32 1 Q And you think by forcing him to sign
16:04:38 2 documents that would take away all of his equity and
16:04:43 3 investment in the building is acting in good faith?
16:04:45 4 **A I didn't force anybody to do anything.**
16:04:47 5 Q And he didn't do it, of course, but you
16:04:49 6 basically gave him an all-or-nothing offer; right?
16:04:52 7 Take it or leave it? That is basically what was
16:04:55 8 provided to him, wasn't it?
16:04:57 9 **A What was provided to him was the structure
16:04:59 10 of a possible forbearance under the context of a
16:05:03 11 pre-negotiation agreement.**
16:05:05 12 Q That forced my client to give up everything
16:05:08 13 he had.
16:05:08 14 **A You are stating that your client would be
16:05:11 15 forced to do something. I am not agreeing with your
16:05:14 16 statement.**
16:05:15 17 Q What option did he have?
16:05:17 18 **A To pay.**
16:05:19 19 Q So how does that differentiate Canyon from
16:05:24 20 a loan shark?
16:05:26 21 **A I don't know what a loan shark is.**
16:05:44 22 Q Ma'am, if the loan wasn't, in fact, due at
16:05:48 23 the time of the meeting, why would my client have to
16:05:50 24 pay?
16:05:50 25 **A The loan was in default.**

16:05:52 1 Q Oh, because you claim it was in default and
16:05:54 2 it was accelerating?

16:05:56 3 A I believe that the defaults were held up by
16:05:59 4 court.

16:06:00 5 Q No. That is not how it works, but that is
16:06:02 6 your opinion.

16:06:02 7 (Discussion held off the record.)

16:06:02 8 BY MR. MILLER:

16:07:29 9 Q Ma'am, one question I don't believe I
16:07:31 10 asked. Are you familiar with entities that are
16:07:35 11 Canyon entities that don't begin with Can?

16:07:39 12 A There are entities that don't begin with
16:07:42 13 that because you gave me a few.

16:07:42 14 Q Right. But -- I know.
16:07:44 15 There is the CJUF ones --

16:07:44 16 A Right.

16:07:47 17 Q -- and the CVOF ones.

16:07:49 18 A Right.

16:07:49 19 Q Are there any other prefixes that are
16:07:52 20 normally used?

16:07:52 21 A Again, I don't -- I don't pick the names.

16:07:53 22 Q I know, but I'm assuming you've seen them
16:07:55 23 over the years.

16:07:56 24 A I don't have any -- I am not the one who
16:07:58 25 forms entities or picks the names; so I can't opine

16:08:01 1 **on what you do or don't have on that list.**

16:08:04 2 Q No. I -- I -- ma'am, I didn't ask you to
16:08:07 3 opine and I didn't ask you to look at a list. I
16:08:10 4 merely asked you if you are aware of any other
16:08:15 5 Canyon entities that don't start with the prefix
16:08:17 6 Can, CJUF, or CVOF.

16:08:21 7 A I am certain that there are other naming
16:08:24 8 conventions. I don't know what they are.

16:08:24 9 (Discussion held off the record.)

16:09:00 10 BY MR. MILLER:

16:09:00 11 Q Ma'am, Roshan Sonthalia -- does he still
16:09:04 12 work at Canyon?

16:09:05 13 A No.

16:09:06 14 Q Do you know why he left?

16:09:06 15 A No.

16:09:08 16 Q Do you know how long ago he left?

16:09:09 17 A No.

16:09:10 18 Q Do you remember the last time you spoke
16:09:11 19 with him or communicated in any way?

16:09:13 20 A I -- I don't remember the last time, no.

16:09:51 21 MR. MILLER: Uh-huh.

16:09:51 22 (A Sotto voce discussion was held.)

16:09:52 23 MR. MILLER: Give me two minutes.

16:09:54 24 MR. DOLAN: Want us to exit?

16:09:56 25 MR. MILLER: Yeah.

16:09:56 1 THE VIDEOGRAPHER: Off the record at
16:09:57 2 4:09 p.m.
16:13:18 3 (Recess.)
16:13:20 4 THE VIDEOGRAPHER: We are back on the
16:13:21 5 record at 4:13 p.m.
16:13:25 6 MR. MILLER: I have no further questions.
16:13:29 7 Mike, are you still there?
16:13:35 8 MR. DOLAN: Or the other woman.
16:13:36 9 MR. MILLER: Or the -- or -- Anna, are you
16:13:36 10 still there?
16:13:41 11 MR. DOLAN: Is anybody still there? You
16:13:46 12 can see them on, yeah.
16:13:48 13 MR. MILLER: Anna, you there? Do you have
16:13:52 14 any questions, Anna?
16:13:54 15 She may have -- my only concern is that she
16:13:56 16 may have walked away.
16:14:00 17 MR. MILLER: Oh, she types it --
16:14:00 18 MR. DOLAN: She said that?
16:14:01 19 MR. MILLER: Oh, look at that.
16:14:02 20 MR. DOLAN: Why don't we have that?
16:14:02 21 MR. MILLER: All right. Ben, do you have
16:14:06 22 any?
16:14:06 23 MR. DOLAN: I don't have any question.
16:14:08 24 MR. MILLER: All right. Then we're done.
16:14:09 25 Thank you.

Maria Stamolis

5/3/2018

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16:14:09 1 THE VIDEOGRAPHER: This marks the end of
16:14:12 2 Media No. 3 in the deposition of Maria Stamolis. We
16:14:15 3 are off the record at 4:14 p.m.
4 (Ending time: 4:14 p.m.)
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WITNESS'S CERTIFICATE

I am the witness in the foregoing deposition. I have read the foregoing deposition and having made such changes and corrections as I desire, I certify that the same is true of my own knowledge, except as to those matters which are therein stated upon my information or belief, and as to those matters, I believe it to be true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on _____,

at _____.

MARIA STAMOLIS

1 REPORTER'S CERTIFICATE

2

3

4 I, DEBORAH L. LUNDGREN, CSR No. 6727, RPR,
5 a certified shorthand reporter in and for the State
6 of California, do hereby certify:

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

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

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

18 May 15, 2018

19

20

21

22

DEBORAH L. LUNDGREN
CSR NO. 6727, RPR

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